To amend the Public Health Service Act to permit individuals to have freedom of access to certain medical clinics and facilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 23 (legislative day, MARCH 3), 1993

Mr. KENNEDY (for himself, Mrs. BOXER, Mr. CAMPBELL, Mrs. FEINSTEIN, Mr. HARKIN, Mr. METZENBAUM, Ms. MIKULSKI, Mr. SIMON, Mr. ROBB, Mr. WELLSTONE, Mr. PELL, Ms. MOSELEY-BRAUN, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To amend the Public Health Service Act to permit individuals to have freedom of access to certain medical clinics and facilities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE.

This Act may be cited as the “Freedom of Access to Clinic Entrances Act of 1993”.

SECTION. 2. CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE.

(a) FINDINGS.— Congress finds that—
(1) medical clinics and other facilities offering abortion services have been targeted in recent years by an interstate campaign of violence and obstruction aimed at closing the facilities or physically blocking ingress to them, and intimidating those seeking to obtain or provide abortion services;

(2) as a result of such conduct, women are being denied access to, and health care providers are being prevented from delivering, vital reproductive health services;

(3) such conduct subjects women to increased medical risks and thereby jeopardizes the public health and safety;

(4) the methods used to deny women access to these services include blockades of facility entrances; invasions and occupations of the premises; vandalism and destruction of property in and around the facility; bombings, arson, and murder; and other acts of force and threats of force;

(5) those engaging in such tactics frequently trample police lines and barricades and overwhelm State and local law enforcement authorities and courts and their ability to restrain and enjoin unlawful conduct and prosecute those who have violated the law;
(6) such conduct operates to infringe upon women's ability to exercise full enjoyment of rights secured to them by Federal and State law, both statutory and constitutional, and burdens interstate commerce, including by interfering with business activities of medical clinics involved in interstate commerce and by forcing women to travel from States where their access to reproductive health services is obstructed to other States;

(7) prior to the Supreme Court's decision in Bray v. Alexandria Women's Health Clinic (No. 90-985, January 13, 1993), such conduct was frequently restrained and enjoined by Federal courts in actions brought under section 1980(3) of the Revised Statutes (42 U.S.C. 1985(3));

(8) in the Bray decision, the Court denied a remedy under such section to persons injured by the obstruction of access to abortion services;

(9) legislation is necessary to prohibit the obstruction of access by women to abortion services and to ensure that persons injured by such conduct, as well as the Attorney General, can seek redress in the Federal courts;

(10) the obstruction of access to abortion services can be prohibited, and the right of injured par-
ties to seek redress in the courts can be established,
without abridging the exercise of any rights guaran-
teed under the First Amendment to the Constitution
or other law; and

(11) Congress has the affirmative power under
section 8 of article I of the Constitution and under
section 5 of the Fourteenth Amendment to the Con-
stitution to enact such legislation.

(b) Purpose.—It is the purpose of this Act to pro-
tect and promote the public health and safety by prohibit-
ing the use of force, threat of force or physical obstruction
to injure, intimidate or interfere with a person seeking to
obtain or provide abortion services, and the destruction
of property of facilities providing abortion services, and
by establishing the right of private parties injured by such
conduct, as well as the Attorney General in appropriate
cases, to bring actions for appropriate relief.

SEC. 3. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

Title XXVII of the Public Health Service Act (42
U.S.C. 300aaa et seq.) is amended by adding at the end
thereof the following new section:

"SEC. 2715. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

"(a) Prohibited Activities.—Whoever—

"(1) by force or threat of force or by physical
obstruction, intentionally injures, intimidates or
interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons, from—

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(A) obtaining abortion services; or
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(B) lawfully aiding another person to obtain abortion services; or
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(2) intentionally damages or destroys the property of a medical facility or in which a medical facility is located, or attempts to do so, because such facility provides abortion services,
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shall be subject to the penalties provided in subsection (b) and the civil remedy provided in subsection (e).

