

117TH CONGRESS
2D SESSION

S. 3537

To amend the Internal Revenue Code of 1986 to provide a child tax credit for pregnant moms with respect to their unborn children, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 31, 2022

Mr. DAINES (for himself, Mr. CRAMER, Mr. SASSE, Mr. BOOZMAN, Mr. SCOTT of South Carolina, Mrs. HYDE-SMITH, Mr. LANKFORD, Mr. LEE, Mr. ROMNEY, Mr. HAWLEY, Mrs. FISCHER, Mr. RUBIO, and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide a child tax credit for pregnant moms with respect to their unborn children, 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 This Act may be cited as the “Child Tax Credit for
5 Pregnant Moms Act of 2022”.

1 **SEC. 2. CHILD TAX CREDIT ALLOWED WITH RESPECT TO**
 2 **UNBORN CHILDREN.**

3 (a) IN GENERAL.—Section 24 of the Internal Rev-
 4 enue Code of 1986 is amended by adding at the end the
 5 following new subsection:

6 “(l) CREDIT ALLOWED WITH RESPECT TO UNBORN
 7 CHILDREN.—For purposes of this section—

8 “(1) IN GENERAL.—The term ‘qualifying child’
 9 includes an unborn child of an eligible taxpayer, and
 10 the requirements of subsections (e)(1) and (h)(7)
 11 shall be treated as met with respect to such child,
 12 for—

13 “(A) the taxable year immediately pre-
 14 ceding the year in which such child is born
 15 alive, if the taxpayer includes on the return of
 16 tax for such taxable year a social security num-
 17 ber for such child which is issued before the due
 18 date for such return of tax (without regard to
 19 extensions), or

20 “(B) the taxable year in which such child
 21 is miscarried or stillborn, if the taxpayer in-
 22 cludes on the return of tax for the taxable year
 23 the identification number from a certificate of
 24 miscarriage or stillbirth issued for such child
 25 under section 229A(b) of the Public Health
 26 Service Act.

1 “(2) RETROACTIVE OR DOUBLE CREDIT AL-
 2 LOWED IN CERTAIN CASES TO ENSURE EQUAL AC-
 3 CESS TO THE CREDIT FOR UNBORN CHILDREN.—

4 “(A) IN GENERAL.—In the case of a quali-
 5 fying child of an eligible taxpayer who is born
 6 alive and with respect to whom the credit under
 7 this section is not claimed under paragraph
 8 (1)(A) for the taxable year described in such
 9 paragraph, for the taxable year in which the
 10 child is born alive, with respect to such child—

11 “(i) the amount of the credit allowed
 12 (before the application of this subsection)
 13 under subsection (a), and

14 “(ii) the amount of the credit allowed
 15 (before the application of this subsection)
 16 under subsection (d)(1),

17 shall each be increased by the amount of the
 18 credit which would have been allowed under
 19 each such subsection respectively with respect
 20 to such child for the preceding taxable year if
 21 such child had been treated as a qualifying
 22 child of the taxpayer for such preceding year.

23 “(B) SPECIAL RULE FOR SPLITTING OF
 24 CREDIT.—In the case of a child otherwise de-
 25 scribed in subparagraph (A) who, but for this

1 subparagraph, would not be treated as a quali-
2 fying child of the eligible taxpayer for the tax-
3 able year in which such child is born alive—

4 “(i) subparagraph (A) shall not apply
5 with respect to such child,

6 “(ii) such child shall be treated as a
7 qualifying child for purposes of this section
8 for such taxable year of—

9 “(I) the eligible taxpayer, and

10 “(II) any other taxpayer with re-
11 spect to whom such child would, with-
12 out regard to this subparagraph, be
13 treated as a qualifying child, and

14 “(iii) in the case of the eligible tax-
15 payer, the amount of the credit allowed
16 under subsection (a) and the amount of
17 the credit allowed under subsection (d)(1)
18 for such taxable year shall each be equal to
19 the amount of the credit which would have
20 been allowed under each such subsection
21 respectively with respect to such child for
22 the preceding taxable year if such child
23 had been treated as a qualifying child of
24 the eligible taxpayer for such preceding
25 year.

