

105TH CONGRESS  
1ST SESSION

# S. 1208

To protect women's reproductive health and constitutional right to choice,  
and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 23, 1997

Mrs. BOXER (for herself and Mrs. MURRAY) introduced the following bill;  
which was read twice and referred to the Committee on Labor and  
Human Resources

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## A BILL

To protect women's reproductive health and constitutional  
right to choice, 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 “Family Planning and  
5       Choice Protection Act of 1997”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

8               (1) reproductive rights are central to the ability  
9       of women to exercise full enjoyment of rights se-  
10      cured to women by Federal and State law;

1           (2) abortion has been a legal and constitu-  
2           tionally protected medical procedure throughout the  
3           United States since 1973 and has become part of  
4           mainstream medical practice as is evidenced by the  
5           positions of medical institutions including the Amer-  
6           ican Medical Association, the American College of  
7           Obstetricians and Gynecologists, the American Medi-  
8           cal Women’s Association, the American Nurses As-  
9           sociation, and the American Public Health Associa-  
10          tion;

11          (3) the availability of abortion services is dimin-  
12          ishing throughout the United States, as evidenced  
13          by—

14                (A) the fact that 84 percent of counties in  
15                the United States have no abortion provider;  
16                and

17                (B) the fact that, between 1982 and 1992,  
18                the number of abortion providers decreased in  
19                45 States; and

20          (4)(A) the Department of Health and Human  
21          Services and the Institute of Medicine of the Na-  
22          tional Academy of Sciences have contributed to the  
23          development of a report entitled “Healthy People  
24          2000”, which urges that the rate of unintended

1 pregnancy in the United States be reduced by nearly  
2 50 percent by the year 2000;

3 (B) nearly 60 percent, or approximately  
4 3,100,000, of all pregnancies in the United States  
5 each year are unintended, resulting in 1,500,000  
6 abortions in the United States each year; and

7 (C) the provision of family planning services,  
8 including emergency contraception, is a cost-effective  
9 way of reducing the number of unintended preg-  
10 nancies and abortions in the United States; and

11 (5) at a minimum, Congress must enact legisla-  
12 tion establishing or retaining the following policies to  
13 preserve the choice and reproductive health of  
14 women:

15 (A) Authorization of family planning pro-  
16 grams.

17 (B) The prohibition of any gag rule on in-  
18 formation pertaining to reproductive medical  
19 services.

20 (C) The promotion of equitable treatment  
21 and coverage of prescription contraception  
22 drugs and devices in the provision of health in-  
23 surance.

24 (D) The provision of funding for emer-  
25 gency contraceptive education.

1           (E) The establishment of breast cancer,  
2           cervical cancer, and chlamydia screening pro-  
3           grams in all 50 States.

4           (F) Full implementation of contraceptive  
5           and infertility research programs.

6           (G) Funding through the medicaid pro-  
7           gram under title XIX of the Social Security Act  
8           (42 U.S.C. 1396 et seq.) for abortion services.

9           (H) Protection of women from clinic vio-  
10          lence.

11          (I) Final approval of the drug called  
12          Mifepristone or RU-486.

13          (J) The maintenance of a fundamental  
14          right to choose, as stated in the Supreme Court  
15          decision in Roe v. Wade, 410 U.S. 113 (1973).

16          (K) The establishment of the right of the  
17          District of Columbia to access locally raised  
18          revenue to provide abortion services to low-in-  
19          come women.

20          (L) The promotion of fairness in insur-  
21          ance.

22          (M) The establishment of the ability of  
23          military personnel overseas to obtain abortion  
24          services.

1                   **TITLE I—PREVENTION**  
2                   **Subtitle A—Family Planning**

3   **SEC. 101. FAMILY PLANNING AMENDMENTS.**

4           Section 1001(d) of the Public Health Service Act (42  
5 U.S.C. 300(d)) is amended to read as follows:

6           “(d) For the purpose of making grants and entering  
7 into contracts under this section, there are authorized to  
8 be appropriated \$275,000,000 for fiscal year 1999 and  
9 such sums as may be necessary for each of fiscal years  
10 2000 through 2003.”.

