

117TH CONGRESS  
2D SESSION

# S. 4504

To protect freedom of travel and reproductive rights.

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## IN THE SENATE OF THE UNITED STATES

JULY 12, 2022

Ms. CORTEZ MASTO (for herself, Mr. WHITEHOUSE, Mrs. MURRAY, Mrs. GILLIBRAND, Mr. DURBIN, Mr. SCHUMER, Mr. BLUMENTHAL, Mr. HICKENLOOPER, Mr. PADILLA, Ms. CANTWELL, Ms. KLOBUCHAR, Mr. MENENDEZ, Ms. STABENOW, Mr. REED, Ms. DUCKWORTH, Mrs. FEINSTEIN, Mr. MURPHY, Ms. HIRONO, Ms. SMITH, Mr. BENNET, Ms. BALDWIN, Mr. COONS, Mr. MARKEY, Mr. WARNOCK, Mr. VAN HOLLEN, Mr. WYDEN, Mr. KAINE, Ms. WARREN, Mr. LUJÁN, Mr. BOOKER, Mr. BROWN, Ms. ROSEN, Mr. SANDERS, Mr. TESTER, Mr. WARNER, and Mr. HEINRICH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To protect freedom of travel and reproductive rights.

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 “Freedom to Travel  
5       for Health Care Act of 2022”.

6       **SEC. 2. FINDINGS.**

7       Congress finds the following:

1           (1) The right to travel freely and voluntarily  
2           among the several States is one of the chief privi-  
3           leges and immunities guaranteed to all citizens of  
4           the United States by the 14th Amendment and one  
5           of the fundamental rights guaranteed to all persons  
6           under the 14th Amendment’s Equal Protection  
7           Clause.

8           (2) Section 5 of the 14th Amendment empowers  
9           Congress to enforce, by appropriate legislation, its  
10          provisions.

11          (3) Article 1, section 8, clause 3 of the Con-  
12          stitution of the United States empowers Congress to  
13          regulate commerce among the several States.

14          (4) The Supreme Court has repeatedly held  
15          that “a citizen of one State who travels in other  
16          States, intending to return home at the end of his  
17          journey, is entitled to enjoy the ‘Privileges and Im-  
18          munities of Citizens in the several States’ that he  
19          visits” (Saenz v. Roe, 526 U.S. 489, 501 (1999)  
20          (citing Corfield v. Coryell, 6 F. Cas. 546 (No. 3,230)  
21          (C.C.E.D.Pa.1823); Edwards v. California, 314 U.S.  
22          160 (1941); United States v. Guest, 383 U.S. 745  
23          (1966))).

24          (5) The Supreme Court long ago decided that  
25          one of the privileges which the Constitution guaran-

1       tees to citizens of 1 State is the “fundamental” right  
2       to travel to another State to seek and obtain services  
3       lawful in that State, including medical services, on  
4       terms of substantial equality with the citizens of  
5       that State (*Toomer v. Witsell*, 334 U.S. 385, 396  
6       (1948); *Hicklin v. Orbeck*, 437 U.S. 518, 525  
7       (1978); *Doe v. Bolton*, 410 U.S. 179, 200 (1973)  
8       (citing *Ward v. Maryland*, 79 U.S. 418 (1870));  
9       *Chalker v. Birmingham & N.W.R. Co.*, 249  
10      U.S. 522, 527 (1919); *Shaffer v. Carter*, 252 U.S.  
11      37, 52, 53 (1920)).

12               (6) In 2022, legislation introduced in State leg-  
13      islatures, and draft legislation proposed to State leg-  
14      islators by interest groups, attempts to restrict free-  
15      dom to travel for reproductive health care.

16   **SEC. 3. FREEDOM OF TRAVEL.**

17       (a) PROHIBITED CONDUCT.—It shall be unlawful for  
18      any person or government to—

19               (1) restrict or in way sanction, hold liable, dis-  
20      criminate against, or otherwise disadvantage any in-  
21      dividual from traveling to another State to receive or  
22      provide reproductive health care that is legal in that  
23      State;

24               (2) restrict or in any way sanction, hold liable,  
25      discriminate against, or otherwise disadvantage any

1 individual, entity, or nonprofit organization from as-  
2 sisting an individual in traveling to another State to  
3 receive or provide reproductive health care that is  
4 legal in that State;

5 (3) deny any right, benefit, or privilege to an  
6 individual, entity, or nonprofit organization as retal-  
7 iation for another person's travel to another State to  
8 receive or provide reproductive health care that is  
9 legal in that State; or

10 (4) restrict or in any way sanction, hold liable,  
11 discriminate against, or otherwise disadvantage a re-  
12 productive health care provider for providing, initi-  
13 ating, or otherwise enabling reproductive health care  
14 services for an individual who does not reside in the  
15 State wherein the provider offers health care services  
16 if it would be legal for the health care provider to  
17 provide, initiate, or otherwise enable the same repro-  
18 ductive health care services to an individual who re-  
19 sides in the State where the provider offers health  
20 care services.

