

109TH CONGRESS  
1ST SESSION

# H. R. 748

To amend title 18, United States Code, to prevent the transportation of minors in circumvention of certain laws relating to abortion, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2005

Ms. ROS-LEHTINEN (for herself, Mr. PITTS, Mr. SHIMKUS, Mr. McCAUL of Texas, Mrs. JO ANN DAVIS of Virginia, Mr. ROGERS of Michigan, Mr. McCOTTER, Mr. TERRY, Mr. WICKER, Mr. BAKER, Mr. WAMP, Mr. HAYES, Mr. TANCREDO, Mr. CHABOT, Mr. KING of Iowa, Mr. AKIN, Mr. PICKERING, Mr. LEWIS of Kentucky, Mr. LATOURETTE, Ms. HART, Mr. HAYWORTH, Mr. OBERSTAR, Mr. TAYLOR of North Carolina, Mr. PLATTS, Mrs. BLACKBURN, Mr. CANTOR, Mr. SMITH of New Jersey, Mr. BERRY, Mrs. NORTHUP, Mr. WILSON of South Carolina, Mr. MARIO DIAZ-BALART of Florida, Mr. GARRETT of New Jersey, Mrs. CUBIN, Mr. BUYER, Mr. MANZULLO, Mr. BLUNT, Mr. LINCOLN DIAZ-BALART of Florida, Mr. HYDE, Mr. MCHENRY, Mr. ROGERS of Alabama, Mr. RYUN of Kansas, Mr. STEARNS, Mr. DAVIS of Tennessee, Mr. TIAHRT, Mr. FERGUSON, Mr. EHLERS, Mr. JONES of North Carolina, Mr. FRANKS of Arizona, Mr. SOUDER, Ms. FOXX, Mr. WELDON of Florida, Mr. SESSIONS, Mr. STUPAK, Mr. BOEHNER, Mr. HUNTER, Mr. CHOCOLA, Mr. HOSTETTLER, Mrs. DRAKE, Mr. ALEXANDER, Mr. HOEKSTRA, Mr. BRADY of Texas, Mr. DAVIS of Kentucky, Mr. SAM JOHNSON of Texas, Mr. MARSHALL, Mr. ADERHOLT, Mr. KENNEDY of Minnesota, Mr. FORBES, Mr. PETERSON of Pennsylvania, Mr. KING of New York, Mr. BURTON of Indiana, Mr. DELAY, Mr. GREEN of Wisconsin, Mr. LATHAM, Mr. PETERSON of Minnesota, Mr. RENZI, Mr. CUNNINGHAM, Mr. NEUGEBAUER, Mr. SMITH of Texas, Mrs. MUSGRAVE, Mr. McCRERY, Mr. ROGERS of Kentucky, Mr. PENCE, Mr. BACHUS, Mr. COSTELLO, Mrs. MYRICK, Mr. BOOZMAN, Mr. BARRETT of South Carolina, Mr. GOODLATTE, Mr. PORTMAN, Mr. BARTLETT of Maryland, Mr. PUTNAM, Mr. SULLIVAN, Mrs. MILLER of Michigan, Mr. WESTMORELAND, Miss McMORRIS, Mr. SHUSTER, Mr. DOOLITTLE, Mrs. EMERSON, Mr. INGLIS of South Carolina, Mr. GOODE, Mr. NEY, Mr. MCINTYRE, Mr. FOSSELLA, Mr. TIBERI, Mr. GUTKNECHT, and Mr. LAHOOD) introduced the following bill; which was referred to the Committee on the Judiciary

# A BILL

To amend title 18, United States Code, to prevent the transportation of minors in circumvention of certain laws relating to abortion, and for other purposes.

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 “Child Interstate Abor-

5 tion Notification Act”.

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

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

10 **“CHAPTER 117A—TRANSPORTATION OF**  
 11 **MINORS IN CIRCUMVENTION OF CER-**  
 12 **TAIN LAWS RELATING TO ABORTION**

13 **“§ 2431. Transportation of minors in circumvention of**  
 14 **certain laws relating to abortion**

15 “(a) OFFENSE.—

16 “(1) GENERALLY.—Except as provided in sub-

17 section (b), whoever knowingly transports a minor

18 across a State line, with the intent that such minor

19 obtain an abortion, and thereby in fact abridges the

20 right of a parent under a law requiring parental in-

21 volvement in a minor’s abortion decision, in force in

1 the State where the minor resides, shall be fined  
2 under this title or imprisoned not more than one  
3 year, or both.