11   **SEC. 102. FREEDOM OF FULL DISCLOSURE.**

12           Title XI of the Civil Rights Act of 1964 (42 U.S.C.  
13 2000h et seq.) is amended by adding at the end the follow-  
14 ing:

15   **“SEC. 1107. INFORMATION ABOUT AVAILABILITY OF REPRO-**  
16                   **DUCTIVE HEALTH CARE SERVICES.**

17           “(a) DEFINITION.—As used in this section, the term  
18 ‘governmental authority’ means any authority of the Unit-  
19 ed States.

20           “(b) GENERAL AUTHORITY.—Notwithstanding any  
21 other provision of law, no governmental authority shall,  
22 in or through any program or activity that is administered  
23 or assisted by such authority and that provides health care  
24 services or information, limit the right of any person to  
25 provide, or the right of any person to receive, nonfraudu-

1 lent information about the availability of reproductive  
2 health care services, including family planning, prenatal  
3 care, adoption, and abortion services.”.

## 4     **Subtitle B—Prescription Equity** 5     **and Contraceptive Coverage**

### 6     **SEC. 111. FINDINGS.**

7         Congress finds that—

8             (1) each year, approximately 3,100,000 preg-  
9             nancies, or nearly 60 percent of all pregnancies, in  
10            this country are unintended;

11           (2) contraceptive services are part of basic  
12           health care, allowing families to both adequately  
13           space desired pregnancies and avoid unintended  
14           pregnancy;

15           (3) studies show that contraceptives are cost-ef-  
16           fective: for every \$1 of public funds invested in fam-  
17           ily planning, \$4 to \$14 of public funds is saved in  
18           pregnancy and health care-related costs;

19           (4) by reducing rates of unintended pregnancy,  
20           contraceptives help reduce the need for abortion;

21           (5) unintended pregnancies lead to higher rates  
22           of infant mortality, low-birth weight, and maternal  
23           morbidity, and threaten the economic viability of  
24           families;

1           (6) the National Commission to Prevent Infant  
2           Mortality determined that “infant mortality could be  
3           reduced by 10 percent if all women not desiring  
4           pregnancy used contraception”;

5           (7) most women in the United States, including  
6           two-thirds of women of childbearing age, rely on  
7           some form of private employment-related insurance  
8           (through either their own employer or a family mem-  
9           ber’s employer) to defray their medical expenses;

10          (8) the vast majority of private insurers cover  
11          prescription drugs, but many exclude coverage for  
12          prescription contraceptives;

13          (9) private insurance provides extremely limited  
14          coverage of contraceptives: half of traditional indem-  
15          nity plans and preferred provider organizations, 20  
16          percent of point-of-service networks, and 7 percent  
17          of health maintenance organizations cover no contra-  
18          ceptive methods other than sterilization;

19          (10) women of reproductive age spend 68 per-  
20          cent more than men on out-of-pocket health care  
21          costs, with contraceptives and reproductive health  
22          care services accounting for much of the difference;

23          (11) the lack of contraceptive coverage in health  
24          insurance places many effective forms of contracep-

1       tives beyond the financial reach of many women,  
 2       leading to unintended pregnancies; and

3               (12) the Institute of Medicine Committee on  
 4       Unintended Pregnancy recently recommended that  
 5       “financial barriers to contraception be reduced by  
 6       increasing the proportion of all health insurance  
 7       policies that cover contraceptive services and sup-  
 8       plies”.

9   **SEC. 112. AMENDMENTS TO THE EMPLOYEE RETIREMENT**  
 10                   **INCOME SECURITY ACT OF 1974.**

11       (a) IN GENERAL.—Subpart B of part 7 of subtitle  
 12   B of title I of the Employee Retirement Income Security  
 13   Act of 1974 (as added by section 603(a) of the Newborns’  
 14   and Mothers’ Health Protection Act of 1996 and amended  
 15   by section 702(a) of the Mental Health Parity Act of  
 16   1996) is further amended by adding at the end the follow-  
 17   ing new section:

18   **“SEC. 713. STANDARDS RELATING TO BENEFITS FOR CON-**  
 19                   **TRACEPTIVES.**

20       “(a) REQUIREMENTS FOR COVERAGE.—A group  
 21   health plan, and a health insurance issuer providing health  
 22   insurance coverage in connection with a group health plan,  
 23   may not—

24               “(1) exclude or restrict benefits for prescription  
 25       contraceptive drugs or devices approved by the Food



1 and Drug Administration, or generic equivalents ap-  
2 proved as substitutable by the Food and Drug Ad-  
3 ministration, if such plan provides benefits for other  
4 outpatient prescription drugs or devices; or

5 “(2) exclude or restrict benefits for outpatient  
6 contraceptive services if such plan provides benefits  
7 for other outpatient services provided by a health  
8 care professional (referred to in this section as ‘out-  
9 patient health care services’).

