

118TH CONGRESS
1ST SESSION

S. 78

To amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

IN THE SENATE OF THE UNITED STATES

JANUARY 25, 2023

Mr. RUBIO (for himself, Mrs. HYDE-SMITH, Mr. RISCH, Mr. LANKFORD, Mr. THUNE, Mr. CRUZ, Mr. SCOTT of South Carolina, Mr. CRAMER, Mr. BRAUN, Mr. HAWLEY, Mr. KENNEDY, Mrs. FISCHER, Mr. CASSIDY, and Mr. MARSHALL) 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 taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

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 “Child Interstate Abor-
5 tion Notification Act of 2023”.

1 **SEC. 2. TRANSPORTATION OF MINORS IN CIRCUMVENTION**
 2 **OF CERTAIN LAWS RELATING TO ABORTION.**

3 Part I of title 18, United States Code, is amended
 4 by inserting after chapter 117 the following:

5 **“CHAPTER 117A—TRANSPORTATION OF**
 6 **MINORS IN CIRCUMVENTION OF CER-**
 7 **TAIN LAWS RELATING TO ABORTION**

“Sec.

“2431. Transportation of minors in circumvention of certain laws relating to
 abortion.

“2432. Transportation of minors in circumvention of certain laws relating to
 abortion and incest.

8 **“§ 2431. Transportation of minors in circumvention of**
 9 **certain laws relating to abortion**

10 “(a) OFFENSE.—

11 “(1) GENERALLY.—Except as provided in sub-
 12 section (b), whoever knowingly transports a minor
 13 across a State line, with the intent that the minor
 14 obtain an abortion, and thereby in fact abridges the
 15 right of a parent of the minor under a law requiring
 16 parental involvement in a minor’s abortion decision,
 17 in force in the State in which the minor resides,
 18 shall be fined under this title or imprisoned not
 19 more than 1 year, or both.

20 “(2) DEFINITION.—For the purposes of this
 21 subsection, an abridgement of the right of a parent
 22 of a minor occurs if an abortion is performed or in-
 23 duced on the minor, in a State other than the State

1 in which the minor resides or in a foreign country,
2 without the parental consent or notification, or the
3 judicial authorization, that would have been required
4 under a law requiring parental involvement in a mi-
5 nor’s abortion decision had the abortion been per-
6 formed in the State in which the minor resides.

7 “(b) EXCEPTIONS.—

8 “(1) LIFE-ENDANGERING CONDITIONS.—The
9 prohibition under subsection (a) shall not apply if
10 the abortion is necessary to save the life of the
11 minor because her life is endangered by a physical
12 disorder, physical injury, or physical illness, includ-
13 ing a life endangering physical condition caused by
14 or arising from the pregnancy itself.

15 “(2) MINORS AND PARENTS.—A minor trans-
16 ported in violation of this section, and any parent of
17 that minor, may not be prosecuted or sued for a vio-
18 lation of this section, a conspiracy to violate this sec-
19 tion, or an offense under section 2 or 3 of this title
20 based on a violation of this section.

21 “(c) AFFIRMATIVE DEFENSE.—It is an affirmative
22 defense to a prosecution for an offense, or to a civil action,
23 based on a violation of this section that the defendant—

24 “(1) reasonably believed, based on information
25 the defendant obtained directly from a parent of the

1 minor, that before the minor obtained the abortion,
2 the parental consent or notification took place that
3 would have been required under the law requiring
4 parental involvement in a minor's abortion decision,
5 had the abortion been performed in the State in
6 which the minor resides; or

7 “(2) was presented with documentation showing
8 with a reasonable degree of certainty that a court in
9 the minor's State of residence waived any parental
10 notification required by the laws of that State, or
11 otherwise authorized that the minor be allowed to
12 procure an abortion.

13 “(d) CIVIL ACTION.—Any parent who suffers harm
14 from a violation of subsection (a) may obtain appropriate
15 relief in a civil action unless the parent has committed
16 an act of incest with the minor described in subsection
17 (a).

