

115TH CONGRESS  
1ST SESSION

# S. 2259

To establish certain duties for pharmacies to ensure provision of Food and Drug Administration-approved contraception, medication related to contraception, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 20, 2017

Mr. BOOKER (for himself, Mrs. MURRAY, Mr. BROWN, Mr. WHITEHOUSE, Ms. BALDWIN, Mr. FRANKEN, Mrs. GILLIBRAND, Mr. KAINE, Mrs. SHAHEEN, Mr. BLUMENTHAL, Mr. SANDERS, Ms. HIRONO, Mr. MARKEY, Mr. MURPHY, Mr. VAN HOLLEN, Ms. DUCKWORTH, Mr. MENENDEZ, Mr. MERKLEY, and Mr. WYDEN) 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 establish certain duties for pharmacies to ensure provision of Food and Drug Administration-approved contraception, medication related to contraception, and for other purposes.

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 “Access to Birth Control  
5 Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds as follows:

3 (1) Family planning is basic health care for  
4 women. Access to contraception helps women pre-  
5 vent unintended pregnancy and control the timing  
6 and spacing of planned births.

7 (2) As a result of the enactment of the Patient  
8 Protection and Affordable Care Act (Public Law  
9 111–148), 62,400,000 women now have coverage of  
10 the full range of Food and Drug Administration-ap-  
11 proved contraceptive methods without cost sharing.

12 (3) The Patient Protection and Affordable Care  
13 Act saved women \$1,400,000,000 on birth control  
14 pills alone in 2013.

15 (4) Nearly  $\frac{2}{3}$  of women of reproductive age are  
16 currently using a contraceptive method.

17 (5) Although the Centers for Disease Control  
18 and Prevention included family planning in its pub-  
19 lished list of the Ten Great Public Health Achieve-  
20 ments in the 20th Century, the United States still  
21 has one of the highest rates of unintended preg-  
22 nancies among industrialized nations.

23 (6) Each year, 2,800,000 pregnancies, nearly  
24 half of all pregnancies, in the United States are un-  
25 intended, and nearly half of unintended pregnancies  
26 end in abortion.

1           (7) Access to contraceptives at no cost has been  
2 found to contribute to significantly lower rates of  
3 unintended pregnancy and abortion.

4           (8) Women who do not use contraception,  
5 women who have gaps in contraception, and women  
6 who use contraception inconsistently or incorrectly  
7 account for 95 percent of unintended pregnancies in  
8 the United States.

9           (9) Women rely on prescription contraceptives  
10 for a range of medical purposes in addition to birth  
11 control, such as regulation of cycles and endo-  
12 metriosis.

13           (10) The Food and Drug Administration has  
14 approved emergency contraception as safe and effec-  
15 tive in preventing unintended pregnancy and has ap-  
16 proved over-the-counter access to some forms of  
17 emergency contraception for all individuals, regard-  
18 less of age. If taken soon after unprotected sex or  
19 primary contraceptive failure, emergency contracep-  
20 tion can significantly reduce a woman's chance of  
21 unintended pregnancy.

22           (11) Access to legal contraception is a protected  
23 fundamental right in the United States and should  
24 not be impeded by one individual's personal beliefs.

1           (12) Reports of pharmacists refusing to fill pre-  
 2           scriptions for contraceptives or provide emergency  
 3           contraception over-the-counter, including emergency  
 4           contraceptives, have surfaced in States across the  
 5           Nation, including Alabama, Arizona, California, the  
 6           District of Columbia, Georgia, Illinois, Louisiana,  
 7           Massachusetts, Michigan, Minnesota, Missouri, Mon-  
 8           tana, New Hampshire, New Mexico, New York,  
 9           North Carolina, Ohio, Oklahoma, Oregon, Rhode Is-  
 10          land, Tennessee, Texas, Washington, West Virginia,  
 11          and Wisconsin.