10 “(b) PROHIBITIONS.—A group health plan, and a  
11 health insurance issuer providing health insurance cov-  
12 erage in connection with a group health plan, may not—

13 “(1) deny to an individual eligibility, or contin-  
14 ued eligibility, to enroll or to renew coverage under  
15 the terms of the plan because of the individual’s or  
16 enrollee’s use or potential use of items or services  
17 that are covered in accordance with the requirements  
18 of this section;

19 “(2) provide monetary payments or rebates to  
20 a covered individual to encourage such individual to  
21 accept less than the minimum protections available  
22 under this section;

23 “(3) penalize or otherwise reduce or limit the  
24 reimbursement of a health care professional because  
25 such professional prescribed contraceptive drugs or

1 devices, or provided contraceptive services, described  
 2 in subsection (a), in accordance with this section; or  
 3 “(4) provide incentives (monetary or otherwise)  
 4 to a health care professional to induce such profes-  
 5 sional to withhold from a covered individual contra-  
 6 ceptive drugs or devices, or contraceptive services,  
 7 described in subsection (a).

8 “(c) RULES OF CONSTRUCTION.—

9 “(1) IN GENERAL.—Nothing in this section  
 10 shall be construed—

11 “(A) as preventing a group health plan  
 12 and a health insurance issuer providing health  
 13 insurance coverage in connection with a group  
 14 health plan from imposing deductibles, coinsur-  
 15 ance, or other cost-sharing or limitations in re-  
 16 lation to—

17 “(i) benefits for contraceptive drugs  
 18 under the plan, except that such a deduct-  
 19 ible, coinsurance, or other cost-sharing or  
 20 limitation for any such drug may not be  
 21 greater than such a deductible, coinsur-  
 22 ance, or cost-sharing or limitation for any  
 23 outpatient prescription drug otherwise cov-  
 24 ered under the plan;

1 “(ii) benefits for contraceptive devices  
2 under the plan, except that such a deduct-  
3 ible, coinsurance, or other cost-sharing or  
4 limitation for any such device may not be  
5 greater than such a deductible, coinsur-  
6 ance, or cost-sharing or limitation for any  
7 outpatient prescription device otherwise  
8 covered under the plan; and

9 “(iii) benefits for outpatient contra-  
10 ceptive services under the plan, except that  
11 such a deductible, coinsurance, or other  
12 cost-sharing or limitation for any such  
13 service may not be greater than such a de-  
14 ductible, coinsurance, or cost-sharing or  
15 limitation for any outpatient health care  
16 service otherwise covered under the plan;  
17 and

18 “(B) as requiring a group health plan and  
19 a health insurance issuer providing health in-  
20 surance coverage in connection with a group  
21 health plan to cover experimental or investiga-  
22 tional contraceptive drugs or devices, or experi-  
23 mental or investigational contraceptive services,  
24 described in subsection (a), except to the extent  
25 that the plan or issuer provides coverage for

1 other experimental or investigational outpatient  
2 prescription drugs or devices, or experimental  
3 or investigational outpatient health care serv-  
4 ices.

5 “(2) LIMITATIONS.—As used in paragraph (1),  
6 the term ‘limitation’ includes—

7 “(A) in the case of a contraceptive drug or  
8 device, restricting the type of health care pro-  
9 fessionals that may prescribe such drugs or de-  
10 vices, utilization review provisions, and limits on  
11 the volume of prescription drugs or devices that  
12 may be obtained on the basis of a single con-  
13 sultation with a professional; or

14 “(B) in the case of an outpatient contra-  
15 ceptive service, restricting the type of health  
16 care professionals that may provide such serv-  
17 ices, utilization review provisions, requirements  
18 relating to second opinions prior to the coverage  
19 of such services, and requirements relating to  
20 preauthorizations prior to the coverage of such  
21 services.

