

105TH CONGRESS
2D SESSION

S. 2497

To ban certain abortions.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18, 1998

Mr. DURBIN (for himself, Ms. SNOWE, Ms. COLLINS, Mr. TORRICELLI, Ms. MIKULSKI, Mr. GRAHAM, Ms. LANDRIEU, Mr. LIEBERMAN, Mr. BINGAMAN, and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To ban certain abortions.

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 “Late-Term Abortion
5 Limitation Act of 1998”.

6 **SEC. 2. BAN ON CERTAIN ABORTIONS.**

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

1 **“CHAPTER 74—BAN ON CERTAIN**
 2 **ABORTIONS**

“Sec.

“1531. Prohibition of post-viability abortions.

“1532. Penalties.

“1533. Regulations.

“1534. State law.

“1535. Definitions.

3 **“§ 1531. Prohibition of post-viability abortions**

4 “(a) IN GENERAL.—It shall be unlawful for a physi-
 5 cian to intentionally abort a viable fetus unless the physi-
 6 cian prior to performing the abortion—

7 “(1) certifies in writing that, in the physician’s
 8 medical judgment based on the particular facts of
 9 the case before the physician, the continuation of the
 10 pregnancy would threaten the mother’s life or risk
 11 grievous injury to her physical health; and

12 “(2) an independent physician who will not per-
 13 form nor be present at the abortion and who was not
 14 previously involved in the treatment of the mother
 15 certifies in writing that, in his or her medical judg-
 16 ment based on the particular facts of the case, the
 17 continuation of the pregnancy would threaten the
 18 mother’s life or risk grievous injury to her physical
 19 health.

20 “(b) NO CONSPIRACY.—No woman who has had an
 21 abortion after fetal viability may be prosecuted under this

1 chapter for conspiring to violate this chapter or for an of-
2 fense under section 2, 3, 4, or 1512 of title 18.

3 “(c) **MEDICAL EMERGENCY EXCEPTION.**—The cer-
4 tification requirements contained in subsection (a) shall
5 not apply when, in the medical judgment of the physician
6 performing the abortion based on the particular facts of
7 the case before the physician, there exists a medical emer-
8 gency. In such a case, however, after the abortion has been
9 completed the physician who performed the abortion shall
10 certify in writing the specific medical condition which
11 formed the basis for determining that a medical emer-
12 gency existed.

13 **“§ 1532. Penalties**

14 “(a) **ACTION BY THE ATTORNEY GENERAL.**—The
15 Attorney General, the Deputy Attorney General, the Asso-
16 ciate Attorney General, or any Assistant Attorney General
17 or United States Attorney specifically designated by the
18 Attorney General may commence a civil action under this
19 chapter in any appropriate United States district court to
20 enforce the provisions of this chapter.

21 “(b) **FIRST OFFENSE.**—Upon a finding by the court
22 that the respondent in an action commenced under sub-
23 section (a) has knowingly violated a provision of this chap-
24 ter, the court shall notify the appropriate State medical
25 licensing authority in order to effect the suspension of the

1 respondent's medical license in accordance with the regu-
2 lations and procedures developed by the State under sec-
3 tion 1533(b), or shall assess a civil penalty against the
4 respondent in an amount not to exceed \$100,000, or both.

5 “(c) SECOND OFFENSE.—Upon a finding by the
6 court that the respondent in an action commenced under
7 subsection (a) has knowingly violated a provision of this
8 chapter and the respondent has been found to have know-
9 ingly violated a provision of this chapter on a prior occa-
10 sion, the court shall notify the appropriate State medical
11 licensing authority in order to effect the revocation of the
12 respondent's medical license in accordance with the regu-
13 lations and procedures developed by the State under sec-
14 tion 1533(b), or shall assess a civil penalty against the
15 respondent in an amount not to exceed \$250,000, or both.

16 “(d) HEARING.—With respect to an action under
17 subsection (a), the appropriate State medical licensing au-
18 thority shall be given notification of and an opportunity
19 to be heard at a hearing to determine the penalty to be
20 imposed under this section.

