

111TH CONGRESS
2D SESSION

S. _____

To ensure that women seeking an abortion are fully informed regarding the pain experienced by their unborn child.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To ensure that women seeking an abortion are fully informed regarding the pain experienced by their unborn child.

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 “Unborn Child Pain
5 Awareness Act of 2010”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) At least by 20 weeks after fertilization, an
9 unborn child has the physical structures necessary to
10 experience pain.

1 (2) There is substantial evidence that by 20
2 weeks after fertilization, unborn children draw away
3 from certain stimuli in a manner which in an infant
4 or an adult would be interpreted as a response to
5 pain.

6 (3) Anesthesia is routinely administered to un-
7 born children who have developed 20 weeks or more
8 after fertilization who undergo prenatal surgery.

9 (4) There is substantial evidence that the abor-
10 tion methods most commonly used 20 weeks or more
11 after fertilization cause substantial pain to an un-
12 born child, whether by dismemberment, poisoning,
13 penetrating or crushing the skull, or other methods.
14 Examples of abortion methods used 20 weeks or
15 more after fertilization include, but are not limited
16 to the following:

17 (A) The dilation and evacuation (D and E)
18 method of abortion is commonly performed in
19 the second trimester of pregnancy. In a dilation
20 and evacuation abortion, the unborn child's
21 body parts are grasped with a long-toothed
22 clamp. The fetal body parts are then torn from
23 the body and pulled out of the vaginal canal.
24 The remaining body parts are grasped and
25 pulled out until only the head remains. The

1 head is then grasped and crushed in order to
2 remove it from the vaginal canal.

3 (B) Partial-birth abortion is an abortion in
4 which the abortion practitioner delivers an un-
5 born child's body until only the head remains
6 inside the womb, punctures the back of the
7 child's skull with a sharp instrument, and sucks
8 the child's brains out before completing the de-
9 livery of the dead infant, and as further defined
10 in section 1531 of title 18, United States Code.

11 (5) Expert testimony confirms that by 20 weeks
12 after fertilization an unborn child may experience
13 substantial pain even if the woman herself has re-
14 ceived local analgesic or general anesthesia.

15 (6) Medical science is capable of reducing such
16 pain through the administration of anesthesia or
17 other pain-reducing drugs directly to the unborn
18 child.

19 (7) There is a valid Federal Government inter-
20 est in preventing or reducing the infliction of pain
21 on sentient creatures. Examples of this are laws gov-
22 erning the use of laboratory animals and requiring
23 pain-free methods of slaughtering livestock, which
24 include, but are not limited to the following:

1 (A) Section 2 of the Act commonly known
2 as the Humane Slaughter Act of 1958 (Public
3 Law 85–765; 7 U.S.C. 1902) states, “No meth-
4 od of slaughter or handling in connection with
5 slaughtering shall be deemed to comply with the
6 public policy of the United States unless it is
7 humane. Either of the following two methods of
8 slaughtering and handling are hereby found to
9 be humane—

10 “(i) in the case of cattle, calves,
11 horses, mules, sheep, swine, and other live-
12 stock, all animals are rendered insensible
13 to pain by a single blow or gunshot or an
14 electrical, chemical or other means that is
15 rapid and effective, before being shackled,
16 hoisted, thrown, cast, or cut; or

17 “(ii) by slaughtering in accordance
18 with the ritual requirements of the Jewish
19 faith or any other religious faith that pre-
20 scribes a method of slaughter whereby the
21 animal suffers loss of consciousness by
22 anemia of the brain caused by the simulta-
23 neous and instantaneous severance of the
24 carotid arteries with a sharp instrument

1 and handling in connection with such
2 slaughtering.”.

3 (B) Section 13(a)(3) of the Animal Wel-
4 fare Act (7 U.S.C. 2143(a)(3)) sets the stand-
5 ards and certification process for the humane
6 handling, care, treatment, and transportation of
7 animals. This includes having standards with
8 respect to animals in research facilities that in-
9 clude requirements—

10 (i) for animal care, treatment, and
11 practices in experimental procedures to en-
12 sure that animal pain and distress are
13 minimized, including adequate veterinary
14 care with the appropriate use of anesthetic,
15 analgesic, tranquilizing drugs, or eutha-
16 nasia;

17 (ii) that the principal investigator con-
18 siders alternatives to any procedure likely
19 to produce pain to or distress in an experi-
20 mental animal; and

21 (iii) in any practice which could cause
22 pain to animals—

23 (I) that a doctor of veterinary
24 medicine is consulted in the planning
25 of such procedures;

6

1 (II) for the use of tranquilizers,
2 analgesics, and anesthetics;

3 (III) for pre-surgical and post-
4 surgical care by laboratory workers, in
5 accordance with established veterinary
6 medical and nursing procedures;

7 (IV) against the use of paralytics
8 without anesthesia; and

9 (V) that the withholding of tran-
10 quilizers, anesthesia, analgesia, or eu-
11 thanasia when scientifically necessary
12 shall continue for only the necessary
13 period of time.

