



Legislative Bulletin.....September 26, 2006

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Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: \$0

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 1

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

S. 403 — Child Custody Protection Act — *as received* (Sen. Ensign, R-NV)

Order of Business: The bill is scheduled for consideration on Tuesday, September 26, 2006, subject to a closed rule ([H.Res. 1039](#)). Note that the rule provides that the House will take up the Senate-passed S.403, strike the language and replace it with the [amendment in the nature of a substitute](#) (primarily the House-passed language, plus a key Senate provision).

This bill is a modified version of the House-passed Child Interstate Abortion Notification Act (CIANA). In past Congresses, it was introduced in the House (by Rep. Ros-Lehtinen) as the Child Custody Protection Act, which passed the House (H.R. 3682) on July 15, 1998, [276-150](#), on June 30, 1999, (H.R. 1218) by a vote of [270-159](#), and in the 107th Congress (H.R. 476) on April 17, 2002, by a vote of [260-161](#).

In both the 106th and 107th Congresses, Rep. Sheila Jackson-Lee offered a motion to recommit the bill with instructions. Her motion would have allowed an adult sibling, a grandparent, or a

minister, rabbi, pastor, priest, or other religious leader of the minor to transport a pregnant minor for an abortion without parental consent or notification. The motion to recommit was rejected in 1999, by 164-268 (roll call #260) and in 2002, by a vote of [173-246](#).

Summary: S. 403, as amended, makes it a criminal offense to knowingly transport a minor across a state line to obtain an abortion in circumvention of her state's parental consent or parental notification law. S. 403 states:

“whoever knowingly transports a minor across a State line, with the intent that such minor obtain an abortion, and thereby in fact abridges the right of a parent under a law requiring parental involvement in a minor's abortion decision, in force in the State where the minor resides, shall be fined under this title [up to \$100,000] or imprisoned not more than one year, or both.”

Additional provisions of the bill are as follows:

- The bill allows exceptions if the abortion was necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself. The bill also notes that the pregnant minor herself and her parent(s) are exempted from the provisions of this act.
- The bill allows a defendant (charged in violating this Act) to present an “affirmative defense” when being prosecuted for the offence if: 1) he reasonably believed that the required parental consent took place already took place (based on information obtained directly for the minor or her parent), or 2) was presented documentation showing (to a “reasonable degree of certainty”) that a court in the minor's state residence waived the parental notification requirement.
- The bill also makes it a requirement in federal law for an abortionist who performs or induces an abortion on a minor who lives out of state to provide at least 24 hours actual notice to a parent of the minor before performing the abortion. If actual notice to such parent is not possible after a reasonable effort has been made, 24 hours constructive notice (such as certified mail or return receipt mail) must be given to a parent. Five exceptions to this requirement are allowed if:
 - 1) the state where the abortion takes place already has a law in force that requires parental involvement and that law is followed;
 - 2) the abortionist has documentation that the minor's home state court has waived the home state parental involvement law;
 - 3) the minor declares in a signed written statement that she is the victim of sexual abuse, neglect, or physical abuse by a parent, and, before an abortion is performed on the minor, the physician notifies the authorities specified to receive reports of child abuse or neglect by the law of the state in which the minor resides of the known or suspected abuse or neglect;
 - 4) the abortion is necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, or the delay in performing the abortion (caused by fulfilling the parental notification requirements) would cause major harm to the minor, in the judgment of the minor's attending physician. If the abortion was performed, the abortionist must notify the

- parent in writing within 24 hours of the abortion and regarding the circumstances that warranted the exception; and
- 5) the minor is physically accompanied by a person who presents documentation to the abortionist showing “with a reasonable degree of certainty” that he or she is the parent of the minor.
- The bill prohibits a parent who has committed incest with a minor to transport the minor across a state line to obtain an abortion, and provides for violations to be punishable by fine or up to one year in prison, or both.
 - The bill establishes that a parent who suffers harm from violation of these provisions may obtain appropriate relief in a civil action.
 - Applies a severability clause to all provisions of this Act, so that if one provision of the Act is found unconstitutional, the other provisions are still valid.
 - Stipulates that the provisions of this Act will take effect 45 days after the bill is signed into law.

Additional Background: Currently, 46 states have enacted some form of a parental involvement statute, though only 29 are in effect.

The 29 states with parental consent or notification laws in force: Alabama, Arizona, Arkansas, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming. For a complete state-by-state list of parental consent/notification laws go to: <http://www.nrlc.org/Federal/CCPA/ParentalLawsFS.pdf>.

