

103D CONGRESS
1ST SESSION

S. 636

To amend the Public Health Service Act to permit individuals to have freedom of access to certain medical clinics and facilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 23 (legislative day, MARCH 3), 1993

Mr. KENNEDY (for himself, Mrs. BOXER, Mr. CAMPBELL, Mrs. FEINSTEIN, Mr. HARKIN, Mr. METZENBAUM, Ms. MIKULSKI, Mr. SIMON, Mr. ROBB, Mr. WELLSTONE, Mr. PELL, Ms. MOSELEY-BRAUN, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To amend the Public Health Service Act to permit individuals to have freedom of access to certain medical clinics and facilities, and for other purposes.

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 “Freedom of Access
5 to Clinic Entrances Act of 1993”.

6 **SEC. 2. CONGRESSIONAL STATEMENT OF FINDINGS AND**
7 **PURPOSE.**

8 (a) FINDINGS.—Congress finds that—

1 (1) medical clinics and other facilities offering
2 abortion services have been targeted in recent years
3 by an interstate campaign of violence and obstruc-
4 tion aimed at closing the facilities or physically
5 blocking ingress to them, and intimidating those
6 seeking to obtain or provide abortion services;

7 (2) as a result of such conduct, women are
8 being denied access to, and health care providers are
9 being prevented from delivering, vital reproductive
10 health services;

11 (3) such conduct subjects women to increased
12 medical risks and thereby jeopardizes the public
13 health and safety;

14 (4) the methods used to deny women access to
15 these services include blockades of facility entrances;
16 invasions and occupations of the premises; vandalism
17 and destruction of property in and around the facil-
18 ity; bombings, arson, and murder; and other acts of
19 force and threats of force;

20 (5) those engaging in such tactics frequently
21 trample police lines and barricades and overwhelm
22 State and local law enforcement authorities and
23 courts and their ability to restrain and enjoin unlaw-
24 ful conduct and prosecute those who have violated
25 the law;

1 (6) such conduct operates to infringe upon
2 women's ability to exercise full enjoyment of rights
3 secured to them by Federal and State law, both stat-
4 utory and constitutional, and burdens interstate
5 commerce, including by interfering with business ac-
6 tivities of medical clinics involved in interstate com-
7 merce and by forcing women to travel from States
8 where their access to reproductive health services is
9 obstructed to other States;

10 (7) prior to the Supreme Court's decision in
11 *Bray v. Alexandria Women's Health Clinic* (No. 90-
12 985, January 13, 1993), such conduct was fre-
13 quently restrained and enjoined by Federal courts in
14 actions brought under section 1980(3) of the Re-
15 vised Statutes (42 U.S.C. 1985(3));

16 (8) in the *Bray* decision, the Court denied a
17 remedy under such section to persons injured by the
18 obstruction of access to abortion services;

19 (9) legislation is necessary to prohibit the ob-
20 struction of access by women to abortion services
21 and to ensure that persons injured by such conduct,
22 as well as the Attorney General, can seek redress in
23 the Federal courts;

24 (10) the obstruction of access to abortion serv-
25 ices can be prohibited, and the right of injured par-

1 ties to seek redress in the courts can be established,
2 without abridging the exercise of any rights guaran-
3 teed under the First Amendment to the Constitution
4 or other law; and

5 (11) Congress has the affirmative power under
6 section 8 of article I of the Constitution and under
7 section 5 of the Fourteenth Amendment to the Con-
8 stitution to enact such legislation.

9 (b) PURPOSE.—It is the purpose of this Act to pro-
10 tect and promote the public health and safety by prohibit-
11 ing the use of force, threat of force or physical obstruction
12 to injure, intimidate or interfere with a person seeking to
13 obtain or provide abortion services, and the destruction
14 of property of facilities providing abortion services, and
15 by establishing the right of private parties injured by such
16 conduct, as well as the Attorney General in appropriate
17 cases, to bring actions for appropriate relief.

