

109TH CONGRESS  
1ST SESSION

# H. R. 356

To ensure that women seeking an abortion are fully informed regarding the pain experienced by their unborn child.

---

## IN THE HOUSE OF REPRESENTATIVES

JANUARY 25, 2005

Mr. SMITH of New Jersey (for himself, Mr. DAVIS of Tennessee, Mrs. JO ANN DAVIS of Virginia, Mr. CANTOR, Mr. MCINTYRE, Mr. HYDE, Mr. STUPAK, Mr. WICKER, Mrs. MUSGRAVE, Mr. BLUNT, Mr. COSTELLO, Mr. HAYES, Mr. FERGUSON, Mr. SOUDER, Mr. AKIN, Mr. PITTS, Mr. MCCAUL of Texas, Mr. BEAUPREZ, Mr. SHIMKUS, Mr. ENGLISH of Pennsylvania, Mr. ROGERS of Alabama, Mr. CUNNINGHAM, Mr. FLAKE, Mr. BURGESS, Mr. FORTUÑO, Mr. LEWIS of Kentucky, Mr. GOODE, Mr. GREEN of Wisconsin, Mr. JINDAL, Mr. HUNTER, Mr. WAMP, Mrs. BLACKBURN, Mr. LAHOOD, Mrs. MYRICK, Mr. BURTON of Indiana, Mr. KING of Iowa, Mr. GARRETT of New Jersey, Mr. ALEXANDER, Mr. KINGSTON, Mr. RYUN of Kansas, Mr. BAKER, Mr. CARTER, Mr. CHABOT, Mr. WILSON of South Carolina, Mr. FORBES, Mr. SAM JOHNSON of Texas, Mr. SHUSTER, Mr. MCHENRY, Mr. HALL, Mr. MILLER of Florida, Mr. PUTNAM, Mr. KENNEDY of Minnesota, Mr. BISHOP of Utah, Mr. STEARNS, Mr. LUCAS, Mr. DOOLITTLE, Mr. SESSIONS, Mr. BACHUS, Mr. CHOCOLA, Mr. RENZI, Mr. PICKERING, Mr. DAVIS of Kentucky, Mr. GOODLATTE, Mr. PETERSON of Pennsylvania, Mr. TANCREDO, Mr. FEENEY, Mr. CONAWAY, Mrs. DRAKE, Mrs. NORTHUP, Mr. WESTMORELAND, Mr. BOOZMAN, Mr. MCCOTTER, Mr. POMBO, Mr. NEUGEBAUER, Ms. ROS-LEHTINEN, and Mr. WELDON 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 are fully informed regarding the pain experienced by their 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 “Unborn Child Pain  
5 Awareness Act of 2005”.

6 **SEC. 2. FINDINGS.**

7        Congress makes the following findings:

8            (1) At least 20 weeks after fertilization, an un-  
9        born child has the physical structures necessary to  
10        experience pain.

11           (2) There is substantial evidence that by 20  
12        weeks after fertilization, unborn children draw away  
13        from certain stimuli in a manner which in an infant  
14        or an adult would be interpreted as a response to  
15        pain.

16           (3) Anesthesia is routinely administered to un-  
17        born children who have developed 20 weeks or more  
18        past fertilization who undergo prenatal surgery.

19           (4) There is substantial evidence that the abor-  
20        tion methods most commonly used 20 weeks after  
21        fertilization cause substantial pain to an unborn  
22        child, whether by dismemberment, poisoning, pene-  
23        trating or crushing the skull, or other methods. Ex-  
24        amples of abortion methods used 20 weeks after fer-

1       tilization include, but are not limited to the fol-  
2       lowing:

3               (A) The Dilation and Evacuation (DE)  
4               method of abortion is commonly performed in  
5               the second trimester of pregnancy. In a dilation  
6               and evacuation abortion, the unborn child's  
7               body parts are grasped at random with a long-  
8               toothed clamp. The fetal body parts are then  
9               torn off of the body and pulled out of the vag-  
10              inal canal. The remaining body parts are  
11              grasped and pulled out until only the head re-  
12              mains. The head is then grasped and crushed  
13              in order to remove it from the vaginal canal.

