

Calendar No. 362

117TH CONGRESS
2^D SESSION**S. 4132**

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

MAY 3, 2022

Mr. BLUMENTHAL introduced the following bill; which was read the first time

MAY 4, 2022

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 2022".

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

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

11 (3) HEALTH CARE PROVIDER.—The term
12 “health care provider” means any entity or indi-
13 vidual (including any physician, certified nurse-mid-
14 wife, nurse practitioner, and physician assistant)
15 that—

16 (A) is engaged or seeks to engage in the
17 delivery of health care services, including abor-
18 tion services, and

19 (B) if required by law or regulation to be
20 licensed or certified to engage in the delivery of
21 such services—

22 (i) is so licensed or certified, or

23 (ii) would be so licensed or certified

24 but for their past, present, or potential

1 provision of abortion services permitted by
2 section 3.

3 (4) MEDICALLY COMPARABLE PROCEDURE.—

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

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

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

18 (7) VIABILITY.—The term “viability” means
19 the point in a pregnancy at which, in the good-faith
20 medical judgment of the treating health care pro-
21 vider, based on the particular facts of the case be-
22 fore the health care provider, there is a reasonable
23 likelihood of sustained fetal survival outside the
24 uterus with or without artificial support.

1 **SEC. 3. PERMITTED SERVICES.**

2 (a) **GENERAL RULE.**—A health care provider has a
3 statutory right under this Act to provide abortion services,
4 and may provide abortion services, and that provider’s pa-
5 tient has a corresponding right to receive such services,
6 without any of the following limitations or requirements:

7 (1) A requirement that a health care provider
8 perform specific tests or medical procedures in con-
9 nection with the provision of abortion services, un-
10 less generally required for the provision of medically
11 comparable procedures.

12 (2) A requirement that the same health care
13 provider who provides abortion services also perform
14 specified tests, services, or procedures prior to or
15 subsequent to the abortion.

16 (3) A requirement that a health care provider
17 offer or provide the patient seeking abortion services
18 medically inaccurate information in advance of or
19 during abortion services.

20 (4) A limitation on a health care provider’s abil-
21 ity to prescribe or dispense drugs based on current
22 evidence-based regimens or the provider’s good-faith
23 medical judgment, other than a limitation generally
24 applicable to the medical profession.

25 (5) A limitation on a health care provider’s abil-
26 ity to provide abortion services via telemedicine,

1 other than a limitation generally applicable to the
2 provision of medical services via telemedicine.

3 (6) A requirement or limitation concerning the
4 physical plant, equipment, staffing, or hospital
5 transfer arrangements of facilities where abortion
6 services are provided, or the credentials or hospital
7 privileges or status of personnel at such facilities,
8 that is not imposed on facilities or the personnel of
9 facilities where medically comparable procedures are
10 performed.

11 (7) A requirement that, prior to obtaining an
12 abortion, a patient make one or more medically un-
13 necessary in-person visits to the provider of abortion
14 services or to any individual or entity that does not
15 provide abortion services.

16 (8) A prohibition on abortion at any point or
17 points in time prior to fetal viability, including a
18 prohibition or restriction on a particular abortion
19 procedure.

20 (9) A prohibition on abortion after fetal viabil-
21 ity when, in the good-faith medical judgment of the
22 treating health care provider, continuation of the
23 pregnancy would pose a risk to the pregnant pa-
24 tient's life or health.

1 (10) A limitation on a health care provider's
2 ability to provide immediate abortion services when
3 that health care provider believes, based on the
4 good-faith medical judgment of the provider, that
5 delay would pose a risk to the patient's health.

6 (11) A requirement that a patient seeking abor-
7 tion services at any point or points in time prior to
8 fetal viability disclose the patient's reason or reasons
9 for seeking abortion services, or a limitation on the
10 provision or obtaining of abortion services at any
11 point or points in time prior to fetal viability based
12 on any actual, perceived, or potential reason or rea-
13 sons of the patient for obtaining abortion services,
14 regardless of whether the limitation is based on a
15 health care provider's degree of actual or construc-
16 tive knowledge of such reason or reasons.

