

# Calendar No. 362

117<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 4132

To protect a person's ability to determine whether to continue or end a pregnancy, and to protect a health care provider's ability to provide abortion services.

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IN THE SENATE OF THE UNITED STATES

MAY 3, 2022

Mr. BLUMENTHAL introduced the following bill; which was read the first time

MAY 4, 2022

Read the second time and placed on the calendar

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## A BILL

To protect a person's ability to determine whether to continue or end a pregnancy, and to protect a health care provider's ability to provide abortion services.

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 "Women's Health Pro-  
5 tection Act of 2022".

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1           (1) ABORTION SERVICES.—The term “abortion  
2 services” means an abortion and any medical or  
3 non-medical services related to and provided in con-  
4 junction with an abortion (whether or not provided  
5 at the same time or on the same day as the abor-  
6 tion).

7           (2) GOVERNMENT.—The term “government”  
8 includes each branch, department, agency, instru-  
9 mentality, and official of the United States or a  
10 State.

11           (3) HEALTH CARE PROVIDER.—The term  
12 “health care provider” means any entity or indi-  
13 vidual (including any physician, certified nurse-mid-  
14 wife, nurse practitioner, and physician assistant)  
15 that—

16                   (A) is engaged or seeks to engage in the  
17 delivery of health care services, including abor-  
18 tion services, and

19                   (B) if required by law or regulation to be  
20 licensed or certified to engage in the delivery of  
21 such services—

22                           (i) is so licensed or certified, or

23                           (ii) would be so licensed or certified

24 but for their past, present, or potential

1           provision of abortion services permitted by  
2           section 3.

3           (4) MEDICALLY COMPARABLE PROCEDURE.—

4           The term “medically comparable procedures” means  
5           medical procedures that are similar in terms of  
6           health and safety risks to the patient, complexity, or  
7           the clinical setting that is indicated.

8           (5) PREGNANCY.—The term “pregnancy” refers  
9           to the period of the human reproductive process be-  
10          ginning with the implantation of a fertilized egg.

11          (6) STATE.—The term “State” includes the  
12          District of Columbia, the Commonwealth of Puerto  
13          Rico, and each territory and possession of the  
14          United States, and any subdivision of any of the  
15          foregoing, including any unit of local government,  
16          such as a county, city, town, village, or other general  
17          purpose political subdivision of a State.

18          (7) VIABILITY.—The term “viability” means  
19          the point in a pregnancy at which, in the good-faith  
20          medical judgment of the treating health care pro-  
21          vider, based on the particular facts of the case be-  
22          fore the health care provider, there is a reasonable  
23          likelihood of sustained fetal survival outside the  
24          uterus with or without artificial support.

1 **SEC. 3. PERMITTED SERVICES.**

2 (a) **GENERAL RULE.**—A health care provider has a  
3 statutory right under this Act to provide abortion services,  
4 and may provide abortion services, and that provider’s pa-  
5 tient has a corresponding right to receive such services,  
6 without any of the following limitations or requirements:

7 (1) A requirement that a health care provider  
8 perform specific tests or medical procedures in con-  
9 nection with the provision of abortion services, un-  
10 less generally required for the provision of medically  
11 comparable procedures.

12 (2) A requirement that the same health care  
13 provider who provides abortion services also perform  
14 specified tests, services, or procedures prior to or  
15 subsequent to the abortion.

16 (3) A requirement that a health care provider  
17 offer or provide the patient seeking abortion services  
18 medically inaccurate information in advance of or  
19 during abortion services.

20 (4) A limitation on a health care provider’s abil-  
21 ity to prescribe or dispense drugs based on current  
22 evidence-based regimens or the provider’s good-faith  
23 medical judgment, other than a limitation generally  
24 applicable to the medical profession.

25 (5) A limitation on a health care provider’s abil-  
26 ity to provide abortion services via telemedicine,

1 other than a limitation generally applicable to the  
2 provision of medical services via telemedicine.

3 (6) A requirement or limitation concerning the  
4 physical plant, equipment, staffing, or hospital  
5 transfer arrangements of facilities where abortion  
6 services are provided, or the credentials or hospital  
7 privileges or status of personnel at such facilities,  
8 that is not imposed on facilities or the personnel of  
9 facilities where medically comparable procedures are  
10 performed.

11 (7) A requirement that, prior to obtaining an  
12 abortion, a patient make one or more medically un-  
13 necessary in-person visits to the provider of abortion  
14 services or to any individual or entity that does not  
15 provide abortion services.

16 (8) A prohibition on abortion at any point or  
17 points in time prior to fetal viability, including a  
18 prohibition or restriction on a particular abortion  
19 procedure.

