

117TH CONGRESS
2D SESSION

H. R. 8373

To protect a person'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 HOUSE OF REPRESENTATIVES

JULY 14, 2022

Ms. MANNING (for herself, Ms. WILLIAMS of Georgia, Ms. JACOBS of California, Ms. CRAIG, Ms. DELAURO, Ms. DEGETTE, Ms. ESCOBAR, Ms. LEE of California, Mr. NADLER, Ms. LOIS FRANKEL of Florida, Mrs. FLETCHER, Ms. CLARK of Massachusetts, Ms. UNDERWOOD, Ms. TITUS, Mr. CARTER of Louisiana, Mr. VARGAS, Ms. ROSS, Ms. BONAMICI, Ms. WILD, Ms. SCANLON, Mr. TONKO, Mr. BOWMAN, Ms. CASTOR of Florida, Mr. TORRES of New York, Mr. VEASEY, Ms. BOURDEAUX, Mr. LOWENTHAL, Ms. BARRAGÁN, Mr. JONES, Ms. CLARKE of New York, Ms. VELÁZQUEZ, Ms. MENG, Mr. DOGGETT, Ms. WILSON of Florida, Mr. DAVID SCOTT of Georgia, Mrs. CAROLYN B. MALONEY of New York, Mr. AUCHINCLOSS, Mr. CONNOLLY, Mr. MEEKS, Mr. GRIJALVA, Mrs. LEE of Nevada, Mrs. WATSON COLEMAN, Mr. SHERMAN, Mr. BROWN of Maryland, Mrs. BUSTOS, Mr. POCAN, Ms. SHERRILL, Mr. WELCH, Ms. DEAN, Ms. BROWN of Ohio, Ms. TLAIB, Ms. NEWMAN, Ms. WASSERMAN SCHULTZ, Ms. PINGREE, Ms. CHU, and Mr. TAKANO) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To protect a person'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:

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

12 (2) CONTRACEPTIVE.—The term “contracep-
13 tive” means any device or medication used to pre-
14 vent pregnancy, whether specifically used to prevent
15 pregnancy or for other health needs, including all
16 contraceptive products approved, cleared, or granted
17 de novo classification by the Food and Drug Admin-
18 istration, such as oral contraceptives, long-acting re-
19 versible contraceptives, emergency contraceptives, in-
20 ternal and external condoms, injectables, vaginal
21 barrier methods, transdermal patches, and vaginal
22 rings, or other contraceptives.

23 (3) GOVERNMENT.—The term “government”
24 includes each branch, department, agency, instru-

1 mentality, and official of the United States or a
2 State.

3 (4) HEALTH CARE PROVIDER.—The term
4 “health care provider” means any entity or indi-
5 vidual (including any physician, certified nurse-mid-
6 wife, nurse, nurse practitioner, physician assistant,
7 and pharmacist) that is engaged or seeks to engage
8 in health care services.

9 (5) STATE.—The term “State” includes each of
10 the 50 States, the District of Columbia, the Com-
11 monwealth of Puerto Rico, and each territory and
12 possession of the United States, and any subdivision
13 of any of the foregoing, including any unit of local
14 government, such as a county, city, town, village, or
15 other general purpose political subdivision of a
16 State.

17 **SEC. 3. FINDINGS.**

18 Congress finds the following:

19 (1) The right to contraception is a fundamental
20 right, central to a person’s privacy, health, well-
21 being, dignity, liberty, equality, and ability to par-
22 ticipate in the social and economic life of the Nation.

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

1 (3) In *Griswold v. Connecticut* (381 U.S. 479
2 (1965)), the Supreme Court first recognized the
3 Constitutional right for married people to use con-
4 traceptives.

5 (4) In *Eisenstadt v. Baird* (405 U.S. 438
6 (1972)), the Supreme Court confirmed the constitu-
7 tional right of all people to legally access contracep-
8 tives regardless of marital status.

