H. R. 3805

To ensure that women seeking an abortion receive an ultrasound and the opportunity to review the ultrasound before giving informed consent to receive an abortion.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 23, 2012

Mr. JORDAN (for himself, Mr. AKIN, Mr. AUSTRIA, Mrs. BACHMANN, Mr. BARTLETT, Mrs. BLACK, Mrs. BLACKBURN, Mr. BOUSTANY, Mr. BRADY of Texas, Mr. BURTON of Indiana, Mr. CALVERT, Mr. CANSECO, Mr. DUNCAN of South Carolina, Mr. DUNCAN of Tennessee, Mr. FLORES, Mr. FORBES, Mr. FRANKS of Arizona, Mr. GARRETT, Mr. HALL, Mr. HERRING, Mr. HUIZENGA of Michigan, Mr. HULTGREN, Mr. JOHNSON of Ohio, Mr. JONES, Mr. KELLY, Mr. KING of Iowa, Mr. KLINE, Mr. LIPINSKI, Mr. LONG, Mr. MANZULLO, Mr. MARCHANT, Mr. MCCOTTER, Mr. MURPHY of Pennsylvania, Mr. NEUGEBAUER, Mr. NUNNELEE, Mr. ROE of Tennessee, Mr. ROGERS of Alabama, Mr. ROSS of Florida, Mrs. SCHMIDT, Mr. SMITH of New Jersey, Mr. SOUTHERLAND, Mr. WESTMORELAND, Mr. HUELSKAMP, Mr. FLEMING, and Mr. MILLER of Florida) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To ensure that women seeking an abortion receive an ultrasound and the opportunity to review the ultrasound before giving informed consent to receive an abortion.

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 “Ultrasound Informed Consent Act”.

SEC. 2. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT.

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

“TITLE XXXIV—INFORMED CONSENT

“SEC. 3401. DEFINITIONS.

“In this title:

“(1) ABORTION.—The term ‘abortion’ means the intentional use or prescription of any instrument, medicine, drug, or any other substance or device or method to terminate the life of an unborn child, or to terminate the pregnancy of a woman known to be pregnant with an intention other than—

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

“(B) to remove an ectopic pregnancy, or to remove a dead unborn child who died as the result of a spontaneous abortion, accidental trauma, or a criminal assault on the pregnant female or her unborn child.
“(2) ABORTION PROVIDER.—The term ‘abortion provider’ means any person legally qualified to perform an abortion under applicable Federal and State laws.

“(3) UNBORN CHILD.—The term ‘unborn child’ means a member of the species homo sapiens, at any stage of development prior to birth.

“(4) UNEMANCIPATED MINOR.—The term ‘unemancipated minor’ means a minor who is subject to the control, authority, and supervision of his or her parent or guardian, as determined under State law.

“(5) WOMAN.—The term ‘woman’ means a female human being whether or not she has reached the age of majority.

“SEC. 3402. REQUIREMENT OF INFORMED CONSENT.

“(a) REQUIREMENT OF COMPLIANCE BY PROVIDERS.—Any abortion provider in or affecting interstate or foreign commerce, who knowingly performs any abortion, shall comply with the requirements of this title.

“(b) PERFORMANCE AND REVIEW OF ULTRASOUND.—Prior to a woman giving informed consent to having any part of an abortion performed, the abortion provider who is to perform the abortion, or an agent under the supervision of the provider, shall—
“(1) perform an obstetric ultrasound on the pregnant woman;

“(2) provide a simultaneous explanation of what the ultrasound is depicting;

“(3) display the ultrasound images so that the pregnant woman may view them; and

“(4) provide a complete medical description of the ultrasound images, which shall include all of the following: the dimensions of the embryo or fetus, cardiac activity if present and visible, and the presence of external members and internal organs if present and viewable.

“(c) Ability To Turn Eyes Away.—Nothing in this section shall be construed to prevent a pregnant woman from turning her eyes away from the ultrasound images required to be displayed and described to her. Neither the abortion provider nor the pregnant woman shall be subject to any penalty under this title if the pregnant woman declines to look at the displayed ultrasound images.

“SEC. 3403. EXCEPTION FOR MEDICAL EMERGENCIES.

“(a) Exception.—The provisions of section 3402 shall not apply to an abortion provider if the abortion is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical
injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

“(b) CERTIFICATION.—Upon a determination by an abortion provider under subsection (a) that an abortion is necessary to save the life of a mother, such provider shall include in the medical file of the pregnant woman a truthful and accurate certification of the specific medical circumstances that support such determination.

“SEC. 3404. PENALTIES FOR FAILURE TO COMPLY.

“(a) CIVIL PENALTIES.—

“(1) IN GENERAL.—The Attorney General may commence a civil action in Federal court under this section against any abortion provider who knowingly commits an act constituting a violation of this title for a penalty in an amount not to exceed—

“(A) $100,000 for each violation in the first proceeding in the case of the first such violation; and

“(B) $250,000 per violation in the case of each subsequent proceeding.

“(2) NOTIFICATION.—Upon the assessment of a civil penalty under paragraph (1), the Attorney General shall notify the appropriate State medical licensing authority.
“(b) Private Right of Action.—A woman upon whom an abortion has been performed in violation of this title may commence a civil action against the abortion provider for any violation of this title for actual and punitive damages. For purposes of the preceding sentence, actual damages are objectively verifiable money damages for all injuries.”.

SEC. 3. PREEMPTION.

Nothing in this Act or the amendments made by this Act shall be construed to preempt any provision of State law to the extent that such State law establishes, implements, or continues in effect disclosure requirements regarding abortion or penalties for failure to comply with such requirements that are more extensive than those provided under the amendment made by this Act.

SEC. 4. SEVERABILITY.

If any provision of this Act, or any application thereof, is found to be unconstitutional, the remainder of this Act and any application thereof shall not be affected by such finding.