

109TH CONGRESS  
1ST SESSION

# S. 396

To amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 16, 2005

Mr. ENSIGN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

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 “Child Custody Protec-  
5 tion Act”.

6 **SEC. 2. TRANSPORTATION OF MINORS IN CIRCUMVENTION**  
7 **OF CERTAIN LAWS RELATING TO ABORTION.**

8 (a) IN GENERAL.—Title 18, United States Code, is  
9 amended by inserting after chapter 117 the following:

1 **“CHAPTER 117A—TRANSPORTATION OF**  
 2 **MINORS IN CIRCUMVENTION OF CER-**  
 3 **TAIN LAWS RELATING TO ABORTION**

“Sec

“2431. *Transportation of minors in circumvention of certain laws relating to abortion*

4 **“§ 2431. Transportation of minors in circumvention of**  
 5 **certain laws relating to abortion**

6 “(a) OFFENSE.—

7 “(1) GENERALLY.—Except as provided in sub-  
 8 section (b), whoever knowingly transports a minor  
 9 across a State line, with the intent that such minor  
 10 obtain an abortion, and thereby in fact abridges the  
 11 right of a parent under a law requiring parental in-  
 12 volvement in a minor’s abortion decision, in force in  
 13 the State where the minor resides, shall be fined  
 14 under this title or imprisoned not more than one  
 15 year, or both.

16 “(2) DEFINITION.—For the purposes of this  
 17 subsection, an abridgement of the right of a parent  
 18 occurs if an abortion is performed on the minor, in  
 19 a State other than the State where the minor re-  
 20 sides, without the parental consent or notification, or  
 21 the judicial authorization, that would have been re-  
 22 quired by that law had the abortion been performed  
 23 in the State where the minor resides.

24 “(b) EXCEPTIONS.—

1           “(1) The prohibition of subsection (a) does not  
2           apply if the abortion was necessary to save the life  
3           of the minor because her life was endangered by a  
4           physical disorder, physical injury, or physical illness,  
5           including a life endangering physical condition  
6           caused by or arising from the pregnancy itself.

7           “(2) A minor transported in violation of this  
8           section, and any parent of that minor, may not be  
9           prosecuted or sued for a violation of this section, a  
10          conspiracy to violate this section, or an offense  
11          under section 2 or 3 based on a violation of this sec-  
12          tion.

13          “(c) AFFIRMATIVE DEFENSE.—It is an affirmative  
14          defense to a prosecution for an offense, or to a civil action,  
15          based on a violation of this section that the defendant rea-  
16          sonably believed, based on information the defendant ob-  
17          tained directly from a parent of the minor or other compel-  
18          ling facts, that before the minor obtained the abortion, the  
19          parental consent or notification, or judicial authorization  
20          took place that would have been required by the law re-  
21          quiring parental involvement in a minor’s abortion deci-  
22          sion, had the abortion been performed in the State where  
23          the minor resides.

1       “(d) CIVIL ACTION.—Any parent who suffers harm  
2 from a violation of subsection (a) may obtain appropriate  
3 relief in a civil action.

4       “(e) DEFINITIONS.—For the purposes of this sec-  
5 tion—

6               “(1) a ‘law requiring parental involvement in a  
7 minor’s abortion decision’ means a law—

8                       “(A) requiring, before an abortion is per-  
9 formed on a minor, either—

10                               “(i) the notification to, or consent of,  
11 a parent of that minor; or

12                               “(ii) proceedings in a State court; and

13                       “(B) that does not provide as an alter-  
14 native to the requirements described in sub-  
15 paragraph (A) notification to or consent of any  
16 person or entity who is not described in that  
17 subparagraph;

18               “(2) the term ‘parent’ means—

19                       “(A) a parent or guardian;

20                       “(B) a legal custodian; or

21                       “(C) a person standing in loco parentis  
22 who has care and control of the minor, and  
23 with whom the minor regularly resides, who is  
24 designated by the law requiring parental in-  
25 volvement in the minor’s abortion decision as a

1 person to whom notification, or from whom con-  
2 sent, is required;

3 “(3) the term ‘minor’ means an individual who  
4 is not older than the maximum age requiring paren-  
5 tal notification or consent, or proceedings in a State  
6 court, under the law requiring parental involvement  
7 in a minor’s abortion decision; and

8 “(4) the term ‘State’ includes the District of  
9 Columbia and any commonwealth, possession, or  
10 other territory of the United States.”.

11 (b) CLERICAL AMENDMENT.—The table of chapters  
12 for part I of title 18, United States Code, is amended by  
13 inserting after the item relating to chapter 117 the fol-  
14 lowing new item:

“117A. Transportation of minors in circumvention of certain laws  
relating to abortion ..... 2431”.