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

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

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

23 (8) Contraception is safe, essential health care,
24 and access to contraceptive products and services is
25 central to people's ability to participate equally in

1 economic and social life in the United States and
2 globally. Contraception allows people to make deci-
3 sions about their families and their lives.

4 (9) Contraception is key to sexual and repro-
5 ductive health. It is critical to preventing unintended
6 pregnancy, is highly effective in preventing and
7 treating a wide array of often severe medical condi-
8 tions, and decreases the risk of certain cancers.

9 (10) Family planning improves health outcomes
10 for women, their families, and their communities
11 and reduces rates of maternal and infant mortality
12 and morbidity.

13 (11) The United States has a long history of
14 reproductive coercion, including the childbearing
15 forced upon enslaved women, as well as the forced
16 sterilization of Black women, Puerto Rican women,
17 indigenous women, immigrant women, and disabled
18 women, and reproductive coercion continues to
19 occur.

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 Black, indigenous, and other peo-
24 ple of color; immigrants; LGBTQ people; people with
25 disabilities; people with low incomes; and people liv-

1 ing in rural and underserved areas. Many people
2 who are part of these marginalized groups already
3 face barriers—exacerbated by social, political, eco-
4 nomic, and environmental inequities—to comprehen-
5 sive health care, including reproductive health care,
6 that reduce their ability to make decisions about
7 their health, families, and lives.

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

12 (14) People engage in interstate commerce to
13 access contraception services.

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

19 (16) Congress has the authority to enact this
20 Act to protect access to contraception pursuant to—

21 (A) its powers under the commerce clause
22 of section 8 of article I of the Constitution of
23 the United States;

24 (B) its powers under section 5 of the Four-
25 teenth Amendment to the Constitution of the

1 United States to enforce the provisions of sec-
2 tion 1 of the Fourteenth Amendment; and

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

6 (17) Congress has used its authority in the past
7 to protect and expand access to contraception infor-
8 mation, products, and services.

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

15 (19) In 1972, Congress required Medicaid to
16 cover family planning services and supplies, and
17 Medicaid currently accounts for 75 percent of Fed-
18 eral funds spent on family planning.

19 (20) In 2010, Congress enacted the Patient
20 Protection and Affordable Care Act (Public Law
21 111–148) (referred to in this section as the “ACA”).
22 Among other provisions, the ACA included provi-
23 sions to expand the affordability and accessibility of
24 contraception by requiring that most health insur-

1 ance plans provide coverage for preventive health
2 care with no patient cost-sharing.

3 (21) Despite the clearly established constitu-
4 tional right to contraception, access to contracep-
5 tives, including emergency contraceptives and long-
6 acting reversible contraceptives, has been obstructed
7 across the United States in various ways by Federal
8 and State governments.

9 (22) In 2021 alone, at least 4 States tried to
10 ban access to some or all contraceptives by restrict-
11 ing access to public funding for these products and
12 services. Also, State violations of the Medicaid free
13 choice of provider requirement, thus far in Arkan-
14 sas, Mississippi, Missouri, and Texas, have infringed
15 on people's ability to access their contraceptive care.

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

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

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

3 (25) In June 2022, Justice Thomas, in his con-
4 ccurring opinion in *Dobbs v. Jackson Women’s*
5 *Health Organization* (597 U.S. ____ (2022)), stated
6 that the Supreme Court “should reconsider all of
7 this Court’s substantive due process precedents, in-
8 cluding *Griswold*, *Lawrence*, and *Obergefell*” and
9 that the Court has “a duty to correct the error es-
10 tablished in those 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. PERMITTED SERVICES.**

21 (a) GENERAL RULE.—A person has a statutory right
22 under this Act to obtain contraceptives and to engage in
23 contraception, and a health care provider has a cor-
24 responding right to provide contraceptives, contraception,
25 and information related to contraception.

