

109TH CONGRESS  
1ST SESSION

# S. 51

To ensure that women seeking an abortion are fully informed regarding the pain experienced by their unborn child.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2005

Mr. BROWNBACK (for himself, Mr. ALEXANDER, Mr. ALLEN, Mr. BUNNING, Mrs. DOLE, Mr. ISAKSON, Mr. CHAMBLISS, Mr. BURNS, Mr. COBURN, Mr. COLEMAN, Mr. CORNYN, Mr. CRAPO, Mr. DEMINT, Mr. DEWINE, Mr. ENZI, Mr. GRAHAM, Mr. GRASSLEY, Mr. HAGEL, Mr. HATCH, Mr. INHOFE, Mr. KYL, Mr. ROBERTS, Mr. SANTORUM, Mr. SESSIONS, Mr. SHELBY, Mr. TALENT, Mr. THUNE, Mr. VITTER, Mr. VOINOVICH, Mr. MARTINEZ, Mr. ENSIGN, and Mr. MCCONNELL) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To ensure that women seeking an abortion are fully informed regarding the pain experienced by their unborn child.

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 “Unborn Child Pain  
5 Awareness Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1           (1) At least 20 weeks after fertilization, an un-  
2           born child has the physical structures necessary to  
3           experience pain.

4           (2) There is substantial evidence that by 20  
5           weeks after fertilization, unborn children draw away  
6           from certain stimuli in a manner which in an infant  
7           or an adult would be interpreted as a response to  
8           pain.

9           (3) Anesthesia is routinely administered to un-  
10          born children who have developed 20 weeks or more  
11          past fertilization who undergo prenatal surgery.

12          (4) There is substantial evidence that the abor-  
13          tion methods most commonly used 20 weeks after  
14          fertilization cause substantial pain to an unborn  
15          child, whether by dismemberment, poisoning, pene-  
16          trating or crushing the skull, or other methods. Ex-  
17          amples of abortion methods used 20 weeks after fer-  
18          tilization include, but are not limited to the fol-  
19          lowing:

20                 (A) The Dilation and Evacuation (D&E)  
21                 method of abortion is commonly performed in  
22                 the second trimester of pregnancy. In a dilation  
23                 and evacuation abortion, the unborn child's  
24                 body parts are grasped at random with a long-  
25                 toothed clamp. The fetal body parts are then

1           torn off of the body and pulled out of the vag-  
2           inal canal. The remaining body parts are  
3           grasped and pulled out until only the head re-  
4           mains. The head is then grasped and crushed  
5           in order to remove it from the vaginal canal.

6           (B) Partial-Birth Abortion is an abortion  
7           in which the abortion practitioner delivers an  
8           unborn child's body until only the head remains  
9           inside the womb, punctures the back of the  
10          child's skull with a sharp instrument, and sucks  
11          the child's brains out before completing the de-  
12          livery of the dead infant.

13          (5) Expert testimony confirms that by 20 weeks  
14          after fertilization an unborn child may experience  
15          substantial pain even if the woman herself has re-  
16          ceived local analgesic or general anesthesia.

17          (6) Medical science is capable of reducing such  
18          pain through the administration of anesthesia or  
19          other pain-reducing drugs directly to the unborn  
20          child.

21          (7) There is a valid Federal Government inter-  
22          est in reducing the number of events in which great  
23          pain is inflicted on sentient creatures. Examples of  
24          this are laws governing the use of laboratory animals  
25          and requiring pain-free methods of slaughtering live-

1 stock, which include, but are not limited to the fol-  
2 lowing:

3 (A) Section 2 of the Humane Slaughter  
4 Act (7 U.S.C. 1902) states, “No method of  
5 slaughter or handling in connection with  
6 slaughtering shall be deemed to comply with the  
7 public policy of the United States unless it is  
8 humane. Either of the following two methods of  
9 slaughtering and handling are hereby found to  
10 be humane:

