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[H.R. 36, Pain-Capable Unborn Child Protection Act](#)

FLOOR SITUATION

On Wednesday, May 13, 2015, the House will consider H.R. 36, *the Pain-Capable Unborn Child Protection Act*, under a [closed rule](#). H.R. 36 was introduced on January 6, 2015, by Rep. Trent Franks (R-AZ) and was referred to the Committee on the Judiciary.

SUMMARY

H.R. 36, [as amended by the rule](#), if adopted, generally prohibits the abortion¹ of unborn children at 20 weeks after fertilization or later. This is the stage at which a substantial body of medical evidence indicates that they are capable of feeling pain. The bill provides exceptions for pregnancies resulting from rape, incest, or to save a pregnant woman whose life is endangered by a physical disorder, illness, injury, or life-endangering physical condition caused by or arising from the pregnancy itself, excluding psychological or emotional conditions.

The bill requires women impregnated as a result of rape to have obtained counseling or medical treatment for the rape at least 48 hours prior to the abortion. Prior to an abortion being performed on a minor who is pregnant as a result of rape or incest, the rape or incest must be reported to a government agency legally authorized to act on reports of child abuse or to a law enforcement agency. Under this bill, the provider is responsible for securing documentation that these reporting requirements have been satisfied.

For abortions occurring under these exceptions, the bill requires the procedure be carried out in a manner that gives the child the best opportunity to survive. The bill also requires a second physician trained in neonatal resuscitation to be present and prepared to provide care consistent with that given to any other premature infant, including transportation to a hospital.

A person who performs or attempts to perform an abortion prohibited under the bill is subject to a fine and/or imprisonment for not more than five years. A woman who receives an abortion that is

¹ For purposes of this legislation, an abortion means the use or prescription of any instrument, medicine, drug, or any other substance or device: 1) to intentionally kill the unborn child of a woman known to be pregnant; or 2) to intentionally terminate the pregnancy of a woman known to be pregnant with an intention other than after viability to produce a live birth and preserve the life and health of the child born alive, or to remove a dead unborn child.

performed in a manner that violates the provisions of this bill is entitled to a civil right of action against the provider performing the abortion.

There is no requirement in this bill to report to law enforcement. However, if a woman chooses to report a rape to law enforcement, or Department of Defense victim assistance-personnel prior to obtaining the abortion, she is not considered to be in violation of this act.

BACKGROUND

Medical advances in recent decades have provided a greater understanding of the development of unborn children and their capacity to feel pain at various stages of growth. The legislative findings in H.R. 36 demonstrate that unborn children react to touch by eight weeks after fertilization² and respond to painful stimuli after 20 weeks.³ Surgeons routinely administer anesthesia to unborn children before performing surgery⁴ and have found it necessary to sedate unborn children with anesthesia to prevent rigorous movement in reaction to the surgery.⁵ There is substantial medical evidence that an unborn child is capable of experiencing pain 20 weeks after fertilization, if not earlier.⁶

As of 2014, 11 States have enacted versions of the Pain-Capable Unborn Child Protection Act.⁷ In addition, a November 2014 Quinnipiac University poll found that 60 percent of those surveyed supported restricting abortions after the first 20 weeks of pregnancy, while only 33 percent opposed such limitations.⁸

COST

The Congressional Budget Office (CBO) [estimates](#) that enacting H.R. 36, as introduced, would increase Federal Medicaid spending by \$235 million over the 2015 to 2025 period. Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues; however, H.R. 36 would have a negligible effect on revenues.

STAFF CONTACT

For questions or further information please contact [Jerry White](#) with the House Republican Policy Committee by email or at 5-0190.

² Section 2, paragraph (2).

³ Id.

⁴ Id. at paragraph (5).

⁵ Id. at paragraph (10).

⁶ Id. at paragraph (11).

⁷ <http://www.nrlc.org/uploads/stateleg/PCUCPAfactsheet.pdf>

⁸ http://www.quinnipiac.edu/images/polling/us/us11252014_uh2ddgk.pdf