18 **SEC. 3. FREEDOM OF ACCESS TO CLINIC ENTRANCES.**

19 Title XXVII of the Public Health Service Act (42
20 U.S.C. 300aaa et seq.) is amended by adding at the end
21 thereof the following new section:

22 **“SEC. 2715. FREEDOM OF ACCESS TO CLINIC ENTRANCES.**

23 “(a) PROHIBITED ACTIVITIES.—Whoever—

24 “(1) by force or threat of force or by physical
25 obstruction, intentionally injures, intimidates or

1 interferes with or attempts to injure, intimidate or
2 interfere with any person because that person is or
3 has been, or in order to intimidate such person or
4 any other person or any class of persons, from—

5 “(A) obtaining abortion services; or

6 “(B) lawfully aiding another person to ob-
7 tain abortion services; or

8 “(2) intentionally damages or destroys the
9 property of a medical facility or in which a medical
10 facility is located, or attempts to do so, because such
11 facility provides abortion services,

12 shall be subject to the penalties provided in subsection (b)
13 and the civil remedy provided in subsection (e).

14 “(b) PENALTIES.—Whoever violates this section
15 shall—

16 “(1) in the case of a first offense, be fined in
17 accordance with title 18 or imprisoned not more
18 than 1 year, or both; and

19 “(2) in the case of a second or subsequent of-
20 fense after a prior conviction under this section, be
21 fined in accordance with title 18 or imprisoned not
22 more than 3 years, or both;

23 except that, if bodily injury results, the length of imprison-
24 ment shall be not more than 10 years, and if death results,
25 it shall be for any term of years or for life.

1 “(c) STUDY.—

2 “(1) IN GENERAL.—The Secretary shall con-
3 duct a study concerning the effect that conduct pro-
4 hibited by subsection (a) has had, is having or may
5 be expected to have on the delivery of reproductive
6 health services for women and on the health and
7 welfare of women throughout the United States.
8 Such study shall take into account the full range of
9 reproductive health services offered at facilities tar-
10 geted by such conduct, including abortion services,
11 family planning, pregnancy testing, infertility serv-
12 ices, testing and treatment for sexually transmitted
13 diseases, screening for breast and cervical cancer,
14 prenatal services, and other similar activities. Such
15 study shall include consideration of—

16 “(A) the nature and extent of incidents in
17 which conduct prohibited by subsection (a) has
18 occurred throughout the United States;

19 “(B) the impact of such incidents on the
20 medical facilities and providers that have been
21 targeted, and on the ability of physicians and
22 other health care providers to deliver reproduc-
23 tive health services to their patients; and

1 “(C) the effects of such incidents on the
2 mental and physical health of women, includ-
3 ing—

4 “(i) any medical risks or complica-
5 tions associated with delays in obtaining,
6 or failure to obtain, testing, screening or
7 treatment services in the areas of repro-
8 ductive health;

9 “(ii) any medical risks or complica-
10 tions associated with delays in the termi-
11 nation of a pregnancy;

12 “(iii) any harm to maternal or child
13 health associated with delays in obtaining,
14 or failure to obtain, prenatal services; and

15 “(iv) any other effects of delays in ob-
16 taining or failure to obtain reproductive
17 health services.

18 Such study shall take into account any short-term
19 effects on the delivery of reproductive health services
20 by the targeted facilities and providers, as well as
21 any long-term implications for the health and wel-
22 fare of women in the general population.

23 “(2) REPORT.—Not later than 1 year after the
24 date of enactment of this section, the Secretary shall
25 prepare and submit to the appropriate committees of

1 Congress a report that describes the results of the
2 study conducted under paragraph (1), together with
3 any appropriate recommendations and proposed leg-
4 islation.

5 “(d) INVESTIGATION OF VIOLATIONS.—

6 “(1) IN GENERAL.—The Secretary shall con-
7 duct an investigation, on the request of a medical fa-
8 cility providing reproductive health services or on the
9 initiative of the Secretary, to determine whether any
10 person has violated or is violating this section.

