

116TH CONGRESS
2D SESSION

S. 3388

To ensure that women seeking an abortion are informed of the medical risks associated with the abortion procedure and the major developmental characteristics of the unborn child, before giving their informed consent to receive an abortion.

IN THE SENATE OF THE UNITED STATES

MARCH 4, 2020

Mrs. LOEFFLER (for herself, Mrs. BLACKBURN, Ms. ERNST, Mr. INHOFE, Mr. LANKFORD, Mr. BRAUN, and Mr. SCOTT of Florida) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To ensure that women seeking an abortion are informed of the medical risks associated with the abortion procedure and the major developmental characteristics of the unborn child, before giving their 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 “Woman’s Right To
5 Know Act”.

1 **SEC. 2. REQUIREMENT OF INFORMED CONSENT.**

2 (a) IN GENERAL.—

3 (1) REQUIREMENT OF COMPLIANCE BY PRO-
4 VIDERS.—Any abortion provider, acting in or affect-
5 ing interstate or foreign commerce, who knowingly
6 performs, or attempts to perform, any abortion shall
7 comply with the requirements of this section.

8 (2) REVIEW OF MEDICAL RISKS AND UNBORN
9 HEALTH STATUS.—An abortion provider who intends
10 to perform, or attempt to perform, an abortion may
11 not perform any part of the abortion procedure with-
12 out first obtaining a signed Informed Consent Au-
13 thorization form in accordance with this subsection.

14 (3) INFORMED CONSENT AUTHORIZATION
15 FORM.—

16 (A) IN GENERAL.—The Informed Consent
17 Authorization form required under this sub-
18 section shall—

19 (i) be presented in person by the abor-
20 tion provider 24 hours prior to performing,
21 or attempting to perform, the abortion to
22 the woman seeking the abortion; and

23 (ii) consist of—

24 (I) a statement by the abortion
25 provider indicating—

- 1 (aa) the probable gestational
2 age, in completed days, of the
3 child;
- 4 (bb) all medical risks associ-
5 ated with the specific abortion
6 procedure; and
- 7 (cc) the major developmental
8 characteristics of unborn children
9 at such gestational age, including
10 the presence of a heartbeat, the
11 ability to react to painful stimuli,
12 and the development of organs,
13 appendages, and facial features;
- 14 (II) a statement that the require-
15 ments of this subsection are binding
16 upon the abortion provider and all
17 other medical personnel, that such
18 abortion providers and medical per-
19 sonnel are subject to criminal and
20 civil penalties for violations of these
21 requirements, and that a woman on
22 whom an abortion has been performed
23 may take civil action if these require-
24 ments are not followed; and

1 (III) an affirmation that each in-
2 dividual signing the Informed Consent
3 Authorization form has filled out the
4 form to the best of his or her knowl-
5 edge and understands the information
6 contained in the form.

7 (B) SIGNATORIES REQUIRED.—The In-
8 formed Consent Authorization form required
9 under this subsection shall be signed in person
10 by the woman seeking the abortion, the abor-
11 tion provider performing or attempting to per-
12 form the abortion, and a witness.

13 (C) RETENTION OF CONSENT FORM.—The
14 abortion provider performing or attempting to
15 perform an abortion shall retain the signed In-
16 formed Consent Authorization form required
17 under this subsection in the patient's medical
18 file.

19 (D) REQUIREMENT FOR DATA RETEN-
20 TION.—Paragraph (j)(2) of section 164.530 of
21 title 45, Code of Federal Regulations, shall
22 apply to the Informed Consent Authorization
23 form required to be placed in a patient's med-
24 ical file pursuant to subparagraph (C) in the
25 same manner and to the same extent as such

1 paragraph applies to documentation required by
2 paragraph (j)(1) of such section.

3 (4) EXCEPTIONS.—The requirements of this
4 subsection shall not apply if, in reasonable medical
5 judgment, compliance with paragraph (2) would pose
6 a greater risk of—

7 (A) the death of the pregnant woman; or

8 (B) the substantial and irreversible phys-
9 ical impairment of a major bodily function, not
10 including psychological or emotional conditions,
11 of the pregnant woman.

12 (b) PENALTY FOR FAILURE TO COMPLY.—

13 (1) CIVIL PENALTY.—

14 (A) ENFORCEMENT BY ATTORNEY GEN-
15 ERAL.—The Attorney General shall commence
16 a civil action in an appropriate district court of
17 the United States under this subsection against
18 any abortion provider who knowingly commits a
19 violation of subsection (a).

