

Mr. ASHCROFT submitted an amendment intended to be proposed by him to amendment No. 274 submitted by Mr. KENNEDY to the bill, S. 4, supra; as follows:

To the matter proposed to be stricken, add the following:

( ) FLEXIBLE AND COMPRESSED WORK SCHEDULE PROGRAMS.—

(1) REPEAL.—Subchapter II of chapter 61 of title 5, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—

(A) The table of sections for chapter 61 title 5, United States Code, is amended—

(i) by striking the following item:

“SUBCHAPTER I—GENERAL PROVISIONS”;

and

(ii) by striking the items relating to subchapter II.

(B) Section 6103 of title 5, United States Code, is amended by striking subsection (d).

(C) Subchapter I of chapter 61 of title 5, United States Code, is amended by striking the following:

“SUBCHAPTER I—GENERAL PROVISIONS”.

(D) Section 3401(2) of title 5, United States Code is amended by striking “(or 32 to 64 hours during a biweekly pay period in the case of a flexible or compressed work schedule under subchapter II of chapter 61 of this title)”.

(E) Section 116 of the Indian Health Care Improvement Act (25 U.S.C. 1616i) is amended by striking subsection (c).

#### ASHCROFT AMENDMENT NO. 286

(Ordered to lie on the table.)

Mr. ASHCROFT submitted an amendment intended to be proposed by him to amendment No. 276 submitted by Mr. DODD to the bill, S. 4, supra; as follows:

To the matter proposed to be stricken, add the following:

( ) FLEXIBLE AND COMPRESSED WORK SCHEDULE PROGRAMS.—

(1) REPEAL.—Subchapter II of chapter 61 of title 5, United States Code, is repealed.

(2) CONFORMING AMENDMENTS.—

(A) The table of sections for chapter 61 of title 5, United States Code, is amended—

(i) by striking the following item:

“SUBCHAPTER I—GENERAL PROVISIONS”;

and

(ii) by striking the items relating to subchapter II.

(B) Section 6103 of title 5, United States Code, is amended by striking subsection (d).

(C) Subchapter I of chapter 61 of title 5, United States Code, is amended by striking the following:

“SUBCHAPTER I—GENERAL PROVISIONS”.

(D) Section 3401(2) of title 5, United States Code is amended by striking “(or 32 to 64 hours during a biweekly pay period in the case of a flexible or compressed work schedule under subchapter II of chapter 61 of this title)”.

(E) Section 116 of the Indian Health Care Improvement Act (25 U.S.C. 1616i) is amended by striking subsection (c).

#### ASHCROFT AMENDMENT NO. 287

(Ordered to lie on the table.)

Mr. ASHCROFT submitted an amendment intended to be proposed by him to amendment No. 271 submitted by

Mr. KENNEDY to the bill, S. 4, supra; as follows:

To the matter proposed to be stricken, add the following:

( ) FLEXIBLE AND COMPRESSED WORK SCHEDULE PROGRAMS.—

(1) REPEAL.—Subchapter II of chapter 61 of title 5, United States Code, is repealed.

(2) CONFORMING AMENDMENTS.—

(A) The table of sections for chapter 61 of title 5, United States Code, is amended—

(i) by striking the following item:

“SUBCHAPTER I—GENERAL PROVISIONS”;

and

(ii) by striking the items relating to subchapter II.

(B) Section 6103 of title 5, United States Code, is amended by striking subsection (d).

(C) Subchapter I of chapter 61 of title 5, United States Code, is amended by striking the following:

“SUBCHAPTER I—GENERAL PROVISIONS”.

(D) Section 3401(2) of title 5, United States Code is amended by striking “(or 32 to 64 hours during a biweekly pay period in the case of a flexible or compressed work schedule under subchapter II of chapter 61 of this title)”.

(E) Section 116 of the Indian Health Care Improvement Act (25 U.S.C. 1616i) is amended by striking subsection (c).

### THE PARTIAL-BIRTH ABORTION BAN ACT OF 1997

#### FEINSTEIN (AND OTHERS) AMENDMENT NO. 288

Mrs. FEINSTEIN (for herself, Mrs. BOXER, and Ms. MOSELEY-BRAUN) proposed an amendment to the bill (H.R. 1122) to amend title 18, United States Code, to ban partial-birth abortions; as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Post-Viability Abortion Restriction Act.”

#### SEC. 2. PROHIBITION ON CERTAIN ABORTIONS.

(a) IN GENERAL.—It shall be unlawful, in or affecting interstate or foreign commerce, for a physician knowingly to perform an abortion after the fetus has become viable.

(b) EXCEPTION.—Subsection (a) does not apply if, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or to avert serious adverse health consequences to the woman.

#### SEC. 3. CIVIL PENALTIES.

(a) ACTION BY ATTORNEY GENERAL.—The Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney specifically designated by the Attorney General (referred to in this Act as the “appropriate official”), may commence a civil action under this subsection in any appropriate United States district court to enforce the provisions of this Act.

