

Calendar No. 400118TH CONGRESS
2^D SESSION**S. 4381**

To protect an individual's ability to access contraceptives and to engage in contraception and to protect a health care provider's ability to provide contraceptives, contraception, and information related to contraception.

IN THE SENATE OF THE UNITED STATES

MAY 21, 2024

Mr. MARKEY (for himself, Ms. BALDWIN, Mr. BENNET, Mr. BLUMENTHAL, Mr. BOOKER, Mr. BROWN, Ms. BUTLER, Ms. CANTWELL, Mr. CARDIN, Mr. CARPER, Mr. CASEY, Mr. COONS, Ms. CORTEZ MASTO, Ms. DUCKWORTH, Mr. DURBIN, Mr. FETTERMAN, Mrs. GILLIBRAND, Ms. HASSAN, Mr. HEINRICH, Mr. HICKENLOOPER, Ms. HIRONO, Mr. KAINE, Mr. KELLY, Mr. KING, Ms. KLOBUCHAR, Mr. LUJÁN, Mr. MENENDEZ, Mr. MERKLEY, Mr. MURPHY, Mrs. MURRAY, Mr. OSSOFF, Mr. PADILLA, Mr. PETERS, Mr. REED, Ms. ROSEN, Mr. SANDERS, Mr. SCHATZ, Mr. SCHUMER, Mrs. SHAHEEN, Ms. SINEMA, Ms. SMITH, Ms. STABENOW, Mr. TESTER, Mr. VAN HOLLEN, Mr. WARNER, Mr. WARNOCK, Ms. WARREN, Mr. WELCH, Mr. WHITEHOUSE, and Mr. WYDEN) introduced the following bill; which was read the first time

MAY 22, 2024

Read the second time and placed on the calendar

A BILL

To protect an individual's ability to access contraceptives and to engage in contraception and to protect a health care provider's ability to provide contraceptives, contraception, and information related to contraception.

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 “Right to Contraception
5 Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) CONTRACEPTION.—The term “contracep-
9 tion” means an action taken to prevent pregnancy,
10 including the use of contraceptives or fertility-aware-
11 ness-based methods and sterilization procedures.

12 (2) CONTRACEPTIVE.—The term “contracep-
13 tive” means any drug, device, or biological product
14 intended for use in the prevention of pregnancy,
15 whether specifically intended to prevent pregnancy
16 or for other health needs, that is approved, cleared,
17 authorized, or licensed under section 505, 510(k),
18 513(f)(2), 515, or 564 of the Federal Food, Drug,
19 and Cosmetic Act (21 U.S.C. 355, 360(k),
20 360e(f)(2), 360e, 360bbb–3) or section 351 of the
21 Public Health Service Act (42 U.S.C. 262).

22 (3) GOVERNMENT.—The term “government”
23 includes each branch, department, agency, instru-
24 mentality, and official of the United States or a
25 State.

1 (4) HEALTH CARE PROVIDER.—The term
2 “health care provider” means any entity or indi-
3 vidual (including any physician, certified nurse-mid-
4 wife, nurse, nurse practitioner, physician assistant,
5 and pharmacist) that is licensed or otherwise author-
6 ized by a State to provide health care services.

7 (5) STATE.—The term “State” includes each of
8 the 50 States, the District of Columbia, the Com-
9 monwealth of Puerto Rico, each territory and pos-
10 session of the United States, and each Indian Tribe
11 (as defined in section 4 of the Indian Self-Deter-
12 mination and Education Assistance Act (25 U.S.C.
13 5304)), and any political subdivision of any of the
14 foregoing, including any unit of local government,
15 such as a county, city, town, village, or other general
16 purpose political subdivision of a State.

17 **SEC. 3. PURPOSES.**

18 The purposes of this Act are—

19 (1) to provide a clear and comprehensive right
20 to contraception;

21 (2) to permit individuals to seek and obtain
22 contraceptives and engage in contraception, and to
23 permit health care providers to facilitate that care;
24 and

1 (3) to protect an individual’s ability to make de-
2 cisions about their body, medical care, family, and
3 life’s course, and thereby protect the individual’s
4 ability to participate equally in the economic and so-
5 cial life of the United States.