14             (B) Partial-Birth Abortion is an abortion  
15             in which the abortion practitioner delivers an  
16             unborn child's body until only the head remains  
17             inside the womb, punctures the back of the  
18             child's skull with a sharp instrument, and sucks  
19             the child's brains out before completing the de-  
20             livery of the dead infant.

21             (5) Expert testimony confirms that by 20 weeks  
22             after fertilization an unborn child may experience  
23             substantial pain even if the woman herself has re-  
24             ceived local analgesic or general anesthesia.

1           (6) Medical science is capable of reducing such  
2 pain through the administration of anesthesia or  
3 other pain-reducing drugs directly to the unborn  
4 child.

5           (7) There is a valid Federal Government inter-  
6 est in reducing the number of events in which great  
7 pain is inflicted on sentient creatures. Examples of  
8 this are laws governing the use of laboratory animals  
9 and requiring pain-free methods of slaughtering live-  
10 stock, which include, but are not limited to the fol-  
11 lowing:

12                   (A) Section 2 of the Act commonly known  
13 as the Humane Slaughter Act of 1958 (Public  
14 Law 85–765; 7 U.S.C. 1902) states, “No meth-  
15 od of slaughter or handling in connection with  
16 slaughtering shall be deemed to comply with the  
17 public policy of the United States unless it is  
18 humane. Either of the following two methods of  
19 slaughtering and handling are hereby found to  
20 be humane:

21                           “(a) in the case of cattle, calves,  
22 horses, mules, sheep, swine, and other live-  
23 stock, all animals are rendered insensible  
24 to pain by a single blow or gunshot or an  
25 electrical, chemical or other means that is

1 rapid and effective, before being shackled,  
2 hoisted, thrown, cast, or cut; or

3 “(b) by slaughtering in accordance  
4 with the ritual requirements of the Jewish  
5 faith or any other religious faith that pre-  
6 scribes a method of slaughter whereby the  
7 animal suffers loss of consciousness by  
8 anemia of the brain caused by the simulta-  
9 neous and instantaneous severance of the  
10 carotid arteries with a sharp instrument  
11 and handling in connection with such  
12 slaughtering.”.

13 (B) Section 13(a)(3) of the Animal Wel-  
14 fare Act (7 U.S.C. 2143(a)(3)) sets the stand-  
15 ards and certification process for the humane  
16 handling, care, treatment, and transportation of  
17 animals. This includes having standards with  
18 respect to animals in research facilities that in-  
19 clude requirements—

20 “(i) for animal care, treatment, and  
21 practices in experimental procedures to en-  
22 sure that animal pain and distress are  
23 minimized, including adequate veterinary  
24 care with the appropriate use of anesthetic,

1 analgesic, tranquilizing drugs, or eutha-  
2 nasia;

3 “(ii) that the principal investigator  
4 considers alternatives to any procedure  
5 likely to produce pain to or distress in an  
6 experimental animal;

7 “(iii) in any practice which could  
8 cause pain to animals—

9 “(I) that a doctor of veterinary  
10 medicine is consulted in the planning  
11 of such procedures;

12 “(II) for the use of tranquilizers,  
13 analgesics, and anesthetics;

14 “(III) for pre-surgical and post-  
15 surgical care by laboratory workers, in  
16 accordance with established veterinary  
17 medical and nursing procedures;

18 “(IV) against the use of para-  
19 lytics without anesthesia; and

20 “(V) that the withholding of  
21 tranquilizers, anesthesia, analgesia, or  
22 euthanasia when scientifically nec-  
23 essary shall continue for only the nec-  
24 essary period of time;”.

1 (C) Section 495 of the Public Health Serv-  
2 ice Act (42 U.S.C. 289d) directs the Secretary  
3 of Health and Human Services, acting through  
4 the Director of the National Institutes of  
5 Health, to establish guidelines for research fa-  
6 cilities as to the proper care and treatment of  
7 animals, including the appropriate use of tran-  
8 quilizers, analgesics, and other drugs, except  
9 that such guidelines may not prescribe methods  
10 of research. Entities that conduct biomedical  
11 and behavioral research with National Insti-  
12 tutes of Health funds must establish animal  
13 care committees which must conduct reviews at  
14 least semi-annually and report to the Director  
15 of such Institutes at least annually. If the Di-  
16 rector determines that an entity has not been  
17 following the guidelines, the Director must give  
18 the entity an opportunity to take corrective ac-  
19 tion, and, if the entity does not, the Director  
20 must suspend or revoke the grant or contract  
21 involved.

