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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.

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## IN THE SENATE OF THE UNITED STATES

JUNE 14, 2023

Mr. MARKEY (for himself, Ms. HIRONO, Ms. DUCKWORTH, Mr. MERKLEY, Ms. WARREN, Mr. PADILLA, Mr. BLUMENTHAL, Mr. VAN HOLLEN, Mr. SCHATZ, Ms. CANTWELL, Mrs. FEINSTEIN, Mrs. GILLIBRAND, Mr. WHITEHOUSE, Mr. WELCH, Ms. STABENOW, Mrs. MURRAY, Ms. BALDWIN, Mr. HEINRICH, Mr. SANDERS, Mr. CARPER, Mr. REED, Ms. CORTEZ MASTO, Mr. MENENDEZ, Mr. KAINE, Mr. WYDEN, Mr. HICKENLOOPER, Mr. CARDIN, Mr. WARNOCK, Mr. BROWN, Mr. FETTERMAN, Mrs. SHAHEEN, Mr. BENNET, Ms. SMITH, Mr. BOOKER, Mr. LUJÁN, Mr. WARNER, and Ms. ROSEN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Right to Contraception  
3 Act”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

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

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

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

24 (4) **HEALTH CARE PROVIDER.**—The term  
25 “health care provider” means any entity or indi-  
26 vidual (including any physician, certified nurse-mid-

1 wife, nurse, nurse practitioner, physician assistant,  
2 and pharmacist) that is licensed or otherwise author-  
3 ized by a State to provide health care services.

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

14 **SEC. 3. FINDINGS.**

15 Congress finds the following:

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

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

22 (3) In *Griswold v. Connecticut* (381 U.S. 479  
23 (1965)), the Supreme Court first recognized the con-  
24 stitutional right for married people to use contracep-  
25 tives.

1           (4) In *Eisenstadt v. Baird* (405 U.S. 438  
2 (1972)), the Supreme Court confirmed the constitu-  
3 tional right of all people to legally access contracep-  
4 tives regardless of marital status.

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

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

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

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

1           (9) Contraception is key to sexual and repro-  
2           ductive health. Contraception is critical to pre-  
3           venting unintended pregnancy, and many contracep-  
4           tives are highly effective in preventing and treating  
5           a wide array of medical conditions and decrease the  
6           risk of certain cancers.

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

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

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

24                  (A) Black, indigenous, and other people of  
25                  color;

- 1 (B) immigrants;  
2 (C) LGBTQ+ people;  
3 (D) people with disabilities;  
4 (E) people paid low wages; and  
5 (F) people living in rural and underserved  
6 areas.

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

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

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

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

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

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

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

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

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

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

22          (20) In 1972, Congress required the Medicaid  
23 program to cover family planning services and sup-  
24 plies and the Medicaid program currently accounts

1 for 75 percent of Federal funds spent on family  
2 planning.

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

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

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



1           (24) States have attempted to define abortion  
2           expansively so as to include contraceptives in State  
3           bans on abortion and have also restricted access to  
4           emergency contraception.

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

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

22 **SEC. 4. PURPOSES.**

23          The purposes of this Act are—

24               (1) to provide a clear and comprehensive right  
25          to contraception;

1           (2) to permit individuals to seek and obtain  
2           contraceptives and engage in contraception, and to  
3           permit health care providers to facilitate that care;  
4           and

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

10 **SEC. 5. PERMITTED SERVICES.**

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

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

21           (1) expressly, effectively, implicitly, or as-imple-  
22 mented singles out—

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

1 (B) health care providers who provide con-  
2 traceptives, contraception, or contraception-re-  
3 lated information; or

4 (C) facilities in which contraceptives, con-  
5 traception, or contraception-related information  
6 is provided; and

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

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

14 (1) the limitation or requirement significantly  
15 advances access to contraceptives, contraception, and  
16 information related to contraception; and

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

21 (d) RULE OF CONSTRUCTION.—Nothing in this sec-  
22 tion shall be construed to limit the authority of the Sec-  
23 retary of Health and Human Services, acting through the  
24 Commissioner of Food and Drugs, to approve, clear, au-  
25 thorize, or license contraceptives under section 505,

1 510(k), 513(f)(2), 515, or 564 of the Federal Food, Drug,  
2 and Cosmetic Act (21 U.S.C. 355, 360(k), 360c(f)(2),  
3 360e, 360bbb–3) or section 351 of the Public Health Serv-  
4 ice Act (42 U.S.C. 262), or for the Federal Government  
5 to enforce such approval, clearance, authorization, or li-  
6 censure.

7 **SEC. 6. APPLICABILITY AND PREEMPTION.**

8 (a) GENERAL APPLICATION.—

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

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

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

22 (B) prohibits or restricts any individual  
23 from aiding another individual in voluntarily  
24 obtaining or using any contraceptives or contra-  
25 ceptive methods; or

1 (C) exempts any contraceptives or contra-  
2 ceptive methods from any other generally appli-  
3 cable law in a way that would make it more dif-  
4 ficult to sell, provide, obtain, or use such con-  
5 traceptives or contraceptive methods.

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

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

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

1 (d) DEFENSE.—In any cause of action against an in-  
 2 dividual or entity who is subject to a limitation or require-  
 3 ment that violates this Act, in addition to the remedies  
 4 specified in section 8, this Act shall also apply to, and  
 5 may be raised as a defense by, such an individual or entity.

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

8 **SEC. 7. RULES OF CONSTRUCTION.**

9 (a) IN GENERAL.—In interpreting the provisions of  
 10 this Act, a court shall liberally construe such provisions  
 11 to effectuate the purposes described in section 4.

12 (b) RULE OF CONSTRUCTION.—Nothing in this Act  
 13 shall be construed—

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

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

22 (c) OTHER INDIVIDUALS CONSIDERED AS GOVERN-  
 23 MENT OFFICIALS.—Any individual who, by operation of  
 24 a provision of Federal or State law, is permitted to imple-  
 25 ment or enforce a limitation or requirement that violates

1 section 5 shall be considered a government official for pur-  
2 poses of this Act.

3 **SEC. 8. ENFORCEMENT.**

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

12 (b) PRIVATE RIGHT OF ACTION.—

13 (1) IN GENERAL.—Any individual or entity, in-  
14 cluding any health care provider or patient, ad-  
15 versely affected by an alleged violation of this Act,  
16 may commence a civil action against any State that  
17 violates, or against any government official (includ-  
18 ing an individual described in section 7(c)) that im-  
19 plements or enforces a limitation or requirement  
20 that violates, section 5. The court shall hold unlaw-  
21 ful and set aside the limitation or requirement if it  
22 is in violation of this Act.

23 (2) HEALTH CARE PROVIDER.—A health care  
24 provider may commence an action for relief on its  
25 own behalf, on behalf of the provider's staff, and on

1       behalf of the provider’s patients who are or may be  
2       adversely affected by an alleged violation of this Act.

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

7       (d) **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 nonfrivolous action under this section.

12       (e) **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       (f) **ABROGATION OF STATE IMMUNITY.**—Neither a  
18 State that enforces or maintains, nor a government official  
19 (including an individual described in section 7(c)) who is  
20 permitted to implement or enforce any limitation or re-  
21 quirement that violates section 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



1 action in a Federal or State court of competent jurisdic-  
2 tion challenging that limitation or requirement.

3 **SEC. 9. SEVERABILITY.**

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

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