6 **SEC. 4. PERMITTED SERVICES.**

7 (a) **IN GENERAL.**—An individual has a statutory
8 right under this Act to obtain contraceptives and to volun-
9 tarily engage in contraception, free from coercion, and a
10 health care provider has a corresponding right to provide
11 contraceptives, contraception, and information, referrals,
12 and services related to contraception.

13 (b) **LIMITATIONS OR REQUIREMENTS.**—The statu-
14 tory rights specified in subsection (a) shall not be limited
15 or otherwise infringed through any limitation or require-
16 ment that—

17 (1) expressly, effectively, implicitly, or as-imple-
18 mented singles out—

19 (A) the provision of contraceptives, contra-
20 ception, or contraception-related information;

21 (B) health care providers who provide con-
22 traceptives, contraception, or contraception-re-
23 lated information; or

1 (C) facilities in which contraceptives, con-
2 traception, or contraception-related information
3 is provided; and

4 (2) impedes access to contraceptives, contracep-
5 tion, or contraception-related information.

6 (c) EXCEPTION.—To defend against a claim that a
7 limitation or requirement violates a health care provider’s
8 or individual’s statutory rights under subsection (b), a
9 party must establish, by clear and convincing evidence,
10 that—

11 (1) the limitation or requirement significantly
12 advances access to contraceptives, contraception, and
13 information related to contraception; and

14 (2) access to contraceptives, contraception, and
15 information related to contraception or the health of
16 patients cannot be advanced by a less restrictive al-
17 ternative measure or action.

18 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
19 tion shall be construed to limit the authority of the Sec-
20 retary of Health and Human Services, acting through the
21 Commissioner of Food and Drugs, to approve, clear, au-
22 thorize, or license contraceptives under section 505,
23 510(k), 513(f)(2), 515, or 564 of the Federal Food, Drug,
24 and Cosmetic Act (21 U.S.C. 355, 360(k), 360c(f)(2),
25 360e, 360bbb–3) or section 351 of the Public Health Serv-

1 ice Act (42 U.S.C. 262), or for the Federal Government
2 to enforce such approval, clearance, authorization, or li-
3 censure.

4 **SEC. 5. APPLICABILITY AND PREEMPTION.**

5 (a) GENERAL APPLICATION.—

6 (1) IN GENERAL.—Except as provided in sub-
7 section (c), this Act supersedes and applies to the
8 law of the Federal Government and each State, and
9 the implementation of such law, whether statutory,
10 common law, or otherwise, and whether adopted be-
11 fore or after the date of enactment of this Act.

12 (2) PROHIBITION.—Neither the Federal Gov-
13 ernment nor any State may administer, implement,
14 or enforce any law, rule, regulation, standard, or
15 other provision having the force and effect of law in
16 a manner that—

17 (A) prohibits or restricts the sale, provi-
18 sion, or use of any contraceptives;

19 (B) prohibits or restricts any individual
20 from aiding another individual in voluntarily
21 obtaining or using any contraceptives or contra-
22 ceptive methods; or

23 (C) exempts any contraceptives or contra-
24 ceptive methods from any other generally appli-
25 cable law in a way that would make it more dif-

1 ficult to sell, provide, obtain, or use such con-
2 traceptives or contraceptive methods.

3 (3) RELATIONSHIP WITH OTHER LAWS.—This
4 Act applies notwithstanding any other provision of
5 Federal law, including the Religious Freedom Res-
6 toration Act of 1993 (42 U.S.C. 2000bb et seq.).

7 (b) SUBSEQUENTLY ENACTED FEDERAL LEGISLA-
8 TION.—Federal law enacted after the date of enactment
9 of this Act is subject to this Act, unless such law explicitly
10 excludes such application by reference to this Act.

11 (c) LIMITATIONS.—The provisions of this Act shall
12 not supersede or otherwise affect any provision of Federal
13 law relating to coverage under (and shall not be construed
14 as requiring the provision of specific benefits under) group
15 health plans or group or individual health insurance cov-
16 erage or coverage under a Federal health care program
17 (as defined in section 1128B(f) of the Social Security Act
18 (42 U.S.C. 1320a–7b(f))), including coverage provided
19 under section 1905(a)(4)(C) of the Social Security Act (42
20 U.S.C. 1396d(a)(4)(C)) and section 2713 of the Public
21 Health Service Act (42 U.S.C. 300gg–13).