1 (b) LIMITATIONS OR REQUIREMENTS.—The statu-
2 tory rights specified in subsection (a) shall not be limited
3 or otherwise infringed through any limitation or require-
4 ment that—

5 (1) expressly, effectively, implicitly, or as imple-
6 mented singles out the provision of contraceptives,
7 contraception, or contraception-related information;
8 health care providers who provide contraceptives,
9 contraception, or contraception-related information;
10 or facilities in which contraceptives, contraception,
11 or contraception-related information are provided;
12 and

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

15 (c) EXCEPTION.—To defend against a claim that a
16 limitation or requirement violates a health care provider's
17 or patient's statutory rights under subsection (b), a party
18 must establish, by clear and convincing evidence, that—

19 (1) the limitation or requirement significantly
20 advances access to contraceptives, contraception, and
21 information related to contraception; and

22 (2) access to contraceptives, contraception, and
23 information related to contraception or the health of
24 patients cannot be advanced by a less restrictive al-
25 ternative measure or action.

1 **SEC. 5. APPLICABILITY AND PREEMPTION.**

2 (a) IN GENERAL.—

3 (1) GENERAL APPLICATION.—Except as stated
4 under subsection (b), this Act supersedes and ap-
5 plies to the law of the Federal Government and each
6 State government, and the implementation of such
7 law, whether statutory, common law, or otherwise,
8 and whether adopted before or after the date of en-
9 actment of this Act, and neither the Federal Govern-
10 ment nor any State government shall administer,
11 implement, or enforce any law, rule, regulation,
12 standard, or other provision having the force and ef-
13 fect of law that conflicts with any provision of this
14 Act, notwithstanding any other provision of Federal
15 law, including the Religious Freedom Restoration
16 Act of 1993 (42 U.S.C. 2000bb et seq.).

17 (2) SUBSEQUENTLY ENACTED FEDERAL LEGIS-
18 LATION.—Federal statutory law adopted after the
19 date of the enactment of this Act is subject to this
20 Act unless such law explicitly excludes such applica-
21 tion by reference to this Act.

22 (b) LIMITATIONS.—The provisions of this Act shall
23 not supersede or apply to insurance or medical assistance
24 coverage, such as coverage provided under section
25 1905(A)(4)(c) of the Social Security Act and section 2713

1 of Public Health Service Act, so long as such coverage
2 does not limit the rights established under section 4(a).

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

8 (d) EFFECTIVE DATE.—This Act shall take effect
9 immediately upon the date of enactment of this Act.

10 **SEC. 6. RULES OF CONSTRUCTION.**

11 (a) IN GENERAL.—In interpreting the provisions of
12 this Act, a court shall liberally construe such provisions
13 to effectuate the purposes of the Act.

14 (b) RULE OF CONSTRUCTION.—Nothing in this Act
15 shall be construed to authorize any government to inter-
16 fere with a health care provider’s ability to provide contra-
17 ceptives or information related to contraception or a pa-
18 tient’s ability to obtain contraceptives or to engage in con-
19 traception.

20 (c) OTHER INDIVIDUALS CONSIDERED AS GOVERN-
21 MENT OFFICIALS.—Any person who, by operation of a
22 provision of Federal or State law, is permitted to imple-
23 ment or enforce a limitation or requirement that violates
24 section 4 shall be considered a government official for pur-
25 poses of this Act.

1 **SEC. 7. 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 a person described in section
6 6(c)) that implements or enforces a limitation or require-
7 ment that violates, section 3. The court shall hold unlawful
8 and set aside the limitation or requirement if it is in viola-
9 tion 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 a person described in section 6(c)) that imple-
17 ments or enforces a limitation or requirement that
18 violates, section 4. The court shall hold unlawful and
19 set aside the limitation or requirement if it is in vio-
20 lation 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, or permanent injunctive
4 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 non-frivolous 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 a person described in section 6(c)) who is per-
18 mitted to implement or enforce any limitation or require-
19 ment that violates section 4 shall be immune under the
20 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. 8. SEVERABILITY.**

2 If any provision of this Act, or the application of such
3 provision to any person, 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 persons, entities, governments, or circumstances, shall not
7 be affected thereby.

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