17 (b) OTHER LIMITATIONS OR REQUIREMENTS.—The
18 statutory right specified in subsection (a) shall not be lim-
19 ited or otherwise infringed through, in addition to the limi-
20 tations and requirements specified in paragraphs (1)
21 through (11) of subsection (a), any limitation or require-
22 ment that—

23 (1) is the same as or similar to one or more of
24 the limitations or requirements described in sub-
25 section (a); or

1 (2) both—

2 (A) expressly, effectively, implicitly, or as
3 implemented singles out the provision of abor-
4 tion services, health care providers who provide
5 abortion services, or facilities in which abortion
6 services are provided; and

7 (B) impedes access to abortion services.

8 (c) FACTORS FOR CONSIDERATION.—Factors a court
9 may consider in determining whether a limitation or re-
10 quirement impedes access to abortion services for purposes
11 of subsection (b)(2)(B) include the following:

12 (1) Whether the limitation or requirement, in a
13 provider’s good-faith medical judgment, interferes
14 with a health care provider’s ability to provide care
15 and render services, or poses a risk to the patient’s
16 health or safety.

17 (2) Whether the limitation or requirement is
18 reasonably likely to delay or deter some patients in
19 accessing abortion services.

20 (3) Whether the limitation or requirement is
21 reasonably likely to directly or indirectly increase the
22 cost of providing abortion services or the cost for ob-
23 taining abortion services (including costs associated
24 with travel, childcare, or time off work).

1 (4) Whether the limitation or requirement is
2 reasonably likely to have the effect of necessitating
3 a trip to the offices of a health care provider that
4 would not otherwise be required.

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

9 (6) Whether the limitation or requirement im-
10 poses penalties that are not imposed on other health
11 care providers for comparable conduct or failure to
12 act, or that are more severe than penalties imposed
13 on other health care providers for comparable con-
14 duct or failure to act.

15 (7) The cumulative impact of the limitation or
16 requirement combined with other new or existing
17 limitations or requirements.

18 (d) EXCEPTION.—To defend against a claim that a
19 limitation or requirement violates a health care provider’s
20 or patient’s statutory rights under subsection (b), a party
21 must establish, by clear and convincing evidence, that—

22 (1) the limitation or requirement significantly
23 advances the safety of abortion services or the health
24 of patients; and

1 (2) the safety of abortion services or the health
2 of patients cannot be advanced by a less restrictive
3 alternative measure or action.

4 **SEC. 4. APPLICABILITY AND PREEMPTION.**

5 (a) IN GENERAL.—

6 (1) Except as stated under subsection (b), this
7 Act supersedes and applies to the law of the Federal
8 Government and each State government, and the im-
9 plementation of such law, whether statutory, com-
10 mon law, or otherwise, and whether adopted before
11 or after the date of enactment of this Act, and nei-
12 ther the Federal Government nor any State govern-
13 ment shall administer, implement, or enforce any
14 law, rule, regulation, standard, or other provision
15 having the force and effect of law that conflicts with
16 any provision of this Act, notwithstanding any other
17 provision of Federal law, including the Religious
18 Freedom Restoration Act of 1993 (42 U.S.C.
19 2000bb et seq.).

20 (2) Federal statutory law adopted after the
21 date of the enactment of this Act is subject to this
22 Act unless such law explicitly excludes such applica-
23 tion by reference to this Act.

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

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

3 (2) insurance or medical assistance coverage of
4 abortion services;

5 (3) the procedure described in section
6 1531(b)(1) of title 18, United States Code; or

7 (4) generally applicable State contract law.

8 (c) DEFENSE.—In any cause of action against an in-
9 dividual or entity who is subject to a limitation or require-
10 ment that violates this Act, in addition to the remedies
11 specified in section 7, this Act shall also apply to, and
12 may be raised as a defense by, such an individual or entity.