1 “(3) DEFINITIONS.—For purposes of this sub-
2 section—

3 “(A) BORN ALIVE.—The term ‘born alive’
4 has the meaning given such term by section
5 8(b) of title 1, United States Code.

6 “(B) ELIGIBLE TAXPAYER.—The term ‘eli-
7 gible taxpayer’ means a taxpayer who—

8 “(i) with respect to a child, is the
9 mother who—

10 “(I) carries or carried such child
11 in the womb, and

12 “(II) is the biological mother of
13 such child or initiated the pregnancy
14 with the intention of bearing and re-
15 taining custody of and parental rights
16 to such child (or acted to such effect),
17 or

18 “(ii) in the case of a joint return, is
19 the husband of such mother,
20 but only if such taxpayer includes on the return
21 of tax for the taxable year the social security
22 number of such taxpayer (of at least 1 of such
23 mother or husband, in the case of a joint re-
24 turn).

1 “(C) SOCIAL SECURITY NUMBER.—The
 2 term ‘social security number’ has the meaning
 3 given such term by subsection (h)(7).

4 “(D) UNBORN CHILD.—The term ‘unborn
 5 child’ means an individual of the species homo
 6 sapiens, from the beginning of the biological de-
 7 velopment of that individual, including fertiliza-
 8 tion, until the point of the earlier of being born
 9 alive or death.”.

10 (b) CONFORMING AMENDMENT.—Subsection (a) of
 11 section 24 of the Internal Revenue Code of 1986 is amend-
 12 ed by striking “for which the taxpayer is allowed a deduc-
 13 tion under section 151”.

14 (c) APPLICATION.—The amendments made by this
 15 section shall apply to children born alive, stillborn, or mis-
 16 carried in taxable years beginning after the date of the
 17 enactment of this Act.

18 **SEC. 3. MISCARRIAGE OR STILLBIRTH CERTIFICATES.**

19 Part A of title II of the Public Health Service Act
 20 (42 U.S.C. 202 et seq.) is amended by adding at the end
 21 the following:

22 **“SEC. 229A. MISCARRIAGE OR STILLBIRTH CERTIFICATES.**

23 “(a) FORM CERTIFYING MISCARRIAGE OR STILL-
 24 BIRTH.—Upon the request of a parent of an unborn child
 25 who dies pursuant to a miscarriage or stillbirth desiring

1 a certificate described in subsection (b), a qualifying
2 health care practitioner who attends or diagnoses such
3 miscarriage or stillbirth may submit to the Secretary, act-
4 ing through the Director for the National Center for
5 Health Statistics (referred to in this section as the ‘Direc-
6 tor’), a form certifying the miscarriage or stillbirth that
7 includes—

8 “(1) the name of the unborn child (if provided
9 by the requesting parent);

10 “(2) the sex of the child (if known);

11 “(3) the probable gestational age of the child;

12 “(4) identifying information of the parents of
13 the unborn child;

14 “(5) a written certification from such practi-
15 tioner stating, under penalty of perjury pursuant to
16 section 1746 of title 28, that—

17 “(A) the mother was diagnosed as having
18 been pregnant with the unborn child, according
19 to standard medical practice, by such practi-
20 tioner or another licensed health care practi-
21 tioner; and

22 “(B) the unborn child died—

23 “(i) as a result of a miscarriage or
24 stillbirth attended by or diagnosed by the
25 certifying practitioner; and

1 “(ii) not as a result of an induced
2 abortion or any other act that was in-
3 tended by the mother to cause the death of
4 the unborn child, including through the use
5 of any abortion-inducing drug, but not in-
6 cluding any treatment of an ectopic preg-
7 nancy;

8 “(6) a written certification from the mother of
9 the unborn child stating, under penalty of perjury
10 pursuant to section 1746 of title 28, United States
11 Code, that the unborn child died as described in
12 paragraph (9)(B); and

13 “(7) any other information as the Director may
14 require.

