

116TH CONGRESS
1ST SESSION

S. 2745

To amend title 18, United States Code, to prohibit discrimination by abortion against an unborn child on the basis of Down syndrome.

IN THE SENATE OF THE UNITED STATES

OCTOBER 30, 2019

Mr. INHOFE (for himself, Mr. DAINES, Mr. CRAMER, Mr. BRAUN, Mrs. HYDE-SMITH, Mr. THUNE, Mr. SCOTT of Florida, Mrs. BLACKBURN, Mr. COTTON, Mr. LANKFORD, Mr. RISCH, Ms. ERNST, Mr. HOEVEN, and Mr. ROUNDS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to prohibit discrimination by abortion against an unborn child on the basis of Down syndrome.

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 “Down Syndrome Dis-
5 crimination by Abortion Prohibition Act”.

1 **SEC. 2. DISCRIMINATION BY ABORTION AGAINST AN UN-**
 2 **BORN CHILD ON THE BASIS OF DOWN SYN-**
 3 **DROME PROHIBITED.**

4 (a) IN GENERAL.—Chapter 13 of title 18, United
 5 States Code, is amended by adding at the end the fol-
 6 lowing:

7 **“§ 250. Discrimination by abortion against an unborn**
 8 **child on the basis of Down syndrome pro-**
 9 **hibited**

10 “(a) DEFINITIONS.—In this section:

11 “(1) ABORTION.—The term ‘abortion’ means
 12 the act of using or prescribing any instrument, med-
 13 icine, drug, or any other substance, device, or means
 14 with the intent to—

15 “(A) kill the unborn child of a woman
 16 known to be pregnant; or

17 “(B) terminate the pregnancy of a woman
 18 known to be pregnant, with an intention other
 19 than—

20 “(i) to produce a live birth and pre-
 21 serve the life and health of the child born
 22 alive;

23 “(ii) to save the life of the pregnant
 24 woman; or

25 “(iii) to remove a dead unborn child.

1 “(2) DOWN SYNDROME.—The term ‘Down syn-
 2 drome’ means a chromosomal disorder associated
 3 with—

4 “(A) an extra copy of the chromosome 21,
 5 in whole or in part; or

6 “(B) an effective trisomy for chromosome
 7 21.

8 “(3) QUALIFIED PLAINTIFF.—The term ‘quali-
 9 fied plaintiff’ means—

10 “(A) a woman upon whom an abortion is
 11 performed or attempted in violation of this sec-
 12 tion;

13 “(B) a maternal grandparent of the un-
 14 born child if the woman upon whom an abortion
 15 is performed or attempted in violation of this
 16 section is an unemancipated minor;

17 “(C) the father of an unborn child who is
 18 the subject of an abortion performed or at-
 19 tempted in violation of this section unless the
 20 pregnancy or abortion resulted from the crimi-
 21 nal conduct of the father; or

22 “(D) the Attorney General.

23 “(4) UNBORN CHILD.—The term ‘unborn child’
 24 means an individual of the species homo sapiens
 25 from the beginning of the biological development of

1 that individual, including fertilization, until the point
2 of being born alive, as defined in section 8(b) of title
3 1.

4 “(b) OFFENSE.—It shall be unlawful to—

5 “(1) perform an abortion—

6 “(A) with the knowledge that a pregnant
7 woman is seeking an abortion, in whole or in
8 part, on the basis of—

9 “(i) a test result indicating that the
10 unborn child has Down syndrome;

11 “(ii) a prenatal diagnosis that the un-
12 born child has Down syndrome; or

13 “(iii) any other reason to believe that
14 the unborn child has or may have Down
15 syndrome; or

16 “(B) without first—

17 “(i) asking the pregnant woman if she
18 is aware of any test results, prenatal diag-
19 nosis, or any other evidence that the un-
20 born child has or may have Down syn-
21 drome; and

22 “(ii) if the woman is aware that the
23 unborn child has or may have Down syn-
24 drome, informing the pregnant woman of

1 the prohibitions on abortion under this sec-
2 tion;

3 “(2) use force or the threat of force to inten-
4 tionally injure or intimidate any person for the pur-
5 pose of coercing an abortion described in paragraph
6 (1)(A);

7 “(3) solicit or accept funds for the performance
8 of an abortion described in paragraph (1)(A); or

9 “(4) knowingly transport a woman into the
10 United States or across a State line for the purpose
11 of obtaining an abortion described in paragraph
12 (1)(A).

13 “(c) CRIMINAL PENALTY.—Any person that violates,
14 or attempts to violate, subsection (b) shall be fined under
15 this title, imprisoned not more than 5 years, or both.

