S. 1415

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

IN THE SENATE OF THE UNITED STATES

JULY 26, 2011

Mr. LAUTENBERG (for himself, Mr. MENENDEZ, Mr. WYDEN, Mr. FRANKEN, Mr. WHITEHOUSE, Mrs. FEINSTEIN, Mr. BROWN of Ohio, Mr. SANDERS, Mr. BLUMENTHAL, Mrs. MURRAY, Mrs. GILLIBRAND, Mr. AKAKA, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Access to Birth Control Act”.

SEC. 2. FINDINGS.

Congress finds as follows:
(1) Family planning is basic health care for women. Access to contraception helps women prevent unintended pregnancy and control the timing and spacing of planned births.

(2) Although the Centers for Disease Control and Prevention included family planning in its published list of the Ten Great Public Health Achievements in the 20th Century, the United States still has one of the highest rates of unintended pregnancies among industrialized nations.

(3) Each year, 3,000,000 pregnancies, nearly half of all pregnancies, in the United States are unintended, and nearly half of unintended pregnancies end in abortion.

(4) Women rely on prescription contraceptives for a range of medical purposes in addition to birth control, such as regulation of cycles and endometriosis.

(5) The Food and Drug Administration has declared emergency contraception to be safe and effective in preventing unintended pregnancy and has approved over-the-counter access to some forms of emergency contraception for individuals aged 17 and older.
(6) If taken soon after unprotected sex or primary contraceptive failure, emergency contraception can significantly reduce a woman’s chance of unintended pregnancy.

(7) Emergency contraception is approved to prevent pregnancy. It will not work if a woman is already pregnant.

(8) Access to legal contraception is a protected fundamental right in the United States and should not be impeded by one individual’s personal beliefs.

(9) Reports of pharmacists refusing to fill prescriptions for contraceptives, including emergency contraceptives, have surfaced in States across the Nation, including Alabama, Arizona, California, the District of Columbia, Georgia, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Washington, West Virginia, and Wisconsin. Since emergency contraception became available without a prescription for certain individuals, refusals to provide non-prescription emergency contraception have also been reported.
SEC. 3. DUTIES OF PHARMACIES TO ENSURE PROVISION OF
FDA-APPROVED CONTRACEPTION.

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

“SEC. 249. DUTIES OF PHARMACIES TO ENSURE PROVISION OF FDA-APPROVED CONTRACEPTION.

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

“(1) If a customer requests a contraceptive that is in stock, the pharmacy shall ensure that the contraceptive is provided to the customer without delay.

“(2) If a customer requests a contraceptive that is not in stock and the pharmacy in the normal course of business stocks contraception, the pharmacy shall immediately inform the customer that the contraceptive is not in stock and without delay offer the customer the following options:

“(A) If the customer prefers to obtain the contraceptive through a referral or transfer, the pharmacy shall—

“(i) locate a pharmacy of the customer’s choice or the closest pharmacy
confirmed to have the contraceptive in stock; and

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

“(B) If the customer prefers for the pharmacy to order the contraceptive, the pharmacy shall obtain the contraceptive under the pharmacy’s standard procedure for expedited ordering of medication and notify the customer when the contraceptive arrives.

“(3) The pharmacy shall ensure that its employees do not—

“(A) intimidate, threaten, or harass customers in the delivery of services relating to a request for contraception;

“(B) interfere with or obstruct the delivery of services relating to a request for contraception;

“(C) intentionally misrepresent or deceive customers about the availability of contraception or its mechanism of action;

“(D) breach medical confidentiality with respect to a request for contraception or threaten to breach such confidentiality; or
“(E) refuse to return a valid, lawful prescription for contraception upon customer request.

“(b) **Contraceptives Not Ordinarily Stocked**.—Nothing in subsection (a)(2) shall be construed to require any pharmacy to comply with such subsection if the pharmacy does not ordinarily stock contraceptives in the normal course of business.

“(c) **Refusals Pursuant to Standard Pharmacy Practice**.—This section does not prohibit a pharmacy from refusing to provide a contraceptive to a customer in accordance with any of the following:

“(1) If it is unlawful to dispense the contraceptive to the customer without a valid, lawful prescription and no such prescription is presented.

“(2) If the customer is unable to pay for the contraceptive.

“(3) If the employee of the pharmacy refuses to provide the contraceptive on the basis of a professional clinical judgment.

“(d) **Rule of Construction**.—Nothing in this section shall be construed to invalidate or limit rights, remedies, procedures, or legal standards under title VII of the **Civil Rights Act of 1964.**
“(e) **Preemption.**—This section does not preempt any provision of State law or any professional obligation made applicable by a State board or other entity responsible for licensing or discipline of pharmacies or pharmacists, to the extent that such State law or professional obligation provides protections for customers that are greater than the protections provided by this section.

“(f) **Enforcement.**—

“(1) **Civil Penalty.**—A pharmacy that violates a requirement of subsection (a) is liable to the United States for a civil penalty in an amount not exceeding $1,000 per day of violation, not to exceed $100,000 for all violations adjudicated in a single proceeding.

“(2) **Private Cause of Action.**—Any person aggrieved as a result of a violation of a requirement of subsection (a) may, in any court of competent jurisdiction, commence a civil action against the pharmacy involved to obtain appropriate relief, including actual and punitive damages, injunctive relief, and a reasonable attorney’s fee and cost.

“(3) **Limitations.**—A civil action under paragraph (1) or (2) may not be commenced against a pharmacy after the expiration of the 5-year period.
beginning on the date on which the pharmacy allegedly engaged in the violation involved.

“(g) DEFINITIONS.—In this section:

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

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

“(3) The term ‘pharmacy’ means an entity that—

“(A) is authorized by a State to engage in the business of selling prescription drugs at retail; and

“(B) employs one or more employees.

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

“(5) The term ‘professional clinical judgment’ means the use of professional knowledge and skills to form a clinical judgment, in accordance with prevailing medical standards.

“(6) The term ‘without delay’, with respect to a pharmacy providing, providing a referral for, or ordering contraception, or transferring the prescription for contraception, means within the usual and
customary timeframe at the pharmacy for providing, providing a referral for, or ordering other products, or transferring the prescription for other products, respectively.

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