11 “(i) in the case of cattle, calves,  
12 horses, mules, sheep, swine, and other live-  
13 stock, all animals are rendered insensible  
14 to pain by a single blow or gunshot or an  
15 electrical, chemical or other means that is  
16 rapid and effective, before being shackled,  
17 hoisted, thrown, cast, or cut; or

18 “(ii) by slaughtering in accordance  
19 with the ritual requirements of the Jewish  
20 faith or any other religious faith that pre-  
21 scribes a method of slaughter whereby the  
22 animal suffers loss of consciousness by  
23 anemia of the brain caused by the simulta-  
24 neous and instantaneous severance of the  
25 carotid arteries with a sharp instrument

1           and handling in connection with such  
2           slaughtering.”.

3           (B) Section 13(a)(3) of the Animal Wel-  
4           fare Act (7 U.S.C. 2143(a)(3)) sets the stand-  
5           ards and certification process for the humane  
6           handling, care, treatment, and transportation of  
7           animals. This includes having standards with  
8           respect to animals in research facilities that in-  
9           clude requirements—

10           “(i) for animal care, treatment, and  
11           practices in experimental procedures to en-  
12           sure that animal pain and distress are  
13           minimized, including adequate veterinary  
14           care with the appropriate use of anesthetic,  
15           analgesic, tranquilizing drugs, or eutha-  
16           nasia;

17           “(ii) that the principal investigator  
18           considers alternatives to any procedure  
19           likely to produce pain to or distress in an  
20           experimental animal;

21           “(iii) in any practice which could  
22           cause pain to animals—

23           “(I) that a doctor of veterinary  
24           medicine is consulted in the planning  
25           of such procedures;

1                   “(II) for the use of tranquilizers,  
2                   analgesics, and anesthetics;

3                   “(III) for pre-surgical and post-  
4                   surgical care by laboratory workers, in  
5                   accordance with established veterinary  
6                   medical and nursing procedures;

7                   “(IV) against the use of para-  
8                   lytics without anesthesia; and

9                   “(V) that the withholding of  
10                  tranquilizers, anesthesia, analgesia, or  
11                  euthanasia when scientifically nec-  
12                  essary shall continue for only the nec-  
13                  essary period of time;”.

14                  (C) Section 495 of the Public Health Serv-  
15                  ice Act (42 U.S.C. 289d) directs the Secretary  
16                  of Health and Human Services, acting through  
17                  the Director of the National Institutes of  
18                  Health, to establish guidelines for research fa-  
19                  cilities as to the proper care and treatment of  
20                  animals, including the appropriate use of tran-  
21                  quilizers, analgesics, and other drugs, except  
22                  that such guidelines may not prescribe methods  
23                  of research. Entities that conduct biomedical  
24                  and behavioral research with National Insti-  
25                  tutes of Health funds must establish animal

1 care committees which must conduct reviews at  
 2 least semi-annually and report to the Director  
 3 of such Institutes at least annually. If the Di-  
 4 rector determines that an entity has not been  
 5 following the guidelines, the Director must give  
 6 the entity an opportunity to take corrective ac-  
 7 tion, and, if the entity does not, the Director  
 8 must suspend or revoke the grant or contract  
 9 involved.

10 **SEC. 3. AMENDMENT TO THE PUBLIC HEALTH SERVICE**  
 11 **ACT.**

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

14 **“TITLE XXIX—UNBORN CHILD**  
 15 **PAIN AWARENESS**

16 **“SEC. 2901. DEFINITIONS.**

17 “In this title:

18 “(1) ABORTION.—The term ‘abortion’ means  
 19 the intentional use or prescription of any instru-  
 20 ment, medicine, drug, or any other substance or de-  
 21 vice to terminate the pregnancy of a woman known  
 22 to be pregnant with an intention other than to in-  
 23 crease the probability of a live birth, to preserve the  
 24 life or health of the child after live birth, or to re-  
 25 move a dead fetus.

