

118TH CONGRESS
2D SESSION

S. 3612

To prohibit the limitation of access to assisted reproductive technology, and all medical care surrounding such technology.

IN THE SENATE OF THE UNITED STATES

JANUARY 18, 2024

Ms. DUCKWORTH (for herself, Ms. BALDWIN, Mrs. MURRAY, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To prohibit the limitation of access to assisted reproductive technology, and all medical care surrounding such technology.

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 “Access to Family
5 Building Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **ASSISTED REPRODUCTIVE TECHNOLOGY.**—

9 The term “assisted reproductive technology” has the
10 meaning given such term in section 8 of the Fertility

1 Clinic Success Rate and Certification Act of 1992
2 (42 U.S.C. 263a–7(1)).

3 (2) HEALTH CARE PROVIDER.—The term
4 “health care provider” means any entity or indi-
5 vidual (including any physician, nurse practitioner,
6 physician assistant, pharmacist, health care support
7 personnel, and any other individual, as determined
8 by the Secretary of Health and Human Services)
9 that—

10 (A) is engaged or seeks to engage in the
11 delivery of assisted reproductive technology, in-
12 cluding through the provision of evidence-based
13 information, counseling, referrals, or items and
14 services that relate to, aid in, or provide fertility
15 treatment; and

16 (B) if required by State law to be licensed,
17 certified, or otherwise authorized to engage in
18 the delivery of such services—

19 (i) is so licensed, certified, or other-
20 wise authorized; or

21 (ii) would be so licensed, certified, or
22 otherwise authorized but for the individ-
23 ual’s or entity’s past, present, or potential
24 provision of assisted reproductive tech-
25 nology in accordance with section 4.

1 (3) PATIENT.—The term “patient” means any
2 individual who receives or seeks to receive assisted
3 reproductive technology services and evidence-based
4 information, counseling, referrals, or items and serv-
5 ices that relate to, aid in, or provide fertility treat-
6 ment.

7 (4) STATE.—The term “State” includes each of
8 the 50 States, the District of Columbia, Puerto Rico,
9 each territory and possession of the United States,
10 and any political subdivision thereof.

11 **SEC. 3. FINDINGS AND PURPOSE.**

12 (a) FINDINGS.—Congress finds the following:

13 (1) Congress has the authority to enact this Act
14 to protect access to fertility treatments pursuant
15 to—

16 (A) its powers under the Commerce Clause
17 of section 8 of article I of the Constitution of
18 the United States;

19 (B) its powers under section 5 of the Four-
20 teenth Amendment to the Constitution of the
21 United States to enforce the provisions of sec-
22 tion 1 of the Fourteenth Amendment; and

23 (C) its powers under the necessary and
24 proper clause of section 8 of article I of the
25 Constitution of the United States.

1 (2) Congress has used its authority in the past
2 to protect and expand access to fertility treatment,
3 information, products, and services.

4 (b) PURPOSE.—It is the purpose of this Act to permit
5 health care providers to provide, and for patients to re-
6 ceive, assisted reproductive technology services without
7 limitations or requirements that—

8 (1) are more burdensome than limitations or re-
9 quirements imposed on medically comparable proce-
10 dures;

11 (2) do not significantly advance reproductive
12 health or the safety of such services; or

13 (3) unduly restrict access to such services.

14 **SEC. 4. ACCESS TO ASSISTED REPRODUCTIVE TECH-**
15 **NOLOGY.**

16 (a) GENERAL RULE.—

17 (1) INDIVIDUAL RIGHTS.—An individual has a
18 statutory right under this Act, including without
19 prohibition or unreasonable limitation or interference
20 (such as due to financial cost or detriment to the in-
21 dividual’s health, including mental health), to—

22 (A) access assisted reproductive tech-
23 nology;

24 (B) continue or complete an ongoing as-
25 sisted reproductive technology treatment or pro-

1 cedure pursuant to a written plan or agreement
2 with a health care provider; and

3 (C) retain all rights regarding the use or
4 disposition of reproductive genetic materials, in-
5 cluding gametes, subject to subsection (c).

6 (2) HEALTH CARE PROVIDER RIGHTS.—A
7 health care provider has a statutory right under this
8 Act to—

9 (A) perform or assist with the performance
10 of assisted reproductive technology treatments
11 or procedures; and

12 (B) provide or assist with the provision of
13 evidence-based information related to assisted
14 reproductive technology.

15 (3) INSURANCE PROVIDER RIGHTS.—A health
16 insurance provider has a statutory right under this
17 Act to cover assisted reproductive technology treat-
18 ments or procedures.