22 “(d) NOTICE UNDER GROUP HEALTH PLAN.—The  
23 imposition of the requirements of this section shall be  
24 treated as a material modification in the terms of the plan  
25 described in section 102(a)(1), for purposes of assuring

1 notice of such requirements under the plan, except that  
 2 the summary description required to be provided under the  
 3 last sentence of section 104(b)(1) with respect to such  
 4 modification shall be provided by not later than 60 days  
 5 after the first day of the first plan year in which such  
 6 requirements apply.

7 “(e) PREEMPTION.—Nothing in this section shall be  
 8 construed to preempt any provision of State law to the  
 9 extent that such State law establishes, implements, or con-  
 10 tinues in effect any standard or requirement that provides  
 11 protections for enrollees that are greater than the protec-  
 12 tions provided under this section.

13 “(f) DEFINITION.—In this section, the term ‘out-  
 14 patient contraceptive services’ means consultations, exami-  
 15 nations, procedures, and medical services, provided on an  
 16 outpatient basis and related to the use of contraceptive  
 17 methods (including natural family planning) to prevent an  
 18 unintended pregnancy.”.

19 (b) CLERICAL AMENDMENT.—The table of contents  
 20 in section 1 of such Act, as amended by section 603 of  
 21 the Newborns’ and Mothers’ Health Protection Act of  
 22 1996 and section 702 of the Mental Health Parity Act  
 23 of 1996, is amended by inserting after the item relating  
 24 to section 712 the following new item:

“Sec. 713. Standards relating to benefits for contraceptives.”.

1 (c) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply with respect to plan years begin-  
 3 ning on or after January 1, 1998.

4 **SEC. 113. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**  
 5 **ACT RELATING TO THE GROUP MARKET.**

6 (a) IN GENERAL.—Subpart 2 of part A of title  
 7 XXVII of the Public Health Service Act (as added by sec-  
 8 tion 604(a) of the Newborns’ and Mothers’ Health Protec-  
 9 tion Act of 1996 and amended by section 703(a) of the  
 10 Mental Health Parity Act of 1996) is further amended  
 11 by adding at the end the following new section:

12 **“SEC. 2706. STANDARDS RELATING TO BENEFITS FOR CON-**  
 13 **TRACEPTIVES.**

14 “(a) REQUIREMENTS FOR COVERAGE.—A group  
 15 health plan, and a health insurance issuer providing health  
 16 insurance coverage in connection with a group health plan,  
 17 may not—

18 “(1) exclude or restrict benefits for prescription  
 19 contraceptive drugs or devices approved by the Food  
 20 and Drug Administration, or generic equivalents ap-  
 21 proved as substitutable by the Food and Drug Ad-  
 22 ministration, if such plan provides benefits for other  
 23 outpatient prescription drugs or devices; or

24 “(2) exclude or restrict benefits for outpatient  
 25 contraceptive services if such plan provides benefits

1 for other outpatient services provided by a health  
2 care professional (referred to in this section as ‘out-  
3 patient health care services’).

4 “(b) PROHIBITIONS.—A group health plan, and a  
5 health insurance issuer providing health insurance cov-  
6 erage in connection with a group health plan, may not—

7 “(1) deny to an individual eligibility, or contin-  
8 ued eligibility, to enroll or to renew coverage under  
9 the terms of the plan because of the individual’s or  
10 enrollee’s use or potential use of items or services  
11 that are covered in accordance with the requirements  
12 of this section;

13 “(2) provide monetary payments or rebates to  
14 a covered individual to encourage such individual to  
15 accept less than the minimum protections available  
16 under this section;

17 “(3) penalize or otherwise reduce or limit the  
18 reimbursement of a health care professional because  
19 such professional prescribed contraceptive drugs or  
20 devices, or provided contraceptive services, described  
21 in subsection (a), in accordance with this section; or

22 “(4) provide incentives (monetary or otherwise)  
23 to a health care professional to induce such profes-  
24 sional to withhold from a covered individual contra-

ceptive drugs or devices, or contraceptive services,  
described in subsection (a).