(b) RELIEF.—

(1) FIRST VIOLATION.—In an action commenced under subsection (a), if the court finds that the respondent in the action has violated a provision of this Act, the court shall assess a civil penalty against the respondent in an amount not exceeding \$100,000, and refer the case to the State medical licensing authority for consideration of

suspension of the respondent's medical license.

(2) SECOND VIOLATION.—If a respondent in an action commenced under subsection (a) has been found to have violated a provision of this Act on a prior occasion, the court shall assess a civil penalty against the respondent in an amount not exceeding \$250,000, and refer the case to the State medical licensing authority for consideration of revocation of the respondent's medical license.

(c) CERTIFICATION REQUIREMENTS.—

(1) IN GENERAL.—At the time of the commencement of an action under subsection (a), the appropriate official shall certify to the court involved that the appropriate official—

(A) has provided notification in writing of the alleged violation of this Act, at least 30 calendar days prior to the filing of such action, to the attorney general or chief legal officer of the appropriate State or political subdivision; and

(B) believes that such an action by the United States is in the public interest and necessary to secure substantial justice.

(2) LIMITATION.—No woman who has had an abortion after fetal viability may be penalized under this Act for a conspiracy to violate this section or for an offense under section 2, 3, 4, or 1512 of title 18, United States Code.

#### SEC. 4. REGULATIONS AND PROCEDURES.

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary of Health and Human Services shall establish regulations—

(1) requiring an attending physician described in section 2(b) to certify that, in the best medical judgment of the physician, the abortion described in section 2(b) was medically necessary to preserve the life or to avert serious adverse health consequences to the woman involved, and to describe the medical indications supporting the judgment; and

(2) to ensure the confidentiality of all information submitted pursuant to a certification by a physician under paragraph (1).

(b) STATE REGULATIONS AND PROCEDURES.—The regulations described in subsection (a) shall not apply in a State that has established regulations described in subsection (a).

#### SEC. 5. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to prohibit State or local governments from regulating, restricting, or prohibiting post-viability abortions to the extent permitted by the Constitution of the United States.

#### DASCHLE (AND OTHERS) AMENDMENT NO. 289

Mr. DASCHLE (for himself, Ms. SNOWE, Ms. MIKULSKI, Mrs. MURRAY, Ms. LANDRIEU, Ms. COLLINS, Mr. LIEBERMAN, and Mr. KENNEDY) proposed an amendment to the bill, H.R. 1122, supra; as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Comprehensive Abortion Ban Act of 1997”.

#### SEC. 2. FINDINGS.

Congress makes the following findings:

(1) As the Supreme Court recognized in *Roe v. Wade*, the government has an “important and legitimate interest in preserving and protecting the health of the pregnant woman...and has still another important and legitimate interest in protecting the potentiality of human life. These interests are separate and distinct. Each grow in substantiality as the woman approaches term and,

at a point during pregnancy, each becomes compelling”.

(2) In delineating at what point the Government's interest in fetal life becomes “compelling”, *Roe v. Wade* held that “a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability”, a conclusion reaffirmed in *Planned Parenthood of Southeastern Pennsylvania v. Casey*.

(3) *Planned Parenthood of Southeastern Pennsylvania v. Casey* also reiterated the holding in *Roe v. Wade* that the government's interest in potential life becomes compelling with fetal viability, stating that “subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother”.

(4) According to the Supreme Court, viability “is the time at which there is a realistic possibility of maintaining and nourishing a life outside the womb, so that the independent existence of the second life can in reason and all fairness be the object of State protection that now overrides the rights of the woman”.

(5) The Supreme Court has thus indicated that it is constitutional for Congress to ban abortions occurring after viability so long as the ban does not apply when a woman's life or health faces a serious threat.

(6) Even when it is necessary to terminate a pregnancy to save the life or health of the mother, every medically appropriate measure should be taken to deliver a viable fetus.

(7) It is well established that women may suffer serious health conditions during pregnancy, such as breast cancer, preeclampsia, uterine rupture or non-Hodgkin's lymphoma, among others, that may require the pregnancy to be terminated.

(8) While such situations are rare, not only would it be unconstitutional but it would be unconscionable for Congress to ban abortions in such cases, forcing women to endure severe damage to their health and, in some cases, risk early death.

(9) In cases where the mother's health is not at such high risk, however, it is appropriate for Congress to assert its “compelling interest” in fetal life by prohibiting abortions after fetal viability.

(10) While many States have banned abortions of viable fetuses, in some States it continues to be legal for a healthy woman to abort a viable fetus.

(11) As a result, women seeking abortions may travel between the States to take advantage of differing State laws.

(12) To prevent abortions of viable fetuses not necessitated by severe medical complications, Congress must act to make such abortions illegal in all States.

(13) Abortion of a viable fetus should be prohibited throughout the United States, unless a woman's life or health is threatened and, even when it is necessary to terminate the pregnancy, every measure should be taken, consistent with the goals of protecting the mother's life and health, to preserve the life and health of the fetus.

### SEC. 3. ABORTION PROHIBITION.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 73 the following:

#### “CHAPTER 74—ABORTION PROHIBITION

“Sec.

“1531. Prohibition.

“1532. Penalties.

“1533. State regulations.

“1534. Rule of construction.