19 (b) ENFORCEMENT.—

20 (1) THE ATTORNEY GENERAL.—The Attorney
21 General may commence a civil action on behalf of
22 the United States against any State, local munici-
23 pality, or against any government official, individual,
24 or entity that enacts, implements, or enforces a limi-
25 tation or requirement that prohibits, unreasonably

1 limits, or interferes with subsection (a). The court
2 shall hold unlawful and set aside the limitation or
3 requirement if it is in violation of subsection (a).

4 (2) PRIVATE RIGHT OF ACTION.—Any indi-
5 vidual or entity adversely affected by an alleged vio-
6 lation of subsection (a) may commence a civil action
7 against any State or local government official that
8 enacts, implements, or enforces a limitation or re-
9 quirement that violates subsection (a). The court
10 shall hold unlawful and enjoin the limitation or re-
11 quirement if it is in violation of subsection (a).

12 (3) HEALTH CARE PROVIDER.—A health care
13 provider may commence an action for relief on its
14 own behalf, on behalf of the provider's staff, or on
15 behalf of the provider's patients who are or may be
16 adversely affected by an alleged violation of sub-
17 section (a).

18 (4) EQUITABLE RELIEF.—In any action under
19 this section, the court may award appropriate equi-
20 table relief, including temporary, preliminary, or per-
21 manent injunctive relief.

22 (5) COSTS.—In any action under this section,
23 the court shall award costs of litigation, as well as
24 reasonable attorney's fees, to any prevailing plain-
25 tiff. A plaintiff shall not be liable to a defendant for

1 costs or attorney's fees in any non-frivolous action
2 under this section.

3 (6) JURISDICTION.—The district courts of the
4 United States shall have jurisdiction over pro-
5 ceedings under this section and shall exercise the
6 same without regard to whether the party aggrieved
7 shall have exhausted any administrative or other
8 remedies that may be provided for by law.

9 (7) RIGHT TO REMOVE.—Any party shall have
10 a right to remove an action brought under this sub-
11 section to the district court of the United States for
12 the district and division embracing the place where
13 such action is pending. An order remanding the case
14 to the State court from which it was removed under
15 this paragraph is immediately reviewable by appeal
16 or otherwise.

17 (c) STATE REGULATION OF MEDICINE.—Nothing in
18 this Act shall be construed to prohibit enforcement of
19 health and safety regulations a State or local municipality
20 requires of medical facilities or providers, if such regula-
21 tions—

22 (1) advance the safety of health care services or
23 the health of patients; and

24 (2) that safety objective cannot be advanced by
25 a less restrictive alternative measure or action.

1 (d) INSURANCE.—Nothing in this Act shall be con-
2 strued to modify, supersede, or otherwise affect any State
3 law regarding insurance coverage of assisted reproductive
4 technologies and treatments.

5 (e) REGULATIONS.—Not later than 1 year after the
6 date of enactment of this Act, the Secretary of Health and
7 Human Services shall promulgate regulations to carry out
8 this section.

9 **SEC. 5. APPLICABILITY AND PREEMPTION.**

10 (a) IN GENERAL.—

11 (1) GENERAL APPLICATION.—This Act super-
12 sedes and applies to the law of the Federal Govern-
13 ment and each State government, and the implemen-
14 tation of such law, whether statutory, common law,
15 or otherwise, and whether adopted before or after
16 the date of enactment of this Act, and neither the
17 Federal Government nor any State government shall
18 administer, implement, or enforce any law, rule, reg-
19 ulation, standard, or other provision having the force
20 and effect of law that conflicts with any provision of
21 this Act, notwithstanding any other provision of
22 Federal law, including the Religious Freedom Res-
23 toration Act of 1993 (42 U.S.C. 2000bb et seq.).

24 (2) SUBSEQUENTLY ENACTED FEDERAL LEGIS-
25 LATION.—Federal statutory law adopted after the

1 date of the enactment of this Act is subject to this
2 Act unless such law explicitly excludes such applica-
3 tion by reference to this Act.

4 (b) DEFENSE.—In any cause of action against an in-
5 dividual or entity who is subject to a limitation or require-
6 ment that violates this Act, in addition to the remedies
7 specified in section 4(b), this Act shall also apply to, and
8 may be raised as a defense by, such an individual or entity.

9 **SEC. 6. SEVERABILITY.**

10 If any provision of this Act, or the application of such
11 provision to any person, entity, government, or cir-
12 cumstance is held to be unconstitutional, the remainder
13 of this Act, or the application of such provision to all other
14 persons, entities, governments, or circumstances shall not
15 be affected thereby.

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