21 “(e) CERTIFICATION REQUIREMENTS.—At the time
22 of the commencement of an action under subsection (a),
23 the Attorney General, the Deputy Attorney General, the
24 Associate Attorney General, or any Assistant Attorney
25 General or United States Attorney who has been specifi-

1 cally designated by the Attorney General to commence a
 2 civil action under this chapter, shall certify to the court
 3 involved that, at least 30 calendar days prior to the filing
 4 of such action, the Attorney General, the Deputy Attorney
 5 General, the Associate Attorney General, or any Assistant
 6 Attorney General or United States Attorney involved—

7 “(1) has provided notice of the alleged violation
 8 of this chapter, in writing, to the Governor or Chief
 9 Executive Officer and Attorney General or Chief
 10 Legal Officer of the State or political subdivision in-
 11 volved, as well as to the State medical licensing
 12 board or other appropriate State agency; and

13 “(2) believes that such an action by the United
 14 States is in the public interest and necessary to se-
 15 cure substantial justice.

16 **“§ 1533. Regulations**

17 “(a) FEDERAL REGULATIONS.—

18 “(1) IN GENERAL.—Not later than 60 days
 19 after the date of enactment of this chapter, the Sec-
 20 retary of Health and Human Services shall publish
 21 proposed regulations for the filing of certifications
 22 by physicians under this chapter.

23 “(2) REQUIREMENTS.—The regulations under
 24 paragraph (1) shall require that a certification filed
 25 under this chapter contain—

1 “(A) a certification by the physician per-
2 forming the abortion, under threat of criminal
3 prosecution under section 1746 of title 28, that,
4 in his or her best medical judgment, the abor-
5 tion performed was medically necessary pursu-
6 ant to this chapter;

7 “(B) a description by the physician of the
8 medical indications supporting his or her judg-
9 ment;

10 “(C) a certification by an independent phy-
11 sician pursuant to section 1531(a)(2), under
12 threat of criminal prosecution under section
13 1746 of title 28, that, in his or her best medical
14 judgment, the abortion performed was medically
15 necessary pursuant to this chapter; and

16 “(D) a certification by the physician per-
17 forming an abortion under a medical emergency
18 pursuant to section 1531(c), under threat of
19 criminal prosecution under section 1746 of title
20 28, that, in his or her best medical judgment,
21 a medical emergency existed, and the specific
22 medical condition upon which the physician
23 based his or her decision.

24 “(3) CONFIDENTIALITY.—The Secretary of
25 Health and Human Services shall promulgate regu-

1 lations to ensure that the identity of a mother de-
 2 scribed in section 1531(a)(1) is kept confidential,
 3 with respect to a certification filed by a physician
 4 under this chapter.

5 “(b) STATE REGULATIONS.—A State, and the medi-
 6 cal licensing authority of the State, shall develop regula-
 7 tions and procedures for the revocation or suspension of
 8 the medical license of a physician upon a finding under
 9 section 1532 that the physician has violated a provision
 10 of this chapter. A State that fails to implement such pro-
 11 cedures shall be subject to loss of funding under title XIX
 12 of the Social Security Act.

13 **“§ 1534. State law**

14 “(a) IN GENERAL.—The requirements of this chapter
 15 shall not apply with respect to post-viability abortions in
 16 a State if there is a State law in effect in that State that
 17 regulates, restricts, or prohibits such abortions to the ex-
 18 tent permitted by the Constitution of the United States.

19 “(b) DEFINITION.—In subsection (a), the term ‘State
 20 law’ means all laws, decisions, rules, or regulations of any
 21 State, or any other State action, having the effect of law.

22 **“§ 1535. Definitions**

23 “In this chapter:

24 “(1) GRIEVOUS INJURY.—

1 “(A) IN GENERAL.—The term ‘grievous in-
2 jury’ means—

3 “(i) a severely debilitating disease or
4 impairment specifically caused by the preg-
5 nancy; or

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

8 “(B) LIMITATION.—The term ‘grievous in-
9 jury’ does not include any condition that is not
10 medically diagnosable or any condition for
11 which termination of the pregnancy is not medi-
12 cally indicated.

13 “(2) PHYSICIAN.—The term ‘physician’ means
14 a doctor of medicine or osteopathy legally authorized
15 to practice medicine and surgery by the State in
16 which the doctor performs such activity, or any
17 other individual legally authorized by the State to
18 perform abortions, except that any individual who is
19 not a physician or not otherwise legally authorized
20 by the State to perform abortions, but who neverthe-
21 less directly performs an abortion in violation of sec-
22 tion 1531 shall be subject to the provisions of this
23 chapter.”.

24 (b) CLERICAL AMENDMENT.—The table of chapters
25 for part I of title 18, United States Code, is amended by

1 inserting after the item relating to chapter 73 the follow-

2 ing new item:

“74. Ban on certain abortions 1531.”

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