

112TH CONGRESS  
1ST SESSION

# S. 906

To prohibit taxpayer funded abortions and to provide for conscience protections, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 5, 2011

Mr. WICKER (for himself, Mr. SHELBY, Mr. BLUNT, Mr. DEMINT, Mr. COATS, Mr. BURR, Mr. ENZI, Mr. COBURN, Mr. VITTER, Mr. RISCH, Mr. BARRASSO, Mr. COCHRAN, Mr. BOOZMAN, Mr. MORAN, Ms. AYOTTE, Mr. JOHANNIS, Mr. GRASSLEY, Mr. PAUL, Mr. RUBIO, Mr. INHOFE, Mr. HATCH, Mr. KYL, and Mr. THUNE) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To prohibit taxpayer funded abortions and to provide for conscience protections, and for other purposes.

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 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “No Taxpayer Funding for Abortion Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PROHIBITING FEDERALLY FUNDED ABORTIONS AND  
PROVIDING FOR CONSCIENCE PROTECTIONS

- Sec. 101. Prohibiting taxpayer funded abortions and providing for conscience  
protections.  
Sec. 102. Amendment to table of chapters.

TITLE II—ELIMINATION OF CERTAIN TAX BENEFITS RELATING  
TO ABORTION

- Sec. 201. Deduction for medical expenses not allowed for abortions.  
Sec. 202. Disallowance of refundable credit for coverage under qualified health  
plan which provides coverage for abortion.  
Sec. 203. Disallowance of small employer health insurance expense credit for  
plan which includes coverage for abortion.  
Sec. 204. Distributions for abortion expenses from certain accounts and ar-  
rangements included in gross income.

1 **TITLE I—PROHIBITING FEDER-**  
2 **ALLY FUNDED ABORTIONS**  
3 **AND PROVIDING FOR CON-**  
4 **SCIENCE PROTECTIONS**

5 **SEC. 101. PROHIBITING TAXPAYER FUNDED ABORTIONS**  
6 **AND PROVIDING FOR CONSCIENCE PROTEC-**  
7 **TIONS.**

8 Title 1, United States Code is amended by adding  
9 at the end the following new chapter:

10 **“CHAPTER 4—PROHIBITING TAXPAYER**  
11 **FUNDED ABORTIONS AND PROVIDING**  
12 **FOR CONSCIENCE PROTECTIONS**

“Sec.

- “301. Prohibition on funding for abortions.  
“302. Prohibition on funding for health benefits plans that cover abortion.  
“303. Limitation on Federal facilities and employees.  
“304. Construction relating to separate coverage.  
“305. Construction relating to the use of non-Federal funds for health coverage.  
“306. Non-preemption of other Federal laws.  
“307. Construction relating to complications arising from abortion.  
“308. Treatment of abortions related to rape, incest, or preserving the life of  
the mother.  
“309. Application to District of Columbia.  
“310. No government discrimination against certain health care entities.

1 **“§ 301. Prohibition on funding for abortions**

2 “No funds authorized or appropriated by Federal  
3 law, and none of the funds in any trust fund to which  
4 funds are authorized or appropriated by Federal law, shall  
5 be expended for any abortion.

6 **“§ 302. Prohibition on funding for health benefits**  
7 **plans that cover abortion**

8 “None of the funds authorized or appropriated by  
9 Federal law, and none of the funds in any trust fund to  
10 which funds are authorized or appropriated by Federal  
11 law, shall be expended for health benefits coverage that  
12 includes coverage of abortion.

13 **“§ 303. Limitation on Federal facilities and employees**

14 “No health care service furnished—

15 “(1) by or in a health care facility owned or op-  
16 erated by the Federal Government; or

17 “(2) by any physician or other individual em-  
18 ployed by the Federal Government to provide health  
19 care services within the scope of the physician’s or  
20 individual’s employment,  
21 may include abortion.

22 **“§ 304. Construction relating to separate coverage**

23 “Nothing in this chapter shall be construed as pro-  
24 hibiting any individual, entity, or State or locality from  
25 purchasing separate abortion coverage or health benefits  
26 coverage that includes abortion so long as such coverage

1 is paid for entirely using only funds not authorized or ap-  
2 propriated by Federal law and such coverage shall not be  
3 purchased using matching funds required for a federally  
4 subsidized program, including a State's or locality's con-  
5 tribution of Medicaid matching funds.