4 “(2) DEFINITION.—For the purposes of this  
5 subsection, an abridgement of the right of a parent  
6 occurs if an abortion is performed or induced on the  
7 minor, in a State other than the State where the  
8 minor resides, without the parental consent or notifi-  
9 cation, or the judicial authorization, that would have  
10 been required by that law had the abortion been per-  
11 formed in the State where the minor resides.

12 “(b) EXCEPTIONS.—

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

19 “(2) A minor transported in violation of this  
20 section, and any parent of that minor, may not be  
21 prosecuted or sued for a violation of this section, a  
22 conspiracy to violate this section, or an offense  
23 under section 2 or 3 based on a violation of this sec-  
24 tion.

1       “(c) AFFIRMATIVE DEFENSE.—It is an affirmative  
2 defense to a prosecution for an offense, or to a civil action,  
3 based on a violation of this section that the defendant rea-  
4 sonably believed, based on information the defendant ob-  
5 tained directly from a parent of the minor or other compel-  
6 ling facts, that before the minor obtained the abortion, the  
7 parental consent or notification, or judicial authorization,  
8 took place that would have been required by the law re-  
9 quiring parental involvement in a minor’s abortion deci-  
10 sion, had the abortion been performed in the State where  
11 the minor resides.

12       “(d) CIVIL ACTION.—Any parent who suffers harm  
13 from a violation of subsection (a) may obtain appropriate  
14 relief in a civil action.

15       “(e) DEFINITIONS.—For the purposes of this sec-  
16 tion—

17               “(1) the term ‘abortion’ means the use or pre-  
18 scription of any instrument, medicine, drug, or any  
19 other substance or device intentionally to terminate  
20 the pregnancy of a female known to be pregnant  
21 with an intention other than to increase the prob-  
22 ability of a live birth, to preserve the life or health  
23 of the child after live birth, or to remove a dead un-  
24 born child who died as the result of a spontaneous

1 abortion, accidental trauma or a criminal assault on  
2 the pregnant female or her unborn child;

3 “(2) the term a ‘law requiring parental involve-  
4 ment in a minor’s abortion decision’ means a law—

5 “(A) requiring, before an abortion is per-  
6 formed on a minor, either—

7 “(i) the notification to, or consent of,  
8 a parent of that minor; or

9 “(ii) proceedings in a State court; and

10 “(B) that does not provide as an alter-  
11 native to the requirements described in sub-  
12 paragraph (A) notification to or consent of any  
13 person or entity who is not described in that  
14 subparagraph;

15 “(3) the term ‘minor’ means an individual who  
16 is not older than the maximum age requiring paren-  
17 tal notification or consent, or proceedings in a State  
18 court, under the law requiring parental involvement  
19 in a minor’s abortion decision;

20 “(4) the term ‘parent’ means—

21 “(A) a parent or guardian;

22 “(B) a legal custodian; or

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

1 designated by the law requiring parental in-  
 2 volvement in the minor’s abortion decision as a  
 3 person to whom notification, or from whom con-  
 4 sent, is required; and

5 “(5) the term ‘State’ includes the District of  
 6 Columbia and any commonwealth, possession, or  
 7 other territory of the United States.”.

8 **SEC. 3. CHILD INTERSTATE ABORTION NOTIFICATION.**

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

11 **“CHAPTER 117B—CHILD INTERSTATE**  
 12 **ABORTION NOTIFICATION**

13 **“§ 2432. Child interstate abortion notification**

14 **“(a) OFFENSE.—**

15 **“(1) GENERALLY.—**A physician who knowingly  
 16 performs or induces an abortion on a minor in viola-  
 17 tion of the requirements of this section shall be fined  
 18 under this title or imprisoned not more than one  
 19 year, or both.