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(b) PENALTIES.—Whoever violates this section shall—
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(1) in the case of a first offense, be fined in accordance with title 18 or imprisoned not more than 1 year, or both; and
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(2) in the case of a second or subsequent offense after a prior conviction under this section, be fined in accordance with title 18 or imprisoned not more than 3 years, or both;
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except that, if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life.
“(c) Study.—

“(1) In General.—The Secretary shall conduct a study concerning the effect that conduct prohibited by subsection (a) has had, is having or may be expected to have on the delivery of reproductive health services for women and on the health and welfare of women throughout the United States. Such study shall take into account the full range of reproductive health services offered at facilities targeted by such conduct, including abortion services, family planning, pregnancy testing, infertility services, testing and treatment for sexually transmitted diseases, screening for breast and cervical cancer, prenatal services, and other similar activities. Such study shall include consideration of—

“(A) the nature and extent of incidents in which conduct prohibited by subsection (a) has occurred throughout the United States;

“(B) the impact of such incidents on the medical facilities and providers that have been targeted, and on the ability of physicians and other health care providers to deliver reproductive health services to their patients; and
“(C) the effects of such incidents on the mental and physical health of women, including—

“(i) any medical risks or complications associated with delays in obtaining, or failure to obtain, testing, screening or treatment services in the areas of reproductive health;

“(ii) any medical risks or complications associated with delays in the termination of a pregnancy;

“(iii) any harm to maternal or child health associated with delays in obtaining, or failure to obtain, prenatal services; and

“(iv) any other effects of delays in obtaining or failure to obtain reproductive health services.

Such study shall take into account any short-term effects on the delivery of reproductive health services by the targeted facilities and providers, as well as any long-term implications for the health and welfare of women in the general population.

“(2) REPORT.—Not later than 1 year after the date of enactment of this section, the Secretary shall prepare and submit to the appropriate committees of
Congress a report that describes the results of the study conducted under paragraph (1), together with any appropriate recommendations and proposed legislation.

"(d) INVESTIGATION OF VIOLATIONS.—

"(1) IN GENERAL.—The Secretary shall conduct an investigation, on the request of a medical facility providing reproductive health services or on the initiative of the Secretary, to determine whether any person has violated or is violating this section.

"(2) ASSISTANCE.—The Secretary may obtain the assistance of the Attorney General, or a State or local government agency under a cooperative agreement with such agency, in conducting investigations under paragraph (1).

"(3) REFERRAL.—If the Secretary determines that reasonable cause exists to believe that a violation of this section has occurred or is occurring, the Secretary shall immediately refer the matter to the Attorney General for appropriate action under subsection (e)(2).

"(e) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited by sub-
section (a) may commence a civil action for the
relief set forth in subparagraph (B).

“(B) DAMAGES.—In any action under sub-
paragraph (A), the court may award appro-
priate relief, including temporary, preliminary
or permanent injunctive relief and compen-
satory and punitive damages, as well as the
costs of suit and reasonable fees for attorneys
and expert witnesses. With respect to compen-
satory damages, the plaintiff may elect, at any
time prior to the rendering of final judgment,
to recover, in lieu of actual damages, an award
of statutory damages in the amount of $5,000
per violation.

“(2) ACTION BY ATTORNEY GENERAL.—

“(A) IN GENERAL.—If the Attorney Gen-
eral has reasonable cause to believe that any
person or group of persons is being, has been,
or may be injured by conduct constituting a vio-
lation of this section, and such conduct raises
an issue of general public importance, the At-
torney General may commence a civil action in
any appropriate United States District Court.

“(B) DAMAGES.—In any action under sub-
paragraph (A), the court may award appro-
appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent—

“(i) in an amount not exceeding $15,000, for a first violation; and

“(ii) in an amount not exceeding $25,000, for any subsequent violation.

“(f) Rules of Construction.—Nothing in this section shall be construed or interpreted to—

“(1) prevent any State from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section;

“(2) deprive State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State or local law;

“(3) provide exclusive authority to prosecute, or exclusive penalties for, acts that may be violations of this section and that are violations of other Federal laws;
“(4) limit or otherwise affect the right of a person aggrieved by acts that may be violations of this section to seek other available civil remedies; or

“(5) prohibit expression protected by the First Amendment to the Constitution.

“(g) Definitions.—As used in this section:

“(1) Abortion services.—The term ‘abortion services’ includes medical, surgical, counselling or referral services relating to the termination of a pregnancy.

“(2) Attorney General.—The term ‘Attorney General’ includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this section.

“(3) Medical facility.—The term ‘medical facility’ includes a hospital, clinic, physician’s office, or other facility that provides health or surgical services.

“(4) State.—The term ‘State’ includes a State of the United States, the District of Columbia, and
any commonwealth, territory, or possession of the United States.”. 