14 (C) Section 495 of the Public Health Serv-
15 ice Act (42 U.S.C. 289d) directs the Secretary
16 of Health and Human Services, acting through
17 the Director of the National Institutes of
18 Health, to establish guidelines for research fa-
19 cilities as to the proper care and treatment of
20 animals, including the appropriate use of tran-
21 quilizers, analgesics, and other drugs, except
22 that such guidelines may not prescribe methods
23 of research. Entities that conduct biomedical
24 and behavioral research with National Insti-
25 tutes of Health funds must establish animal

1 care committees which must conduct reviews at
2 least semiannually and report to the Director of
3 such Institutes at least annually. If the Director
4 determines that an entity has not been fol-
5 lowing the guidelines, the Director must give
6 the entity an opportunity to take corrective ac-
7 tion, and, if the entity does not, the Director
8 must suspend or revoke the grant or contract
9 involved.

10 (8) There is a valid Federal Government inter-
11 est in preventing harm to developing human life at
12 all stages. Examples of this include regulations pro-
13 tecting fetal human subjects from risks of “harm or
14 discomfort” in federally funded biomedical research,
15 45 C.F.R. 102(i) and 45 C.F.R. 46.201 et seq.

16 **SEC. 3. AMENDMENT TO THE PUBLIC HEALTH SERVICE**
17 **ACT.**

18 The Public Health Service Act (42 U.S.C. 201 et
19 seq.) is amended by adding at the end the following:

20 **“TITLE XXXIII—UNBORN CHILD**
21 **PAIN AWARENESS**

22 **“SEC. 3301. DEFINITIONS.**

23 “In this title:

24 “(1) ABORTION.—The term ‘abortion’ means
25 the intentional use or prescription of any instru-

1 ment, medicine, drug, or any other substance or de-
2 vice or method to terminate the life of an unborn
3 child, or to terminate the pregnancy of a woman
4 known to be pregnant with an intention other
5 than—

6 “(A) to produce a live birth and preserve
7 the life and health of the child after live birth;
8 or

9 “(B) to remove an ectopic pregnancy, or to
10 remove a dead unborn child who died as the re-
11 sult of a spontaneous abortion, accidental trau-
12 ma or a criminal assault on the pregnant fe-
13 male or her unborn child.

14 “(2) ABORTION PROVIDER.—The term ‘abortion
15 provider’ means any person legally qualified to per-
16 form an abortion under applicable Federal and State
17 laws.

18 “(3) PAIN-CAPABLE UNBORN CHILD.—

19 “(A) IN GENERAL.—The term ‘pain-cap-
20 able unborn child’ means an unborn child who
21 has reached a probable stage of development of
22 20 weeks or more after fertilization.

23 “(B) RULE OF CONSTRUCTION.—Nothing
24 in subparagraph (A) shall be construed as a de-
25 termination or finding by Congress that pain

1 may not in fact be experienced by an unborn
2 child at stages of development prior to 20 weeks
3 or more after fertilization.

4 “(4) PROBABLE AGE OF DEVELOPMENT.—The
5 term ‘probable age of development’ means the dura-
6 tion of development after fertilization of the unborn
7 child at the time an abortion is performed, as deter-
8 mined in the good faith judgment of the abortion
9 provider using generally accepted medical criteria
10 and information obtained by interviewing the preg-
11 nant woman.

12 “(5) UNBORN CHILD.—The term ‘unborn child’
13 means a member of the species homo sapiens, at any
14 stage of development, who is carried in the womb.

15 “(6) WOMAN.—The term ‘woman’ means a fe-
16 male human being whether or not she has reached
17 the age of majority.

18 “(7) UNEMANCIPATED MINOR.—The term
19 ‘unemancipated minor’ means an individual who is
20 not older than 18 years and who is not emancipated
21 under State law.