6 **“§ 305. Construction relating to the use of non-Fed-**  
7 **eral funds for health coverage**

8 “Nothing in this chapter shall be construed as re-  
9 stricting the ability of any non-Federal health benefits cov-  
10 erage provider from offering abortion coverage, or the abil-  
11 ity of a State or locality to contract separately with such  
12 a provider for such coverage, so long as only funds not  
13 authorized or appropriated by Federal law are used and  
14 such coverage shall not be purchased using matching  
15 funds required for a federally subsidized program, includ-  
16 ing a State's or locality's contribution of Medicaid match-  
17 ing funds.

18 **“§ 306. Non-preemption of other Federal laws**

19 “Nothing in this chapter shall repeal, amend, or have  
20 any effect on any other Federal law to the extent such  
21 law imposes any limitation on the use of funds for abortion  
22 or for health benefits coverage that includes coverage of  
23 abortion, beyond the limitations set forth in this chapter.

1 **“§ 307. Construction relating to complications arising**  
2 **from abortion**

3 “Nothing in this chapter shall be construed to apply  
4 to the treatment of any infection, injury, disease, or dis-  
5 order that has been caused by or exacerbated by the per-  
6 formance of an abortion. This rule of construction shall  
7 be applicable without regard to whether the abortion was  
8 performed in accord with Federal or State law, and with-  
9 out regard to whether funding for the abortion is permis-  
10 sible under section 308.

11 **“§ 308. Treatment of abortions related to rape, incest,**  
12 **or preserving the life of the mother**

13 “The limitations established in sections 301, 302,  
14 and 303 shall not apply to an abortion—

15 “(1) if the pregnancy is the result of an act of  
16 rape or incest; or

17 “(2) in the case where a woman suffers from a  
18 physical disorder, physical injury, or physical illness  
19 that would, as certified by a physician, place the  
20 woman in danger of death unless an abortion is per-  
21 formed, including a life-endangering physical condi-  
22 tion caused by or arising from the pregnancy itself.

23 **“§ 309. Application to District of Columbia**

24 “In this chapter:

25 “(1) Any reference to funds appropriated by  
26 Federal law shall be treated as including any

1 amounts within the budget of the District of Colum-  
2 bia that have been approved by Act of Congress pur-  
3 suant to section 446 of the District of Columbia  
4 Home Rule Act (or any applicable successor Federal  
5 law).

6 “(2) The term ‘Federal Government’ includes  
7 the government of the District of Columbia.

8 **“§ 310. No government discrimination against certain**  
9 **health care entities**

10 “(a) NONDISCRIMINATION.—A Federal agency or  
11 program, and any State or local government that receives  
12 Federal financial assistance (either directly or indirectly),  
13 may not subject any individual or institutional health care  
14 entity to discrimination on the basis that the health care  
15 entity does not provide, pay for, provide coverage of, or  
16 refer for abortions.

17 “(b) HEALTH CARE ENTITY DEFINED.—For pur-  
18 poses of this section, the term ‘health care entity’ includes  
19 an individual physician or other health care professional,  
20 a hospital, a provider-sponsored organization, a health  
21 maintenance organization, a health insurance plan, or any  
22 other kind of health care facility, organization, or plan.

23 “(c) REMEDIES.—

24 “(1) IN GENERAL.—The courts of the United  
25 States shall have jurisdiction to prevent and redress

1 actual or threatened violations of this section by  
2 issuing any form of legal or equitable relief, includ-  
3 ing—

4 “(A) injunctions prohibiting conduct that  
5 violates this section; and

6 “(B) orders preventing the disbursement of  
7 all or a portion of Federal financial assistance  
8 to a State or local government, or to a specific  
9 offending agency or program of a State or local  
10 government, until such time as the conduct pro-  
11 hibited by this section has ceased.

12 “(2) COMMENCEMENT OF ACTION.—An action  
13 under this subsection may be instituted by—

14 “(A) any health care entity that has stand-  
15 ing to complain of an actual or threatened vio-  
16 lation of this section; or

17 “(B) the Attorney General of the United  
18 States.

