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S. 369

To amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2013

Mr. RUBIO (for himself, Mr. HATCH, Mr. BLUNT, Mr. PAUL, Mr. RISCH, Mr. GRASSLEY, Mr. JOHANNS, Mr. BURR, Mrs. FISCHER, Mr. BOOZMAN, Mr. WICKER, Mr. CORKER, Mr. INHOFE, Mr. ROBERTS, Mr. COBURN, Mr. ENZI, Mr. CHAMBLISS, Mr. MCCONNELL, Mr. VITTER, Mr. MORAN, Mr. GRAHAM, Mr. CRUZ, and Mr. CORNYN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

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 ''Child Interstate Abortion Notification Act''.

SEC. 2. TRANSPORTATION OF MINORS IN CIRCUMVENTION OF CERTAIN LAWS RELATING TO ABORTION.

Title 18, United States Code, is amended by inserting after chapter 117 the following:

"CHAPTER 117A—TRANSPORTATION OF MINORS IN CIRCUMVENTION OF CERTAIN LAWS RELATING TO ABORTION

"Sec.
"2431. Transportation of minors in circumvention of certain laws relating to abortion.
"2432. Transportation of minors in circumvention of certain laws relating to abortion.

"§ 2431. Transportation of minors in circumvention of certain laws relating to abortion

"(a) OFFENSE.—

"(1) GENERALLY.—Except as provided in subsection (b), whoever knowingly transports a minor across a State line, with the intent that such minor obtain an abortion, and thereby in fact abridges the right of a parent under a law requiring parental involvement in a minor's abortion decision, in force in the State where the minor resides, shall be fined under this title or imprisoned not more than one year, or both.

"(2) DEFINITION.—For the purposes of this subsection, an abridgement of the right of a parent occurs if an abortion is performed or induced on the minor, in a State or a foreign nation other than the

State where the minor resides, without the parental consent or notification, or the judicial authorization, that would have been required by that law had the abortion been performed in the State where the minor resides.

"(b) EXCEPTIONS.—

"(1) The prohibition of subsection (a) does not apply if the abortion was necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself.

"(2) A minor transported in violation of this section, and any parent of that minor, may not be prosecuted or sued for a violation of this section, a conspiracy to violate this section, or an offense under section 2 or 3 of this title based on a violation of this section.

"(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution for an offense, or to a civil action, based on a violation of this section that the defendant—

"(1) reasonably believed, based on information the defendant obtained directly from a parent of the minor, that before the minor obtained the abortion, the parental consent or notification took place that

would have been required by the law requiring parental involvement in a minor's abortion decision, had the abortion been performed in the State where the minor resides; or

"(2) was presented with documentation showing with a reasonable degree of certainty that a court in the minor's State of residence waived any parental notification required by the laws of that State, or otherwise authorized that the minor be allowed to procure an abortion.

"(d) CIVIL ACTION.—Any parent who suffers harm from a violation of subsection (a) may obtain appropriate relief in a civil action unless the parent has committed an act of incest with the minor subject to subsection (a).

"(e) DEFINITIONS.—For the purposes of this section—

"(1) 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 prematurely terminate the pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of a live birth or of pre-

serving the life or health of the child after live birth, or to remove a dead unborn child;

"(2) the term 'law requiring parental involvement in a minor's abortion decision' means a law—

"(A) requiring, before an abortion is performed on a minor, either—

"(i) the notification to, or consent of, a parent of that minor; or

"(ii) proceedings in a State court; and

"(B) that does not provide as an alternative to the requirements described in subparagraph (A) notification to or consent of any person or entity who is not described in that subparagraph;

"(3) the term 'minor' means an individual who is not older than the maximum age requiring parental notification or consent, or proceedings in a State court, under the law requiring parental involvement in a minor's abortion decision;

"(4) the term 'parent' means—

"(A) a parent or guardian;

"(B) a legal custodian; or

"(C) a person standing in loco parentis who has care and control of the minor, and with whom the minor regularly resides, who is

designated by the law requiring parental involvement in the minor's abortion decision as a person to whom notification, or from whom consent, is required; and

''(5) the term 'State' includes the District of Columbia and any commonwealth, possession, or other territory of the United States, and any Indian tribe or reservation.

"§ 2432. Transportation of minors in circumvention of certain laws relating to abortion

''Notwithstanding section 2431(b)(2), whoever has committed an act of incest with a minor and knowingly transports the minor across a State line with the intent that such minor obtain an abortion, shall be fined under this title or imprisoned not more than one year, or both. For the purposes of this section, the terms 'State', 'minor', and 'abortion' have, respectively, the definitions given those terms in section 2435.''.