“(c) RULES OF CONSTRUCTION.—

“(1) IN GENERAL.—Nothing in this section  
shall be construed—

“(A) as preventing a group health plan  
and a health insurance issuer providing health  
insurance coverage in connection with a group  
health plan from imposing deductibles, coinsur-  
ance, or other cost-sharing or limitations in re-  
lation to—

“(i) benefits for contraceptive drugs  
under the plan, except that such a deduct-  
ible, coinsurance, or other cost-sharing or  
limitation for any such drug may not be  
greater than such a deductible, coinsur-  
ance, or cost-sharing or limitation for any  
outpatient prescription drug otherwise cov-  
ered under the plan;

“(ii) benefits for contraceptive devices  
under the plan, except that such a deduct-  
ible, coinsurance, or other cost-sharing or  
limitation for any such device may not be  
greater than such a deductible, coinsur-  
ance, or cost-sharing or limitation for any



1 outpatient prescription device otherwise  
 2 covered under the plan; and

3 “(iii) benefits for outpatient contra-  
 4 ceptive services under the plan, except that  
 5 such a deductible, coinsurance, or other  
 6 cost-sharing or limitation for any such  
 7 service may not be greater than such a de-  
 8 ductible, coinsurance, or cost-sharing or  
 9 limitation for any outpatient health care  
 10 service otherwise covered under the plan;  
 11 and

12 “(B) as requiring a group health plan and  
 13 a health insurance issuer providing health in-  
 14 surance coverage in connection with a group  
 15 health plan to cover experimental or investiga-  
 16 tional contraceptive drugs or devices, or experi-  
 17 mental or investigational contraceptive services,  
 18 described in subsection (a), except to the extent  
 19 that the plan or issuer provides coverage for  
 20 other experimental or investigational outpatient  
 21 prescription drugs or devices, or experimental  
 22 or investigational outpatient health care serv-  
 23 ices.

24 “(2) LIMITATIONS.—As used in paragraph (1),  
 25 the term ‘limitation’ includes—

1           “(A) in the case of a contraceptive drug or  
2           device, restricting the type of health care pro-  
3           fessionals that may prescribe such drugs or de-  
4           vices, utilization review provisions, and limits on  
5           the volume of prescription drugs or devices that  
6           may be obtained on the basis of a single con-  
7           sultation with a professional; or

8           “(B) in the case of an outpatient contra-  
9           ceptive service, restricting the type of health  
10          care professionals that may provide such serv-  
11          ices, utilization review provisions, requirements  
12          relating to second opinions prior to the coverage  
13          of such services, and requirements relating to  
14          preauthorizations prior to the coverage of such  
15          services.

16          “(d) NOTICE.—A group health plan under this part  
17          shall comply with the notice requirement under section  
18          713(d) of the Employee Retirement Income Security Act  
19          of 1974 with respect to the requirements of this section  
20          as if such section applied to such plan.

21          “(e) PREEMPTION.—Nothing in this section shall be  
22          construed to preempt any provision of State law to the  
23          extent that such State law establishes, implements, or con-  
24          tinues in effect any standard or requirement that provides

1 protections for enrollees that are greater than the protec-  
 2 tions provided under this section.

3 “(f) DEFINITION.—In this section, the term ‘out-  
 4 patient contraceptive services’ means consultations, exami-  
 5 nations, procedures, and medical services, provided on an  
 6 outpatient basis and related to the use of contraceptive  
 7 methods (including natural family planning) to prevent an  
 8 unintended pregnancy.”.

9 (b) EFFECTIVE DATE.—The amendments made by  
 10 this section shall apply with respect to group health plans  
 11 for plan years beginning on or after January 1, 1998.

12 **SEC. 114. AMENDMENT TO THE PUBLIC HEALTH SERVICE**  
 13 **ACT RELATING TO THE INDIVIDUAL MARKET.**

14 (a) IN GENERAL.—Subpart 3 of part B of title  
 15 XXVII of the Public Health Service Act (as added by sec-  
 16 tion 605(a) of the Newborn’s and Mother’s Health Protec-  
 17 tion Act of 1996) is amended by adding at the end the  
 18 following new section:

19 **“SEC. 2752. STANDARDS RELATING TO BENEFITS FOR CON-**  
 20 **TRACEPTIVES.**

21 “The provisions of section 2706 shall apply to health  
 22 insurance coverage offered by a health insurance issuer  
 23 in the individual market in the same manner as they apply  
 24 to health insurance coverage offered by a health insurance

1 issuer in connection with a group health plan in the small  
2 or large group market.”.

