

Calendar No. 26118TH CONGRESS
1ST SESSION**S. 701**

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.

IN THE SENATE OF THE UNITED STATES

MARCH 8, 2023

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

MARCH 9, 2023

Read the second time and placed on the calendar

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 2023”.

6 **SEC. 2. PURPOSE.**

7 The purposes of this Act are as follows:

8 (1) To permit people to seek and obtain abor-
9 tion services, and to permit health care providers to
10 provide abortion services, without harmful or unwar-
11 ranted limitations or requirements that single out
12 the provision of abortion services for restrictions
13 that are more burdensome than those restrictions
14 imposed on medically comparable procedures, do not
15 significantly advance reproductive health or the safe-
16 ty of abortion services, or make abortion services
17 more difficult to access.

18 (2) To promote access to abortion services and
19 thereby protect women’s ability to participate equally
20 in the economic and social life of the United States.

21 (3) To protect people’s ability to make decisions
22 about their bodies, medical care, family, and life’s
23 course.

24 (4) To eliminate unwarranted burdens on com-
25 merce and the right to travel. Abortion bans and re-

1 strictions invariably affect commerce over which the
2 United States has jurisdiction. Health care providers
3 engage in economic and commercial activity when
4 they provide abortion services. Moreover, there is an
5 interstate market for abortion services and, in order
6 to provide such services, health care providers en-
7 gage in interstate commerce to purchase medicine,
8 medical equipment, and other necessary goods and
9 services; to obtain and provide training; and to em-
10 ploy and obtain commercial services from health care
11 personnel, many of whom themselves engage in
12 interstate commerce, including by traveling across
13 State lines. Congress has the authority to enact this
14 Act to protect access to abortion services 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 **SEC. 3. DEFINITIONS.**

2 In this Act:

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

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

13 (3) **HEALTH CARE PROVIDER.**—The term
14 “health care provider” means any entity (including
15 any hospital, clinic, or pharmacy) or individual (in-
16 cluding any physician, certified nurse-midwife, nurse
17 practitioner, pharmacist, or physician assistant)
18 that—

19 (A) is engaged or seeks to engage in the
20 delivery of health care services, including abor-
21 tion services; and

22 (B) if required by law or regulation to be
23 licensed or certified to engage in the delivery of
24 such services—

25 (i) is so licensed or certified; or

1 (ii) would be so licensed or certified
2 but for their past, present, or potential
3 provision of abortion services protected by
4 section 4.

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

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

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

20 (7) VIABILITY.—The term “viability” means
21 the point in a pregnancy at which, in the good-faith
22 medical judgment of the treating health care pro-
23 vider, and based on the particular facts of the case
24 before the health care provider, there is a reasonable

1 likelihood of sustained fetal survival outside the
2 uterus with or without artificial support.

3 **SEC. 4. PROTECTED ACTIVITIES AND SERVICES.**

4 (a) GENERAL RULES.—

5 (1) PRE-VIABILITY.—A health care provider has
6 a right under this Act to provide abortion services,
7 and a patient has a corresponding right under this
8 Act to terminate a pregnancy prior to viability with-
9 out being subject to any of the following limitations
10 or requirements:

11 (A) A prohibition on abortion prior to via-
12 bility, including a prohibition or restriction on
13 a particular abortion procedure or method, or a
14 prohibition on providing or obtaining such abor-
15 tions.

16 (B) A limitation on a health care pro-
17 vider's ability to prescribe or dispense drugs
18 that could be used for reproductive health pur-
19 poses based on current evidence-based regimens
20 or the provider's good-faith medical judgment,
21 or a limitation on a patient's ability to receive
22 or use such drugs, other than a limitation gen-
23 erally applicable to the prescription, dispensing,
24 or distribution of drugs.

1 (C) A limitation on a health care provider's
2 ability to provide, or a patient's ability to re-
3 ceive, abortion services via telemedicine, other
4 than a limitation generally applicable to the
5 provision of medically comparable services via
6 telemedicine.

7 (D) A limitation or prohibition on a pa-
8 tient's ability to receive, or a provider's ability
9 to provide, abortion services in a State based on
10 the State of residency of the patient, or a prohi-
11 bition or limitation on the ability of any indi-
12 vidual to assist or support a patient seeking
13 abortion.

14 (E) A requirement that a health care pro-
15 vider perform specific tests or medical proce-
16 dures in connection with the provision of abor-
17 tion services (including prior to or subsequent
18 to the abortion), unless generally required for
19 the provision of medically comparable proce-
20 dures.

21 (F) A requirement that a health care pro-
22 vider offer or provide a patient seeking abortion
23 services medically inaccurate information.

