

117TH CONGRESS
1ST SESSION

S. 92

To prohibit taxpayer funded abortions.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2021

Mr. WICKER (for himself, Mr. BARRASSO, Mrs. BLACKBURN, Mr. BLUNT, Mr. BOOZMAN, Mr. BRAUN, Mrs. CAPITO, Mr. CASSIDY, Mr. CORNYN, Mr. COTTON, Mr. CRAMER, Mr. CRAPO, Mr. CRUZ, Mr. DAINES, Ms. ERNST, Mrs. FISCHER, Mr. GRAHAM, Mr. GRASSLEY, Mr. HAGERTY, Mr. HAWLEY, Mr. HOEVEN, Mrs. HYDE-SMITH, Mr. INHOFE, Mr. JOHNSON, Mr. KENNEDY, Mr. LANKFORD, Mr. LEE, Ms. LUMMIS, Mr. MARSHALL, Mr. MCCONNELL, Mr. MORAN, Mr. PAUL, Mr. PORTMAN, Mr. RISCH, Mr. ROMNEY, Mr. ROUNDS, Mr. RUBIO, Mr. SASSE, Mr. SCOTT of Florida, Mr. SCOTT of South Carolina, Mr. SHELBY, Mr. SULLIVAN, Mr. THUNE, Mr. TILLIS, Mr. TOOMEY, Mr. TUBERVILLE, and Mr. YOUNG) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To prohibit taxpayer funded abortions.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “No Taxpayer Funding for Abortion and Abortion Insur-
6 ance Full Disclosure Act of 2021”.

1 (b) TABLE OF CONTENTS.—The table of contents of
2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PROHIBITING FEDERALLY FUNDED ABORTIONS

Sec. 101. Prohibiting taxpayer funded abortions.

Sec. 102. Amendment to table of chapters.

TITLE II—APPLICATION UNDER THE AFFORDABLE CARE ACT

Sec. 201. Clarifying application of prohibition to premium credits and cost-sharing reductions under ACA.

Sec. 202. Revision of notice requirements regarding disclosure of extent of health plan coverage of abortion and abortion premium surcharges.

3 **TITLE I—PROHIBITING FEDER-**
4 **ALLY FUNDED ABORTIONS**

5 **SEC. 101. PROHIBITING TAXPAYER FUNDED ABORTIONS.**

6 Title 1, United States Code is amended by adding
7 at the end the following new chapter:

8 **“CHAPTER 4—PROHIBITING TAXPAYER**
9 **FUNDED ABORTIONS**

“301. Prohibition on funding for abortions.

“302. Prohibition on funding for health benefits plans that cover abortion.

“303. Limitation on Federal facilities and employees.

“304. Construction relating to separate coverage.

“305. Construction relating to the use of non-Federal funds for health coverage.

“306. Non-preemption of other Federal laws.

“307. Construction relating to complications arising from abortion.

“308. Treatment of abortions related to rape, incest, or preserving the life of the mother.

“309. Application to District of Columbia.

10 **“§ 301. Prohibition on funding for abortions**

11 “No funds authorized or appropriated by Federal
12 law, and none of the funds in any trust fund to which
13 funds are authorized or appropriated by Federal law, shall
14 be expended for any abortion.

1 **“§ 302. Prohibition on funding for health benefits**
 2 **plans that cover abortion**

3 “None of the funds authorized or appropriated by
 4 Federal law, and none of the funds in any trust fund to
 5 which funds are authorized or appropriated by Federal
 6 law, shall be expended for health benefits coverage that
 7 includes coverage of abortion.

8 **“§ 303. Limitation on Federal facilities and employees**

9 “No health care service furnished—

10 “(1) by or in a health care facility owned or op-
 11 erated by the Federal Government; or

12 “(2) by any physician or other individual em-
 13 ployed by the Federal Government to provide health
 14 care services within the scope of the physician’s or
 15 individual’s employment,

16 may include abortion.

17 **“§ 304. Construction relating to separate coverage**

18 “Nothing in this chapter shall be construed as pro-
 19 hibiting any individual, entity, or State or locality from
 20 purchasing separate abortion coverage or health benefits
 21 coverage that includes abortion so long as such coverage
 22 is paid for entirely using only funds not authorized or ap-
 23 propriated by Federal law and such coverage shall not be
 24 purchased using matching funds required for a federally
 25 subsidized program, including a State’s or locality’s con-
 26 tribution of Medicaid matching funds.

1 **“§ 305. Construction relating to the use of non-Fed-**
2 **eral funds for health coverage**

3 “Nothing in this chapter shall be construed as re-
4 stricting the ability of any non-Federal health benefits cov-
5 erage provider from offering abortion coverage, or the abil-
6 ity of a State or locality to contract separately with such
7 a provider for such coverage, so long as only funds not
8 authorized or appropriated by Federal law are used and
9 such coverage shall not be purchased using matching
10 funds required for a federally subsidized program, includ-
11 ing a State’s or locality’s contribution of Medicaid match-
12 ing funds.