22 **“SEC. 3302. REQUIREMENT OF INFORMED CONSENT.**

23 “(a) REQUIREMENT OF COMPLIANCE BY PRO-
24 VIDERS.—Any abortion provider in or affecting interstate
25 or foreign commerce, who knowingly performs any abor-

1 tion of a pain-capable unborn child, shall comply with the
2 requirements of this title.

3 “(b) PROVISION OF CONSENT.—

4 “(1) IN GENERAL.—Before any part of an abor-
5 tion involving a pain-capable unborn child begins,
6 the abortion provider or his or her agent shall pro-
7 vide the pregnant woman involved, by telephone or
8 in person, with the information described in para-
9 graph (2). It may not be provided by a tape record-
10 ing, but must be provided in a fashion that permits
11 the woman to ask questions of and receive answers
12 from the abortion provider or his agent. (In the case
13 of the Unborn Child Pain Awareness Brochure, it
14 may be provided pursuant to subsection (c)(2) or
15 (c)(3)).

16 “(2) REQUIRED INFORMATION.—

17 “(A) IN GENERAL.—An abortion provider
18 or the provider’s agent to whom paragraph (1)
19 applies shall provide the following information
20 to the pregnant woman (or in the case of a deaf
21 or non-English speaking woman, provide the
22 statement in a manner that she can easily un-
23 derstand):

24 “(i) AGE OF UNBORN BABY.—The
25 probable age of development of the unborn

1 baby based on the number of weeks since
2 fertilization.

3 “(ii) UNBORN CHILD PAIN AWARE-
4 NESS BROCHURE.—An abortion provider to
5 whom paragraph (1) applies must provide
6 the pregnant woman with the Unborn
7 Child Pain Awareness Brochure (referred
8 to in this section as the ‘Brochure’) to be
9 developed by the Department of Health
10 and Human Services under subsection (c)
11 or with the information described in sub-
12 section (c)(2) relating to accessing such
13 Brochure.

14 “(iii) USE OF PAIN-PREVENTING
15 DRUGS.—Drugs administered to the moth-
16 er may not prevent the unborn child from
17 feeling pain, but in some cases, anesthesia
18 or other pain-reducing drug or drugs can
19 be administered directly to the unborn
20 child.

21 “(iv) DESCRIPTION OF RISKS.—After
22 providing the information required under
23 clauses (i), (ii), and (iii) the abortion pro-
24 vider shall provide the woman involved
25 with his or her best medical judgment on

1 the risks, if any, of administering such an-
2 esthesia or analgesic, and the costs associ-
3 ated therewith.

4 “(v) ADMINISTRATION OF ANES-
5 THESIA.—If the abortion provider is not
6 qualified or willing to administer the anes-
7 thesia or other pain-reducing drug to an
8 unborn child in response to a request from
9 a pregnant women, the provider shall—

10 “(I) arrange for a qualified spe-
11 cialist to administer such anesthesia
12 or drug; or

13 “(II) advise the pregnant
14 woman—

15 “(aa) where she may obtain
16 such anesthesia or other pain re-
17 ducing drugs for the unborn child
18 in the course of an abortion; or

19 “(bb) that the abortion pro-
20 vider is unable to perform the
21 abortion if the woman requires
22 that she receive anesthesia or
23 other pain-reducing drug for her
24 unborn child.

1 “(vi) UNBORN CHILD PAIN AWARE-
2 NESS DECISION FORM.—An abortion pro-
3 vider to which paragraph (1) applies shall
4 provide the pregnant woman with the Un-
5 born Child Pain Awareness Decision Form
6 (provided for under subsection (d)) and ob-
7 tain the appropriate signature of the
8 woman on such form.

9 “(vii) RULE OF CONSTRUCTION.—
10 Nothing in this section may be construed
11 to impede an abortion provider or the
12 abortion provider’s agent from offering
13 their own evaluation on the capacity of the
14 unborn child to experience pain, the advis-
15 ability of administering pain-reducing
16 drugs to the unborn child, or any other
17 matter, as long as such provider or agent
18 provides the required information, obtains
19 the woman’s signature on the decision
20 form, and otherwise complies with the af-
21 firmative requirements of the law.

22 “(B) UNBORN CHILD PAIN AWARENESS
23 BROCHURE.—An abortion provider to whom
24 paragraph (1) applies shall provide the preg-
25 nant woman with the Unborn Child Pain

1 Awareness Brochure (referred to in this section
2 as the ‘Brochure’) to be developed by the De-
3 partment of Health and Human Services under
4 subsection (c) or with the information described
5 in subsection (c)(2) relating to accessing such
6 Brochure.