3 (b) EFFECTIVE DATE.—The amendment made by  
4 this section shall apply with respect to health insurance  
5 coverage offered, sold, issued, renewed, in effect, or oper-  
6 ated in the individual market on or after January 1, 1998.

## 7 **Subtitle C—Emergency** 8 **Contraceptives**

### 9 **SEC. 121. EMERGENCY CONTRACEPTIVE EDUCATION.**

10 (a) DEFINITION.—In this section:

11 (1) EMERGENCY CONTRACEPTIVE.—The term  
12 “emergency contraceptive” means a drug or device  
13 (as the terms are defined in section 201 of the Fed-  
14 eral Food, Drug, and Cosmetic Act (21 U.S.C. 321))  
15 that is designed—

16 (A) to be used after sexual relations; and

17 (B) to prevent pregnancy, by preventing  
18 ovulation, fertilization of an egg, or implanta-  
19 tion of an egg in a uterus.

20 (2) HEALTH CARE PROVIDER.—The term  
21 “health care provider” means anyone licensed or cer-  
22 tified under State law to provide health care services  
23 who is operating within the scope of such license.

24 (3) INSTITUTION OF HIGHER EDUCATION.—The  
25 term “institution of higher education” has the

1 meaning given the term in section 1201(a) of the  
2 Higher Education Act of 1965 (20 U.S.C. 1141(a)).

3 (b) EMERGENCY CONTRACEPTIVE PUBLIC EDU-  
4 CATION PROGRAM.—

5 (1) IN GENERAL.—The Secretary of Health and  
6 Human Services, acting through the Director of the  
7 Centers for Disease Control, shall develop and dis-  
8 seminate to the public information on emergency  
9 contraceptives.

10 (2) DEVELOPMENT AND DISSEMINATION.—The  
11 Secretary may develop and disseminate the informa-  
12 tion directly or through arrangements with nonprofit  
13 organizations, consumer groups, institutions of high-  
14 er education, Federal, State, or local agencies, and  
15 clinics.

16 (3) INFORMATION.—The information shall in-  
17 clude, at a minimum, information describing emer-  
18 gency contraceptives, and explaining the use, effects,  
19 efficacy, and availability of the contraceptives.

20 (c) EMERGENCY CONTRACEPTIVE INFORMATION  
21 PROGRAM FOR HEALTH CARE PROVIDERS.—

22 (1) IN GENERAL.—The Secretary of Health and  
23 Human Services, acting through the Administrator  
24 of the Health Resources and Services Administra-

1       tion, shall develop and disseminate to health care  
2       providers information on emergency contraceptives.

3           (2) INFORMATION.—The information shall in-  
4       clude, at a minimum—

5           (A) information describing the use, effects,  
6       and efficacy and availability of the contracep-  
7       tives;

8           (B) a recommendation from the Secretary  
9       regarding the use of the contraceptives in ap-  
10      propriate cases; and

11          (C) information explaining how to obtain  
12      copies of the information developed under sub-  
13      section (b), for distribution to the patients of  
14      the providers.

15      (d) AUTHORIZATION OF APPROPRIATIONS.—There is  
16      authorized to be appropriated to carry out this section  
17      \$5,000,000 for the period consisting of fiscal years 1999  
18      through 2001.

## 19                   **TITLE II—RESEARCH**

### 20      **SEC. 201. PREVENTIVE HEALTH MEASURES REGARDING** 21                   **BREAST AND CERVICAL CANCER AND** 22                   **CHLAMYDIA.**

23      It is the sense of Congress that the programs of  
24      grants under section 318 and title XV of the Public  
25      Health Service Act (42 U.S.C. 247c and 300k et seq.)

1 should receive a level of funding that is adequate for all  
 2 States, or entities in all States, as appropriate, to receive  
 3 grants under such section and title.