22 **SEC. 3. AMENDMENT TO THE PUBLIC HEALTH SERVICE**  
23 **ACT.**

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

1       **“TITLE XXIX—UNBORN CHILD**  
2                       **PAIN AWARENESS**

3       **“SEC. 2901. DEFINITIONS.**

4            “In this title:

5                    “(1) ABORTION.—The term ‘abortion’ means  
6            the intentional use or prescription of any instru-  
7            ment, medicine, drug, or any other substance or de-  
8            vice to terminate the pregnancy of a woman known  
9            to be pregnant with an intention other than to in-  
10           crease the probability of a live birth, to preserve the  
11           life or health of the child after live birth, or to re-  
12           move a dead fetus.

13                   “(2) ABORTION PROVIDER.—The term ‘abortion  
14            provider’ means any person legally qualified to per-  
15            form an abortion under applicable Federal and State  
16            laws.

17                   “(3) PAIN-CAPABLE UNBORN CHILD.—

18                           “(A) IN GENERAL.—The term ‘pain-capable  
19            unborn child’ means an unborn child who  
20            has reached a probable stage of development of  
21            20 weeks after fertilization.

22                           “(B) RULE OF CONSTRUCTION.—Nothing  
23            in subparagraph (A) shall be construed as a de-  
24            termination or finding by Congress that pain  
25            may not in fact be experienced by an unborn



1 child at stages of development prior to 20 weeks  
2 after fertilization.

3 “(4) PROBABLE AGE OF DEVELOPMENT.—The  
4 term ‘probable age of development’ means the dura-  
5 tion of development after fertilization of the unborn  
6 child at the time an abortion is performed, as deter-  
7 mined in the good faith judgment of the abortion  
8 provider on the basis of examination of the unborn  
9 child using ultrasound or other imaging technology,  
10 in addition to information obtained by interviewing  
11 the pregnant woman.

12 “(5) UNBORN CHILD.—The term ‘unborn child’  
13 means a member of the species homo sapiens, at any  
14 stage of development, who is carried in the womb.

15 “(6) WOMAN.—The term ‘woman’ means a fe-  
16 male human being who is capable of becoming preg-  
17 nant, whether or not she has reached the age of ma-  
18 jority.

19 **“SEC. 2902. REQUIREMENT OF INFORMED CONSENT.**

20 “(a) REQUIREMENT OF COMPLIANCE BY PRO-  
21 VIDERS.—An abortion provider performing any abortion,  
22 of a pain-capable unborn child, that is in or affecting  
23 interstate commerce shall comply with the requirements  
24 of this title.

25 “(b) PROVISION OF CONSENT.—

1           “(1) IN GENERAL.—Before any part of an abor-  
2           tion involving a pain-capable unborn child begins,  
3           the abortion provider or his or her agent shall pro-  
4           vide the pregnant woman involved, by telephone or  
5           in person, with the information described in para-  
6           graph (2).

7           “(2) REQUIRED INFORMATION.—

8           “(A) ORAL STATEMENT.—

9           “(i) IN GENERAL.—An abortion pro-  
10          vider or the provider’s agent to whom  
11          paragraph (1) applies shall make the fol-  
12          lowing oral statement to the pregnant  
13          woman (or in the case of a deaf or non-  
14          English speaking woman, provide the  
15          statement in a manner that she can easily  
16          understand):

17          You are considering having an abortion of  
18          an unborn child who will have developed,  
19          at the time of the abortion, approximately  
20          \_\_\_\_\_ weeks after fertilization. The Con-  
21          gress of the United States has determined  
22          that at this stage of development, an un-  
23          born child has the physical structures nec-  
24          essary to experience pain. There is sub-  
25          stantial evidence that by this point, unborn

