

[117H2782]



(Original Signature of Member)

118TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

To ensure that women seeking an abortion are notified, before giving informed consent to receive an abortion, of the medical risks associated with the abortion procedure and the major developmental characteristics of the unborn child.

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IN THE HOUSE OF REPRESENTATIVES

Mrs. MCCLAIN introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

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**A BILL**

To ensure that women seeking an abortion are notified, before giving informed consent to receive an abortion, of the medical risks associated with the abortion procedure and the major developmental characteristics of the 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 "Woman's Right To  
5 Know Act".

1 **SEC. 2. REQUIREMENT OF INFORMED CONSENT.**

2 (a) IN GENERAL.—

3 (1) REQUIREMENT OF COMPLIANCE BY PRO-  
4 VIDERS.—Any abortion provider, acting in or affect-  
5 ing interstate or foreign commerce, who knowingly  
6 performs, or attempts to perform, any abortion shall  
7 comply with the requirements of this section.

8 (2) REVIEW OF MEDICAL RISKS AND UNBORN  
9 HEALTH STATUS.—An abortion provider who intends  
10 to perform, or attempt to perform, an abortion may  
11 not perform any part of the abortion procedure with-  
12 out first obtaining a signed Informed Consent Au-  
13 thorization form in accordance with this subsection.

14 (3) INFORMED CONSENT AUTHORIZATION  
15 FORM.—

16 (A) IN GENERAL.—The Informed Consent  
17 Authorization form required under this sub-  
18 section shall—

19 (i) be presented in person by the abor-  
20 tion provider 24 hours prior to performing,  
21 or attempting to perform, the abortion to  
22 the woman seeking the abortion; and

23 (ii) consist of—

24 (I) a statement by the abortion  
25 provider indicating—

1 (aa) the probable gestational  
2 age, in completed days, of the  
3 child;

4 (bb) all medical risks associ-  
5 ated with the specific abortion  
6 procedure; and

7 (cc) the major developmental  
8 characteristics of unborn children  
9 at such gestational age, including  
10 the presence of a heartbeat, the  
11 ability to react to painful stimuli,  
12 and the development of organs,  
13 appendages, and facial features;

14 (II) a statement that the require-  
15 ments of this subsection are binding  
16 upon the abortion provider and all  
17 other medical personnel, that such  
18 abortion providers and medical per-  
19 sonnel are subject to criminal and  
20 civil penalties for violations of these  
21 requirements, and that a woman on  
22 whom an abortion has been performed  
23 may take civil action if these require-  
24 ments are not followed; and

1 (III) an affirmation that each in-  
2 dividual signing the Informed Consent  
3 Authorization form has filled out the  
4 form to the best of his or her knowl-  
5 edge and understands the information  
6 contained in the form.

7 (B) SIGNATORIES REQUIRED.—The In-  
8 formed Consent Authorization form required  
9 under this subsection shall be signed in person  
10 by the woman seeking the abortion, the abor-  
11 tion provider performing or attempting to per-  
12 form the abortion, and a witness.

13 (C) RETENTION OF CONSENT FORM.—The  
14 abortion provider performing or attempting to  
15 perform an abortion shall retain the signed In-  
16 formed Consent Authorization form required  
17 under this subsection in the patient's medical  
18 file.

19 (D) REQUIREMENT FOR DATA RETEN-  
20 TION.—Paragraph (j)(2) of section 164.530 of  
21 title 45, Code of Federal Regulations, shall  
22 apply to the Informed Consent Authorization  
23 form required to be placed in a patient's med-  
24 ical file pursuant to subparagraph (C) in the  
25 same manner and to the same extent as such

1 paragraph applies to documentation required by  
2 paragraph (j)(1) of such section.

3 (4) EXCEPTIONS.—The requirements of this  
4 subsection shall not apply if, in reasonable medical  
5 judgment, compliance with paragraph (2) would pose  
6 a greater risk of—

7 (A) the death of the pregnant woman; or

8 (B) the substantial and irreversible phys-  
9 ical impairment of a major bodily function, not  
10 including psychological or emotional conditions,  
11 of the pregnant woman.

12 (b) PENALTY FOR FAILURE TO COMPLY.—

13 (1) CIVIL PENALTY.—

14 (A) ENFORCEMENT BY ATTORNEY GEN-  
15 ERAL.—The Attorney General shall commence  
16 a civil action in an appropriate district court of  
17 the United States under this subsection against  
18 any abortion provider who knowingly commits a  
19 violation of subsection (a).

20 (B) PENALTY.—In a civil action under  
21 subparagraph (A), the court may, to vindicate  
22 the public interest, assess a civil penalty against  
23 the abortion provider in an amount—

24 (i) not less than \$100,000 and not  
25 more than \$150,000, for each such viola-

1           tion that is adjudicated in the first pro-  
2           ceeding against such abortion provider  
3           under this subsection; or

4           (ii) not less than \$150,001 and not  
5           more than \$250,000, for each such viola-  
6           tion that is adjudicated in a subsequent  
7           proceeding against such abortion provider  
8           under this subsection.

