

117TH CONGRESS
2D SESSION

S. 3790

To ensure that women seeking an abortion receive an ultrasound and the opportunity to review the ultrasound before giving informed consent to receive an abortion.

IN THE SENATE OF THE UNITED STATES

MARCH 10 (legislative day, MARCH 7), 2022

Mr. MARSHALL (for himself, Mrs. BLACKBURN, Mr. BRAUN, Mr. CASSIDY, Mr. CRUZ, Mr. DAINES, Mrs. HYDE-SMITH, Mr. INHOFE, Ms. LUMMIS, Mr. ROUNDS, Mr. SCOTT of Florida, and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To ensure that women seeking an abortion receive an ultrasound and the opportunity to review the ultrasound before giving informed consent to receive an abortion.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ultrasound Informed
5 Consent Act”.

1 **SEC. 2. AMENDMENT TO THE PUBLIC HEALTH SERVICE**
2 **ACT.**

3 The Public Health Service Act (42 U.S.C. 201 et
4 seq.) is amended by adding at the end the following:

5 **“TITLE XXXIV—INFORMED**
6 **CONSENT**

7 **“SEC. 3401. DEFINITIONS.**

8 “In this title:

9 “(1) ABORTION.—The term ‘abortion’ means
10 the intentional use or prescription of any instru-
11 ment, medicine, drug, substance, device, or method
12 to terminate the life of an unborn child, or to termi-
13 nate the pregnancy of a woman known to be preg-
14 nant, with an intention other than—

15 “(A) to produce a live birth and preserve
16 the life and health of the child after live birth;
17 or

18 “(B) to remove an ectopic pregnancy, or to
19 remove a dead unborn child who died as the re-
20 sult of a spontaneous abortion, accidental trau-
21 ma, or a criminal assault on the pregnant fe-
22 male or her unborn child.

23 “(2) ABORTION PROVIDER.—The term ‘abortion
24 provider’ means any person legally authorized to
25 perform an abortion.

1 “(3) UNBORN CHILD.—The term ‘unborn child’
2 means a member of the species homo sapiens, at any
3 stage of development prior to birth.

4 “(4) WOMAN.—The term ‘woman’ means a fe-
5 male human being whether or not she has reached
6 the age of majority.

7 **“SEC. 3402. REQUIREMENT OF INFORMED CONSENT.**

8 “(a) REQUIREMENT OF COMPLIANCE BY PRO-
9 VIDERS.—Any abortion provider in or affecting interstate
10 or foreign commerce, who knowingly performs any abor-
11 tion, shall comply with the requirements of this title.

12 “(b) PERFORMANCE AND REVIEW OF
13 ULTRASOUND.—Prior to a woman giving informed con-
14 sent to having any part of an abortion performed, the
15 abortion provider who is to perform the abortion, or an
16 agent under the supervision of the provider, shall—

17 “(1) perform an obstetric ultrasound on the
18 pregnant woman;

19 “(2) provide a simultaneous explanation of
20 what the ultrasound is depicting;

21 “(3) display the ultrasound images so that the
22 pregnant woman may view them;

23 “(4) make audible the live, real-time heart aus-
24 cultation, when present, for the pregnant woman to
25 hear, in a quality consistent with current medical

1 practice, and provide, in a manner understandable to
2 a layperson, a simultaneous verbal explanation of
3 the live, real-time heart auscultation; and

4 “(5) provide a complete medical description of
5 the ultrasound images, which shall include all of the
6 following: the dimensions of the embryo or fetus,
7 cardiac activity if present and visible, and the pres-
8 ence of arms, legs, external members and internal
9 organs if present and viewable, and provide a copy
10 of the ultrasound image to the woman.

11 “(c) ABILITY TO TURN EYES AWAY.—Nothing in
12 this section shall be construed to prevent a pregnant
13 woman from turning her eyes away from the ultrasound
14 images required to be displayed and described to her. Nei-
15 ther the abortion provider nor the pregnant woman shall
16 be subject to any penalty under this title if the pregnant
17 woman declines to look at the displayed ultrasound im-
18 ages.

19 **“SEC. 3403. EXCEPTION FOR MEDICAL EMERGENCIES.**

20 “(a) EXCEPTION.—The provisions of section 3402
21 shall not apply to an abortion provider if the abortion is
22 necessary to save the life of a mother whose life is endan-
23 gered by a physical disorder, physical illness, or physical
24 injury, including a life-endangering physical condition
25 caused by or arising from the pregnancy itself.

1 “(b) CERTIFICATION.—Upon a determination by an
2 abortion provider under subsection (a) that an abortion
3 is necessary to save the life of a mother, such provider
4 shall include in the medical file of the pregnant woman
5 a truthful and accurate certification of the specific medical
6 circumstances that support such determination.

7 **“SEC. 3404. PENALTIES FOR FAILURE TO COMPLY.**

8 “(a) CIVIL PENALTIES.—

9 “(1) IN GENERAL.—The Attorney General may
10 commence a civil action in Federal court under this
11 section against any abortion provider who knowingly
12 commits an act constituting a violation of this title
13 for a penalty in an amount not to exceed—

14 “(A) \$100,000 for each such violation that
15 is adjudicated in the first proceeding against
16 such provider under this title; and

17 “(B) \$250,000 for each violation of this
18 title that is adjudicated in a subsequent pro-
19 ceeding against such provider under this title.

20 “(2) NOTIFICATION.—Upon the assessment of
21 a civil penalty under paragraph (1), the Attorney
22 General shall notify the appropriate State medical li-
23 censing authority.

24 “(b) PRIVATE RIGHT OF ACTION.—A woman upon
25 whom an abortion has been performed in violation of this

1 title may commence a civil action against the abortion pro-
2 vider for any violation of this title for actual and punitive
3 damages. For purposes of the preceding sentence, actual
4 damages are objectively verifiable money damages for all
5 injuries.”.

6 **SEC. 3. PREEMPTION.**

7 Nothing in this Act or the amendments made by this
8 Act shall be construed to preempt any provision of State
9 law to the extent that such State law establishes, imple-
10 ments, or continues in effect disclosure requirements re-
11 garding abortion or penalties for failure to comply with
12 such requirements that are more extensive than those pro-
13 vided under the amendment made by this Act.

14 **SEC. 4. REQUIREMENT FOR FUNDING.**

15 As a condition for receiving any Federal funds or as-
16 sistance, an abortion provider shall comply with the re-
17 quirements of title XXXIV of the Public Health Service
18 Act, as added by this Act.

19 **SEC. 5. SEVERABILITY.**

20 If any provision of this Act, or any application there-
21 of, is found to be unconstitutional, the remainder of this
22 Act and any application thereof shall not be affected by
23 such finding.

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