7 “(C) UNBORN CHILD PAIN AWARENESS
8 DECISION FORM.—An abortion provider to
9 which paragraph (1) applies shall provide the
10 pregnant woman with the Unborn Child Pain
11 Awareness Decision Form (provided for under
12 subsection (d)) and obtain the appropriate sig-
13 nature of the woman on such form.

14 “(c) UNBORN CHILD PAIN AWARENESS BRO-
15 CHURE.—

16 “(1) DEVELOPMENT.—Not later than 90 days
17 after the date of enactment of this title, the Sec-
18 retary shall develop an Unborn Child Pain Aware-
19 ness Brochure. Such Brochure shall—

20 “(A) be written in English and Spanish;

21 “(B) Contain the following text: ‘Your doc-
22 tor has determined that, in his or her best me-
23 dial judgment, your unborn child is at least 20
24 weeks old. There is a significant body of evi-
25 dence that unborn children at 20 weeks after

1 fertilization have the physical structures nec-
2 essary to experience pain. There is substantial
3 evidence that at least by this point, unborn chil-
4 dren draw away from surgical instruments in a
5 manner which in an infant or an adult would be
6 interpreted as a response to pain. There is sub-
7 stantial evidence that the process of being killed
8 in an abortion will cause the unborn child pain,
9 even though you receive a pain-reducing drug or
10 drugs. Under the Federal Unborn Child Pain
11 Awareness Act of 2010, you have a right to
12 know that there is evidence that the process of
13 being killed in an abortion will cause your un-
14 born child pain. You may request that anes-
15 thesia or other pain-reducing drug or drugs are
16 administered directly to the pain-capable un-
17 born child if you so desire. The purpose of ad-
18 ministering such drug or drugs would be to re-
19 duce or eliminate the capacity of the unborn
20 child to experience pain during the abortion
21 procedure. In some cases, there may be some
22 additional risk to you associated with admin-
23 istering such a drug.’;

24 “(C) contain greater detail on her option
25 of having a pain-reducing drug or drugs admin-

1 istered to the unborn child to reduce the experi-
2 ence of pain by the unborn child during the
3 abortion;

4 “(D) be written in an objective and
5 nonjudgmental manner and be printed in a
6 typeface large enough to be clearly legible; and

7 “(E) be made available by the Secretary at
8 no cost to any abortion provider.

9 “(2) INTERNET INFORMATION.—The Brochure
10 under this section shall be available on the Internet
11 website of the Department of Health and Human
12 Services at a minimum resolution of 70 DPI (dots
13 per inch). All pictures appearing on the website shall
14 be a minimum of 200x300 pixels. All letters on the
15 website shall be a minimum of 12 point font. All
16 such information and pictures shall be accessible
17 with an industry standard browser, requiring no ad-
18 ditional plug-ins.

19 “(3) PRESENTATION OF BROCHURE.—An abor-
20 tion provider or his or her agent must provide a
21 pregnant woman with the Brochure, developed under
22 paragraph (1), before any part of an abortion of a
23 pain-capable child begins. The brochure may be pro-
24 vided—

1 “(A) through an in-person visit by the
2 pregnant woman;

3 “(B) through an e-mail attachment, from
4 the abortion provider or his or her agent; or

5 “(C) by certified mail, mailed to the
6 woman at least 72 hours before any part of the
7 abortion begins.

8 “(4) WAIVER.—After the abortion provider or
9 his or her agent offers to provide a pregnant woman
10 the brochure, a pregnant woman may waive receipt
11 of the brochure under this subsection by signing the
12 waiver form contained in the Unborn Child Pain
13 Awareness Decision Form.