18 “(e) DEFINITIONS.—For the purposes of this sec-
19 tion—

20 “(1) the term ‘abortion’ means the use or pre-
21 scription of any instrument, medicine, drug, or other
22 substance or device to intentionally—

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

1 “(B) prematurely terminate the pregnancy
2 of a woman known to be pregnant, with an in-
3 tention other than to—

4 “(i) increase the probability of a live
5 birth or of preserving the life or health of
6 the child after live birth; or

7 “(ii) remove a dead unborn child;

8 “(2) the term ‘law requiring parental involve-
9 ment in a minor’s abortion decision’ means a law—

10 “(A) requiring, before an abortion is per-
11 formed on a minor, either—

12 “(i) the notification to, or consent of,
13 a parent of that minor; or

14 “(ii) proceedings in a State court; and

15 “(B) that does not provide as an alter-
16 native to the requirements described in sub-
17 paragraph (A) notification to or consent of any
18 person or entity not described in that subpara-
19 graph;

20 “(3) the term ‘minor’ means an individual who
21 is not older than the maximum age requiring paren-
22 tal notification or consent, or proceedings in a State
23 court, under a law requiring parental involvement in
24 a minor’s abortion decision;

25 “(4) the term ‘parent’ means—

1 “(A) a parent or guardian;

2 “(B) a legal custodian; or

3 “(C) an individual standing in loco
4 parentis—

5 “(i) who has care and control of the
6 minor;

7 “(ii) with whom the minor regularly
8 resides; and

9 “(iii) who is designated by the law re-
10 quiring parental involvement in the minor’s
11 abortion decision as an individual to whom
12 notification, or from whom consent, is re-
13 quired; and

14 “(5) the term ‘State’ includes—

15 “(A) the District of Columbia;

16 “(B) any commonwealth, possession, or
17 other territory of the United States; and

18 “(C) any Indian Tribe or reservation.

19 **“§ 2432. Transportation of minors in circumvention of**
20 **certain laws relating to abortion and in-**
21 **cest**

22 “(a) OFFENSE.—Notwithstanding section
23 2431(b)(2), whoever has committed an act of incest with
24 a minor and knowingly transports the minor across a
25 State line with the intent that the minor obtain an abor-

1 tion, shall be fined under this title or imprisoned not more
2 than 1 year, or both.

3 “(b) DEFINITIONS.—For the purposes of this section,
4 the terms ‘abortion’, ‘minor’, and ‘State’ have the mean-
5 ings given those terms in section 2435.”.

6 **SEC. 3. CHILD INTERSTATE ABORTION NOTIFICATION.**

7 Part I of title 18, United States Code, is amended
8 by inserting after chapter 117A (as added by section 2)
9 the following:

10 **“CHAPTER 117B—CHILD INTERSTATE**
11 **ABORTION NOTIFICATION**

“Sec.
“2435. Child interstate abortion notification.

12 **“§ 2435. Child interstate abortion notification**

13 “(a) OFFENSE.—

14 “(1) GENERALLY.—A physician who knowingly
15 performs or induces an abortion on a minor in viola-
16 tion of the requirements of this section shall be fined
17 under this title or imprisoned not more than 1 year,
18 or both.

19 “(2) PARENTAL NOTIFICATION.—

20 “(A) ACTUAL NOTICE.—A physician who
21 performs or induces an abortion on a minor
22 who is a resident of a State other than the
23 State in which the abortion is performed or in-
24 duced shall provide, or cause his or her agent

1 to provide, not less than 24 hours actual notice
2 to a parent of the minor before performing or
3 inducing the abortion.

4 “(B) CONSTRUCTIVE NOTICE.—If actual
5 notice to a parent under subparagraph (A) is
6 not accomplished after a reasonable effort has
7 been made, not less than 24 hours constructive
8 notice shall be given to a parent of the minor
9 before the abortion is performed or induced.

10 “(b) EXCEPTIONS.—The notification requirement
11 under subsection (a)(2) shall not apply if—

12 “(1) the abortion is performed or induced in a
13 State that has in force a law requiring parental in-
14 volvement in a minor’s abortion decision and the
15 physician complies with the requirements of that
16 law;

17 “(2) the physician is presented with documenta-
18 tion showing with a reasonable degree of certainty
19 that a court in the minor’s State of residence has
20 waived any parental notification required by the laws
21 of that State, or has otherwise authorized that the
22 minor be allowed to procure an abortion;

23 “(3) the minor declares in a signed written
24 statement that she is the victim of sexual abuse, ne-
25 glect, or physical abuse by a parent, and, before an