22 (d) DEFENSE.—In any cause of action against an in-
23 dividual or entity who is subject to a limitation or require-
24 ment that violates this Act, in addition to the remedies

1 specified in section 7, this Act shall also apply to, and
2 may be raised as a defense by, such an individual or entity.

3 (e) EFFECTIVE DATE.—This Act shall take effect im-
4 mediately upon the date of enactment of this Act.

5 **SEC. 6. RULES OF CONSTRUCTION.**

6 (a) IN GENERAL.—In interpreting the provisions of
7 this Act, a court shall liberally construe such provisions
8 to effectuate the purposes described in section 3.

9 (b) RULE OF CONSTRUCTION.—Nothing in this Act
10 shall be construed—

11 (1) to authorize any government to interfere
12 with a health care provider’s ability to provide con-
13 traceptives or information related to contraception
14 or a patient’s ability to obtain contraceptives or to
15 engage in contraception; or

16 (2) to permit or sanction the conduct of any
17 sterilization procedure without the patient’s vol-
18 untary and informed consent.

19 (c) OTHER INDIVIDUALS CONSIDERED AS GOVERN-
20 MENT OFFICIALS.—Any individual who, by operation of
21 a provision of Federal or State law, is permitted to imple-
22 ment or enforce a limitation or requirement that violates
23 section 4 shall be considered a government official for pur-
24 poses of this Act.

1 **SEC. 7. ENFORCEMENT.**

2 (a) ATTORNEY GENERAL.—The Attorney General
3 may commence a civil action on behalf of the United
4 States against any State that violates, or against any gov-
5 ernment official (including an individual described in sec-
6 tion 6(c)) that implements or enforces a limitation or re-
7 quirement that violates, section 4. The court shall hold
8 unlawful and set aside the limitation or requirement if it
9 is in violation of this Act.

10 (b) PRIVATE RIGHT OF ACTION.—

11 (1) IN GENERAL.—Any individual or entity, in-
12 cluding any health care provider or patient, ad-
13 versely affected by an alleged violation of this Act,
14 may commence a civil action against any State that
15 violates, or against any government official (includ-
16 ing an individual described in section 6(e)) that im-
17 plements or enforces a limitation or requirement
18 that violates, section 4. The court shall hold unlaw-
19 ful and set aside the limitation or requirement if it
20 is in violation of this Act.

21 (2) HEALTH CARE PROVIDER.—A health care
22 provider may commence an action for relief on its
23 own behalf, on behalf of the provider's staff, and on
24 behalf of the provider's patients who are or may be
25 adversely affected by an alleged violation of this Act.

1 (c) **EQUITABLE RELIEF.**—In any action under this
2 section, the court may award appropriate equitable relief,
3 including temporary, preliminary, and permanent injunc-
4 tive relief.

5 (d) **COSTS.**—In any action under this section, the
6 court shall award costs of litigation, as well as reasonable
7 attorney’s fees, to any prevailing plaintiff. A plaintiff shall
8 not be liable to a defendant for costs or attorney’s fees
9 in any nonfrivolous action under this section.

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

15 (f) **ABROGATION OF STATE IMMUNITY.**—Neither a
16 State that enforces or maintains, nor a government official
17 (including an individual described in section 6(c)) who is
18 permitted to implement or enforce any limitation or re-
19 quirement that violates section 4 shall be immune under
20 the Tenth Amendment to the Constitution of the United
21 States, the Eleventh Amendment to the Constitution of
22 the United States, or any other source of law, from an
23 action in a Federal or State court of competent jurisdic-
24 tion challenging that limitation or requirement.

1 **SEC. 8. SEVERABILITY.**

2 If any provision of this Act, or the application of such
3 provision to any individual, entity, government, or cir-
4 cumstance, is held to be unconstitutional, the remainder
5 of this Act, or the application of such provision to all other
6 individuals, entities, governments, or circumstances, shall
7 not be affected thereby.

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