1 children draw away from surgical instru-  
2 ments in a manner which in an infant or  
3 an adult would be interpreted as a re-  
4 sponse to pain. Congress finds that there  
5 is substantial evidence that the process of  
6 being killed in an abortion will cause the  
7 unborn child pain, even though you receive  
8 a pain-reducing drug or drugs. Under the  
9 Federal Unborn Child Pain Awareness Act  
10 of 2004, you have the option of choosing to  
11 have anesthesia or other pain-reducing  
12 drug or drugs administered directly to the  
13 pain-capable unborn child if you so desire.  
14 The purpose of administering such drug or  
15 drugs would be to reduce or eliminate the  
16 capacity of the unborn child to experience  
17 pain during the abortion procedure. In  
18 some cases, there may be some additional  
19 risk to you associated with administering  
20 such a drug.

21 “(ii) DESCRIPTION OF RISKS.—After  
22 making the statement required under  
23 clause (i), the abortion provider may pro-  
24 vide the woman involved with his or her  
25 best medical judgment on the risks of ad-

1 ministering such anesthesia or analgesic, if  
2 any, and the costs associated therewith.

3 “(iii) ADMINISTRATION OF ANES-  
4 THESIA.—If the abortion provider is not  
5 qualified or willing to administer the anes-  
6 thesia or other pain-reducing drug in re-  
7 sponse to the request of a pregnant women  
8 after making the statement required under  
9 clause (i), the provider shall—

10 “(I) arrange for a qualified spe-  
11 cialist to administer such anesthesia  
12 or drug; or

13 “(II) advise the pregnant  
14 woman—

15 “(aa) where she may obtain  
16 such anesthesia or other pain re-  
17 ducing drugs for the unborn child  
18 in the course of an abortion; or

19 “(bb) that the abortion pro-  
20 vider is unable to perform the  
21 abortion if the woman elects to  
22 receive anesthesia or other pain-  
23 reducing drug for her unborn  
24 child.

1                   “(iv) RULE OF CONSTRUCTION.—  
2                   Nothing in this section may be construed  
3                   to impede an abortion provider or the  
4                   abortion provider’s agent from offering  
5                   their own evaluation on the capacity of the  
6                   unborn child to experience pain, the advis-  
7                   ability of administering pain-reducing  
8                   drugs to the unborn child, or any other  
9                   matter, as long as such provider or agent  
10                  provides the required information, obtains  
11                  the woman’s signature on the decision  
12                  form, and otherwise complies with the af-  
13                  firmative requirements of the law.

14                  “(B) UNBORN CHILD PAIN AWARENESS  
15                  BROCHURE.—An abortion provider to whom  
16                  paragraph (1) applies shall provide the preg-  
17                  nant woman with the Unborn Child Pain  
18                  Awareness Brochure (referred to in this section  
19                  as the ‘Brochure’) to be developed by the De-  
20                  partment of Health and Human Services under  
21                  subsection (c) or with the information described  
22                  in subsection (c)(2) relating to accessing such  
23                  Brochure.

24                  “(C) UNBORN CHILD PAIN AWARENESS  
25                  DECISION FORM.—An abortion provider to

1           which paragraph (1) applies shall provide the  
2           pregnant woman with the Unborn Child Pain  
3           Awareness Decision Form (provided for under  
4           subsection (c)) and obtain the appropriate sig-  
5           nature of the woman on such form.

6           “(c) UNBORN CHILD PAIN AWARENESS BRO-  
7 CHURE.—

8           “(1) DEVELOPMENT.—Not later than 90 days  
9           after the date of enactment of this title, the Sec-  
10          retary shall develop an Unborn Child Pain Aware-  
11          ness Brochure. Such Brochure shall be written in  
12          English and Spanish and shall contain the same in-  
13          formation as required under the statement under  
14          subsection (b)(2)(A)(i), including greater detail on  
15          her option of having a pain-reducing drug or drugs  
16          administered to the unborn child to reduce the expe-  
17          rience of pain by the unborn child during the abor-  
18          tion. Such information shall be written in an objec-  
19          tive and nonjudgmental manner and be printed in a  
20          typeface large enough to be clearly legible. The Bro-  
21          chure shall be made available by the Secretary at no  
22          cost to any abortion provider.