19 “(d) ADMINISTRATION.—The Secretary of Health  
20 and Human Services shall designate the Director of the  
21 Office for Civil Rights of the Department of Health and  
22 Human Services—

23 “(1) to receive complaints alleging a violation of  
24 this section;

1           “(2) subject to paragraph (3), to pursue the in-  
2           vestigation of such complaints in coordination with  
3           the Attorney General; and

4           “(3) in the case of a complaint related to a  
5           Federal agency (other than with respect to the De-  
6           partment of Health and Human Services) or pro-  
7           gram administered through such other agency or  
8           any State or local government receiving Federal fi-  
9           nancial assistance through such other agency, to  
10          refer the complaint to the appropriate office of such  
11          other agency.”.

12 **SEC. 102. AMENDMENT TO TABLE OF CHAPTERS.**

13          The table of chapters for title 1, United States Code,  
14 is amended by adding at the end the following new item:

**“4. Prohibiting taxpayer funded abortions and providing  
          for conscience protections ..... 301”.**

15 **TITLE II—ELIMINATION OF CER-**  
16 **TAIN TAX BENEFITS RELAT-**  
17 **ING TO ABORTION**

18 **SEC. 201. DEDUCTION FOR MEDICAL EXPENSES NOT AL-**  
19 **LOWED FOR ABORTIONS.**

20          (a) IN GENERAL.—Section 213 of the Internal Rev-  
21 enue Code of 1986 is amended by adding at the end the  
22 following new subsection:

23          “(g) AMOUNTS PAID FOR ABORTION NOT TAKEN  
24 INTO ACCOUNT.—



1           “(1) IN GENERAL.—An amount paid during the  
2 taxable year for an abortion shall not be taken into  
3 account under subsection (a).

4           “(2) EXCEPTIONS.—Paragraph (1) shall not  
5 apply to—

6           “(A) an abortion—

7           “(i) in the case of a pregnancy that is  
8 the result of an act of rape or incest, or

9           “(ii) in the case where a woman suf-  
10 fers from a physical disorder, physical in-  
11 jury, or physical illness that would, as cer-  
12 tified by a physician, place the woman in  
13 danger of death unless an abortion is per-  
14 formed, including a life-endangering phys-  
15 ical condition caused by or arising from  
16 the pregnancy, and

17           “(B) the treatment of any infection, injury,  
18 disease, or disorder that has been caused by or  
19 exacerbated by the performance of an abor-  
20 tion.”.

21           (b) EFFECTIVE DATE.—The amendment made by  
22 this section shall apply to taxable years beginning after  
23 the date of the enactment of this Act.

1 **SEC. 202. DISALLOWANCE OF REFUNDABLE CREDIT FOR**  
 2 **COVERAGE UNDER QUALIFIED HEALTH PLAN**  
 3 **WHICH PROVIDES COVERAGE FOR ABOR-**  
 4 **TION.**

5 (a) IN GENERAL.—Subparagraph (A) of section  
 6 36B(c)(3) of the Internal Revenue Code of 1986 is amend-  
 7 ed by inserting before the period at the end the following:  
 8 “or any health plan that includes coverage for abortions  
 9 (other than any abortion or treatment described in section  
 10 213(g)(2))”.

11 (b) OPTION TO PURCHASE OR OFFER SEPARATE  
 12 COVERAGE OR PLAN.—Paragraph (3) of section 36B(c)  
 13 of such Code is amended by adding at the end the fol-  
 14 lowing new subparagraph:

15 “(C) SEPARATE ABORTION COVERAGE OR  
 16 PLAN ALLOWED.—

17 “(i) OPTION TO PURCHASE SEPARATE  
 18 COVERAGE OR PLAN.—Nothing in subpara-  
 19 graph (A) shall be construed as prohibiting  
 20 any individual from purchasing separate  
 21 coverage for abortions described in such  
 22 subparagraph, or a health plan that in-  
 23 cludes such abortions, so long as no credit  
 24 is allowed under this section with respect  
 25 to the premiums for such coverage or plan.