13 **“§ 306. Non-preemption of other Federal laws**

14 “Nothing in this chapter shall repeal, amend, or have
15 any effect on any other Federal law to the extent such
16 law imposes any limitation on the use of funds for abortion
17 or for health benefits coverage that includes coverage of
18 abortion, beyond the limitations set forth in this chapter.

19 **“§ 307. Construction relating to complications arising**
20 **from abortion**

21 “Nothing in this chapter shall be construed to apply
22 to the treatment of any infection, injury, disease, or dis-
23 order that has been caused by or exacerbated by the per-
24 formance of an abortion. This rule of construction shall
25 be applicable without regard to whether the abortion was
26 performed in accord with Federal or State law, and with-

1 out regard to whether funding for the abortion is permis-
2 sible under section 308.

3 **“§ 308. Treatment of abortions related to rape, incest,**
4 **or preserving the life of the mother**

5 “The limitations established in sections 301, 302,
6 and 303 shall not apply to an abortion—

7 “(1) if the pregnancy is the result of an act of
8 rape or incest; or

9 “(2) in the case where a woman suffers from a
10 physical disorder, physical injury, or physical illness
11 that would, as certified by a physician, place the
12 woman in danger of death unless an abortion is per-
13 formed, including a life-endangering physical condi-
14 tion caused by or arising from the pregnancy itself.

15 **“§ 309. Application to District of Columbia**

16 “In this chapter:

17 “(1) Any reference to funds appropriated by
18 Federal law shall be treated as including any
19 amounts within the budget of the District of Colum-
20 bia that have been approved by Act of Congress pur-
21 suant to section 446 of the District of Columbia
22 Home Rule Act (or any applicable successor Federal
23 law).

24 “(2) The term ‘Federal Government’ includes
25 the government of the District of Columbia.”.

1 **SEC. 102. AMENDMENT TO TABLE OF CHAPTERS.**

2 The table of chapters for title 1, United States Code,
3 is amended by adding at the end the following new item:

“4. **Prohibiting taxpayer funded abortions** 301”.

4 **TITLE II—APPLICATION UNDER**
5 **THE AFFORDABLE CARE ACT**

6 **SEC. 201. CLARIFYING APPLICATION OF PROHIBITION TO**
7 **PREMIUM CREDITS AND COST-SHARING RE-**
8 **DUCTIONS UNDER ACA.**

9 (a) IN GENERAL.—

10 (1) DISALLOWANCE OF REFUNDABLE CREDIT
11 AND COST-SHARING REDUCTIONS FOR COVERAGE
12 UNDER QUALIFIED HEALTH PLAN WHICH PROVIDES
13 COVERAGE FOR ABORTION.—

14 (A) IN GENERAL.—Subparagraph (A) of
15 section 36B(c)(3) of the Internal Revenue Code
16 of 1986 is amended by inserting before the pe-
17 riod at the end the following: “or any health
18 plan that includes coverage for abortions (other
19 than any abortion or treatment described in
20 section 307 or 308 of title 1, United States
21 Code)”.

22 (B) OPTION TO PURCHASE OR OFFER SEP-
23 ARATE COVERAGE OR PLAN.—Paragraph (3) of
24 section 36B(c) of such Code is amended by

1 adding at the end the following new subpara-
2 graph:

3 “(C) SEPARATE ABORTION COVERAGE OR
4 PLAN ALLOWED.—

5 “(i) OPTION TO PURCHASE SEPARATE
6 COVERAGE OR PLAN.—Nothing in subpara-
7 graph (A) shall be construed as prohibiting
8 any individual from purchasing separate
9 coverage for abortions described in such
10 subparagraph, or a health plan that in-
11 cludes such abortions, so long as no credit
12 is allowed under this section with respect
13 to the premiums for such coverage or plan.

14 “(ii) OPTION TO OFFER COVERAGE OR
15 PLAN.—Nothing in subparagraph (A) shall
16 restrict any non-Federal health insurance
17 issuer offering a health plan from offering
18 separate coverage for abortions described
19 in such subparagraph, or a plan that in-
20 cludes such abortions, so long as premiums
21 for such separate coverage or plan are not
22 paid for with any amount attributable to
23 the credit allowed under this section (or
24 the amount of any advance payment of the

1 credit under section 1412 of the Patient
2 Protection and Affordable Care Act).”.