20 (B) PENALTY.—In a civil action under
21 subparagraph (A), the court may, to vindicate
22 the public interest, assess a civil penalty against
23 the abortion provider in an amount—

24 (i) not less than \$100,000 and not
25 more than \$150,000, for each such viola-

tion that is adjudicated in the first proceeding against such abortion provider under this subsection; or

(ii) not less than \$150,001 and not more than \$250,000, for each such violation that is adjudicated in a subsequent proceeding against such abortion provider under this subsection.

(C) NOTIFICATION.—Upon the assessment of a civil penalty under subparagraph (B), the Attorney General shall notify the appropriate State medical licensing authority.

(D) NO PENALTIES FOR PREGNANT WOMEN.—A pregnant woman shall not be subject to any penalty under this section.

(2) PRIVATE RIGHT OF ACTION.—

(A) IN GENERAL.—A woman or a parent of a minor upon whom an abortion has been performed in violation of subsection (a) may commence a civil action against the abortion provider for appropriate relief.

(B) APPROPRIATE RELIEF.—Appropriate relief in a civil action under this paragraph includes—

1 (i) objectively verifiable money dam-
 2 ages for all injuries, psychological and
 3 physical, occasioned by the violation;

4 (ii) statutory damages equal to 3
 5 times the cost of the abortion; and

6 (iii) punitive damages.

7 (C) ATTORNEY'S FEES FOR PLAINTIFF.—

8 The court shall award a reasonable attorney's
 9 fee as part of the costs to a prevailing plaintiff
 10 in a civil action under this paragraph.

11 (D) ATTORNEY'S FEES FOR DEFEND-

12 ANT.—If a defendant in a civil action under
 13 this paragraph prevails and the court finds that
 14 the plaintiff's suit was frivolous, the court shall
 15 award a reasonable attorney's fee in favor of
 16 the defendant against the plaintiff.

17 (E) AWARDS AGAINST WOMAN.—In any

18 civil action under this paragraph, no damages
 19 or other monetary relief, and no attorney's fees
 20 except as provided under subparagraph (D),
 21 may be assessed against the woman upon whom
 22 the abortion was performed or attempted.

23 (c) PREEMPTION.—Nothing in this Act or the amend-

24 ments made by this Act shall be construed to preempt any
 25 provision of State law to the extent that such State law

1 establishes, implements, or continues in effect disclosure
 2 requirements regarding abortion or penalties for failure to
 3 comply with such requirements that are more extensive
 4 than those provided under the amendment made by this
 5 Act.

6 (d) RULE OF CONSTRUCTION.—Nothing in this Act
 7 shall be construed to prohibit an abortion provider from
 8 presenting the information required under subsection (a)
 9 to a pregnant woman at the same time as acquiring in-
 10 formed consent for an abortion from such woman in ac-
 11 cordance with State law, provided that the presentation
 12 of such information occurs at least 24 hours before the
 13 abortion.

14 (e) DEFINITIONS.—In this section:

15 (1) ABORTION.—The term “abortion” means
 16 the use or prescription of any instrument, medicine,
 17 drug, or any other substance or device—

18 (A) to intentionally kill the unborn child of
 19 a woman known to be pregnant; or

20 (B) to intentionally terminate the preg-
 21 nancy of a woman known to be pregnant, with
 22 an intention other than—

23 (i) after viability to produce a live
 24 birth and preserve the life and health of
 25 the child born alive; or

1 (ii) to remove a dead unborn child.

2 (2) ABORTION PROVIDER.—The term “abortion
3 provider” means a person—

4 (A) licensed to practice medicine and sur-
5 gery or osteopathic medicine and surgery; or

6 (B) otherwise legally authorized to perform
7 an abortion.

8 (3) ATTEMPT.—The term “attempt”, with re-
9 spect to an abortion, means conduct that, under the
10 circumstances as the actor believes them to be, con-
11 stitutes a substantial step in a course of conduct
12 planned to culminate in performing an abortion.

13 (4) MINOR.—The term “minor” means an indi-
14 vidual who has not attained the age of 18 years.

15 (5) PERFORM.—The term “perform”, with re-
16 spect to an abortion, includes inducing an abortion
17 through a medical or chemical intervention including
18 writing a prescription for a drug or device intended
19 to result in an abortion.

20 (6) REASONABLE MEDICAL JUDGMENT.—The
21 term “reasonable medical judgment” means a med-
22 ical judgment that would be made by a reasonably
23 prudent abortion provider, knowledgeable about the
24 case and the treatment possibilities with respect to
25 the medical conditions involved.

1 (7) UNBORN CHILD.—The term “unborn child”
2 means an individual organism of the species homo
3 sapiens, beginning at fertilization, until the point of
4 being born alive as defined in section 8(b) of title 1,
5 United States Code.

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

○