23          “(2) INTERNET INFORMATION.—The Brochure  
24          under this section shall be available on the Internet  
25          website of the Department of Health and Human

1 Services at a minimum resolution of 70 DPI (dots  
2 per inch). All pictures appearing on the website shall  
3 be a minimum of 200x300 pixels. All letters on the  
4 website shall be a minimum of 12 point font. All  
5 such information and pictures shall be accessible  
6 with an industry standard browser, requiring no ad-  
7 ditional plug-ins.

8 “(3) PRESENTATION OF BROCHURE.—An abor-  
9 tion provider or his or her agent must offer to pro-  
10 vide a pregnant woman with the Brochure, developed  
11 under paragraph (1), before any part of an abortion  
12 of a pain-capable child begins—

13 “(A) through an in-person visit by the  
14 pregnant woman;

15 “(B) through an e-mail attachment, from  
16 the abortion provider or his or her agent; or

17 “(C) through a request to have such Bro-  
18 chure mailed, by certified mail, to the woman at  
19 least 72 hours before any part of the abortion  
20 begins.

21 “(4) WAIVER.—After the abortion provider or  
22 his or her agent offers to provide a pregnant woman  
23 the Brochure, a pregnant woman may waive receipt  
24 of the Brochure under this subsection by signing the

1 waiver form contained in the Unborn Child Pain  
2 Awareness Decision Form.

3 “(5) UNBORN CHILD PAIN AWARENESS DECI-  
4 SION FORM.—Not later than 30 days after the date  
5 of enactment of this title, the Secretary shall develop  
6 an Unborn Child Pain Awareness Decision Form.  
7 To be valid, such Form shall—

8 “(A) with respect to the pregnant  
9 woman—

10 “(i) contain a statement that affirms  
11 that the woman has received or been of-  
12 fered all of the information required in  
13 subsection (b);

14 “(ii) require the woman to explicitly  
15 either request or refuse the administration  
16 of pain-reducing drugs to the unborn child;

17 “(iii) be signed by a pregnant woman  
18 prior to the performance of an abortion in-  
19 volving a pain-capable unborn child; and

20 “(B) with respect to the abortion pro-  
21 vider—

22 “(i) contain a statement that the pro-  
23 vider has provided the woman with all of  
24 the information required under subsection  
25 (b);



1           “(ii) if applicable, contain a certifi-  
2           cation by the provider that an exception  
3           described in section 2903 applies and the  
4           detailed reasons for such certification; and

5           “(iii) be signed by the provider prior  
6           to the performance of the abortion proce-  
7           dure.

8           “(6) MAINTENANCE OF RECORDS.—The Sec-  
9           retary shall promulgate regulations relating to the  
10          period of time during which copies of Forms under  
11          paragraph (5) shall be maintained by abortion pro-  
12          viders.

13   **“SEC. 2903. EXCEPTION FOR MEDICAL EMERGENCIES.**

14          “(a) IN GENERAL.—The provisions of section 2902  
15          shall not apply to an abortion provider in the case of a  
16          medical emergency.

17          “(b) MEDICAL EMERGENCY DEFINED.—

18                 “(1) IN GENERAL.—In subsection (a), the term  
19          ‘medical emergency’ means a condition which, in the  
20          reasonable medical judgment of the abortion pro-  
21          vider, so complicates the medical condition of the  
22          pregnant woman that a delay in commencing an  
23          abortion procedure would impose a serious risk of  
24          causing grave and irreversible physical health dam-

1 age entailing substantial impairment of a major bod-  
2 ily function.

3 “(2) REASONABLE MEDICAL JUDGMENT.—In  
4 paragraph (1), the term ‘reasonable medical judg-  
5 ment’ means a medical judgment that would be  
6 made by a reasonably prudent physician, knowledge-  
7 able about the case and the treatment possibilities  
8 with respect to the medical conditions involved.

9 “(c) CERTIFICATION.—

10 “(1) IN GENERAL.—Upon a determination by  
11 an abortion provider under subsection (a) that a  
12 medical emergency exists with respect to a pregnant  
13 woman, such provider shall certify the specific med-  
14 ical conditions that constitute the emergency.

15 “(2) FALSE STATEMENTS.—An abortion pro-  
16 vider who willfully falsifies a certification under  
17 paragraph (1) shall be subject to all the penalties  
18 provided for under section 2904 for failure to com-  
19 ply with this title.