20 (9) A prohibition on abortion after fetal viabil-  
21 ity when, in the good-faith medical judgment of the  
22 treating health care provider, continuation of the  
23 pregnancy would pose a risk to the pregnant pa-  
24 tient's life or health.

1           (10) A limitation on a health care provider's  
2           ability to provide immediate abortion services when  
3           that health care provider believes, based on the  
4           good-faith medical judgment of the provider, that  
5           delay would pose a risk to the patient's health.

6           (11) A requirement that a patient seeking abor-  
7           tion services at any point or points in time prior to  
8           fetal viability disclose the patient's reason or reasons  
9           for seeking abortion services, or a limitation on the  
10          provision or obtaining of abortion services at any  
11          point or points in time prior to fetal viability based  
12          on any actual, perceived, or potential reason or rea-  
13          sons of the patient for obtaining abortion services,  
14          regardless of whether the limitation is based on a  
15          health care provider's degree of actual or construc-  
16          tive knowledge of such reason or reasons.

17          (b) OTHER LIMITATIONS OR REQUIREMENTS.—The  
18          statutory right specified in subsection (a) shall not be lim-  
19          ited or otherwise infringed through, in addition to the limi-  
20          tations and requirements specified in paragraphs (1)  
21          through (11) of subsection (a), any limitation or require-  
22          ment that—

23                 (1) is the same as or similar to one or more of  
24                 the limitations or requirements described in sub-  
25                 section (a); or

1 (2) both—

2 (A) expressly, effectively, implicitly, or as  
3 implemented singles out the provision of abor-  
4 tion services, health care providers who provide  
5 abortion services, or facilities in which abortion  
6 services are provided; and

7 (B) impedes access to abortion services.

8 (c) FACTORS FOR CONSIDERATION.—Factors a court  
9 may consider in determining whether a limitation or re-  
10 quirement impedes access to abortion services for purposes  
11 of subsection (b)(2)(B) include the following:

12 (1) Whether the limitation or requirement, in a  
13 provider’s good-faith medical judgment, interferes  
14 with a health care provider’s ability to provide care  
15 and render services, or poses a risk to the patient’s  
16 health or safety.

17 (2) Whether the limitation or requirement is  
18 reasonably likely to delay or deter some patients in  
19 accessing abortion services.

20 (3) Whether the limitation or requirement is  
21 reasonably likely to directly or indirectly increase the  
22 cost of providing abortion services or the cost for ob-  
23 taining abortion services (including costs associated  
24 with travel, childcare, or time off work).

1           (4) Whether the limitation or requirement is  
2 reasonably likely to have the effect of necessitating  
3 a trip to the offices of a health care provider that  
4 would not otherwise be required.

5           (5) Whether the limitation or requirement is  
6 reasonably likely to result in a decrease in the avail-  
7 ability of abortion services in a given State or geo-  
8 graphic region.

9           (6) Whether the limitation or requirement im-  
10 poses penalties that are not imposed on other health  
11 care providers for comparable conduct or failure to  
12 act, or that are more severe than penalties imposed  
13 on other health care providers for comparable con-  
14 duct or failure to act.

15           (7) The cumulative impact of the limitation or  
16 requirement combined with other new or existing  
17 limitations or requirements.

18       (d) EXCEPTION.—To defend against a claim that a  
19 limitation or requirement violates a health care provider’s  
20 or patient’s statutory rights under subsection (b), a party  
21 must establish, by clear and convincing evidence, that—

22           (1) the limitation or requirement significantly  
23 advances the safety of abortion services or the health  
24 of patients; and



1           (2) the safety of abortion services or the health  
2           of patients cannot be advanced by a less restrictive  
3           alternative measure or action.

4 **SEC. 4. APPLICABILITY AND PREEMPTION.**

5           (a) IN GENERAL.—

6           (1) Except as stated under subsection (b), this  
7           Act supersedes and applies to the law of the Federal  
8           Government and each State government, and the im-  
9           plementation of such law, whether statutory, com-  
10          mon law, or otherwise, and whether adopted before  
11          or after the date of enactment of this Act, and nei-  
12          ther the Federal Government nor any State govern-  
13          ment shall administer, implement, or enforce any  
14          law, rule, regulation, standard, or other provision  
15          having the force and effect of law that conflicts with  
16          any provision of this Act, notwithstanding any other  
17          provision of Federal law, including the Religious  
18          Freedom Restoration Act of 1993 (42 U.S.C.  
19          2000bb et seq.).

