

113TH CONGRESS
2D SESSION

H. R. 5551

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 2014

Mrs. BACHMANN (for herself, Mr. HUELSKAMP, Mr. HARRIS, Mr. PEARCE, Mr. BRADY of Texas, Mr. PITTS, Mr. LONG, Mr. GIBBS, Mr. HUIZENGA of Michigan, Mr. LATTA, and Mr. JOHNSON of Ohio) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To ensure that women seeking an abortion receive an ultrasound and an 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 “Heartbeat Informed
5 Consent Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

1 (1) The presence of a heartbeat in a woman's
2 unborn child will be a material consideration to
3 many women contemplating abortion.

4 (2) The presence of a heartbeat in a woman's
5 unborn child is a developmental fact that illustrates
6 to the woman that her baby is already alive.

7 (3) On about the 21st or 22nd day after fer-
8 tilization (which is about 5 weeks from the first day
9 of the last menstrual period) the heart of an unborn
10 child begins to beat.

11 (4) The heartbeat of an unborn child can be
12 visually detected at an early stage of pregnancy
13 using an ultrasound machine, typically, at 4 to 4.5
14 weeks after fertilization (6 to 6.5 weeks from the
15 first day of the last menstrual period) on
16 transvaginal ultrasound, and at 5.5 to 6 weeks after
17 fertilization (7.5 to 8 weeks from the first day of the
18 last menstrual period) on transabdominal
19 ultrasound.

20 (5) The heartbeat of an unborn child can be
21 made audible at later stages, including by using a
22 handheld Doppler fetal monitor.

23 (6) Less than five percent of all natural preg-
24 nancies end in spontaneous miscarriage after detec-
25 tion of cardiac activity. A fetal heartbeat is therefore

1 a key medical indicator that an unborn child is likely
2 to achieve the capacity for live birth.

3 (7) The observation of a heartbeat in a wom-
4 an's unborn child, when a heartbeat has been de-
5 tected, is an important component of full informed
6 consent.

7 (8) Ensuring full informed consent for an abor-
8 tion is imperative, because of the profound physical
9 and psychological risks of an abortion. As the Su-
10 preme Court has observed, “[t]he medical, emo-
11 tional, and psychological consequences of an abortion
12 are serious and can be lasting.” *H.L. v. Matheson*,
13 450 U.S. 398, 411 (1981). The woman’s decision
14 whether to abort “is an important, and often a
15 stressful one, and it is desirable and imperative that
16 it be made with full knowledge of its nature and
17 consequences.” *Planned Parenthood v. Danforth*,
18 428 U.S. 52, 67 (1976). “Whether to have an abor-
19 tion requires a difficult and painful moral decision,”
20 in which “some women come to regret their choice
21 to abort the infant life they once created and sus-
22 tained,” and “[s]evere depression and loss of esteem
23 can follow . . . The State has an interest in ensur-
24 ing so grave a choice is well informed. It is self-evi-
25 dent that a mother who comes to regret her choice

1 to abort must struggle with grief more anguished
2 and sorrow more profound when she learns, only
3 after the event, what she once did not know . . .”
4 *Gonzales v. Carhart*, 550 U.S. 124, 159–160
5 (2007).

6 (9) Requiring providers to give a woman an op-
7 portunity to observe her unborn child’s heartbeat is
8 constitutionally permissible, and the ultrasound
9 image of an unborn child is truthful, nonmisleading
10 information. “In attempting to ensure that a woman
11 apprehend the full consequences of her decision, the
12 State furthers the legitimate purpose of reducing the
13 risk that a woman may elect an abortion, only to
14 discover later, with devastating psychological con-
15 sequences, that her decision was not fully informed.
16 If the information the State requires to be made
17 available to the woman is truthful and not mis-
18 leading, the requirement may be permissible.”
19 (Opinion of O’Connor, Kennedy, and Souter,
20 *Planned Parenthood v. Casey*, 505 U.S. 833, 882
21 (1992)).