20 **“(2) PARENTAL NOTIFICATION.—**A physician  
 21 who performs or induces an abortion on a minor  
 22 who is a resident of a State other than the State in  
 23 which the abortion is performed must provide at  
 24 least 24 hours actual notice to a parent of the minor  
 25 before performing the abortion. If actual notice to

1 such parent is not possible after a reasonable effort  
2 has been made, 24 hours constructive notice must be  
3 given to a parent.

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

6 “(1) the abortion is performed or induced in a  
7 State that has a law in force requiring parental in-  
8 volvement in a minor’s abortion decision and the  
9 physician complies with the requirements of that  
10 law;

11 “(2) the physician is presented with documenta-  
12 tion showing with a reasonable degree of certainty  
13 that a court in the minor’s State of residence has  
14 waived any parental notification required by the laws  
15 of that State, or has otherwise authorized that the  
16 minor be allowed to procure an abortion;

17 “(3) the minor declares in a signed written  
18 statement that she is the victim of sexual abuse, ne-  
19 glect, or physical abuse by a parent, and, before an  
20 abortion is performed on the minor, the physician  
21 notifies the authorities specified to receive reports of  
22 child abuse or neglect by the law of the State in  
23 which the minor resides of the known or suspected  
24 abuse or neglect; or

1           “(4) the abortion is necessary to save the life  
2 of the minor because her life was endangered by a  
3 physical disorder, physical injury, or physical illness,  
4 including a life endangering physical condition  
5 caused by or arising from the pregnancy itself.

6           “(c) CIVIL ACTION.—Any parent who suffers harm  
7 from a violation of subsection (a) may obtain appropriate  
8 relief in a civil action.

9           “(d) DEFINITIONS.—For the purposes of this sec-  
10 tion—

11           “(1) the term ‘abortion’ means the use or pre-  
12 scription of any instrument, medicine, drug, or any  
13 other substance or device intentionally to terminate  
14 the pregnancy of a female known to be pregnant  
15 with an intention other than to increase the prob-  
16 ability of a live birth, to preserve the life or health  
17 of the child after live birth, or to remove a dead un-  
18 born child who died as the result of a spontaneous  
19 abortion, accidental trauma, or a criminal assault on  
20 the pregnant female or her unborn child;

21           “(2) the term ‘actual notice’ means the giving  
22 of written notice directly, in person;

23           “(3) the term ‘constructive notice’ means notice  
24 that is given by certified mail, return receipt re-  
25 quested, restricted delivery to the last known ad-

1 dress of the person being notified, with delivery  
2 deemed to have occurred 48 hours following noon on  
3 the next day subsequent to mailing on which regular  
4 mail delivery takes place, days on which mail is not  
5 delivered excluded;

6 “(4) the term a ‘law requiring parental involve-  
7 ment in a minor’s abortion decision’ means a law—

8 “(A) requiring, before an abortion is per-  
9 formed on a minor, either—

10 “(i) the notification to, or consent of,  
11 a parent of that minor; or

12 “(ii) proceedings in a State court;

13 “(B) that does not provide as an alter-  
14 native to the requirements described in sub-  
15 paragraph (A) notification to or consent of any  
16 person or entity who is not described in that  
17 subparagraph;

18 “(5) the term ‘minor’ means an individual who  
19 is not older than 18 years and who is not emanci-  
20 pated under State law;

21 “(6) the term ‘parent’ means—

22 “(A) a parent or guardian;

23 “(B) a legal custodian; or

1           “(C) a person standing in loco parentis  
2           who has care and control of the minor, and  
3           with whom the minor regularly resides;  
4           as determined by State law;

5           “(7) the term ‘physician’ means a doctor of  
6           medicine legally authorized to practice medicine by  
7           the State in which such doctor practices medicine, or  
8           any other person legally empowered under State law  
9           to perform an abortion; and

10           “(8) the term ‘State’ includes the District of  
11           Columbia and any commonwealth, possession, or  
12           other territory of the United States.”.

13 **SEC. 4. SEVERABILITY AND EFFECTIVE DATE.**

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

18           (b) The provisions of this Act shall take effect upon  
19           enactment.

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