14 “(d) UNBORN CHILD PAIN AWARENESS DECISION
15 FORM.—Not later than 30 days after the date of enact-
16 ment of this title, the Secretary shall develop an Unborn
17 Child Pain Awareness Decision Form. To be valid, such
18 form shall—

19 “(1) with respect to the pregnant woman—

20 “(A) contain a statement that affirms that
21 the woman has received or been offered all of
22 the information required in subsection (b);

23 “(B) affirm that the woman has read the
24 following statement: ‘You are considering hav-
25 ing an abortion of an unborn child who will

1 have developed, at the time of the abortion, ap-
2 proximately _____ weeks after fertilization.
3 There is a significant body of evidence that un-
4 born children at 20 weeks after fertilization
5 have the physical structures necessary to expe-
6 rience pain. There is substantial evidence that
7 at least by this point, unborn children draw
8 away from surgical instruments in a manner
9 which in an infant or an adult would be inter-
10 preted as a response to pain. There is substan-
11 tial evidence that the process of being killed in
12 an abortion will cause the unborn child pain,
13 even though you receive a pain-reducing drug or
14 drugs. Under the Federal Unborn Child Pain
15 Awareness Act of 2010, you have a right to
16 know that there is evidence that the process of
17 being killed in an abortion will cause your un-
18 born child pain. You may request that anes-
19 thesia or other pain-reducing drug or drugs are
20 administered directly to the pain-capable un-
21 born child if you so desire. The purpose of ad-
22 ministering such drug or drugs would be to re-
23 duce or eliminate the capacity of the unborn
24 child to experience pain during the abortion
25 procedure. In some cases, there may be some

1 additional risk to you associated with admin-
2 istering such a drug.’;

3 “(C) require the woman to explicitly either
4 request or refuse the administration of pain-re-
5 ducing drugs to the unborn child; and

6 “(D) be signed by a pregnant woman prior
7 to the performance of an abortion involving a
8 pain-capable unborn child; and

9 “(2) with respect to the abortion provider—

10 “(A) contain a statement that the provider
11 has provided the woman with all of the informa-
12 tion required under subsection (b);

13 “(B) if applicable, contain a certification
14 by the provider that an exception described in
15 section 3303 applies and the detailed reasons
16 for such certification; and

17 “(C) be signed by the provider prior to the
18 performance of the abortion procedure.

19 “(e) MAINTENANCE OF RECORDS.—The Secretary
20 shall promulgate regulations relating to the period of time
21 during which copies of forms under subsection (d) shall
22 be maintained by abortion providers.

1 **“SEC. 3303. EXCEPTION TO SAVE THE LIFE OF THE MOTH-**
2 **ER.**

3 “The provisions of section 3302 shall not apply to
4 an abortion provider in the case that the abortion is nec-
5 essary to save the life of a mother whose life is endangered
6 by a physical disorder, physical illness, or physical injury,
7 including a life-endangering physical condition caused by
8 or arising from the pregnancy itself.

9 **“SEC. 3304. PENALTIES FOR FAILURE TO COMPLY.**

10 “(a) IN GENERAL.—An abortion provider who will-
11 fully fails to comply with the provisions of this title shall
12 be subject to civil penalties in accordance with this section
13 in an appropriate Federal court.

14 “(b) COMMENCEMENT OF ACTION.—The Attorney
15 General of the United States may commence a civil action
16 under this section.

17 “(c) FIRST OFFENSE.—Upon a finding by a court
18 that a respondent in an action commenced under this sec-
19 tion has knowingly violated a provision of this title, the
20 court shall notify the appropriate State medical licensing
21 authority and shall assess a civil penalty against the re-
22 spondent in an amount not to exceed \$100,000.

23 “(d) SECOND AND SUBSEQUENT OFFENSES.—Upon
24 a finding by a court that the respondent in an action com-
25 menced under this section has knowingly violated a provi-
26 sion of this title and the respondent has been found to

1 have knowingly violated a provision of this title on a prior
2 occasion, the court shall notify the appropriate State med-
3 ical licensing authority and shall assess a civil penalty
4 against the respondent in an amount not to exceed
5 \$250,000.

6 “(e) PRIVATE RIGHT OF ACTION.—A pregnant
7 woman upon whom an abortion has been performed in vio-
8 lation of this title, or the parent or legal guardian of such
9 a woman if she is an unemancipated minor, may com-
10 mence a civil action against the abortion provider for any
11 knowing or reckless violation of this title for actual and
12 punitive damages.”.

13 **SEC. 4. PREEMPTION.**

14 Nothing in this Act or the amendments made by this
15 Act shall be construed to preempt any provision of State
16 law to the extent that such State law establishes, imple-
17 ments, or continues in effect greater protections for un-
18 born children from pain than the protections provided
19 under this Act and the amendments made by this Act.

20 **SEC. 5. SEVERABILITY.**

21 The provisions of this Act shall be severable. If any
22 provision of this Act, or any application thereof, is found
23 unconstitutional, that finding shall not affect any provi-
24 sion or application of the Act not so adjudicated.