



Legislative Bulletin.....January 21, 2015

Contents:

H.R. 36 – Pain-Capable Unborn Child Protection Act

H.R. 36 – Pain-Capable Unborn Child Protection Act — (Franks, R-AZ)

Order of Business: H.R.36 is scheduled for consideration on Thursday, January 22, 2015, under a [closed rule](#) which provides for one hour of debate.

Summary: This bill would prohibit abortions from being performed 20 or more weeks after fertilization. This prohibition does not apply: (1) if the abortion is necessary under reasonable medical judgment to save the life of the pregnant woman whose life is endangered by a non-psychological or non-emotional physical disorder, illness, or injury arising from the pregnancy itself; (2) if the pregnancy is the result of rape that has been reported prior to the abortion to an appropriate law enforcement agency; or (3) if the pregnancy is the result of incest against a minor that had been reported to the appropriate law enforcement agency.

The bill would establish criminal penalties for those who provide an abortion after 20 weeks. Violators would be subject to a fine and up to five years in prison. The pregnant woman receiving the abortion is not subject to prosecution.

Finally, the bill contains a number of findings which outline evidence that an unborn child can feel and react to pain at 20 weeks after fertilization.

Major Changes Since the Last Time This Legislation was Before the House: The 113th Congress passed [H.R. 1797](#), the Pain-Capable Unborn Child Protection Act, on June 18, 2013, by a vote of [228-196](#). The bill was referred to the Senate where no further action was taken. H.R. 36 mirrors the bill that was passed last Congress.

Read the RSC legislative bulletin on H.R. 1797, [here](#).

Additional Background: In the 42 years since the Supreme Court handed down the *Roe v. Wade* decision, states have instituted a variety of laws and regulations governing abortions. [Currently](#), forty-two states ban an abortion at some point during the pregnancy, while only 11 states prohibit an abortion after 20 weeks. In a [nationwide poll](#) in March 2013, 64% of Americans supported a law prohibiting abortions after 20 weeks.

In addition to differing gestational limits, states also differ on physician and hospital requirements, the use of public funding, and mandated waiting periods. In 2014 alone, 26 new abortion restrictions were enacted by states. A [study](#) released in early 2014 shows the abortion rate in the United States was at the lowest point since 1973.

Committee Action: This bill was introduced by Representative Franks on January 6, 2015, and referred to the House Committee on the Judiciary where it awaits further action.

Outside Groups Scoring in Favor:

- [Family Research Council](#)
- [Heritage Action](#)
- [Concerned Women for America](#)
- [Americans United for Life Action](#)

Outside Groups Supporting:

- [National Right to Life Committee](#)
- [Susan B. Anthony List](#)
- [U.S. Conference of Catholic Bishops](#)
- [Southern Baptist Ethics & Religious Liberty Commission](#)
- [Focus on the Family](#)
- [American Center for Law and Justice](#)

Possible Conservative Concerns: H.R. 36 would require the incident to be reported to law enforcement prior to a pregnant woman qualifying for an exception to the 20-week ban. Some conservatives have expressed concern that the sexual assault reporting requirement is overly restrictive.

Administration Position: The [administration](#) strongly opposes H.R. 36, and if the President were presented with this legislation, his senior advisors would recommend that he veto this bill.

Cost to Taxpayers: [CBO](#) estimates that enacting H.R. 36 would generate changes in direct spending that would increase federal budget deficits by \$75 million over the 2015-2020 period and \$235 million over the 2015-2025 period.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, this bill would preempt both state and local laws that regulate abortions.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: H.R. 36 would impose both intergovernmental and private-sector mandates on physicians who perform abortions and would preempt state and local laws that regulate abortions. However, CBO estimates that the direct costs of the mandates would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates.

Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10th Amendment?: This bill would preempt state and local laws that regulate abortions.

Does the Bill Delegate Any Legislative Authority to the Executive Branch?: No.

Constitutional Authority: [According](#) to the sponsor, “Congress has authority to extend protection to pain-capable unborn children under the Supreme Court's Commerce Clause precedents and under the Constitution's grants of powers to Congress under the Equal Protection, Due Process, and Enforcement Clauses of the Fourteenth Amendment.”

RSC Staff Contact: Rebekah Armstrong, Rebekah.Armstrong@mail.house.gov, 202-226-0678

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