12 **SEC. 3. DUTIES OF PHARMACIES TO ENSURE PROVISION OF**  
 13                           **FDA-APPROVED CONTRACEPTION AND MEDI-**  
 14                           **CATION RELATED TO CONTRACEPTION.**

15          Part B of title II of the Public Health Service Act  
 16          (42 U.S.C. 238 et seq.) is amended by adding at the end  
 17          the following:

18 **“SEC. 249. DUTIES OF PHARMACIES TO ENSURE PROVISION**  
 19                           **OF FDA-APPROVED CONTRACEPTION AND**  
 20                           **MEDICATION RELATED TO CONTRACEPTION.**

21          “(a) IN GENERAL.—Subject to subsection (c), a  
 22          pharmacy that receives Food and Drug Administration-  
 23          approved drugs or devices in interstate commerce shall  
 24          maintain compliance with the following:

1           “(1) If a customer requests a contraceptive or  
2 a medication related to a contraceptive that is in  
3 stock, the pharmacy shall ensure that the contracep-  
4 tive or the medication related to a contraceptive is  
5 provided to the customer without delay.

6           “(2) If a customer requests a contraceptive or  
7 a medication related to a contraceptive that is not  
8 in stock and the pharmacy in the normal course of  
9 business stocks contraception or the medication re-  
10 lated to contraception, the pharmacy shall imme-  
11 diately inform the customer that the contraceptive or  
12 the medication related to a contraceptive is not in  
13 stock and without delay offer the customer the fol-  
14 lowing options:

15           “(A) If the customer prefers to obtain the  
16 contraceptive or the medication related to a  
17 contraceptive through a referral or transfer, the  
18 pharmacy shall—

19           “(i) locate a pharmacy of the cus-  
20 tomer’s choice or the closest pharmacy  
21 confirmed to have the contraceptive or the  
22 medication related to a contraceptive in  
23 stock; and

24           “(ii) refer the customer or transfer  
25 the prescription to that pharmacy.

1           “(B) If the customer prefers for the phar-  
2           macy to order the contraceptive or the medica-  
3           tion related to a contraceptive, the pharmacy  
4           shall obtain the contraceptive or the medication  
5           related to a contraceptive under the pharmacy’s  
6           standard procedure for expedited ordering of  
7           medication and notify the customer when the  
8           contraceptive or the medication related to a  
9           contraceptive arrives.

10          “(3) The pharmacy shall ensure that—

11                 “(A) it does not operate an environment in  
12                 which customers are intimidated, threatened, or  
13                 harassed in the delivery of services relating to  
14                 a request for contraception or a medication re-  
15                 lated to contraception;

16                 “(B) its employees do not interfere with or  
17                 obstruct the delivery of services relating to a re-  
18                 quest for contraception or a medication related  
19                 to contraception;

20                 “(C) its employees do not intentionally  
21                 misrepresent or deceive customers about the  
22                 availability of contraception or a medication re-  
23                 lated to contraception or its mechanism of ac-  
24                 tion;

1           “(D) its employees do not breach medical  
2           confidentiality with respect to a request for a  
3           contraception or a medication related to contra-  
4           ception or threaten to breach such confiden-  
5           tiality; or

6           “(E) its employees do not refuse to return  
7           a valid, lawful prescription for a contraception  
8           or a medication related to contraception upon  
9           customer request.

10          “(b) CONTRACEPTIVES OR MEDICATION RELATED TO  
11          A CONTRACEPTIVE NOT ORDINARILY STOCKED.—Noth-  
12          ing in subsection (a)(2) shall be construed to require any  
13          pharmacy to comply with such subsection if the pharmacy  
14          does not ordinarily stock contraceptives or medication re-  
15          lated to a contraceptive in the normal course of business.

16          “(c) REFUSALS PURSUANT TO STANDARD PHAR-  
17          MACY PRACTICE.—This section does not prohibit a phar-  
18          macy from refusing to provide a contraceptive or a medi-  
19          cation related to a contraceptive to a customer in accord-  
20          ance with any of the following:

21                 “(1) If it is unlawful to dispense the contracep-  
22                 tive or the medication related to a contraceptive to  
23                 the customer without a valid, lawful prescription and  
24                 no such prescription is presented.