24 (G) A limitation or requirement concerning
25 the physical plant, equipment, staffing, or hos-

1 pital transfer arrangements of facilities where
2 abortion services are provided, or the creden-
3 tials or hospital privileges or status of personnel
4 at such facilities, that is not imposed on facili-
5 ties or the personnel of facilities where medi-
6 cally comparable procedures are performed.

7 (H) A requirement that, prior to obtaining
8 an abortion, a patient make one or more medi-
9 cally unnecessary in-person visits to the pro-
10 vider of abortion services or to any individual or
11 entity that does not provide abortion services.

12 (I) A limitation on a health care provider's
13 ability to provide immediate abortion services
14 when that health care provider believes, based
15 on the good-faith medical judgment of the pro-
16 vider, that delay would pose a risk to the pa-
17 tient's life or health.

18 (J) A requirement that a patient seeking
19 abortion services at any point or points in time
20 prior to viability disclose the patient's reason or
21 reasons for seeking abortion services, or a limi-
22 tation on providing or obtaining abortion serv-
23 ices at any point or points in time prior to via-
24 bility based on any actual, perceived, or poten-
25 tial reason or reasons of the patient for obtain-

1 ing abortion services, regardless of whether the
2 limitation is based on a health care provider's
3 actual or constructive knowledge of such reason
4 or reasons.

5 (2) POST-VIABILITY.—

6 (A) IN GENERAL.—A health care provider
7 has a right under this Act to provide abortion
8 services and a patient has a corresponding right
9 under this Act to terminate a pregnancy after
10 viability when, in the good-faith medical judge-
11 ment of the treating health care provider, it is
12 necessary to protect the life or health of the pa-
13 tient. This subparagraph shall not otherwise
14 apply after viability.

15 (B) ADDITIONAL CIRCUMSTANCES.—A
16 State may provide additional circumstances
17 under which post viability abortions are per-
18 mitted under this paragraph.

19 (C) LIMITATION.—In the case where a ter-
20 mination of a pregnancy after viability, in the
21 good-faith medical judgement of the treating
22 health care provider, is necessary to protect the
23 life or health of the patient, a State shall not
24 impose any of the limitations or requirements
25 described in paragraph (1)

1 (b) OTHER LIMITATIONS OR REQUIREMENTS.—The
2 rights described in subsection (a) shall not be limited or
3 otherwise infringed through any other limitation or re-
4 quirement that—

5 (1) expressly, effectively, implicitly, or as imple-
6 mented, singles out abortion, the provision of abor-
7 tion services, individuals who seek abortion services
8 or who provide assistance and support to those seek-
9 ing abortion services, health care providers who pro-
10 vide abortion services, or facilities in which abortion
11 services are provided; and

12 (2) impedes access to abortion services.

13 (c) FACTORS FOR CONSIDERATION.—A court may
14 consider the following factors, among others, in deter-
15 mining whether a limitation or requirement impedes ac-
16 cess to abortion services for purposes of subsection (b)(2):

17 (1) Whether the limitation or requirement, in a
18 provider’s good-faith medical judgment, interferes
19 with a health care provider’s ability to provide care
20 and render services, or poses a risk to the patient’s
21 health or safety.

22 (2) Whether the limitation or requirement is
23 reasonably likely to delay or deter a patient in ac-
24 cessing abortion services.

1 (3) Whether the limitation or requirement is
2 reasonably likely to directly or indirectly increase the
3 cost of providing abortion services or the cost for ob-
4 taining abortion services such as costs associated
5 with travel, childcare, or time off work.

6 (4) Whether the limitation or requirement is
7 reasonably likely to have the effect of necessitating
8 patient travel that would not otherwise have been re-
9 quired, including by making it necessary for a pa-
10 tient to travel out of State to obtain services.

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

15 (6) Whether the limitation or requirement im-
16 poses penalties that are not imposed on other health
17 care providers for comparable conduct or failure to
18 act, or that are more severe than penalties imposed
19 on other health care providers for comparable con-
20 duct or failure to act.

21 (7) The cumulative impact of the limitation or
22 requirement combined with other limitations or re-
23 quirements.

24 (d) EXCEPTION.—To defend against a claim that a
25 limitation or requirement violates a health care provider's

1 or patient’s rights under subsection (b) a party must es-
2 tablish, by clear and convincing evidence, that the limita-
3 tion or requirement is essential to significantly advance
4 the safety of abortion services or the health of the patients
5 and that the safety or health objective cannot be accom-
6 plished by a different means that does not interfere with
7 the right protected under subsection (b)).

8 **SEC. 5. PROTECTION OF THE RIGHT TO TRAVEL.**

9 A person has a fundamental right under the Con-
10 stitution of the United States and this Act to travel to
11 a State other than the person’s State of residence, includ-
12 ing to obtain reproductive health services such as prenatal,
13 childbirth, fertility, and abortion services, and a person
14 has a right under this Act to assist another person to ob-
15 tain such services or otherwise exercise the right described
16 in this section.