1           “(2) ABORTION PROVIDER.—The term ‘abortion  
2 provider’ means any person legally qualified to per-  
3 form an abortion under applicable Federal and State  
4 laws.

5           “(3) PAIN-CAPABLE UNBORN CHILD.—

6           “(A) IN GENERAL.—The term ‘pain-capable  
7 unborn child’ means an unborn child who  
8 has reached a probable stage of development of  
9 20 weeks after fertilization.

10           “(B) RULE OF CONSTRUCTION.—Nothing  
11 in subparagraph (A) shall be construed as a de-  
12 termination or finding by Congress that pain  
13 may not in fact be experienced by an unborn  
14 child at stages of development prior to 20 weeks  
15 after fertilization.

16           “(4) PROBABLE AGE OF DEVELOPMENT.—The  
17 term ‘probable age of development’ means the dura-  
18 tion of development after fertilization of the unborn  
19 child at the time an abortion is performed, as deter-  
20 mined in the good faith judgment of the abortion  
21 provider on the basis of examination of the unborn  
22 child using ultrasound or other imaging technology,  
23 in addition to information obtained by interviewing  
24 the pregnant woman.



1           “(5) UNBORN CHILD.—The term ‘unborn child’  
2           means a member of the species homo sapiens, at any  
3           stage of development, who is carried in the womb.

4           “(6) WOMAN.—The term ‘woman’ means a fe-  
5           male human being who is capable of becoming preg-  
6           nant, whether or not she has reached the age of ma-  
7           jority.

8   **“SEC. 2902. REQUIREMENT OF INFORMED CONSENT.**

9           “(a) REQUIREMENT OF COMPLIANCE BY PRO-  
10          VIDERS.—An abortion provider performing any abortion  
11          of a pain-capable unborn child, that is in or affecting  
12          interstate commerce, shall comply with the requirements  
13          of this title.

14          “(b) PROVISION OF CONSENT.—

15                 “(1) IN GENERAL.—Before any part of an abor-  
16                 tion involving a pain-capable unborn child begins,  
17                 the abortion provider or his or her agent shall pro-  
18                 vide the pregnant woman involved, by telephone or  
19                 in person, with the information described in para-  
20                 graph (2).

21                 “(2) REQUIRED INFORMATION.—

22                         “(A) ORAL STATEMENT.—

23                                 “(i) IN GENERAL.—An abortion pro-  
24                                 vider or the provider’s agent to whom  
25                                 paragraph (1) applies shall make the fol-

1           lowing oral statement to the pregnant  
2           woman (or in the case of a deaf or non-  
3           English speaking woman, provide the  
4           statement in a manner that she can easily  
5           understand):

6           ‘You are considering having an abortion of  
7           an unborn child who will have developed,  
8           at the time of the abortion, approximately  
9           \_\_\_\_\_ weeks after fertilization. The Con-  
10          gress of the United States has determined  
11          that at this stage of development, an un-  
12          born child has the physical structures nec-  
13          essary to experience pain. There is sub-  
14          stantial evidence that by this point, unborn  
15          children draw away from surgical instru-  
16          ments in a manner which in an infant or  
17          an adult would be interpreted as a re-  
18          sponse to pain. Congress finds that there  
19          is substantial evidence that the process of  
20          being killed in an abortion will cause the  
21          unborn child pain, even though you receive  
22          a pain-reducing drug or drugs. Under the  
23          Federal Unborn Child Pain Awareness Act  
24          of 2005, you have the option of choosing to  
25          have anesthesia or other pain-reducing

1 drug or drugs administered directly to the  
2 pain-capable unborn child if you so desire.  
3 The purpose of administering such drug or  
4 drugs would be to reduce or eliminate the  
5 capacity of the unborn child to experience  
6 pain during the abortion procedure. In  
7 some cases, there may be some additional  
8 risk to you associated with administering  
9 such a drug.’.

