

# **Section by Section of Amendment in the Nature of a Substitute to H.R. 36**

Section 1 – Short Title – the “Pain-Capable Unborn Child Protection Act”

Sec 2 – Findings

Sec 3 – Pain-Capable Unborn Child Protection – Amendment to title 18 inserting new section 1532

Section 1532. Pain-Capable Unborn Child Protection

Subsection (a) – Prohibition on performing any abortion except in conformity with the requirements of subsection (b).

Subsection (b) – Requirements for abortions

(b)(1) Determine the probable-post fertilization age of the unborn child.

(b)(2) Prohibition on performance of certain abortions.

(b)(2)(A) Except as provided for in subparagraph (B), the abortion shall not be performed if the unborn child is 20 weeks post-fertilization age or older.

(b)(2)(B) Exceptions

(i) the pregnancy threatens the life of the mother;

**(ii) the pregnancy is a result of rape against an adult woman and at least 48 hours prior to the abortion she has obtained**

**(I) counseling for the rape, or**

**(II) medical treatment for rape or an injury related to the rape; or**

(iii) the pregnancy is the result of rape against a minor or incest against a minor, and the rape or incest has been reported to either—

(I) a government agency legally authorized to act on reports of child abuse; or

(II) law enforcement.

(b)(2)(C) Abortions performed under an exception in (B) must be carried out in the manner that gives the child the best opportunity to survive.

**(b)(2)(D) If the child has the potential to survive, a second physician trained in neonatal resuscitation must be present and prepared to provide care to the child consistent with (E).**

**(b)(2)(E) Born Alive Infant Protections – when a physician performs an abortion in accordance with this section and the child is born alive the following shall apply:**

**(i) Any health care practitioner present shall provide the same degree of care as would be given to any other premature infant.**

**(ii) The child shall be transported and admitted to a hospital.**

**(iii) Anyone aware of a violation of this provision must report the violation.**

**(b)(2)(F) Documentation**

**(i) Prior to performing an abortion on an adult woman, the physician must place in the patient file documentation from the counselor or medical provider, that the woman has obtained counseling or medical treatment**

**(ii) Prior to performing an abortion on a minor, the physician must place in the patient file documentation from a government agency authorized to act on reports of child abuse or law enforcement that the rape or incest was reported.**

**(b)(2)(G) Informed Consent**

- (i) Prior to an abortion performed under subparagraph (B), the physician must obtain a signed Informed Consent Authorization form**
- (ii) The form shall consist of:**
  - (I) The age of the unborn child.**
  - (II) Statement that the law only allows abortions after 20 weeks in cases of rape, incest or to save the life of the mother.**
  - (III) Statement that unless it causes significant risk to the mother, the termination method used will give the child the greatest potential for survival.**
  - (IV) Statement that if the child is born alive, the child will be given medical assistance and transported to a hospital.**
  - (V) Statement that the physician and medical personnel are subject to criminal and civil penalties and the woman may sue if the law is not followed.**
  - (VI) Affirmation that each signer has filled out the form to the best of their knowledge and understands the information in the form.**
- (iii) The form must be signed by the physician, the woman and a witness**
- (iv) The form must be retained in the patient medical file.**

**(b)(2)(H) Data Retention – HIPPA record retention rules shall apply to the material entered into the patient medical file in (b)(2)(F), documentation requirements, and (b)(2)(G), informed consent.**

**(b)(2)(I) Additional Exceptions and Requirements**

- (i) Requirements to use the method that allows the baby the greatest chance of survival, have a second doctor present and obtain a signed informed consent do not apply if they would pose a greater risk of—**
  - (I) death; or**
  - (II) substantial and irreversible physical impairment.**
- (ii) Exclusion of certain facilities – counseling and medical treatment may not be performed by a facility that does abortions (unless it is a hospital).**
- (iii) Reports to Law Enforcement – the counseling and medical treatment requirements are suspended if the rape has been reported to law enforcement.**
- (iv) Compliance with state laws. The physician must**
  - (I) Comply with state rape reporting laws.**
  - (II) Comply with state parental involvement laws.**

Subsection (c) – Criminal Penalty – fine and/or imprisonment for not more than 5 years.

