

110TH CONGRESS
1ST SESSION

S. 2075

To ensure that women seeking an abortion receive an ultrasound and the opportunity to review the ultrasound before giving informed consent to receive an abortion.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2007

Mr. BROWNBACK (for himself, Mr. MARTINEZ, Mr. COLEMAN, Mr. VITTER, Mr. INHOFE, and Mr. THUNE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To ensure that women seeking an abortion receive an ultrasound and the opportunity to review the ultrasound before giving informed consent to receive an abortion.

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 “Ultrasound Informed
5 Consent Act”.

1 **SEC. 2. AMENDMENT TO THE PUBLIC HEALTH SERVICE**
 2 **ACT.**

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

5 **“TITLE XXX—INFORMED**
 6 **CONSENT**

7 **“SEC. 3001. DEFINITIONS.**

8 “In this title:

9 “(1) ABORTION.—The term ‘abortion’ means
 10 the intentional use or prescription of any instru-
 11 ment, medicine, drug, or any other substance or de-
 12 vice or method to terminate the life of an unborn
 13 child, or to terminate the pregnancy of a woman
 14 known to be pregnant with an intention other
 15 than—

16 “(A) to produce a live birth and preserve
 17 the life and health of the child after live birth;
 18 or

19 “(B) to remove an ectopic pregnancy, or to
 20 remove a dead unborn child who died as the re-
 21 sult of a spontaneous abortion, accidental trau-
 22 ma, or a criminal assault on the pregnant fe-
 23 male or her unborn child.

24 “(2) ABORTION PROVIDER.—The term ‘abortion
 25 provider’ means any person legally qualified to per-

1 form an abortion under applicable Federal and State
2 laws.

3 “(3) UNBORN CHILD.—The term ‘unborn child’
4 means a member of the species homo sapiens, at any
5 stage of development prior to birth.

6 “(4) WOMAN.—The term ‘woman’ means a fe-
7 male human being whether or not she has reached
8 the age of majority.

9 **“SEC. 3002. REQUIREMENT OF INFORMED CONSENT.**

10 “(a) REQUIREMENT OF COMPLIANCE BY PRO-
11 VIDERS.—Any abortion provider in or affecting interstate
12 or foreign commerce, who knowingly performs any abor-
13 tion, shall comply with the requirements of this title.

14 “(b) PERFORMANCE AND REVIEW OF
15 ULTRASOUND.—Prior to a woman giving informed con-
16 sent to having any part of an abortion performed, the phy-
17 sician who is to perform the abortion, or certified techni-
18 cian working in conjunction with the physician, shall—

19 “(1) perform an obstetric ultrasound on the
20 pregnant woman;

21 “(2) provide an explanation of the results of the
22 ultrasound;

23 “(3) display the ultrasound images so that the
24 pregnant woman may view them; and

1 “(4) provide a medical description of the
2 ultrasound images, which shall include the dimen-
3 sions of the embryo or fetus and the presence of ex-
4 ternal members and internal organs, if present and
5 viewable.

6 “(c) NO REQUIREMENT TO VIEW ULTRASOUND IM-
7 AGES.—Nothing in this section shall be construed to re-
8 quire a woman to view the ultrasound images. Neither the
9 physician nor the woman shall be subject to any penalty
10 if she refuses to look at the presented ultrasound images.

11 **“SEC. 3003. EXCEPTION FOR MEDICAL EMERGENCIES.**

12 “(a) IN GENERAL.—The provisions of section 3002
13 shall not apply to an abortion provider or facility in the
14 case of a medical emergency.

15 “(b) MEDICAL EMERGENCY DEFINED.—

16 “(1) IN GENERAL.—In subsection (a), the term
17 ‘medical emergency’ means a condition which, in the
18 reasonable medical judgment of the abortion pro-
19 vider, so complicates the medical condition of the
20 pregnant woman that a delay in commencing an
21 abortion procedure would impose a serious risk of
22 causing grave and irreversible physical health dam-
23 age entailing substantial impairment of a major bod-
24 ily function, not including any psychological or emo-
25 tional condition or function.

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

7 “(c) CERTIFICATION.—

8 “(1) IN GENERAL.—Upon a determination by
9 an abortion provider under subsection (a) that a
10 medical emergency exists with respect to a pregnant
11 woman, such provider shall certify the specific med-
12 ical conditions that constitute the emergency and in-
13 clude such certification in the medical file of the
14 pregnant woman.

15 “(2) FALSE STATEMENTS.—An abortion pro-
16 vider who willfully falsifies a certification under
17 paragraph (1) shall be subject to all the penalties
18 provided for under section 3004 for failure to com-
19 ply with this title.

20 **“SEC. 3004. PENALTIES FOR FAILURE TO COMPLY.**

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

1 “(b) COMMENCEMENT OF ACTION.—The Attorney
2 General may commence a civil action under this section.

3 “(c) FIRST OFFENSE.—Upon a finding by a court
4 that a respondent in an action commenced under this sec-
5 tion has knowingly violated a provision of this title, the
6 court shall notify the appropriate State medical licensing
7 authority and shall assess a civil penalty against the re-
8 spondent in an amount not to exceed \$100,000.

9 “(d) SECOND AND SUBSEQUENT OFFENSES.—Upon
10 a finding by a court that the respondent in an action com-
11 menced under this section has knowingly violated a provi-
12 sion of this title and the respondent has been found to
13 have knowingly violated a provision of this title on a prior
14 occasion, the court shall notify the appropriate State med-
15 ical licensing authority and shall assess a civil penalty
16 against the respondent in an amount not to exceed
17 \$250,000.

18 “(e) PRIVATE RIGHT OF ACTION.—A pregnant
19 woman upon whom an abortion has been performed in vio-
20 lation of this title, or the parent or legal guardian of such
21 a woman if she is an unemancipated minor, may com-
22 mence a civil action against the abortion provider for any
23 willful violation of this title for actual and punitive dam-
24 ages.”.

1 **SEC. 3. PREEMPTION.**

2 Nothing in this Act or the amendments made by this
3 Act shall be construed to preempt any provision of State
4 law to the extent that such State law establishes, imple-
5 ments, or continues in effect greater disclosure require-
6 ments regarding abortion than those provided under this
7 Act and the amendments made by this Act.

8 **SEC. 4. SEVERABILITY.**

9 The provisions of this Act shall be severable. If any
10 provision of this Act, or any application thereof, is found
11 unconstitutional, that finding shall not affect any provi-
12 sion or application of the Act not so adjudicated.

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