22 (10) Further, recent research, taking into ac-
23 count 22 studies with control groups and more than
24 877,000 women over a 14-year period, finds that
25 women who have had an abortion have an 81 per-

1 cent increased risk for mental health problems and
2 10 percent of the mental health problems of women
3 who have had an abortion are directly attributed to
4 abortion.

5 **SEC. 3. AMENDMENT TO THE PUBLIC HEALTH SERVICE**
6 **ACT.**

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

9 **“TITLE XXXIV—INFORMED**
10 **CONSENT**

11 **“SEC. 3401. DEFINITIONS.**

12 “In this title:

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

20 “(A) to produce a live birth and preserve
21 the life and health of the child after live birth;
22 or

23 “(B) to remove an ectopic pregnancy, or to
24 remove a dead unborn child who died as the re-
25 sult of a spontaneous abortion, accidental trau-

1 ma, or a criminal assault on the pregnant fe-
2 male or her unborn child.

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

7 “(3) EMBRYONIC OR FETAL HEARTBEAT.—The
8 term ‘embryonic or fetal heartbeat’ means embryonic
9 or fetal cardiac activity or the steady and repetitive
10 rhythmic contraction of the embryonic or fetal heart.

11 “(4) QUALIFIED AGENT.—The term ‘qualified
12 agent’ means—

13 “(A) a registered diagnostic medical
14 sonographer who is certified in obstetrics and
15 gynecology by the American Registry for Diag-
16 nostic Medical Sonography (ARDMS);

17 “(B) a nurse midwife, or an advanced
18 practice nurse practitioner in obstetrics, with
19 certification in obstetrical ultrasonography; or

20 “(C) any other agent of an abortion pro-
21 vider who has received training in obstetrical
22 ultrasonography.

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

1 “(6) UNEMANCIPATED MINOR.—The term
 2 ‘unemancipated minor’ means a minor who is sub-
 3 ject to the control, authority, and supervision of his
 4 or her parents or guardians, as determined under
 5 the law of the State in which the minor resides.

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

9 **“SEC. 3402. 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.—

16 “(1) REQUIREMENT.—If an ultrasound is per-
 17 formed on a woman by an abortion provider (or the
 18 provider’s agent) prior to having any part of an
 19 abortion performed, the abortion provider (acting di-
 20 rectly or through the provider’s agent) shall—

21 “(A) ensure that any agent of the provider
 22 performing the ultrasound is a qualified agent;

23 “(B) during the performance of the
 24 ultrasound, display the ultrasound images (as

1 described in paragraph (2)) so that the preg-
2 nant woman may view the images; and

3 “(C) provide a medical description of the
4 ultrasound images of the unborn child’s cardiac
5 activity, if present and viewable.

6 “(2) QUALITY OF ULTRASOUND IMAGES.—To
7 be displayed in accordance with paragraph (1)(B),
8 ultrasound images shall—

9 “(A) be of a quality consistent with stand-
10 ard medical practice;

11 “(B) contain the dimensions of the unborn
12 child; and

13 “(C) accurately portray the presence of ex-
14 ternal members and internal organs, if present.

15 “(3) VIEWING IMAGES AND LISTENING TO DE-
16 SCRPTION.—This section may not be construed to
17 be a requirement that the pregnant woman view the
18 ultrasound images required to be displayed, or listen
19 to the description of the images required to be given,
20 by the provider or the provider’s agent pursuant to
21 paragraph (1).

22 “(c) AUDIBLE EMBRYONIC OR FETAL HEART-
23 BEAT.—

24 “(1) REQUIREMENT.—Prior to a woman giving
25 informed consent to having any part of an abortion

1 performed, if the pregnancy is at least 8 weeks after
2 fertilization (10 weeks from the first day of the last
3 menstrual period), the abortion provider (acting di-
4 rectly or through the provider's employee) shall,
5 using a hand-held Doppler fetal monitor, make the
6 embryonic or fetal heartbeat of the unborn child au-
7 dible for the pregnant woman to hear.