16 “(d) CIVIL REMEDIES.—

17 “(1) CIVIL ACTION BY WOMAN ON WHOM ABOR-
18 TION IS PERFORMED.—A woman upon whom an
19 abortion has been performed or attempted in viola-
20 tion of subsection (b)(2) may bring a civil action in
21 an appropriate court against any person who en-
22 gaged in a violation of subsection (b)(2) to obtain
23 appropriate relief.

24 “(2) CIVIL ACTION BY RELATIVES.—

1 “(A) IN GENERAL.—Except as provided in
 2 subparagraph (B), the father of an unborn
 3 child who is the subject of an abortion per-
 4 formed or attempted in violation of subsection
 5 (b), or a maternal grandparent of the unborn
 6 child if the pregnant woman is an
 7 unemancipated minor, may bring a civil action
 8 in an appropriate court against any person who
 9 engaged in the violation to obtain appropriate
 10 relief.

11 “(B) EXCEPTIONS.—Subparagraph (A)
 12 shall not apply if—

13 “(i) the pregnancy or abortion re-
 14 sulted from the criminal conduct of the
 15 plaintiff described in subparagraph (A); or

16 “(ii) the plaintiff described in sub-
 17 paragraph (A) consented to the abortion.

18 “(3) APPROPRIATE RELIEF.—Appropriate relief
 19 in a civil action under this subsection includes—

20 “(A) objectively verifiable money damages
 21 for all injuries, psychological and physical, in-
 22 cluding loss of companionship and support, oc-
 23 casioned by the violation of this section; and

24 “(B) punitive damages.

1 “(4) INJUNCTIVE RELIEF.—A qualified plaintiff
2 may bring a civil action in an appropriate court to
3 obtain injunctive relief to prevent an abortion pro-
4 vider from performing or attempting further abor-
5 tions in violation of this section.

6 “(5) ATTORNEY’S FEES FOR PLAINTIFF.—The
7 court shall award a reasonable attorney’s fee as part
8 of the costs to a prevailing plaintiff in a civil action
9 under this subsection.

10 “(e) BAR TO PROSECUTION.—A woman upon whom
11 an abortion is performed may not be prosecuted or held
12 civilly liable for any violation of this section or for a con-
13 spiracy to violate this section.

14 “(f) LOSS OF FEDERAL FUNDING.—A violation of
15 subsection (b) shall be deemed discrimination for the pur-
16 poses of section 504 of the Rehabilitation Act of 1973 (29
17 U.S.C. 794).

18 “(g) REPORTING REQUIREMENT.—

19 “(1) IN GENERAL.—A physician, physician’s as-
20 sistant, nurse, counselor, or other medical or mental
21 health professional shall report known or suspected
22 violations of any of this section to appropriate law
23 enforcement authorities.

1 “(2) CRIMINAL PENALTY.—Any person who vio-
 2 lates paragraph (1) shall be fined under this title,
 3 imprisoned not more than 1 year, or both.

4 “(h) EXPEDITED CONSIDERATION.—It shall be the
 5 duty of the district courts of the United States, the courts
 6 of appeals of the United States, and the Supreme Court
 7 of the United States to advance on the docket and to expe-
 8 dite to the greatest possible extent the disposition of any
 9 matter brought under this section.

10 “(i) PROTECTION OF PRIVACY IN COURT PRO-
 11 CEEDINGS.—

12 “(1) IN GENERAL.—Except to the extent the
 13 Constitution of the United States or other similarly
 14 compelling reason requires, in every civil or criminal
 15 action under this section, the court shall make such
 16 orders as are necessary to protect the anonymity of
 17 any woman upon whom an abortion has been per-
 18 formed or attempted if she does not give her written
 19 consent to such disclosure. Such orders may be
 20 made upon motion, but shall be made sua sponte if
 21 not otherwise sought by a party.

22 “(2) ORDERS TO PARTIES, WITNESSES, AND
 23 COUNSEL.—The court shall issue appropriate orders
 24 to the parties, witnesses, and counsel and shall di-
 25 rect the sealing of the record and exclusion of indi-

viduals from courtrooms or hearing rooms to the extent necessary to safeguard the identity of a woman described in paragraph (1) from public disclosure.

“(3) PSEUDONYM REQUIRED.—In the absence of written consent of the woman upon whom an abortion has been performed or attempted, any party, other than a public official, who brings an action under this section shall do so under a pseudonym.

“(4) LIMITATION.—This subsection may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.”.

(b) CLERICAL AMENDMENT.—The table of sections of chapter 13 of title 18, United States Code, is amended by adding at the end the following:

“250. Discrimination by abortion against an unborn child on the basis of Down syndrome prohibited.”.

SEC. 3. SEVERABILITY.

If any portion of this Act, or the amendments made by this Act, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the portions or applications of this Act which can be given effect without the invalid portion or application.

