

112TH CONGRESS
1ST SESSION

S. 1241

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

JUNE 21 (legislative day, JUNE 16), 2011

Mr. RUBIO (for himself, Mr. HATCH, Ms. AYOTTE, Mr. BLUNT, Mr. BURR, Mr. CHAMBLISS, Mr. COATS, Mr. COBURN, Mr. CORNYN, Mr. DEMINT, Mr. ENZI, Mr. GRAHAM, Mr. GRASSLEY, Mrs. HUTCHISON, Mr. JOHANNIS, Mr. KYL, Mr. LEE, Mr. MCCAIN, Mr. MORAN, Mr. RISCH, Mr. SESSIONS, Mr. THUNE, Mr. WICKER, Mr. VITTER, and Mr. PAUL) 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”.

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

3 Title 18, United States Code, is amended by inserting
 4 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.

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 such minor
 14 obtain an abortion, and thereby in fact abridges the
 15 right of a parent under a law requiring parental in-
 16 volvement in a minor’s abortion decision, in force in
 17 the State where the minor resides, shall be fined
 18 under this title or imprisoned not more than one
 19 year, or both.

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

1 State where the minor resides, without the parental
2 consent or notification, or the judicial authorization,
3 that would have been required by that law had the
4 abortion been performed in the State where the
5 minor resides.

6 “(b) EXCEPTIONS.—

7 “(1) The prohibition of subsection (a) does not
8 apply if the abortion was necessary to save the life
9 of the minor because her life was endangered by a
10 physical disorder, physical injury, or physical illness,
11 including a life endangering physical condition
12 caused by or arising from the pregnancy itself.

13 “(2) A minor transported in violation of this
14 section, and any parent of that minor, may not be
15 prosecuted or sued for a violation of this section, a
16 conspiracy to violate this section, or an offense
17 under section 2 or 3 of this title based on a violation
18 of this section.

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

22 “(1) reasonably believed, based on information
23 the defendant obtained directly from a parent of the
24 minor, that before the minor obtained the abortion,
25 the parental consent or notification took place that

1 would have been required by the law requiring pa-
2 rental involvement in a minor’s abortion decision,
3 had the abortion been performed in the State where
4 the minor resides; or

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

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

15 “(e) DEFINITIONS.—For the purposes of this sec-
16 tion—

17 “(1) the term ‘abortion’ means the use or pre-
18 scription of any instrument, medicine, drug, or any
19 other substance or device intentionally to terminate
20 the pregnancy of a female known to be pregnant,
21 with an intention other than to increase the prob-
22 ability of a live birth, to preserve the life or health
23 of the child after live birth, to terminate an ectopic
24 pregnancy, or to remove a dead unborn child who
25 died as the result of a spontaneous abortion, acci-

1 dental trauma or a criminal assault on the pregnant
2 female or her unborn child;

3 “(2) 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 who is not described in that
14 subparagraph;

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

20 “(4) the term ‘parent’ means—

21 “(A) a parent or guardian;

22 “(B) a legal custodian; or

23 “(C) a person standing in loco parentis
24 who has care and control of the minor, and
25 with whom the minor regularly resides, who is

1 designated by the law requiring parental in-
 2 volvement in the minor’s abortion decision as a
 3 person to whom notification, or from whom con-
 4 sent, is required; and

5 “(5) the term ‘State’ includes the District of
 6 Columbia and any commonwealth, possession, or
 7 other territory of the United States, and any Indian
 8 tribe or reservation.

9 **“§ 2432. Transportation of minors in circumvention of**
 10 **certain laws relating to abortion**

11 “Notwithstanding section 2431(b)(2), whoever has
 12 committed an act of incest with a minor and knowingly
 13 transports the minor across a State line with the intent
 14 that such minor obtain an abortion, shall be fined under
 15 this title or imprisoned not more than one year, or both.
 16 For the purposes of this section, the terms ‘State’, ‘minor’,
 17 and ‘abortion’ have, respectively, the definitions given
 18 those terms in section 2435.”.

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

20 Title 18, United States Code, is amended by inserting
 21 after chapter 117A the following:

22 **“CHAPTER 117B—CHILD INTERSTATE**
 23 **ABORTION NOTIFICATION**

“Sec.

“2435. Child interstate abortion notification.

1 **“§ 2435. Child interstate abortion notification**

2 “(a) OFFENSE.—

3 “(1) GENERALLY.—A physician who knowingly
4 performs or induces an abortion on a minor in viola-
5 tion of the requirements of this section shall be fined
6 under this title or imprisoned not more than one
7 year, or both.