10 “(ii) DESCRIPTION OF RISKS.—After  
11 making the statement required under  
12 clause (i), the abortion provider may pro-  
13 vide the woman involved with his or her  
14 best medical judgment on the risks of ad-  
15 ministering such anesthesia or analgesic, if  
16 any, and the costs associated therewith.

17 “(iii) ADMINISTRATION OF ANES-  
18 THESIA.—If the abortion provider is not  
19 qualified or willing to administer the anes-  
20 thesia or other pain-reducing drug in re-  
21 sponse to the request of a pregnant woman  
22 after making the statement required under  
23 clause (i), the provider shall—

1                   “(I) arrange for a qualified spe-  
2                   cialist to administer such anesthesia  
3                   or drug; or

4                   “(II) advise the pregnant  
5                   woman—

6                   “(aa) where she may obtain  
7                   such anesthesia or other pain-re-  
8                   ducing drugs for the unborn child  
9                   in the course of an abortion; or

10                  “(bb) that the abortion pro-  
11                  vider is unable to perform the  
12                  abortion if the woman elects to  
13                  receive anesthesia or other pain-  
14                  reducing drugs for her unborn  
15                  child.

16                  “(iv) RULE OF CONSTRUCTION.—  
17                  Nothing in this section may be construed  
18                  to impede an abortion provider or the  
19                  abortion provider’s agent from offering  
20                  their own evaluation on the capacity of the  
21                  unborn child to experience pain, the advis-  
22                  ability of administering pain-reducing  
23                  drugs to the unborn child, or any other  
24                  matter, as long as such provider or agent  
25                  provides the required information, obtains

1           the woman’s signature on the decision  
 2           form, and otherwise complies with the af-  
 3           firmative requirements of the law.

4           “(B) UNBORN CHILD PAIN AWARENESS  
 5           BROCHURE.—An abortion provider to whom  
 6           paragraph (1) applies shall provide the preg-  
 7           nant woman with the Unborn Child Pain  
 8           Awareness Brochure (referred to in this section  
 9           as the ‘Brochure’) to be developed by the De-  
 10          partment of Health and Human Services under  
 11          subsection (c).

12          “(C) UNBORN CHILD PAIN AWARENESS  
 13          DECISION FORM.—An abortion provider to  
 14          whom paragraph (1) applies shall provide the  
 15          pregnant woman with the Unborn Child Pain  
 16          Awareness Decision Form (provided for under  
 17          subsection (c)) and obtain the appropriate sig-  
 18          nature of the woman on such form.

19          “(c) UNBORN CHILD PAIN AWARENESS BRO-  
 20          CHURE.—

21                 “(1) DEVELOPMENT.—Not later than 90 days  
 22                 after the date of enactment of this title, the Sec-  
 23                 retary shall develop an Unborn Child Pain Aware-  
 24                 ness Brochure. Such Brochure shall be written in  
 25                 English and Spanish and shall contain the same in-

1 formation as required under the statement under  
2 subsection (b)(2)(A)(i), including greater detail on  
3 her option of having a pain-reducing drug or drugs  
4 administered to the unborn child to reduce the expe-  
5 rience of pain by the unborn child during the abor-  
6 tion. Such information shall be written in an objec-  
7 tive and nonjudgmental manner and be printed in a  
8 typeface large enough to be clearly legible. The Bro-  
9 chure shall be made available by the Secretary at no  
10 cost to any abortion provider.

11 “(2) INTERNET INFORMATION.—The Brochure  
12 under this section shall be available on the Internet  
13 website of the Department of Health and Human  
14 Services at a minimum resolution of 70 DPI (dots  
15 per inch). All pictures appearing on the website shall  
16 be a minimum of 200x300 pixels. All letters on the  
17 website shall be a minimum of 12 point font. All  
18 such information and pictures shall be accessible  
19 with an industry standard browser, requiring no ad-  
20 ditional plug-ins.