4 **SEC. 202. PROGRAMS REGARDING CONTRACEPTION AND**  
 5 **INFERTILITY.**

6 (a) RESEARCH CENTERS.—It is the sense of Con-  
 7 gress that the program assisting research centers under  
 8 section 452A of the Public Health Service Act (42 U.S.C.  
 9 285g–5) should receive a level of funding that is adequate  
 10 for a reasonable number of research centers to be operated  
 11 under the program.

12 (b) LOAN REPAYMENT PROGRAM REGARDING CON-  
 13 DUCT OF RESEARCH.—It is the sense of Congress that  
 14 the program of loan-repayment contracts under section  
 15 487B of the Public Health Service Act (42 U.S.C 288–  
 16 2) should receive a level of funding that is adequate for  
 17 a reasonable number of individuals to conduct research  
 18 under the program.

19 **TITLE III—CHOICE PROTECTION**

20 **SEC. 301. FUNDING FOR ABORTION SERVICES.**

21 It is the sense of Congress that Federal and State  
 22 governments should provide funding for abortion services  
 23 to women eligible for assistance through the medicaid pro-  
 24 gram carried out under title XIX of the Social Security

1 Act (42 U.S.C. 1396 et seq.), as such services are essential  
 2 to the health and well-being of women.

3 **SEC. 302. CLINIC VIOLENCE.**

4 It is the sense of Congress that—

5 (1) Federal resources are necessary to ensure  
 6 that women have safe access to reproductive health  
 7 facilities and that health professionals can deliver  
 8 services in a secure environment free from violence  
 9 and threats of force; and

10 (2) it is necessary and appropriate to use Fed-  
 11 eral resources to combat the nationwide campaign of  
 12 violence and harassment against reproductive health  
 13 centers.

14 **SEC. 303. APPROVAL OF RU-486.**

15 The Secretary of Health and Human Services shall—

16 (1) ensure that a decision by the Food and  
 17 Drug Administration to approve the drug called  
 18 Mifepristone or RU-486 shall be made only on the  
 19 basis provided in law; and

20 (2) assess initiatives by which the Department  
 21 of Health and Human Services can promote the  
 22 testing, licensing, and manufacturing in the United  
 23 States of the drug or other antiprogestins.

24 **SEC. 304. FREEDOM OF CHOICE.**

25 (a) FINDINGS.—Congress finds the following:



1           (1) The 1973 Supreme Court decision in *Roe v.*  
2       Wade, 410 U.S. 113 (1973) established constitu-  
3       tionally based limits on the power of States to re-  
4       strict the right of a woman to choose to terminate  
5       a pregnancy. Under the strict scrutiny standard  
6       enunciated in the *Roe v. Wade* decision, States were  
7       required to demonstrate that laws restricting the  
8       right of a woman to choose to terminate a pregnancy  
9       were the least restrictive means available to achieve  
10      a compelling State interest. Since 1989, the Su-  
11      preme Court has no longer applied the strict scru-  
12      tiny standard in reviewing challenges to the constitu-  
13      tionality of State laws restricting such rights.

14           (2) As a result of the recent modification by the  
15      Supreme Court of the strict scrutiny standard enun-  
16      ciated in the *Roe v. Wade* decision, certain States  
17      have restricted the right of women to choose to ter-  
18      minate a pregnancy or to utilize some forms of con-  
19      traception, and the restrictions operate cumulatively  
20      to—

21                   (A)(i) increase the number of illegal or  
22                   medically less safe abortions, often resulting in  
23                   physical impairment, loss of reproductive capac-  
24                   ity, or death to the women involved;

1           (ii) burden interstate and international  
2 commerce by forcing women to travel from  
3 States in which legal barriers render contracep-  
4 tion or abortion unavailable or unsafe to other  
5 States or foreign nations;

6           (iii) interfere with freedom of travel be-  
7 tween and among the various States;

8           (iv) burden the medical and economic re-  
9 sources of States that continue to provide  
10 women with access to safe and legal abortion;  
11 and

12           (v) interfere with the ability of medical  
13 professionals to provide health services;

14           (B) obstruct access to and use of contra-  
15 ceptive and other medical techniques that are  
16 part of interstate and international commerce;

17           (C) discriminate between women who are  
18 able to afford interstate and international travel  
19 and women who are not, a disproportionate  
20 number of whom belong to racial or ethnic mi-  
21 norities; and

22           (D) infringe on the ability of women to ex-  
23 ercise full enjoyment of rights secured to the  
24 women by Federal and State law, both statu-  
25 tory and constitutional.