8 “(2) PARENTAL NOTIFICATION.—A physician
9 who performs or induces an abortion on a minor
10 who is a resident of a State other than the State in
11 which the abortion is performed must provide, or
12 cause his or her agent to provide, at least 24 hours
13 actual notice to a parent of the minor before per-
14 forming the abortion. If actual notice to such parent
15 is not accomplished after a reasonable effort has
16 been made, at least 24 hours constructive notice
17 must be given to a parent before the abortion is per-
18 formed.

19 “(b) EXCEPTIONS.—The notification requirement of
20 subsection (a)(2) does not apply if—

21 “(1) the abortion is performed or induced in a
22 State that has, in force, a law requiring parental in-
23 volvement in a minor’s abortion decision and the
24 physician complies with the requirements of that
25 law;

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

7 “(3) the minor declares in a signed written
8 statement that she is the victim of sexual abuse, ne-
9 glect, or physical abuse by a parent, and, before an
10 abortion is performed on the minor, the physician
11 notifies the authorities specified to receive reports of
12 child abuse or neglect by the law of the State in
13 which the minor resides of the known or suspected
14 abuse or neglect;

15 “(4) the abortion is necessary to save the life
16 of the minor because her life was endangered by a
17 physical disorder, physical injury, or physical illness,
18 including a life endangering physical condition
19 caused by or arising from the pregnancy itself, but
20 an exception under this paragraph does not apply
21 unless the attending physician or an agent of such
22 physician, within 24 hours after completion of the
23 abortion, notifies a parent in writing that an abor-
24 tion was performed on the minor and of the cir-

1 cumstances that warranted invocation of this para-
2 graph; or

3 “(5) the minor is physically accompanied by a
4 person who presents the physician or his agent with
5 documentation showing with a reasonable degree of
6 certainty that he or she is in fact the parent of that
7 minor.

8 “(c) CIVIL ACTION.—Any parent who suffers harm
9 from a violation of subsection (a) may obtain appropriate
10 relief in a civil action unless the parent has committed
11 an act of incest with the minor subject to subsection (a).

12 “(d) DEFINITIONS.—For the purposes of this sec-
13 tion—

14 “(1) the term ‘abortion’ means the use or pre-
15 scription of any instrument, medicine, drug, or any
16 other substance or device intentionally to terminate
17 the pregnancy of a female known to be pregnant,
18 with an intention other than to increase the prob-
19 ability of a live birth, to preserve the life or health
20 of the child after live birth, to terminate an ectopic
21 pregnancy, or to remove a dead unborn child who
22 died as the result of a spontaneous abortion, acci-
23 dental trauma, or a criminal assault on the pregnant
24 female or her unborn child;

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

4 “(3) the term ‘constructive notice’ means notice
5 that is given by certified mail, return receipt re-
6 quested, restricted delivery to the last known ad-
7 dress of the person being notified, with delivery
8 deemed to have occurred 48 hours following noon on
9 the next day subsequent to mailing on which regular
10 mail delivery takes place, days on which mail is not
11 delivered excluded;

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

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

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

18 “(ii) proceedings in a State court;

19 “(B) that does not provide as an alter-
20 native to the requirements described in sub-
21 paragraph (A) notification to or consent of any
22 person or entity who is not described in that
23 subparagraph;

24 “(5) the term ‘minor’ means an individual who
25 has not attained the age of 18 years and who is not

1 emancipated under the law of the State in which the
2 minor resides;

3 “(6) the term ‘parent’ means—

4 “(A) a parent or guardian;

5 “(B) a legal custodian; or

6 “(C) a person standing in loco parentis
7 who has care and control of the minor, and
8 with whom the minor regularly resides;

9 as determined by State law;

10 “(7) the term ‘physician’ means a doctor of
11 medicine legally authorized to practice medicine by
12 the State in which such doctor practices medicine, or
13 any other person legally empowered under State law
14 to perform an abortion; and

15 “(8) the term ‘State’ includes the District of
16 Columbia and any commonwealth, possession, or
17 other territory of the United States, and any Indian
18 tribe or reservation.”.

19 **SEC. 4. CLERICAL AMENDMENT.**

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

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

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

2 (a) The provisions of this Act shall be severable. If
3 any provision of this Act, or any application thereof, is
4 found unconstitutional, that finding shall not affect any
5 provision or application of the Act not so adjudicated.

6 (b) This Act and the amendments made by this Act
7 shall take effect 45 days after the date of enactment of
8 this Act.

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