21 “(3) PRESENTATION OF BROCHURE.—An abor-  
22 tion provider or his or her agent shall offer to pro-  
23 vide a pregnant woman with the Brochure developed  
24 under paragraph (1) before any part of an abortion  
25 of a pain-capable child begins—

1           “(A) through an in-person visit by the  
2 pregnant woman;

3           “(B) through an e-mail attachment, from  
4 the abortion provider or his or her agent; or

5           “(C) through a request to have such Bro-  
6 chure mailed, by certified mail, to the woman at  
7 least 72 hours before any part of the abortion  
8 begins.

9           “(4) WAIVER.—After the abortion provider or  
10 his or her agent offers to provide a pregnant woman  
11 the Brochure, the pregnant woman may waive re-  
12 ceipt of the Brochure under this subsection by sign-  
13 ing the waiver form contained in the Unborn Child  
14 Pain Awareness Decision Form.

15           “(5) UNBORN CHILD PAIN AWARENESS DECI-  
16 SION FORM.—Not later than 30 days after the date  
17 of enactment of this title, the Secretary shall develop  
18 an Unborn Child Pain Awareness Decision Form.  
19 To be valid, such Form shall—

20           “(A) with respect to the pregnant  
21 woman—

22           “(i) contain a statement that affirms  
23 that the woman has received or been of-  
24 fered all of the information required in  
25 subsection (b);

1           “(ii) require the woman to explicitly  
2           either request or refuse the administration  
3           of pain-reducing drugs to the unborn child;

4           “(iii) be signed by a pregnant woman  
5           prior to the performance of an abortion in-  
6           volving a pain-capable unborn child; and

7           “(B) with respect to the abortion pro-  
8           vider—

9           “(i) contain a statement that the pro-  
10          vider has provided the woman with all of  
11          the information required under subsection  
12          (b);

13          “(ii) if applicable, contain a certifi-  
14          cation by the provider that an exception  
15          described in section 2903 applies and the  
16          detailed reasons for such certification; and

17          “(iii) be signed by the provider prior  
18          to the performance of the abortion proce-  
19          dure.

20          “(6) MAINTENANCE OF RECORDS.—The Sec-  
21          retary shall promulgate regulations relating to the  
22          period of time during which copies of Forms under  
23          paragraph (5) shall be maintained by abortion pro-  
24          viders.



1 **“SEC. 2903. EXCEPTION FOR MEDICAL EMERGENCIES.**

2 “(a) IN GENERAL.—The provisions of section 2902  
3 shall not apply to an abortion provider in the case of a  
4 medical emergency.

5 “(b) MEDICAL EMERGENCY DEFINED.—

6 “(1) IN GENERAL.—In subsection (a), the term  
7 ‘medical emergency’ means a condition which, in the  
8 reasonable medical judgment of the abortion pro-  
9 vider, so complicates the medical condition of the  
10 pregnant woman that a delay in commencing an  
11 abortion procedure would impose a serious risk of  
12 causing grave and irreversible physical health dam-  
13 age entailing substantial impairment of a major bod-  
14 ily function.

15 “(2) REASONABLE MEDICAL JUDGMENT.—In  
16 paragraph (1), the term ‘reasonable medical judg-  
17 ment’ means a medical judgment that would be  
18 made by a reasonably prudent physician, knowledge-  
19 able about the case and the treatment possibilities  
20 with respect to the medical conditions involved.

21 “(c) CERTIFICATION.—

22 “(1) IN GENERAL.—Upon a determination by  
23 an abortion provider under subsection (a) that a  
24 medical emergency exists with respect to a pregnant  
25 woman, such provider shall certify the specific med-  
26 ical conditions that constitute the emergency.

1           “(2) FALSE STATEMENTS.—An abortion pro-  
2           vider who willfully falsifies a certification under  
3           paragraph (1) shall be subject to all the penalties  
4           provided for under section 2904 for failure to com-  
5           ply with this title.

