

118TH CONGRESS
1ST SESSION

S. _____

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

Mr. MARKEY introduced the following bill; which was read twice and referred to the Committee on _____

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:

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

5 (2) CONTRACEPTIVE.—The term “contracep-
6 tive” means any drug, device, or biological product
7 intended for use in the prevention of pregnancy,
8 whether specifically intended to prevent pregnancy
9 or for other health needs, that is approved, cleared,
10 authorized, or licensed under section 505, 510(k),
11 513(f)(2), 515, or 564 of the Federal Food, Drug,
12 and Cosmetic Act (21 U.S.C. 355, 360(k),
13 360c(f)(2), 360e, 360bbb–3) or section 351 of the
14 Public Health Service Act (42 U.S.C. 262).

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

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

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

11 **SEC. 3. FINDINGS.**

12 Congress finds the following:

13 (1) The right to contraception is a fundamental
14 right, central to an individual’s privacy, health, well-
15 being, dignity, liberty, equality, and ability to par-
16 ticipate in the social and economic life of the Nation.

17 (2) The Supreme Court has repeatedly recog-
18 nized the constitutional right to contraception.

19 (3) In *Griswold v. Connecticut* (381 U.S. 479
20 (1965)), the Supreme Court first recognized the con-
21 stitutional right for married people to use contracep-
22 tives.

23 (4) In *Eisenstadt v. Baird* (405 U.S. 438
24 (1972)), the Supreme Court confirmed the constitu-

1 tional right of all people to legally access contracep-
2 tives regardless of marital status.

3 (5) In *Carey v. Population Services Inter-*
4 *national* (431 U.S. 678 (1977)), the Supreme Court
5 affirmed the constitutional right to contraceptives
6 for minors.

7 (6) The right to contraception has been repeat-
8 edly recognized internationally as a human right.
9 The United Nations Population Fund has published
10 several reports outlining family planning as a basic
11 human right that advances women's health, eco-
12 nomic empowerment, and equality.

13 (7) Access to contraceptives is internationally
14 recognized by the World Health Organization as ad-
15 vancing other human rights such as the right to life,
16 liberty, expression, health, work, and education.

17 (8) Contraception is safe, essential health care,
18 and access to contraceptive products and services is
19 central to people's ability to participate equally in
20 economic and social life in the United States and
21 globally. Contraception allows people to make deci-
22 sions about their families and their lives.

23 (9) Contraception is key to sexual and repro-
24 ductive health. Contraception is critical to pre-
25 venting unintended pregnancy, and many contracep-

1 tives are highly effective in preventing and treating
2 a wide array of medical conditions and decrease the
3 risk of certain cancers.

4 (10) Contraception has been associated with
5 improved health outcomes for women, their families,
6 and their communities and reduces rates of maternal
7 and infant mortality and morbidity.

8 (11) The United States has a long history of
9 reproductive coercion, including the childbearing
10 forced upon enslaved women, as well as the forced
11 sterilization of Black women, Puerto Rican women,
12 indigenous women, immigrant women, and disabled
13 women, and reproductive coercion continues to
14 occur. This history also includes the coercive testing
15 of contraceptive pills on women and girls in Puerto
16 Rico.

17 (12) The right to make personal decisions about
18 contraceptive use is important for all Americans,
19 and is especially critical for historically marginalized
20 groups, including—

- 21 (A) Black, indigenous, and other people of
22 color;
23 (B) immigrants;
24 (C) LGBTQ+ people;
25 (D) people with disabilities;

1 (E) people paid low wages; and

2 (F) people living in rural and underserved
3 areas.

4 (13) Many people who are part of the
5 marginalized groups described in paragraph (12) al-
6 ready face barriers, exacerbated by social, political,
7 economic, and environmental inequities, to com-
8 prehensive health care, including reproductive health
9 care, that reduce their ability to make decisions
10 about their health, families, and lives.

11 (14) State and Federal policies governing phar-
12 maceutical and insurance policies affect the accessi-
13 bility of contraceptives and the settings in which
14 contraception services are delivered.

15 (15) People engage in interstate commerce to
16 access contraception services.

17 (16) To provide contraception services, health
18 care providers employ and obtain commercial serv-
19 ices from doctors, nurses, and other personnel who
20 engage in interstate commerce and travel across
21 State lines.