Amendments: None, other than the amendment in the nature of a substitute, which is summarized above.

Committee Action: S. 403 was introduced in the Senate on February 16, 2005, and passed the Senate by a vote of [65-34](#) on July 25, 2006. The House version, H.R. 748, was introduced on February 10, 2005, and referred to the Judiciary Committee’s Subcommittee on the Constitution, which held a mark-up on March 17, 2005. The full Committee reported the bill to the House by a vote of 20-13 on April 13, 2005 (House Report [109-51](#)).

Administration Policy: A Statement of Administration Policy was unavailable at the time of publication.

Cost to Taxpayers: CBO estimates that implementing S. 403 would not result in any significant cost to the federal government. Enacting S. 403 could affect direct spending and revenues; however, CBO estimates that any such impact would not be significant.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill creates a new federal crime for transporting a minor across state lines to subvert her state’s parental involvement laws relating to abortion.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes, CBO reports that this bill contains both an intergovernmental and a private sector mandate as defined in the Unfunded Mandates Reform Act by requiring abortionists, in certain cases, to provide parental notification before performing an abortion on a pregnant minor from out of state.

Constitutional Authority: The Judiciary Committee, in Report 109-51, finds Constitutional Authority under Article I, Section 8, Clause 3 of the Constitution (power to regulate interstate Commerce).

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H.R. 2679 — Public Expression of Religion Act — *as reported* (Hostettler, R-IN)

Order of Business: The bill is scheduled for consideration on Tuesday, September 26, 2006, subject to a closed rule ([H.Res. 1038](#)), not allowing any amendments.

Summary: H.R. 2679 would place limitations on certain lawsuits against state, local, and federal officials and entities, specifically regarding the current practice (in Establishment Clause cases) of requiring the defendant to pay the attorney's fees of the plaintiff (amending 42 U.S.C 1983). The specific provisions of the bill are as follows:

- Prohibits attorneys' fees from being awarded to the prevailing party in Establishment Clause cases (1st Amendment, prohibiting an establishment of religion or abridging the free exercise thereof) against states, local officials, federal officials, or the U.S government.
- Narrows the scope of the bill to apply only to rulings of injunctive or declaratory relief in cases involving a violation of the Establishment Clause, and states those violations may include cases such as:
 - 1) a veterans' memorial containing religious words or imagery;
 - 2) a public building containing religious words or imagery;
 - 3) the presence of religious words or imagery in the official seals of a states or its local political subdivisions; and
 - 4) the chartering of Boy Scout units by states or local political subdivisions.
- Provides that the provisions of this Act will take effect on the date of enactment (when the bill is signed into law), and apply to all cases currently pending or commenced on or after the date of enactment.

Additional Background: In regard to the widespread abuse and misapplication of the 1st Amendment and current law, the Judiciary Committee states: "Under current law, attorneys' fees can be demanded by the winning side in lawsuits against States or localities and the Federal government--brought under the Constitution's Establishment Clause--demanding that veterans' memorials be torn down because they happen to have religious symbols on them; that the Ten Commandments be removed from public buildings; that the Boy Scouts be forced off public property; and that crosses be eliminated from official county seals, among other things. Caselaw

under the Establishment Clause is so unpredictable that States and localities know defending themselves in such lawsuits is fraught with uncertainty.

“The threat of having to pay attorneys’ fees in such cases should they happen to lose sometimes leads States and localities to forego whatever rights they might have under the Constitution--and concede to the demands of those bringing Establishment Clause lawsuits--often before such cases even go to trial.” According to the Committee, this bill seeks to remedy these abuses.

Committee Action: H.R. 2679 was introduced on May 26, 2005, and referred to the Judiciary Committee’s Subcommittee on the Constitution. The Committee held hearings, a mark-up, and reported the bill reported to the House by voice vote on September 7, 2006 (House Report [109-657](#)).

Administration Policy: A Statement of Administration Policy was unavailable at the time of publication.

Cost to Taxpayers: CBO expects that “enacting H.R. 2679 would have no significant effect on the federal budget,” since few suits are brought against the federal government for the violations discussed above.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: The Judiciary Committee, in House Report [109-657](#), cites constitutional authority in Article I, Section 8, Clause 3 (power of Congress to regulate commerce), and Article III, Section 2, Clause 2 (power of Congress to delegate federal court jurisdiction).

House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

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