SEC. 3. CHILD INTERSTATE ABORTION NOTIFICATION.

Title 18, United States Code, is amended by inserting after chapter 117A the following:

"CHAPTER 117B—CHILD INTERSTATE ABORTION NOTIFICATION

''Sec.
''2435. Child interstate abortion notification.

"§ 2435. Child interstate abortion notification

''(a) OFFENSE.—

''(1) GENERALLY.—A physician who knowingly performs or induces an abortion on a minor in violation of the requirements of this section shall be fined under this title or imprisoned not more than one year, or both.

''(2) PARENTAL NOTIFICATION.—A physician who performs or induces an abortion on a minor who is a resident of a State other than the State in which the abortion is performed must provide, or cause his or her agent to provide, at least 24 hours actual notice to a parent of the minor before performing the abortion. If actual notice to such parent is not accomplished after a reasonable effort has been made, at least 24 hours constructive notice must be given to a parent before the abortion is performed.

''(b) EXCEPTIONS.—The notification requirement of subsection (a)(2) does not apply if—

''(1) the abortion is performed or induced in a State that has, in force, a law requiring parental involvement in a minor's abortion decision and the physician complies with the requirements of that law;

"(2) the physician is presented with documentation showing with a reasonable degree of certainty that a court in the minor's State of residence has waived any parental notification required by the laws of that State, or has otherwise authorized that the minor be allowed to procure an abortion;

"(3) the minor declares in a signed written statement that she is the victim of sexual abuse, neglect, or physical abuse by a parent, and, before an abortion is performed on the minor, the physician notifies the authorities specified to receive reports of child abuse or neglect by the law of the State in which the minor resides of the known or suspected abuse or neglect;

"(4) the abortion is necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself, but an exception under this paragraph does not apply unless the attending physician or an agent of such physician, within 24 hours after completion of the abortion, notifies a parent in writing that an abortion was performed on the minor and of the cir-

cumstances that warranted invocation of this paragraph; or

"(5) the minor is physically accompanied by a person who presents the physician or his agent with documentation showing with a reasonable degree of certainty that he or she is in fact the parent of that minor.

"(c) CIVIL ACTION.—Any parent who suffers harm from a violation of subsection (a) may obtain appropriate relief in a civil action unless the parent has committed an act of incest with the minor subject to subsection (a).

"(d) DEFINITIONS.—For the purposes of this section—

"(1) 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 prematurely terminate the pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of a live birth or of preserving the life or health of the child after live birth, or to remove a dead unborn child;

"(2) the term 'actual notice' means the giving of written notice directly, in person, by the physician or any agent of the physician;

"(3) the term 'constructive notice' means notice that is given by certified mail, return receipt requested, restricted delivery to the last known address of the person being notified, with delivery deemed to have occurred 48 hours following noon on the next day subsequent to mailing on which regular mail delivery takes place, days on which mail is not delivered excluded;

"(4) the term 'law requiring parental involvement in a minor's abortion decision' means a law—

"(A) requiring, before an abortion is performed on a minor, either—

"(i) the notification to, or consent of, a parent of that minor; or

"(ii) proceedings in a State court;

"(B) that does not provide as an alternative to the requirements described in subparagraph (A) notification to or consent of any person or entity who is not described in that subparagraph;

"(5) the term 'minor' means an individual who has not attained the age of 18 years and who is not

emancipated under the law of the State in which the minor resides;

"(6) the term 'parent' means—

"(A) a parent or guardian;

"(B) a legal custodian; or

"(C) a person standing in loco parentis who has care and control of the minor, and with whom the minor regularly resides;

as determined by State law;

"(7) the term 'physician' means a doctor of medicine legally authorized to practice medicine by the State in which such doctor practices medicine, or any other person legally empowered under State law to perform an abortion; and

"(8) the term 'State' includes the District of Columbia and any commonwealth, possession, or other territory of the United States, and any Indian tribe or reservation.".

SEC. 4. CLERICAL AMENDMENT.

The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 117 the following new items:

"117A. Transportation of minors in circumvention of certain laws relating to abortion 2431
"117B. Child interstate abortion notification ..... 2435".

SEC. 5. SEVERABILITY AND EFFECTIVE DATE.

(a) The provisions of this Act shall be severable. If any provision of this Act, or any application thereof, is found unconstitutional, that finding shall not affect any provision or application of the Act not so adjudicated.

(b) This Act and the amendments made by this Act shall take effect 45 days after the date of enactment of this Act.

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