22 (17) Congress has the authority to enact this
23 Act to protect access to contraception pursuant to—

1 (A) its powers under the Commerce Clause
2 of section 8 of article I of the Constitution of
3 the United States;

4 (B) its powers under section 5 of the Four-
5 teenth Amendment to the Constitution of the
6 United States to enforce the provisions of sec-
7 tion 1 of the Fourteenth Amendment; and

8 (C) its powers under the necessary and
9 proper clause of section 8 of article I of the
10 Constitution of the United States.

11 (18) Congress has used its authority in the past
12 to protect and expand access to contraception infor-
13 mation, products, and services.

14 (19) In 1970, Congress established the family
15 planning program under title X of the Public Health
16 Service Act (42 U.S.C. 300 et seq.), the only Fed-
17 eral grant program dedicated to family planning and
18 related services, providing access to information,
19 products, and services for contraception.

20 (20) In 1972, Congress required the Medicaid
21 program to cover family planning services and sup-
22 plies and the Medicaid program currently accounts
23 for 75 percent of Federal funds spent on family
24 planning.

1 (21) In 2010, Congress enacted the Patient
2 Protection and Affordable Care Act (Public Law
3 111–148) (referred to in this section as the “ACA”).
4 Among other provisions, the ACA included provi-
5 sions to expand the affordability and accessibility of
6 contraception by requiring health insurance plans to
7 provide coverage for preventive services with no pa-
8 tient cost-sharing.

9 (22) As of June 2023, at least 4 States tried
10 to ban access to some or all contraceptives by re-
11 stricting access to public funding for these products
12 and services. Furthermore, Arkansas, Mississippi,
13 Missouri, and Texas have infringed on people’s abil-
14 ity to access their contraceptive care by violating the
15 free choice of provider requirement under the Med-
16 icaid program.

17 (23) Providers’ refusals to offer contraceptives
18 and information related to contraception based on
19 their own personal beliefs impede patients from ob-
20 taining their preferred method of contraception, with
21 laws in 12 States as of the date of introduction of
22 this Act specifically allowing health care providers to
23 refuse to provide services related to contraception.

24 (24) States have attempted to define abortion
25 expansively so as to include contraceptives in State

1 bans on abortion and have also restricted access to
2 emergency contraception.

3 (25) Justice Thomas, in his concurring opinion
4 in *Dobbs v. Jackson Women’s Health Organization*
5 (142 S. Ct. 2228 (2022)), stated that the Supreme
6 Court “should reconsider all of this Court’s sub-
7 stantive due process precedents, including *Griswold*,
8 *Lawrence*, and *Obergefell*” and that the Court has
9 “a duty to correct the error established in those
10 precedents” by overruling them.

11 (26) In order to further public health and to
12 combat efforts to restrict access to reproductive
13 health care, congressional action is necessary to pro-
14 tect access to contraceptives, contraception, and in-
15 formation related to contraception for everyone, re-
16 gardless of actual or perceived race, ethnicity, sex
17 (including gender identity and sexual orientation),
18 income, disability, national origin, immigration sta-
19 tus, or geography.

20 **SEC. 4. PURPOSES.**

21 The purposes of this Act are—

22 (1) to provide a clear and comprehensive right
23 to contraception;

24 (2) to permit individuals to seek and obtain
25 contraceptives and engage in contraception, and to

1 permit health care providers to facilitate that care;
2 and

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

8 **SEC. 5. PERMITTED SERVICES.**

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

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

19 (1) expressly, effectively, implicitly, or as-imple-
20 mented singles out—

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

23 (B) health care providers who provide con-
24 traceptives, contraception, or contraception-re-
25 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. 6. 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 difficult 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 8, 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. 7. 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 4.

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 5 shall be considered a government official for pur-
24 poses of this Act.

1 **SEC. 8. 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 7(c)) that implements or enforces a limitation or re-
7 quirement that violates, section 5. 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 7(e)) that im-
17 plements or enforces a limitation or requirement
18 that violates, section 5. 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 7(c)) who is
18 permitted to implement or enforce any limitation or re-
19 quirement that violates section 5 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. 9. 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.