17 **SEC. 6. APPLICABILITY AND PREEMPTION.**

18 (a) IN GENERAL.—

19 (1) SUPERSEDING INCONSISTENT LAWS.—EX-
20 cept as provided under subsection (b), this Act shall
21 supersede any inconsistent Federal or State law, and
22 the implementation of such law, whether statutory,
23 common law, or otherwise, and whether adopted
24 prior to or after the date of enactment of this Act.

25 A Federal or State government official shall not ad-

1 minister, implement, or enforce any law, rule, regu-
2 lation, standard, or other provision having the force
3 and effect of law that conflicts with any provision of
4 this Act, 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 (2) LAWS AFTER DATE OF ENACTMENT.—Fed-
8 eral law enacted after the date of the enactment of
9 this Act shall be subject to this Act unless such law
10 explicitly excludes such application by reference to
11 this Act.

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

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

16 (2) laws regulating insurance or medical assist-
17 ance coverage of abortion services;

18 (3) the procedure described in section
19 1531(b)(1) of title 18, United States Code; or

20 (4) generally applicable State contract law.

21 (c) PREEMPTION DEFENSE.—In any legal or admin-
22 istrative action against a person or entity who has exer-
23 cised or attempted to exercise a right protected by section
24 4 or section 5 or against any person or entity who has
25 taken any step to assist any such person or entity in exer-

1 cising such right, this Act shall also apply to, and may
2 be raised as a defense by, such person or entity, in addi-
3 tion to the remedies specified in section 8.

4 **SEC. 7. RULES OF CONSTRUCTION.**

5 (a) LIBERAL CONSTRUCTION BY COURTS.—In any
6 action before a court under this Act, the court shall lib-
7 erally construe the provisions of this Act to effectuate the
8 purposes of the Act.

9 (b) PROTECTION OF LIFE AND HEALTH.—Nothing
10 in this Act shall be construed to authorize any government
11 official to interfere with, diminish, or negatively affect a
12 person’s ability to obtain or provide abortion services prior
13 to viability or after viability when, in the good-faith med-
14 ical judgment of the treating health care provider, continu-
15 ation of the pregnancy would pose a risk to the pregnant
16 patient’s life or health.

17 (c) GOVERNMENT OFFICIALS.—Any person who, by
18 operation of a provision of Federal or State law, is per-
19 mitted to implement or enforce a limitation or requirement
20 that violates section 4 or 5 shall be considered a govern-
21 ment official for purposes of this Act.

22 **SEC. 8. ENFORCEMENT.**

23 (a) ATTORNEY GENERAL.—The Attorney General
24 may commence a civil action on behalf of the United
25 States in any district court of the United States against

1 any State that violates, or against any government official
2 (including a person described in section 7(c)) who imple-
3 ments or enforces a limitation or requirement that vio-
4 lates, section 4 or 5. The court shall declare unlawful the
5 limitation or requirement if it is determined to be in viola-
6 tion of this Act.

7 (b) PRIVATE RIGHT OF ACTION.—

8 (1) IN GENERAL.—Any individual or entity ad-
9 versely affected by an alleged violation of this Act,
10 including any person or health care provider, may
11 commence a civil action against any government offi-
12 cial (including a person described in section 7(c))
13 that implements or enforces a limitation or require-
14 ment that violates, section 4 or 5. The court shall
15 declare unlawful the limitation or requirement if it
16 is in violation of this Act.

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

22 (c) PRE-ENFORCEMENT CHALLENGES.—A suit under
23 subsection (a) or (b) may be brought to prevent enforce-
24 ment or implementation by any government of a State lim-

1 itation or requirement that is inconsistent with section 4
2 or 5.

3 (d) DECLARATORY AND EQUITABLE RELIEF.—In
4 any action under this section, the court may award appro-
5 priate declaratory and equitable relief, including tem-
6 porary, preliminary, or permanent injunctive relief.

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

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

17 (g) ABROGATION OF STATE IMMUNITY.—Neither a
18 State that enforces or maintains, nor a government official
19 (including a person described in section 7(c)) who is per-
20 mitted to implement or enforce any limitation or require-
21 ment that violates section 4 or 5 shall be immune under
22 the Tenth Amendment to the Constitution of the United
23 States, the Eleventh Amendment to the Constitution of
24 the United States, or any other source of law, from an
25 action in a Federal or State court of competent jurisdic-

1 tion challenging that limitation or requirement, unless
2 such immunity is required by clearly established Federal
3 law, as determined by the Supreme Court of the United
4 States.

5 **SEC. 9. EFFECTIVE DATE.**

6 This Act shall take effect upon the date of enactment
7 of this Act.

8 **SEC. 10. SEVERABILITY.**

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

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