1 abortion is performed on the minor, the physician
2 notifies the authorities specified to receive reports of
3 child abuse or neglect by the law of the State in
4 which the minor resides of the known or suspected
5 abuse or neglect;

6 “(4) the abortion is necessary to save the life
7 of the minor because her life was endangered by a
8 physical disorder, physical injury, or physical illness,
9 including a life endangering physical condition
10 caused by or arising from the pregnancy itself, ex-
11 cept that an exception under this paragraph shall
12 not apply unless the attending physician or an agent
13 of such physician, not later than 24 hours after com-
14 pletion of the abortion, notifies a parent of the
15 minor in writing that an abortion was performed on
16 the minor and of the circumstances that warranted
17 invocation of this paragraph; or

18 “(5) the minor is physically accompanied by a
19 person who presents the physician or his or her
20 agent with documentation showing with a reasonable
21 degree of certainty that he or she is in fact the par-
22 ent of that minor.

23 “(c) CIVIL ACTION.—Any parent who suffers harm
24 from a violation of subsection (a) may obtain appropriate
25 relief in a civil action unless the parent has committed

1 an act of incest with the minor described in subsection
2 (a).

3 “(d) DEFINITIONS.—For the purposes of this sec-
4 tion—

5 “(1) the term ‘abortion’ means the use or pre-
6 scription of any instrument, medicine, drug, or other
7 substance or device to intentionally—

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

10 “(B) prematurely terminate the pregnancy
11 of a woman known to be pregnant, with an in-
12 tention other than to—

13 “(i) increase the probability of a live
14 birth or of preserving the life or health of
15 the child after live birth; or

16 “(ii) remove a dead unborn child;

17 “(2) the term ‘actual notice’ means the giving
18 of written notice directly, in person, by the physician
19 or any agent of the physician;

20 “(3) the term ‘constructive notice’ means notice
21 that is given by certified mail, return receipt re-
22 quested, restricted delivery to the last known ad-
23 dress of the person being notified, with delivery
24 deemed to have occurred 48 hours following noon on
25 the next day subsequent to mailing on which regular

1 mail delivery takes place, excluding days on which
2 mail is not delivered;

3 “(4) the term ‘law requiring parental involve-
4 ment in a minor’s abortion decision’ means a law—

5 “(A) requiring, before an abortion is per-
6 formed on a minor, either—

7 “(i) the notification to, or consent of,
8 a parent of that minor; or

9 “(ii) proceedings in a State court; and

10 “(B) that does not provide as an alter-
11 native to the requirements described in sub-
12 paragraph (A) notification to or consent of any
13 person or entity not described in that subpara-
14 graph;

15 “(5) the term ‘minor’ means an individual
16 who—

17 “(A) has not attained the age of 18 years;
18 and

19 “(B) is not emancipated under the law of
20 the State in which the individual resides;

21 “(6) the term ‘parent’ means—

22 “(A) a parent or guardian;

23 “(B) a legal custodian; or

24 “(C) an individual standing in loco
25 parentis—

1 “(i) who has care and control of the
2 minor; and

3 “(ii) with whom the minor regularly
4 resides,

5 as determined by State law;

6 “(7) the term ‘physician’ means—

7 “(A) a doctor of medicine legally author-
8 ized to practice medicine by the State in which
9 the doctor practices medicine; or

10 “(B) any other person legally empowered
11 under State law to perform an abortion; and

12 “(8) the term ‘State’ includes—

13 “(A) the District of Columbia;

14 “(B) any commonwealth, possession, or
15 other territory of the United States; and

16 “(C) any Indian Tribe or reservation.”.

17 **SEC. 4. CLERICAL AMENDMENT.**

18 The table of chapters at the beginning of part I of
19 title 18, United States Code, is amended by inserting after
20 the item relating to chapter 117 the following new items:

**“117A. Transportation of minors in circumvention of
certain laws relating to abortion 2431
“117B. Child interstate abortion notification 2435”.**

21 **SEC. 5. SEVERABILITY AND EFFECTIVE DATE.**

22 (a) SEVERABILITY.—The provisions of this Act shall
23 be severable. If any provision of this Act, or any applica-
24 tion thereof, is found unconstitutional, that finding shall

1 not affect any provision or application of the Act not so
2 adjudicated.

3 (b) EFFECTIVE DATE.—This Act and the amend-
4 ments made by this Act shall take effect 45 days after
5 the date of enactment of this Act.

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