9           (C) NOTIFICATION.—Upon the assessment  
10          of a civil penalty under subparagraph (B), the  
11          Attorney General shall notify the appropriate  
12          State medical licensing authority.

13          (D) NO PENALTIES FOR PREGNANT  
14          WOMEN.—A pregnant woman shall not be sub-  
15          ject to any penalty under this section.

16          (2) PRIVATE RIGHT OF ACTION.—

17          (A) IN GENERAL.—A woman or a parent  
18          of a minor upon whom an abortion has been  
19          performed in violation of subsection (a) may  
20          commence a civil action against the abortion  
21          provider for appropriate relief.

22          (B) APPROPRIATE RELIEF.—Appropriate  
23          relief in a civil action under this paragraph in-  
24          cludes—

1 (i) objectively verifiable money dam-  
2 ages for all injuries, psychological and  
3 physical, occasioned by the violation;

4 (ii) statutory damages equal to 3  
5 times the cost of the abortion; and

6 (iii) punitive damages.

7 (C) ATTORNEY'S FEES FOR PLAINTIFF.—

8 The court shall award a reasonable attorney's  
9 fee as part of the costs to a prevailing plaintiff  
10 in a civil action under this paragraph.

11 (D) ATTORNEY'S FEES FOR DEFEND-

12 ANT.—If a defendant in a civil action under  
13 this paragraph prevails and the court finds that  
14 the plaintiff's suit was frivolous, the court shall  
15 award a reasonable attorney's fee in favor of  
16 the defendant against the plaintiff.

17 (E) AWARDS AGAINST WOMAN.—In any

18 civil action under this paragraph, no damages  
19 or other monetary relief, and no attorney's fees  
20 except as provided under subparagraph (D),  
21 may be assessed against the woman upon whom  
22 the abortion was performed or attempted.

23 (c) PREEMPTION.—Nothing in this Act or the amend-  
24 ments made by this Act shall be construed to preempt any  
25 provision of State law to the extent that such State law

1 establishes, implements, or continues in effect disclosure  
2 requirements regarding abortion or penalties for failure to  
3 comply with such requirements that are more extensive  
4 than those provided under the amendment made by this  
5 Act.

6 (d) RULE OF CONSTRUCTION.—Nothing in this Act  
7 shall be construed to prohibit an abortion provider from  
8 presenting the information required under subsection (a)  
9 to a pregnant woman at the same time as acquiring in-  
10 formed consent for an abortion from such woman in ac-  
11 cordance with State law, provided that the presentation  
12 of such information occurs at least 24 hours before the  
13 abortion.

14 (e) DEFINITIONS.—In this section:

15 (1) ABORTION.—The term “abortion” means  
16 the use or prescription of any instrument, medicine,  
17 drug, or any other substance or device—

18 (A) to intentionally kill the unborn child of  
19 a woman known to be pregnant; or

20 (B) to intentionally terminate the preg-  
21 nancy of a woman known to be pregnant, with  
22 an intention other than—

23 (i) after viability to produce a live  
24 birth and preserve the life and health of  
25 the child born alive; or



1 (ii) to remove a dead unborn child.

2 (2) ABORTION PROVIDER.—The term “abortion  
3 provider” means a person—

4 (A) licensed to practice medicine and sur-  
5 gery or osteopathic medicine and surgery; or

6 (B) otherwise legally authorized to perform  
7 an abortion.

8 (3) ATTEMPT.—The term “attempt”, with re-  
9 spect to an abortion, means conduct that, under the  
10 circumstances as the actor believes them to be, con-  
11 stitutes a substantial step in a course of conduct  
12 planned to culminate in performing an abortion.

13 (4) MINOR.—The term “minor” means an indi-  
14 vidual who has not attained the age of 18 years.

15 (5) PERFORM.—The term “perform”, with re-  
16 spect to an abortion, includes inducing an abortion  
17 through a medical or chemical intervention including  
18 writing a prescription for a drug or device intended  
19 to result in an abortion.

20 (6) REASONABLE MEDICAL JUDGMENT.—The  
21 term “reasonable medical judgment” means a med-  
22 ical judgment that would be made by a reasonably  
23 prudent abortion provider, knowledgeable about the  
24 case and the treatment possibilities with respect to  
25 the medical conditions involved.

1           (7) UNBORN CHILD.—The term “unborn child”  
2 means an individual organism of the species homo  
3 sapiens, beginning at fertilization, until the point of  
4 being born alive as defined in section 8(b) of title 1,  
5 United States Code.

6           (8) WOMAN.—The term “woman” means a fe-  
7 male human being whether or not she has reached  
8 the age of majority.