6   **“SEC. 2904. PENALTIES FOR FAILURE TO COMPLY.**

7           “(a) IN GENERAL.—An abortion provider who will-  
8           fully fails to comply with the provisions of this title shall  
9           be subject to civil penalties in accordance with this section  
10          in an appropriate Federal court.

11          “(b) COMMENCEMENT OF ACTION.—The Attorney  
12          General, the Deputy Attorney General, the Associate At-  
13          torney General, or any Assistant Attorney General or  
14          United States Attorney who has been specifically des-  
15          ignated by the Attorney General may commence a civil ac-  
16          tion under this section.

17          “(c) CERTIFICATION REQUIREMENTS.—At the time  
18          of the commencement of an action under this section, the  
19          Attorney General, the Deputy Attorney General, the Asso-  
20          ciate Attorney General, or any Assistant Attorney General  
21          or United States Attorney who has been specifically des-  
22          ignated by the Attorney General to commence a civil ac-  
23          tion under this section, shall certify to the court involved  
24          that, at least 30 calendar days prior to the filing of such  
25          action, the Attorney General, the Deputy Attorney Gen-

1 eral, the Associate Attorney General, or any Assistant At-  
2 torney General or United States Attorney involved—

3           “(1) has provided notice of the alleged violation  
4           of this section, in writing, to the Governor or Chief  
5           Executive Officer and Attorney General or Chief  
6           Legal Officer of the State or political subdivision in-  
7           volved, as well as to the State medical licensing  
8           board or other appropriate State agency; and

9           “(2) believes that such an action by the United  
10          States is in the public interest and necessary to se-  
11          cure substantial justice.

12          “(d) FIRST OFFENSE.—Upon a finding by a court  
13          that a respondent in an action commenced under this sec-  
14          tion has knowingly violated a provision of this title, the  
15          court shall notify the appropriate State medical licensing  
16          authority in order to effect the suspension of the respon-  
17          dent’s medical license in accordance with the regulations  
18          and procedures promulgated under section 2905, or shall  
19          assess a civil penalty against the respondent in an amount  
20          not to exceed \$100,000, or both.

21          “(e) SECOND OFFENSE.—Upon a finding by a court  
22          that the respondent in an action commenced under this  
23          section has knowingly violated a provision of this title and  
24          the respondent has been found to have knowingly violated  
25          a provision of this title on a prior occasion, the court shall

1 notify the appropriate State medical licensing authority in  
2 order to effect the revocation of the respondent's medical  
3 license in accordance with the regulations and procedures  
4 promulgated under section 2905, or shall assess a civil  
5 penalty against the respondent in an amount not to exceed  
6 \$250,000, or both.

7       “(f) HEARING.—With respect to an action under this  
8 section, the appropriate State medical licensing authority  
9 shall be given notification of and an opportunity to be  
10 heard at a hearing to determine the penalty to be imposed  
11 under this section.

12       “(g) PRIVATE RIGHT OF ACTION.—A pregnant  
13 woman upon whom an abortion has been performed in vio-  
14 lation of this title, or the parent or legal guardian of such  
15 a woman if she is an unemancipated minor, may com-  
16 mence a civil action against the abortion provider for any  
17 knowing or reckless violation of this title for actual and  
18 punitive damages.

19 **“SEC. 2905. REGULATIONS.**

20       “A State, and the medical licensing authority of the  
21 State, shall promulgate regulations and procedures for the  
22 revocation or suspension of the medical license of an abor-  
23 tion provider upon a finding by a court under section 2904  
24 that the provider has violated a provision of this title. A  
25 State that fails to implement such procedures shall be sub-

1 ject to loss of funding under title XIX of the Social Secu-  
2 rity Act (42 U.S.C. 1396 et seq.).

3 **“SEC. 2906. PREEMPTION.**

4       “Nothing in this title shall be construed to preempt  
5 any provision of State law to the extent that such State  
6 law establishes, implements, or continues in effect greater  
7 protections for unborn children from pain than the protec-  
8 tions provided for under this title.”.

○