

117TH CONGRESS
2D SESSION

S. 4748

To provide for national uniformity for reproductive health products.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2022

Mr. BOOKER (for himself and Ms. SMITH) introduced the following bill; which
was read twice and referred to the Committee on the Judiciary

A BILL

To provide for national uniformity for reproductive health
products.

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 “Protecting National
5 Access to Reproductive Care Act of 2022”.

6 **SEC. 2. PURPOSE.**

7 (a) IN GENERAL.—This section confirms the inten-
8 tion of Congress that, with respect to reproductive health
9 products approved, licensed, cleared, or authorized by the
10 Food and Drug Administration for specific uses as de-
11 scribed in section 3(c), Federal regulation of such prod-

1 ucts has the effect of preempting any State or local law
2 or regulation, criminal or civil, that has the effect of re-
3 stricting the use of or access to any such product.

4 (b) **RULE OF CONSTRUCTION.**—Nothing in this Act
5 shall be construed to limit the preemptory effect of the
6 regulation by the Food and Drug Administration of prod-
7 ucts that are not reproductive health products.

8 **SEC. 3. NATIONAL UNIFORMITY FOR REPRODUCTIVE**
9 **HEALTH PRODUCTS.**

10 (a) **IN GENERAL.**—No State or unit of local govern-
11 ment, or State or local government official or other person
12 acting under color of law may implement or enforce any
13 law, requirement, prohibition, or limitation that restricts
14 use or access, or has the effect of restricting use or access,
15 by any individual to any reproductive health product.

16 (b) **ENFORCEMENT.**—

17 (1) **ATTORNEY GENERAL.**—The Attorney Gen-
18 eral may commence a civil action in an appropriate
19 district court of the United States on behalf of the
20 United States against any State or unit of local gov-
21 ernment, State or local government official, or
22 against any other person acting under color of law
23 that implements or enforces a limitation or require-
24 ment that violates subsection (a). The court shall

1 hold unlawful the limitation or requirement if it is
2 in violation of subsection (a).

3 (2) PRIVATE RIGHT OF ACTION.—

4 (A) IN GENERAL.—Any individual or enti-
5 ty, including any health care provider or pa-
6 tient, adversely affected by an alleged violation
7 of subsection (a), may commence a civil action
8 in an appropriate district court of the United
9 States against any State or unit of local govern-
10 ment, or State or local government official, or
11 against any other person acting under color of
12 law who violates subsection (a). The court shall
13 hold unlawful the limitation or requirement if it
14 is in violation of subsection (a).

15 (B) HEALTH CARE PROVIDER.—A health
16 care provider may commence an action pursu-
17 ant to subparagraph (A) in an appropriate dis-
18 trict court of the United States for relief on its
19 own behalf, on behalf of the provider's staff, or
20 on behalf of the provider's patients who are or
21 may be adversely affected by an alleged viola-
22 tion of subsection (a).

23 (3) DECLARATORY AND EQUITABLE RELIEF.—

24 In any action under this subsection, the court may
25 award appropriate declaratory or equitable relief, in-

1 including temporary, preliminary, or permanent in-
2 junctive relief.

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

9 (5) JURISDICTION.—The district courts of the
10 United States shall have exclusive jurisdiction over
11 proceedings under this Act 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 (c) DEFINITION.—In this section, the term “repro-
16 ductive health product” means any drug or device that—

17 (1) is approved under section 505 or section
18 515 of the Federal Food, Drug, and Cosmetic Act
19 (21 U.S.C. 355; 360e), licensed under section 351 of
20 the Public Health Service Act (42 U.S.C. 262),
21 cleared under section 510(k) of the Federal Food,
22 Drug, and Cosmetic Act (21 U.S.C. 360(k)), or au-
23 thorized under section 513(f)(2) of such Act (21
24 U.S.C. 360e(f)(2)); and

25 (2) is used to—

1 (A) diagnose, prevent, manage, treat, or
2 terminate pregnancy; or

3 (B) prevent or manage conditions of the
4 reproductive system.

5 (d) AUTHORIZATION OF APPROPRIATIONS.—For pur-
6 poses of carrying out subsection (b)(1), there is authorized
7 to be appropriated to the Attorney General \$20,000,000
8 for fiscal year 2022, to remain available until expended.

○