

111TH CONGRESS
1ST SESSION

H. R. 649

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 HOUSE OF REPRESENTATIVES

JANUARY 22, 2009

Mr. JORDAN of Ohio (for himself, Mrs. BLACKBURN, Mr. LAMBORN, Mr. BOOZMAN, Mrs. McMORRIS RODGERS, Mr. BURTON of Indiana, Mr. PITTS, Mrs. BACHMANN, Mrs. SCHMIDT, Mr. INGLIS, Mr. SCALISE, Mr. WESTMORELAND, Mr. BRADY of Texas, Mr. TERRY, Ms. FOXX, Mr. McHENRY, Mr. GUTHRIE, Mr. LATTA, Mr. ALEXANDER, Mr. ROGERS of Alabama, Mr. BROUN of Georgia, Mr. MANZULLO, Mr. CAO, Mr. LINDER, Mr. POSEY, Mr. HARPER, Mr. OLSON, Mr. GINGREY of Georgia, Mr. PRICE of Georgia, Ms. FALLIN, Mr. HERGER, Ms. LUMMIS, Mr. CANTOR, Mr. THOMPSON of Pennsylvania, Mr. McKEON, Mr. SHIMKUS, Mr. BISHOP of Utah, Mr. FLEMING, Mr. KING of Iowa, Mr. PENCE, Mr. MARCHANT, Mr. LUETKEMEYER, Mr. GARRETT of New Jersey, Mr. BARTLETT, Mr. SMITH of New Jersey, Mr. FORTENBERRY, and Mr. SEN-SEN-BRENNER) 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 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Ultrasound Informed
3 Consent Act”.

4 **SEC. 2. AMENDMENT TO THE PUBLIC HEALTH SERVICE
5 ACT.**

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

8 **“TITLE XXX—INFORMED
9 CONSENT**

10 **“SEC. 3001. DEFINITIONS.**

11 “In this title:

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

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

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

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

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

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

11 “(5) UNEMANCIPATED MINOR.—The term
12 ‘unemancipated minor’ means a minor who is sub-
13 ject to the control, authority, and supervision of his
14 or her parents or guardians, as determined under
15 State law.

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

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

21 “(b) PERFORMANCE AND REVIEW OF
22 ULTRASOUND.—Prior to a woman giving informed con-
23 sent to having any part of an abortion performed, the
24 abortion provider who is to perform the abortion, or cer-

1 tified technician working in conjunction with the provider,
2 shall—

3 “(1) perform an obstetric ultrasound on the
4 pregnant woman;

5 “(2) provide an explanation of the results of the
6 ultrasound;

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

9 “(4) provide a medical description of the
10 ultrasound images, which shall include the dimen-
11 sions of the embryo or fetus, cardiac activity if
12 present and viable, and the presence of external
13 members and internal organs, if present and
14 viewable.

15 “(c) NO REQUIREMENT TO VIEW ULTRASOUND IM-
16 AGES.—Nothing in this section shall be construed to re-
17 quire a woman to view the ultrasound images. Neither the
18 abortion provider nor the woman shall be subject to any
19 penalty if she refuses to look at the presented ultrasound
20 images.

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

22 “(a) EXCEPTION.—The provisions of section 3002
23 shall not apply to an abortion provider in the case that
24 the abortion is necessary to save the life of a mother whose
25 life is endangered by a physical disorder, physical illness,

1 or physical injury, including a life-endangering physical
2 condition caused by or arising from the pregnancy itself.

3 “(b) CERTIFICATION.—

4 “(1) IN GENERAL.—Upon a determination by
5 an abortion provider under subsection (a) that an
6 abortion is necessary to save the life of a mother,
7 such provider shall certify the specific medical condi-
8 tions that support such determination and include
9 such certification in the medical file of the pregnant
10 woman.

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

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

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

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

23 “(c) FIRST OFFENSE.—Upon a finding by a court
24 that a respondent in an action commenced under this sec-
25 tion has knowingly violated a provision of this title, the

1 court shall notify the appropriate State medical licensing
2 authority and shall assess a civil penalty against the re-
3 spondent in an amount not to exceed \$100,000.

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

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

20 **SEC. 3. PREEMPTION.**

21 Nothing in this Act or the amendments made by this
22 Act shall be construed to preempt any provision of State
23 law to the extent that such State law establishes, imple-
24 ments, or continues in effect greater disclosure require-

1 ments regarding abortion than those provided under this
2 Act and the amendments made by this Act.

3 **SEC. 4. SEVERABILITY.**

4 The provisions of this Act shall be severable. If any
5 provision of this Act, or any application thereof, is found
6 unconstitutional, that finding shall not affect any provi-
7 sion or application of the Act not so adjudicated.

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