20          (2) Federal statutory law adopted after the  
21          date of the enactment of this Act is subject to this  
22          Act unless such law explicitly excludes such applica-  
23          tion by reference to this Act.

24          (b) LIMITATIONS.—The provisions of this Act shall  
25          not supersede or apply to—

1           (1) laws regulating physical access to clinic en-  
2           trances;

3           (2) insurance or medical assistance coverage of  
4           abortion services;

5           (3) the procedure described in section  
6           1531(b)(1) of title 18, United States Code; or

7           (4) generally applicable State contract law.

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

13       **SEC. 5. EFFECTIVE DATE.**

14          This Act shall take effect immediately upon the date  
15          of enactment of this Act. This Act shall apply to all re-  
16          strictions on the provision of, or access to, abortion serv-  
17          ices whether the restrictions are enacted or imposed prior  
18          to or after the date of enactment of this Act, except as  
19          otherwise provided in this Act.

20       **SEC. 6. RULES OF CONSTRUCTION.**

21          (a) IN GENERAL.—In interpreting the provisions of  
22          this Act, a court shall liberally construe such provisions  
23          to effectuate the purposes of the Act.

24          (b) RULE OF CONSTRUCTION.—Nothing in this Act  
25          shall be construed to authorize any government to inter-

1 fere with a person’s ability to terminate a pregnancy, to  
2 diminish or in any way negatively affect a person’s con-  
3 stitutional right to terminate a pregnancy, or to displace  
4 any other remedy for violations of the constitutional right  
5 to terminate a pregnancy.

6 (c) OTHER INDIVIDUALS CONSIDERED AS GOVERN-  
7 MENT OFFICIALS.—Any person who, by operation of a  
8 provision of Federal or State law, is permitted to imple-  
9 ment or enforce a limitation or requirement that violates  
10 section 3 of this Act shall be considered a government offi-  
11 cial for purposes of this Act.

12 **SEC. 7. ENFORCEMENT.**

13 (a) ATTORNEY GENERAL.—The Attorney General  
14 may commence a civil action on behalf of the United  
15 States against any State that violates, or against any gov-  
16 ernment official (including a person described in section  
17 6(c)) that implements or enforces a limitation or require-  
18 ment that violates, section 3. The court shall hold unlawful  
19 and set aside the limitation or requirement if it is in viola-  
20 tion of this Act.

21 (b) PRIVATE RIGHT OF ACTION.—

22 (1) IN GENERAL.—Any individual or entity, in-  
23 cluding any health care provider or patient, ad-  
24 versely affected by an alleged violation of this Act,  
25 may commence a civil action against any State that

1 violates, or against any government official (includ-  
2 ing a person described in section 6(c)) that imple-  
3 ments or enforces a limitation or requirement that  
4 violates, section 3. The court shall hold unlawful and  
5 set aside the limitation or requirement if it is in vio-  
6 lation of this Act.

7 (2) HEALTH CARE PROVIDER.—A health care  
8 provider may commence an action for relief on its  
9 own behalf, on behalf of the provider’s staff, and on  
10 behalf of the provider’s patients who are or may be  
11 adversely affected by an alleged violation of this Act.

12 (c) EQUITABLE RELIEF.—In any action under this  
13 section, the court may award appropriate equitable relief,  
14 including temporary, preliminary, or permanent injunctive  
15 relief.

16 (d) COSTS.—In any action under this section, the  
17 court shall award costs of litigation, as well as reasonable  
18 attorney’s fees, to any prevailing plaintiff. A plaintiff shall  
19 not be liable to a defendant for costs or attorney’s fees  
20 in any non-frivolous action under this section.

21 (e) JURISDICTION.—The district courts of the United  
22 States shall have jurisdiction over proceedings under this  
23 Act and shall exercise the same without regard to whether  
24 the party aggrieved shall have exhausted any administra-  
25 tive or other remedies that may be provided for by law.

1           (f) ABROGATION OF STATE IMMUNITY.—Neither a  
2 State that enforces or maintains, nor a government official  
3 (including a person described in section 6(c)) who is per-  
4 mitted to implement or enforce any limitation or require-  
5 ment that violates section 3 shall be immune under the  
6 Tenth Amendment to the Constitution of the United  
7 States, the Eleventh Amendment to the Constitution of  
8 the United States, or any other source of law, from an  
9 action in a Federal or State court of competent jurisdic-  
10 tion challenging that limitation or requirement.

11 **SEC. 8. SEVERABILITY.**

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

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**S. 4132**

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**A BILL**

To protect a person's ability to determine whether to continue or end a pregnancy, and to protect a health care provider's ability to provide abortion services.

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MAY 4, 2022

Read the second time and placed on the calendar