3 (2) DISALLOWANCE OF SMALL EMPLOYER
4 HEALTH INSURANCE EXPENSE CREDIT FOR PLAN
5 WHICH INCLUDES COVERAGE FOR ABORTION.—Sub-
6 section (h) of section 45R of the Internal Revenue
7 Code of 1986 is amended—

8 (A) by striking “Any term” and inserting
9 the following:

10 “(1) IN GENERAL.—Any term”; and

11 (B) by adding at the end the following new
12 paragraph:

13 “(2) EXCLUSION OF HEALTH PLANS INCLUDING
14 COVERAGE FOR ABORTION.—

15 “(A) IN GENERAL.—The term ‘qualified
16 health plan’ does not include any health plan
17 that includes coverage for abortions (other than
18 any abortion or treatment described in section
19 307 or 308 of title 1, United States Code).

20 “(B) SEPARATE ABORTION COVERAGE OR
21 PLAN ALLOWED.—

22 “(i) OPTION TO PURCHASE SEPARATE
23 COVERAGE OR PLAN.—Nothing in subpara-
24 graph (A) shall be construed as prohibiting
25 any employer from purchasing for its em-

1 employees separate coverage for abortions de-
2 scribed in such subparagraph, or a health
3 plan that includes such abortions, so long
4 as no credit is allowed under this section
5 with respect to the employer contributions
6 for such coverage or plan.

7 “(ii) OPTION TO OFFER COVERAGE OR
8 PLAN.—Nothing in subparagraph (A) shall
9 restrict any non-Federal health insurance
10 issuer offering a health plan from offering
11 separate coverage for abortions described
12 in such subparagraph, or a plan that in-
13 cludes such abortions, so long as such sep-
14 arate coverage or plan is not paid for with
15 any employer contribution eligible for the
16 credit allowed under this section.”.

17 (3) CONFORMING ACA AMENDMENTS.—Section
18 1303(b) of Public Law 111–148 (42 U.S.C.
19 18023(b)) is amended—

20 (A) by striking paragraph (2);

21 (B) by striking paragraph (3), as amended
22 by section 202(a); and

23 (C) by redesignating paragraph (4) as
24 paragraph (2).

1 (b) APPLICATION TO MULTI-STATE PLANS.—Para-
2 graph (6) of section 1334(a) of Public Law 111–148 (42
3 U.S.C. 18054(a)) is amended to read as follows:

4 “(6) COVERAGE CONSISTENT WITH FEDERAL
5 ABORTION POLICY.—In entering into contracts
6 under this subsection, the Director shall ensure that
7 no multi-State qualified health plan offered in an
8 Exchange provides health benefits coverage for
9 which the expenditure of Federal funds is prohibited
10 under chapter 4 of title 1, United States Code.”.

11 (c) EFFECTIVE DATES.—

12 (1) IN GENERAL.—The amendments made by
13 paragraphs (1) and (2) of subsection (a) shall apply
14 to taxable years ending after December 31, 2021,
15 but only with respect to plan years beginning after
16 December 31, 2021.

17 (2) ACA AMENDMENTS.—The amendments
18 made by subsection (a)(3) shall take effect on Janu-
19 ary 1, 2022.

20 (3) MULTI-STATE PLANS.—The amendment
21 made by subsection (b) shall apply to plan years be-
22 ginning after December 31, 2021.

1 **SEC. 202. REVISION OF NOTICE REQUIREMENTS REGARD-**
2 **ING DISCLOSURE OF EXTENT OF HEALTH**
3 **PLAN COVERAGE OF ABORTION AND ABOR-**
4 **TION PREMIUM SURCHARGES.**

5 (a) IN GENERAL.—Paragraph (3) of section 1303(b)
6 of Public Law 111–148 (42 U.S.C. 18023(b)) is amended
7 to read as follows:

8 “(3) RULES RELATING TO NOTICE.—

9 “(A) IN GENERAL.—The extent of cov-
10 erage (if any) of services described in para-
11 graph (1)(B)(i) or (1)(B)(ii) by a qualified
12 health plan shall be disclosed to enrollees at the
13 time of enrollment in the plan and shall be
14 prominently displayed in any marketing or ad-
15 vertising materials, comparison tools, or sum-
16 mary of benefits and coverage explanation made
17 available with respect to such plan by the issuer
18 of the plan, by an Exchange, or by the Sec-
19 retary, including information made available
20 through an Internet portal or Exchange under
21 sections 1311(c)(5) and 1311(d)(4)(C).

22 “(B) SEPARATE DISCLOSURE OF ABOR-
23 TION SURCHARGES.—In the case of a qualified
24 health plan that includes the services described
25 in paragraph (1)(B)(i) and where the premium
26 for the plan is disclosed, including in any mar-

1 keting or advertising materials or any other in-
2 formation referred to in subparagraph (A), the
3 surcharge described in paragraph (2)(B)(i)(II)
4 that is attributable to such services shall also be
5 disclosed and identified separately.”.

6 (b) **EFFECTIVE DATE.**—The amendment made by
7 subsection (a) shall apply to materials, tools, or other in-
8 formation made available more than 30 days after the date
9 of the enactment of this Act.

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