1           (3) Although Congress may not by legislation  
2       create constitutional rights, Congress may, where  
3       authorized by a constitutional provision enumerating  
4       the powers of Congress and not prohibited by a con-  
5       stitutional provision, enact legislation to create and  
6       secure statutory rights in areas of legitimate na-  
7       tional concern.

8           (4) Congress has the affirmative power under  
9       section 8 of article I of the Constitution and under  
10      section 5 of the 14th amendment to the Constitution  
11      to enact legislation to prohibit State interference  
12      with interstate commerce, liberty, or equal protection  
13      of the laws.

14      (b) PURPOSE.—The purpose of this section is to es-  
15      tablish, as a statutory matter, limitations on the power  
16      of a State to restrict the freedom of a woman to terminate  
17      a pregnancy in order to achieve the same limitations as  
18      were provided, as a constitutional matter, under the strict  
19      scrutiny standard of review enunciated in the *Roe v. Wade*  
20      decision and applied in subsequent cases from 1973  
21      through 1988.

22      (c) DEFINITION.—As used in this section, the term  
23      “State” includes the District of Columbia, the Common-  
24      wealth of Puerto Rico, and each other territory or posses-  
25      sion of the United States.

1 (d) GENERAL AUTHORITY.—A State—

2 (1) may not restrict the freedom of a woman to  
3 choose whether or not to terminate a pregnancy be-  
4 fore fetal viability;

5 (2) may restrict the freedom of a woman to  
6 choose whether or not to terminate a pregnancy  
7 after fetal viability unless such a termination is nec-  
8 essary to preserve the life or health of the woman;  
9 and

10 (3) may impose requirements on the perform-  
11 ance of abortion procedures if such requirements are  
12 medically necessary to protect the health of women  
13 undergoing such procedures.

14 (e) RULES OF CONSTRUCTION.—Nothing in this sec-  
15 tion shall be construed to—

16 (1) prevent a State from protecting unwilling  
17 individuals or private health care institutions from  
18 being required to participate in the performance of  
19 abortions to which the individuals or institutions are  
20 conscientiously opposed;

21 (2) prevent a State from declining to pay for  
22 the performance of abortions; or

23 (3) prevent a State from requiring a minor to  
24 involve a parent, guardian, or other responsible  
25 adult before terminating a pregnancy.

1 **SEC. 305. FAIRNESS IN INSURANCE.**

2       Notwithstanding any other provision of law, no Fed-  
3 eral law shall be construed to prohibit a health plan from  
4 offering coverage for the full range of reproductive health  
5 care services, including abortion services.

6 **SEC. 306. REPRODUCTIVE RIGHTS OF WOMEN IN THE MILI-**  
7 **TARY.**

8       Section 1093 of title 10, United States Code, is  
9 amended—

10           (1) in subsection (a), by inserting before the pe-  
11 riod the following: “or in a case in which the preg-  
12 nancy involved is the result of an act of rape or in-  
13 cest or the abortion involved is medically necessary  
14 or appropriate”;

15           (2) by striking subsection (b) (as added by sec-  
16 tion 738 of the National Defense Authorization Act  
17 for Fiscal Year 1996 (Public Law 104–106; 110  
18 Stat. 383)); and

19           (3) by adding at the end the following:

20       “(b) ABORTIONS IN FACILITIES OVERSEAS.—Sub-  
21 section (a) does not limit the performing of an abortion  
22 in a facility of the uniformed services located outside the  
23 48 contiguous States of the United States if—

24           “(1) the cost of performing the abortion is fully  
25 paid from a source or sources other than funds  
26 available to the Department of Defense;

1           “(2) abortions are not prohibited by the laws of  
2           the jurisdiction where the facility is located; and

3           “(3) the abortion would otherwise be permitted  
4           under the laws applicable to the provision of health  
5           care to members and former members of the uni-  
6           formed services and their dependents in such  
7           facility.”.

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