11 “(2) ASSISTANCE.—The Secretary may obtain
12 the assistance of the Attorney General, or a State or
13 local government agency under a cooperative agree-
14 ment with such agency, in conducting investigations
15 under paragraph (1).

16 “(3) REFERRAL.—If the Secretary determines
17 that reasonable cause exists to believe that a viola-
18 tion of this section has occurred or is occurring, the
19 Secretary shall immediately refer the matter to the
20 Attorney General for appropriate action under sub-
21 section (e)(2).

22 “(e) CIVIL REMEDIES.—

23 “(1) RIGHT OF ACTION.—

24 “(A) IN GENERAL.—Any person aggrieved
25 by reason of the conduct prohibited by sub-

1 section (a) may commence a civil action for the
2 relief set forth in subparagraph (B).

3 “(B) DAMAGES.—In any action under sub-
4 subparagraph (A), the court may award appro-
5 priate relief, including temporary, preliminary
6 or permanent injunctive relief and compen-
7 satory and punitive damages, as well as the
8 costs of suit and reasonable fees for attorneys
9 and expert witnesses. With respect to compen-
10 satory damages, the plaintiff may elect, at any
11 time prior to the rendering of final judgment,
12 to recover, in lieu of actual damages, an award
13 of statutory damages in the amount of \$5,000
14 per violation.

15 “(2) ACTION BY ATTORNEY GENERAL.—

16 “(A) IN GENERAL.—If the Attorney Gen-
17 eral has reasonable cause to believe that any
18 person or group of persons is being, has been,
19 or may be injured by conduct constituting a vio-
20 lation of this section, and such conduct raises
21 an issue of general public importance, the At-
22 torney General may commence a civil action in
23 any appropriate United States District Court.

24 “(B) DAMAGES.—In any action under sub-
25 subparagraph (A), the court may award appro-

1 priate relief, including temporary, preliminary
2 or permanent injunctive relief and compen-
3 satory damages to persons aggrieved as de-
4 scribed in paragraph (1)(B). The court, to vin-
5 dicate the public interest, may also assess a
6 civil penalty against each respondent—

7 “(i) in an amount not exceeding
8 \$15,000, for a first violation; and

9 “(ii) in an amount not exceeding
10 \$25,000, for any subsequent violation.

11 “(f) RULES OF CONSTRUCTION.—Nothing in this
12 section shall be construed or interpreted to—

13 “(1) prevent any State from exercising jurisdic-
14 tion over any offense over which it would have juris-
15 diction in the absence of this section;

16 “(2) deprive State and local law enforcement
17 authorities of responsibility for prosecuting acts that
18 may be violations of this section and that are viola-
19 tions of State or local law;

20 “(3) provide exclusive authority to prosecute, or
21 exclusive penalties for, acts that may be violations of
22 this section and that are violations of other Federal
23 laws;

1 “(4) limit or otherwise affect the right of a per-
2 son aggrieved by acts that may be violations of this
3 section to seek other available civil remedies; or

4 “(5) prohibit expression protected by the First
5 Amendment to the Constitution.

6 “(g) DEFINITIONS.—As used in this section:

7 “(1) ABORTION SERVICES.—The term ‘abortion
8 services’ includes medical, surgical, counselling or re-
9 ferral services relating to the termination of a preg-
10 nancy.

11 “(2) ATTORNEY GENERAL.—The term ‘Attor-
12 ney General’ includes the Attorney General of the
13 United States, the Deputy Attorney General of the
14 United States, the Associate Attorney General of the
15 United States, or any employee of the Department
16 of Justice or any employee of any department or
17 agency of the United States so designated by the At-
18 torney General to carry out the powers conferred on
19 the Attorney General by this section.

20 “(3) MEDICAL FACILITY.—The term ‘medical
21 facility’ includes a hospital, clinic, physician’s office,
22 or other facility that provides health or surgical serv-
23 ices.

24 “(4) STATE.—The term ‘State’ includes a State
25 of the United States, the District of Columbia, and

1 any commonwealth, territory, or possession of the
2 United States.”.

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