Subsection (d) – Bar to Prosecution – the woman cannot be prosecuted under this Act.

**Subsection (e) – Civil Remedies**

**(e)(1) –A woman on whom an abortion is performed in violation of this section may obtain appropriate relief against a person who committed the violation.**

**(e)(2) – The parent of a minor on whom an abortion is performed in violation of this section may obtain appropriate relief as long as the pregnancy was not a result of the parent’s criminal conduct.**

**(e)(3) – Appropriate relief includes (A) objectively verifiable money damages; (B) damages equal to three times the cost of the abortion; and (C) punitive damages.**

**(e)(4) – The prevailing plaintiff may be awarded attorney’s fees**

**(e)(5) – If the plaintiff’s suit is determined to be frivolous, the court may award attorney’s fees to the defendant.**

**(e)(6) – Except under (5) no damages may be assessed against the woman.**

#### **Subsection (f) – Data Collection**

**(f)(1) Data Submissions – No later than 60 days after the end of each year physicians who have performed abortions described in (b)(2)(B) shall submit a summary of such abortions to the National Center for Health Statistics (CDC).**

**(f)(2) Contents of the Summary – The summary shall include the number of abortions performed or attempted on an unborn child after 20 weeks and specify (A) the age of the child, (B) the method used, (C) the location, (D) the exception used, and (E) any incident of live birth.**

**(f)(3) Exclusions from Data Submissions – The summary shall not contain personally identifying information about the woman.**

**(f)(4) Public Report – The Center shall issue an annual public report ensuring none of the information in the report could reasonably lead to identification of the woman.**

#### **Subsection (g) -- Definitions**

- (1) **Abortion** – The term ‘abortion’ means the use or prescription of any instrument, medicine, drug, or any other substance or device—(A) to intentionally kill the unborn child of a woman known to be pregnant; or (B) to intentionally terminate the pregnancy of a woman known to be pregnant, with an intention other than—(i) after viability to produce a live birth and preserve the life and health of the child born alive; or (ii) to remove a dead unborn child.
- (2) **Attempt** –The term ‘attempt,’ with respect to an abortion, means conduct that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in performing an abortion.
- (3) **Counseling** – **The term ‘counseling’ means counseling by a counselor licensed by the state or a victim rights advocate provided by law enforcement.**
- (4) **Facility** – **The term ‘facility’ means any medical or counseling group, center or clinic and includes the entire legal entity, including any entity that controls, is controlled by, or is under common control with such facility.**
- (5) **Fertilization** – The term ‘fertilization’ means the fusion of human spermatozoon with a human ovum
- (6) **Medical Treatment** – **the term ‘medical treatment’ means treatment provided at a hospital licensed by the state or operated under authority of a Federal agency, at a medical clinic licensed by the State or operated under authority of a Federal agency, or from a personal physician licensed by the State.**
- (7) **Minor** – **the term ‘minor’ mean an individual who has not attained the age of 18 years.**
- (8) **Perform** – The term ‘perform,’ with respect to an abortion, includes induce an abortion through a medical or chemical intervention including writing a prescription for a drug or device intended to result in an abortion.
- (9) **Physician** –The term ‘physician’ means a person licensed to practice medicine and surgery or osteopathic medicine and surgery, or otherwise licensed to legally perform an abortion.
- (10) **Post-Fertilization Age** – —The term ‘post-fertilization age’ means the age of the unborn child as calculated from the fusion of a human spermatozoon with a human ovum.
- (11) **Probable Post-Fertilization Age of the Unborn Child** – The term ‘probable post-fertilization age of the unborn child’ means what, in reasonable medical judgment, will with reasonable probability be the post-fertilization age of the unborn child at the time the abortion is planned to be performed or induced.

- (12) Reasonable Medical Judgement – The term ‘reasonable medical judgment’ means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
- (13) Unborn Child – The term ‘unborn child’ means an individual organism of the species homo sapiens, beginning at fertilization, until the point of being born alive as defined in section 8(b) of title 1.
- (14) Woman —The term ‘woman’ means a female human being whether or not she has reached the age of majority.’

(b) Clerical Amendment – amendment to the table of sections at the beginning of chapter 74 of Title 18