#### “§ 1531 Prohibition.

“(a) IN GENERAL.—It shall be unlawful for a physician to abort a viable fetus unless the

physician certifies that the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health.

“(b) GRIEVOUS INJURY.—

“(1) IN GENERAL.—For purposes of subsection (a), the term ‘grievous injury’ means—

“(A) a severely debilitating disease or impairment specifically caused by the pregnancy; or

“(B) an inability to provide necessary treatment for a life-threatening condition.

“(2) LIMITATION.—The term ‘grievous injury’ does not include any condition that is not medically diagnosable or any condition for which termination of pregnancy is not medically indicated.

“(c) PHYSICIAN.—In this chapter, the term ‘physician’ means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the doctor performs such activity, or any other individual legally authorized by the State to perform abortions, except that any individual who is not a physician or not otherwise legally authorized by the State to perform abortions, but who nevertheless directly performs an abortion in violation of subsection (a) shall be subject to the provisions of this section.

“(d) NO CONSPIRACY.—No woman who has had an abortion after fetal viability may be prosecuted under this section for a conspiracy to violate this section or for an offense under section 2, 3, 4, or 1512 of title 18, United States Code.

#### “§ 1532 Penalties.

“(a) ACTION BY ATTORNEY GENERAL.—The Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney specifically designated by the Attorney General may commence a civil action under this chapter in any appropriate United States district court to enforce the provisions of this chapter.

“(b) RELIEF.—

“(1) FIRST OFFENSE.—Upon a finding by the court that the respondent in an action commenced under subsection (a) has knowingly violated a provision of this chapter, the court shall notify the appropriate State medical licensing authority in order to effect the suspension of the respondent's medical license in accordance with the regulations and procedures developed by the State under section 1533(d), or shall assess a civil penalty against the respondent in an amount not exceeding \$100,000, or both.

“(2) SECOND OFFENSE.—If a respondent in an action commenced under subsection (a) has been found to have knowingly violated a provision of this chapter on a prior occasion, the court shall notify the appropriate State medical licensing authority in order to effect the revocation of the respondent's medical license in accordance with the regulations and procedures developed by the State under section 1533(d), or shall assess a civil penalty against the respondent in an amount not exceeding \$250,000, or both.

“(3) HEARING.—With respect to an action under subsection (a), the appropriate State medical licensing authority shall be given notification of and an opportunity to be heard at a hearing to determine the penalty to be imposed under this subsection.

“(c) CERTIFICATION REQUIREMENTS.—At the time of the commencement of an action under subsection (a), the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney specifically designated by the Attorney General shall certify to the court involved that, at least 30 calendar days prior to the filing of

such action, the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney involved—

“(1) has provided notice of the alleged violation of this section, in writing, to the Governor or chief executive officer and attorney general or chief legal officer of the State or political subdivision involved, as well as to the State medical licensing board or other appropriate State agency; and

“(2) believes that such an action by the United States is in the public interest and necessary to secure substantial justice.

#### “§ 1533 Regulations.

“(a) REGULATIONS OF SECRETARY FOR CERTIFICATION.—

“(1) IN GENERAL.—Not later than 60 days after the date of enactment of this chapter, the Secretary of Health and Human Services shall publish proposed regulations for the filing of certifications by physicians under section 1531(a).

“(2) REQUIREMENT.—The regulations under paragraph (1) shall require that a certification filed under section 1531(a) contain—

“(A) a certification by the physician (on penalty of perjury, as permitted under section 1746 of title 28) that, in his or her best medical judgment, the abortion involved was medically necessary pursuant to such section; and

“(B) a description by the physician of the medical indications supporting his or her judgment.

“(3) CONFIDENTIALITY.—The Secretary of Health and Human Services shall promulgate regulations to ensure that the identity of the mother described in section 1531(a) is kept confidential, with respect to a certification filed by a physician under section 1531(a).

“(b) ACTION BY STATE.—A State, and the medical licensing authority of the State, shall develop regulations and procedures for the revocation or suspension of the medical license of a physician upon a finding under section 1532 that the physician has violated a provision of this chapter. A State that fails to implement such procedures shall be subject to loss of funding under title XIX of the Social Security Act.

#### “§ 1534 Rule of Construction.

“(1) IN GENERAL.—The requirements of this chapter shall not apply with respect to postviability abortions in a State if there is a State law in effect in the State that regulates, restricts, or prohibits such abortions to the extent permitted by the Constitution of the United States.

“(2) STATE LAW.—In paragraph (1), the term “State law” includes all laws, decisions, rules or regulations of any State, or any other State action having the effect of law.”.

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 73 the following new item:

“74. Prohibition of post-viability abortions ..... 1531”.

## NOTICES OF HEARINGS

### COMMITTEE ON RULES AND ADMINISTRATION

Mr. WARNER. Mr. President, I wish to announce that the Committee on Rules and Administration will meet in SR-301, Russell Senate Office Building, on Thursday, May 22, 1997, at 9:30 a.m. to consider revisions to title 44/GPO: Review and Recommendations of Draft Legislation.

For further information concerning this hearing, please contact Eric Peterson at 224-7774.