15 “(b) CERTIFICATE OF MISCARRIAGE OR STILL-
16 BIRTH.—Within 60 days of receipt of a form certifying
17 a miscarriage or stillbirth submitted by a qualifying health
18 care practitioner under subsection (a), the Secretary, act-
19 ing through the Director, shall issue to the requesting par-
20 ent a certificate of miscarriage or stillbirth that includes—

21 “(1) a unique identification number for the un-
22 born child who was miscarried or stillborn;

23 “(2)(A) the name of the unborn child, as pro-
24 vided on the form under subsection (a); or

1 “(B) if a name does not appear on such original
2 or amended form and the requesting parent does not
3 wish to provide a name for the unborn child, ‘baby
4 boy’ or ‘baby girl’, as applicable (or ‘baby’ if the
5 child’s sex is unknown), and the last name of the
6 parent;

7 “(3) the probable gestational age of the child;

8 “(4) the following statement, which shall appear
9 on the front of the certificate: ‘This certificate is not
10 proof of a live birth’;

11 “(5) the names of the parents; and

12 “(6) any other information as the Director may
13 require.

14 “(c) FEES.—The Secretary, acting through the Di-
15 rector, may require payment of a fee from the requesting
16 parent for obtaining a certificate of miscarriage or still-
17 birth under subsection (b), in an amount that is not great-
18 er than the actual cost of processing such certificate.

19 “(d) DISCLOSURE.—Information submitted to the
20 Secretary under subsection (a) and issued by the Sec-
21 retary under subsection (b) shall be confidential, and shall
22 not be disclosed other than as provided in such subsections
23 or as otherwise used in the administration of the child tax
24 credit allowed under section 24 of the Internal Revenue
25 Code of 1986.

1 “(e) DEFINITIONS.—For purposes of this section—

2 “(1) MISCARRIAGE.—The term ‘miscarriage’
3 means the involuntary death of an unborn child who
4 was carried in the womb for a period of less than
5 20 weeks.

6 “(2) QUALIFYING HEALTH CARE PRACTI-
7 TIONER.—

8 “(A) IN GENERAL.—The term ‘qualifying
9 health care practitioner’—

10 “(i) means an individual who is li-
11 censed to practice medicine and surgery,
12 osteopathic medicine and surgery, or mid-
13 wifery, or who is otherwise legally author-
14 ized to perform births and to diagnose and
15 attend miscarriages or stillbirths; and

16 “(ii) excludes any such individual who
17 is acting within the scope of employment
18 with, self-employment as or with, or volun-
19 teer service for, an abortion center.

20 “(B) ABORTION CENTER.—For purposes
21 of subparagraph (A)(ii), the term ‘abortion cen-
22 ter’—

23 “(i) means any entity for which at
24 least one percent of its gross receipts are
25 from performing abortions (including the

1 use or prescription of any abortion-induc-
2 ing drug, but excluding any procedure that
3 is necessary to prevent the death of a preg-
4 nant mother whose life is endangered by a
5 physical disorder, physical illness, or phys-
6 ical injury, including a life-endangering
7 physical condition caused by or arising
8 from the pregnancy itself, so long as every
9 reasonable effort is made to preserve the
10 lives of both the pregnant mother and her
11 unborn child);

12 “(ii) includes the entire legal entity
13 described in clause (i), including any entity
14 that controls, is controlled by, or is under
15 common control with, such legal entity;
16 and

17 “(iii) excludes any hospital (as defined
18 in section 1861(e) of the Social Security
19 Act).

20 “(3) STILLBIRTH.—The term ‘stillbirth’ means
21 the involuntary death of an unborn child who was
22 carried in the womb for 20 weeks or more.

23 “(4) UNBORN CHILD.—The term ‘unborn child’
24 means an individual of the species homo sapiens,
25 from the beginning of the biological development of

1 that individual, including fertilization, until the point
2 of the earlier of being born alive (as defined in sec-
3 tion 8(b) of title 1, United States Code) or death.”.

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