21 (b) PREEMPTION.—A State law that is inconsistent  
22 with this section shall be preempted and shall have no  
23 legal effect. No State, State official, or any other person  
24 acting under the color of law may enforce or apply any  
25 law that is inconsistent with this section.

1 (c) ENFORCEMENT.—

2 (1) ATTORNEY GENERAL.—The Attorney Gen-  
3 eral may commence a civil action in United States  
4 district court on behalf of the United States against  
5 any State, State official, or any other person acting  
6 under the color of law in violation of this section.  
7 The court shall hold unlawful and set aside the limi-  
8 tation or requirement if it is in violation of this sec-  
9 tion.

10 (2) PRIVATE RIGHT OF ACTION.—Any indi-  
11 vidual or entity adversely affected by an alleged vio-  
12 lation of this section may commence a civil action in  
13 State or Federal court against any State, State offi-  
14 cial, or any other person acting under the color of  
15 law in violation of this section. The court shall hold  
16 unlawful and set aside the limitation or requirement  
17 if it is in violation of this section.

18 (3) REPRODUCTIVE HEALTH CARE PRO-  
19 VIDER.—A reproductive health care provider may  
20 commence an action for relief on its own behalf, on  
21 behalf of the provider's staff, or on behalf of the  
22 provider's patients who are or may be adversely af-  
23 fected by an alleged violation of this section.

24 (4) REMEDIES.—In any action under this sec-  
25 tion, the court may award appropriate relief, includ-

1       ing damages, declaratory relief, and temporary, pre-  
2       liminary, or permanent injunctive relief.

3           (5) COSTS.—In any action under this section,  
4       the court shall award costs of litigation, as well as  
5       reasonable attorney’s fees, to any prevailing plain-  
6       tiff. A plaintiff shall not be liable to a defendant for  
7       costs or attorney’s fees in any non-frivolous action  
8       under this section.

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

15          (7) ABROGATION OF STATE IMMUNITY.—Nei-  
16       ther a State that enforces or maintains, nor a gov-  
17       ernment official who implements or enforces, any  
18       limitation or requirement that violates this section  
19       shall be immune under the Tenth Amendment to the  
20       Constitution of the United States, the Eleventh  
21       Amendment to the Constitution of the United  
22       States, the doctrine of sovereign immunity, the doc-  
23       trine of qualified immunity, or any other source of  
24       law, from an action in a Federal or State court of

1 competent jurisdiction challenging that limitation or  
2 requirement.

3 (8) RIGHT TO REMOVE.—A defendant shall  
4 have a right to remove to Federal court any civil or  
5 criminal proceeding that would have the purpose or  
6 effect of interfering with or imposing any liability for  
7 the exercise of the travel right in this section, with  
8 venue in the district court of the United States for  
9 the district and division embracing the place wherein  
10 such proceeding is pending. An order remanding the  
11 case to State court may be immediately reviewable  
12 on appeal or otherwise.

13 (d) DEFINITIONS.—In this Act:

14 (1) GOVERNMENT.—The term “government”  
15 includes each branch, department, agency, instru-  
16 mentality, and official of the United States or of a  
17 State.

18 (2) REPRODUCTIVE HEALTH CARE.—The term  
19 “reproductive health care” means medical, surgical,  
20 counseling, or referral services related to pregnancy,  
21 the termination of a pregnancy, contraception serv-  
22 ices, and other reproductive care.

23 (3) STATE.—The term “State” includes the  
24 District of Columbia, Puerto Rico, each territory  
25 and possession of the United States, and any sub-

1 division of a State, including any unit of local gov-  
2 ernment, such as a county, city, town, village, or  
3 other general purpose political subdivision of a  
4 State.

5 **SEC. 4. SEVERABILITY.**

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

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