



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

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FLOOR SCHEDULE: MAY 13, 2015 UNDER A CLOSED [RULE](#) WHICH PROVIDES THE [AMENDMENT IN THE NATURE OF A SUBSTITUTE](#) TO BE CONSIDERED AS ADOPTED. THE RULE ALSO PROVIDES THE SPEAKER THE AUTHORITY TO BRING BILLS UP UNDER A SUSPENSION OF THE RULES ON THURSDAY AND FRIDAY.

TOPLINE SUMMARY: This [bill](#) would prohibit abortions from being performed 20 or more weeks after fertilization. This bill would provide protections for infants born alive and would provide women with a civil right of action if a healthcare provider fails to comply with the law.

CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS: The Legislative Bulletin for H.R. 36, as introduced, can be found [here](#). The amendment in the nature of a substitute eliminates the reporting requirement for women who were raped to inform law enforcement prior to obtaining an abortion, and replaces it with a requirement that the provider must ensure that a woman has received medical treatment or counseling at least 48 hours prior to the abortion. In addition, the bill would provide increased protections for babies born alive.

This bill would prohibit an abortion from being performed or attempted 20 or more weeks after fertilization. This prohibition would 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 a rape against an adult woman, and at least 48 hours prior to the abortion the woman obtained counseling for the rape or obtained medical treatment for the rape; or (3) if the pregnancy is the result of rape or incest against a minor that had been reported to the appropriate law enforcement agency or government agency legally authorized to act on reports of child abuse.

If an abortion is attempted and the child is born alive, the bill would require: (1) any healthcare practitioner present at the time must provide the same degree of care as would be given to any other premature infant; (2) the child must be transported immediately to the hospital; and (3) anyone aware of a violation of this provision must report the violation.

COST: A Congressional Budget Office (CBO) score for the Amendment in the Nature of a Substitute to H.R. 36 is not available.

However, a CBO score of H.R. 36 as introduced is available, [here](#).

Prior to performing or attempting an abortion, a physical would be required to obtain a signed informed consent authorization form. This form would include: (1) the age of the unborn child; (2) a statement that federal law does not allow abortions after 20 weeks; (3) a statement that the abortion must be performed by the method most likely to allow the child to be born alive; (4) a statement that if the child is born alive, the child will be given medical assistance and transported to a hospital; (5) a statement that the physician and medical personnel are subject to criminal and civil penalties and the woman may sue if the law is not followed; and (6) affirmation that each signer has filled out the form to the best of their knowledge and understands the information in the form.

This bill would establish criminal penalties for violations to this act, punishable by up to five years in prison or a fine. A woman who had an abortion in violation of this act may not be prosecuted. In addition, a woman or parent of a minor who had an abortion attempted or performed in violation of any provision of the act may take civil action against anyone who committed the violation.

Finally, the National Center for Health Statistics would be required to issue an annual statistical report providing statistical information about abortions carried out after 20 weeks post-fertilization age.

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 percent 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.

OUTSIDE GROUPS SUPPORT:

- [U.S. Conference of Catholic Bishops](#)
- [Susan B. Anthony List](#)
- [US Conference of Catholic Bishops](#)
- [Priests for Life](#)
- [March for Life](#)
- [Christian Medical Association](#)
- [Life Issues Institute](#)
- [American Center for Law and Justice](#)
- [Bound4Life](#)
- [Knights of Columbus](#)
- [Statement of support from coalition of pro-life leaders](#)

OUTSIDE GROUPS SCORING THE VOTE:

- [Family Research Council](#)
- [Americans United for Life Action](#)
- [National Right to Life Committee](#)
- [Concerned Women for America](#)
- [Heritage Action](#)
- [Eagle Forum](#)

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.

ADMINISTRATION POSITION: The administration [strongly opposes](#) H.R. 36, which would unacceptably restrict women's health and reproductive rights and is an assault on a woman's right to choose. If the president were presented with this legislation, his senior advisors would recommend that he veto this bill.

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."

NOTE: *RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.*

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