20 **“SEC. 2904. PENALTIES FOR FAILURE TO COMPLY.**

21 “(a) IN GENERAL.—An abortion provider who will-  
22 fully fails to comply with the provisions of this title shall  
23 be subject to civil penalties in accordance with this section  
24 in an appropriate Federal court.

1       “(b) COMMENCEMENT OF ACTION.—The Attorney  
2 General, the Deputy Attorney General, the Associate At-  
3 torney General, or any Assistant Attorney General or  
4 United States Attorney who has been specifically des-  
5 ignated by the Attorney General may commence a civil ac-  
6 tion under this section.

7       “(c) CERTIFICATION REQUIREMENTS.—At the time  
8 of the commencement of an action under this section, the  
9 Attorney General, the Deputy Attorney General, the Asso-  
10 ciate Attorney General, or any Assistant Attorney General  
11 or United States Attorney who has been specifically des-  
12 ignated by the Attorney General to commence a civil ac-  
13 tion under this section, shall certify to the court involved  
14 that, at least 30 calendar days prior to the filing of such  
15 action, the Attorney General, the Deputy Attorney Gen-  
16 eral, the Associate Attorney General, or any Assistant At-  
17 torney General or United States Attorney involved—

18               “(1) has provided notice of the alleged violation  
19 of this section, in writing, to the Governor or Chief  
20 Executive Officer and Attorney General or Chief  
21 Legal Officer of the State or political subdivision in-  
22 volved, as well as to the State medical licensing  
23 board or other appropriate State agency; and

1           “(2) believes that such an action by the United  
2 States is in the public interest and necessary to se-  
3 cure substantial justice.

4           “(d) FIRST OFFENSE.—Upon a finding by a court  
5 that a respondent in an action commenced under this sec-  
6 tion has knowingly violated a provision of this title, the  
7 court shall notify the appropriate State medical licensing  
8 authority in order to effect the suspension of the respond-  
9 ent’s medical license in accordance with the regulations  
10 and procedures promulgated under section 2905, or shall  
11 assess a civil penalty against the respondent in an amount  
12 not to exceed \$100,000, or both.

13           “(e) SECOND OFFENSE.—Upon a finding by a court  
14 that the respondent in an action commenced under this  
15 section has knowingly violated a provision of this title and  
16 the respondent has been found to have knowingly violated  
17 a provision of this title on a prior occasion, the court shall  
18 notify the appropriate State medical licensing authority in  
19 order to effect the revocation of the respondent’s medical  
20 license in accordance with the regulations and procedures  
21 promulgated under section 2905, or shall assess a civil  
22 penalty against the respondent in an amount not to exceed  
23 \$250,000, or both.

24           “(f) HEARING.—With respect to an action under this  
25 section, the appropriate State medical licensing authority

1 shall be given notification of and an opportunity to be  
2 heard at a hearing to determine the penalty to be imposed  
3 under this section.

4 “(g) PRIVATE RIGHT OF ACTION.—A pregnant  
5 woman upon whom an abortion has been performed in vio-  
6 lation of this title, or the parent or legal guardian of such  
7 a woman if she is an unemancipated minor, may com-  
8 mence a civil action against the abortion provider for any  
9 knowing or reckless violation of this title for actual and  
10 punitive damages.

11 **“SEC. 2905. REGULATIONS.**

12 “A State, and the medical licensing authority of the  
13 State, shall promulgate regulations and procedures for the  
14 revocation or suspension of the medical license of an abor-  
15 tion provider upon a finding by a court under section 2904  
16 that the provider has violated a provision of this title. A  
17 State that fails to implement such procedures shall be sub-  
18 ject to loss of funding under title XIX of the Social Secu-  
19 rity Act (42 U.S.C. 1396 et seq.).”.

20 **SEC. 4. PREEMPTION.**

21 Nothing in this Act or the amendments made by this  
22 Act shall be construed to preempt any provision of State  
23 law to the extent that such State law establishes, imple-  
24 ments, or continues in effect greater protections for un-

1 born children from pain than the protections provided  
2 under this Act and the amendments made by this Act.

○