13 **SEC. 5. EFFECTIVE DATE.**

14 This Act shall take effect immediately upon the date
15 of enactment of this Act. This Act shall apply to all re-
16 strictions on the provision of, or access to, abortion serv-
17 ices whether the restrictions are enacted or imposed prior
18 to or after the date of enactment of this Act, except as
19 otherwise provided in this Act.

20 **SEC. 6. RULES OF CONSTRUCTION.**

21 (a) IN GENERAL.—In interpreting the provisions of
22 this Act, a court shall liberally construe such provisions
23 to effectuate the purposes of the Act.

24 (b) RULE OF CONSTRUCTION.—Nothing in this Act
25 shall be construed to authorize any government to inter-

1 fere with a person’s ability to terminate a pregnancy, to
2 diminish or in any way negatively affect a person’s con-
3 stitutional right to terminate a pregnancy, or to displace
4 any other remedy for violations of the constitutional right
5 to terminate a pregnancy.

6 (c) OTHER INDIVIDUALS CONSIDERED AS GOVERN-
7 MENT OFFICIALS.—Any person who, by operation of a
8 provision of Federal or State law, is permitted to imple-
9 ment or enforce a limitation or requirement that violates
10 section 3 of this Act shall be considered a government offi-
11 cial for purposes of this Act.

12 **SEC. 7. ENFORCEMENT.**

13 (a) ATTORNEY GENERAL.—The Attorney General
14 may commence a civil action on behalf of the United
15 States against any State that violates, or against any gov-
16 ernment official (including a person described in section
17 6(c)) that implements or enforces a limitation or require-
18 ment that violates, section 3. The court shall hold unlawful
19 and set aside the limitation or requirement if it is in viola-
20 tion of this Act.

21 (b) PRIVATE RIGHT OF ACTION.—

22 (1) IN GENERAL.—Any individual or entity, in-
23 cluding any health care provider or patient, ad-
24 versely affected by an alleged violation of this Act,
25 may commence a civil action against any State that

1 violates, or against any government official (includ-
2 ing a person described in section 6(c)) that imple-
3 ments or enforces a limitation or requirement that
4 violates, section 3. The court shall hold unlawful and
5 set aside the limitation or requirement if it is in vio-
6 lation of this Act.

7 (2) HEALTH CARE PROVIDER.—A health care
8 provider may commence an action for relief on its
9 own behalf, on behalf of the provider’s staff, and on
10 behalf of the provider’s patients who are or may be
11 adversely affected by an alleged violation of this Act.

12 (c) EQUITABLE RELIEF.—In any action under this
13 section, the court may award appropriate equitable relief,
14 including temporary, preliminary, or permanent injunctive
15 relief.

16 (d) COSTS.—In any action under this section, the
17 court shall award costs of litigation, as well as reasonable
18 attorney’s fees, to any prevailing plaintiff. A plaintiff shall
19 not be liable to a defendant for costs or attorney’s fees
20 in any non-frivolous action under this section.

21 (e) JURISDICTION.—The district courts of the United
22 States shall have jurisdiction over proceedings under this
23 Act and shall exercise the same without regard to whether
24 the party aggrieved shall have exhausted any administra-
25 tive or other remedies that may be provided for by law.

1 (f) ABROGATION OF STATE IMMUNITY.—Neither a
2 State that enforces or maintains, nor a government official
3 (including a person described in section 6(c)) who is per-
4 mitted to implement or enforce any limitation or require-
5 ment that violates section 3 shall be immune under the
6 Tenth Amendment to the Constitution of the United
7 States, the Eleventh Amendment to the Constitution of
8 the United States, or any other source of law, from an
9 action in a Federal or State court of competent jurisdic-
10 tion challenging that limitation or requirement.

11 **SEC. 8. SEVERABILITY.**

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

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