1           “(ii) OPTION TO OFFER COVERAGE OR  
 2           PLAN.—Nothing in subparagraph (A) shall  
 3           restrict any non-Federal health insurance  
 4           issuer offering a health plan from offering  
 5           separate coverage for abortions described  
 6           in such subparagraph, or a plan that in-  
 7           cludes such abortions, so long as premiums  
 8           for such separate coverage or plan are not  
 9           paid for with any amount attributable to  
 10          the credit allowed under this section (or  
 11          the amount of any advance payment of the  
 12          credit under section 1412 of the Patient  
 13          Protection and Affordable Care Act).”.

14          (c) EFFECTIVE DATE.—The amendment made by  
 15 this section shall apply to taxable years ending after De-  
 16 cember 31, 2013.

17 **SEC. 203. DISALLOWANCE OF SMALL EMPLOYER HEALTH**  
 18                                   **INSURANCE EXPENSE CREDIT FOR PLAN**  
 19                                   **WHICH INCLUDES COVERAGE FOR ABOR-**  
 20                                   **TION.**

21          (a) IN GENERAL.—Subsection (h) of section 45R of  
 22 the Internal Revenue Code of 1986 is amended—

23                   (1) by striking “Any term” and inserting the  
 24                   following:

25                   “(1) IN GENERAL.—Any term”, and

1           (2) by adding at the end the following new  
2 paragraph:

3           “(2) EXCLUSION OF HEALTH PLANS INCLUDING  
4 COVERAGE FOR ABORTION.—The terms ‘qualified  
5 health plan’ and ‘health insurance coverage’ shall  
6 not include any health plan or benefit that includes  
7 coverage for abortions (other than any abortion or  
8 treatment described in section 213(g)(2)).”.

9           (b) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to taxable years beginning after  
11 the date of the enactment of this Act.

12 **SEC. 204. DISTRIBUTIONS FOR ABORTION EXPENSES FROM**  
13 **CERTAIN ACCOUNTS AND ARRANGEMENTS**  
14 **INCLUDED IN GROSS INCOME.**

15           (a) FLEXIBLE SPENDING ARRANGEMENTS UNDER  
16 CAFETERIA PLANS.—Section 125 of the Internal Revenue  
17 Code of 1986 is amended by redesignating subsections (k)  
18 and (l) as subsections (l) and (m), respectively, and by  
19 inserting after subsection (j) the following new subsection:

20           “(k) ABORTION REIMBURSEMENT FROM FLEXIBLE  
21 SPENDING ARRANGEMENT INCLUDED IN GROSS IN-  
22 COME.—Notwithstanding section 105(b), gross income  
23 shall include any reimbursement for expenses incurred for  
24 an abortion (other than any abortion or treatment de-  
25 scribed in section 213(g)(2)) from a health flexible spend-

1 ing arrangement provided under a cafeteria plan. Such re-  
2 imbursement shall not fail to be a qualified benefit for  
3 purposes of this section merely as a result of such inclu-  
4 sion in gross income.”.

5 (b) ARCHER MSAS.—Paragraph (1) of section 220(f)  
6 of such Code is amended by inserting before the period  
7 at the end the following: “, except that any such amount  
8 used to pay for an abortion (other than any abortion or  
9 treatment described in section 213(g)(2)) shall be included  
10 in the gross income of such holder”.

11 (c) HSAS.—Paragraph (1) of section 223(f) of such  
12 Code is amended by inserting before the period at the end  
13 the following: “, except that any such amount used to pay  
14 for an abortion (other than any abortion or treatment de-  
15 scribed in section 213(g)(2)) shall be included in the gross  
16 income of such beneficiary”.

17 (d) EFFECTIVE DATES.—

18 (1) FSA REIMBURSEMENTS.—The amendment  
19 made by subsection (a) shall apply to expenses in-  
20 curred with respect to taxable years beginning after  
21 the date of the enactment of this Act.

22 (2) DISTRIBUTIONS FROM SAVINGS AC-  
23 COUNTS.—The amendments made by subsection (b)  
24 and (c) shall apply to amounts paid with respect to

1 taxable years beginning after the date of the enact-  
2 ment of this Act.

○