8 “(2) UNSUCCESSFUL ATTEMPTS AT DETECTING
9 HEARTBEAT.—An abortion provider (or the pro-
10 vider's employee) shall not be in violation of para-
11 graph (1) if—

12 “(A) the provider (acting directly or
13 through the provider's employee) has at-
14 tempted, consistent with standard medical prac-
15 tice, to make the embryonic or fetal heartbeat
16 of the unborn child audible for the pregnant
17 woman to hear using a hand-held Doppler fetal
18 monitor;

19 “(B) that attempt does not result in the
20 heartbeat being made audible; and

21 “(C) the provider has offered to attempt to
22 make the heartbeat audible at a subsequent
23 date.

24 “(3) ABILITY TO NOT LISTEN.—Nothing in this
25 section shall be construed to prevent the pregnant

1 woman from not listening to the sounds detected by
2 the hand-held Doppler fetal monitor, pursuant to
3 paragraph (1).

4 **“SEC. 3403. EXCEPTION FOR MEDICAL EMERGENCIES.**

5 “(a) EXCEPTION.—The provisions of section 3402
6 shall not apply to an abortion provider in the case that
7 the abortion is necessary to save the life of a mother whose
8 life is endangered by a physical disorder, physical illness,
9 or physical injury, including a life-endangering physical
10 condition caused by or arising from the pregnancy itself.

11 “(b) CERTIFICATION.—

12 “(1) IN GENERAL.—Upon a determination by
13 an abortion provider under subsection (a) that an
14 abortion is necessary to save the life of a mother,
15 such provider shall certify the specific medical condi-
16 tions that support such determination and include
17 such certification in the medical file of the pregnant
18 woman. The certification shall be kept by the abor-
19 tion provider for a period of not less than 5 years.
20 If the female is a minor, then the certification shall
21 be placed in the medical file of the minor and kept
22 for at least 5 years after the minor reaches the age
23 of majority.

24 “(2) FALSE STATEMENTS.—An abortion pro-
25 vider who knowingly or recklessly falsifies a certifi-

1 cation under paragraph (1) is deemed to have know-
2 ingly or recklessly failed to comply with this title for
3 purposes of section 3404.

4 **“SEC. 3404. PENALTIES.**

5 “(a) IN GENERAL.—An abortion provider who know-
6 ingly or recklessly fails to comply with any provision of
7 this title shall be subject to civil penalties in accordance
8 with this section in an appropriate Federal court.

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

11 “(c) FIRST OFFENSE.—Upon a finding by a court
12 that a respondent in an action commenced under this sec-
13 tion has knowingly or recklessly violated a provision of this
14 title, the court shall notify the appropriate State medical
15 licensing authority and shall assess a civil penalty against
16 the respondent in an amount not to exceed \$100,000 for
17 each such violation.

18 “(d) SECOND AND SUBSEQUENT OFFENSES.—Upon
19 a finding by a court that the respondent in an action com-
20 menced under this section has knowingly or recklessly vio-
21 lated a provision of this title, the court shall notify the
22 appropriate State medical licensing authority and shall as-
23 sess a civil penalty against the respondent in an amount
24 not to exceed \$250,000 for each such violation if the re-
25 spondent has been found in a prior civil action to have

1 knowingly or recklessly committed another violation of a
2 provision of this title.

3 “(e) PRIVATE RIGHT OF ACTION.—A woman upon
4 whom an abortion has been performed in violation of this
5 title, or the parent or legal guardian of such a woman if
6 she is an unemancipated minor, may commence a civil ac-
7 tion against the abortion provider for any knowing or reck-
8 less violation of this title for actual and punitive dam-
9 ages.”.

10 **SEC. 4. PREEMPTION.**

11 Nothing in this Act or the amendments made by this
12 Act shall be construed to preempt any provision of State
13 law to the extent that such State law establishes, imple-
14 ments, or continues in effect greater disclosure require-
15 ments regarding abortion than those provided under this
16 Act and the amendments made by this Act.

17 **SEC. 5. SEVERABILITY.**

18 If any provision of this Act, an amendment by this
19 Act, or the application of such provision or amendment
20 to any person or circumstance is held to be unconstitu-
21 tional, the remainder of this Act and the amendments
22 made by this Act, and the application of the provisions
23 of such remainder to any person or circumstance, shall
24 not be affected thereby.

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