1           “(2) If the customer is unable to pay for the  
2           contraceptive or the medication related to a contra-  
3           ceptive.

4           “(3) If the employee of the pharmacy refuses to  
5           provide the contraceptive or the medication related  
6           to a contraceptive on the basis of a professional clin-  
7           ical judgment.

8           “(d) RELATION TO OTHER LAWS.—

9           “(1) RULE OF CONSTRUCTION.—Nothing in  
10          this section shall be construed to invalidate or limit  
11          rights, remedies, procedures, or legal standards  
12          under title VII of the Civil Rights Act of 1964.

13          “(2) CERTAIN CLAIMS.—The Religious Free-  
14          dom Restoration Act of 1993 (42 U.S.C. 2000bb et  
15          seq.) shall not provide a claim concerning, or a de-  
16          fense to a claim under, a covered title, or provide a  
17          basis for challenging the application or enforcement  
18          of a covered title.

19          “(e) PREEMPTION.—This section does not preempt  
20          any provision of State law or any professional obligation  
21          made applicable by a State board or other entity respon-  
22          sible for licensing or discipline of pharmacies or phar-  
23          macists, to the extent that such State law or professional  
24          obligation provides protections for customers that are  
25          greater than the protections provided by this section.



1 “(f) ENFORCEMENT.—

2 “(1) CIVIL PENALTY.—A pharmacy that vio-  
3 lates a requirement of subsection (a) is liable to the  
4 United States for a civil penalty in an amount not  
5 exceeding \$1,000 per day of violation, not to exceed  
6 \$100,000 for all violations adjudicated in a single  
7 proceeding.

8 “(2) PRIVATE CAUSE OF ACTION.—Any person  
9 aggrieved as a result of a violation of a requirement  
10 of subsection (a) may, in any court of competent ju-  
11 risdiction, commence a civil action against the phar-  
12 macy involved to obtain appropriate relief, including  
13 actual and punitive damages, injunctive relief, and a  
14 reasonable attorney’s fee and cost.

15 “(3) LIMITATIONS.—A civil action under para-  
16 graph (1) or (2) may not be commenced against a  
17 pharmacy after the expiration of the 5-year period  
18 beginning on the date on which the pharmacy alleg-  
19 edly engaged in the violation involved.

20 “(g) DEFINITIONS.—In this section:

21 “(1) The term ‘contraception’ or ‘contraceptive’  
22 means any drug or device approved by the Food and  
23 Drug Administration to prevent pregnancy.

1           “(2) The term ‘employee’ means a person hired,  
2           by contract or any other form of an agreement, by  
3           a pharmacy.

4           “(3) The term ‘medication related to contracep-  
5           tion’ or ‘medication related to a contraceptive’  
6           means any drug or device approved by the Food and  
7           Drug Administration that a medical professional de-  
8           termines necessary to use before or in conjunction  
9           with contraception or a contraceptive.

10           “(4) The term ‘pharmacy’ means an entity  
11           that—

12                   “(A) is authorized by a State to engage in  
13                   the business of selling prescription drugs at re-  
14                   tail; and

15                   “(B) employs one or more employees.

16           “(5) The term ‘product’ means a Food and  
17           Drug Administration-approved drug or device.

18           “(6) The term ‘professional clinical judgment’  
19           means the use of professional knowledge and skills  
20           to form a clinical judgment, in accordance with pre-  
21           vailing medical standards.

22           “(7) The term ‘without delay’, with respect to  
23           a pharmacy providing, providing a referral for, or  
24           ordering contraception or a medication related to  
25           contraception, or transferring the prescription for

1       contraception or a medication related to contracep-  
2       tion, means within the usual and customary time-  
3       frame at the pharmacy for providing, providing a re-  
4       ferral for, or ordering other products, or transferring  
5       the prescription for other products, respectively.

6       “(h) EFFECTIVE DATE.—This section shall take ef-  
7       fect on the 31st day after the date of the enactment of  
8       this section, without regard to whether the Secretary has  
9       issued any guidance or final rule regarding this section.”.

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