

118TH CONGRESS  
1ST SESSION

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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.

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IN THE SENATE OF THE UNITED STATES

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Ms. BALDWIN (for herself, Mr. BLUMENTHAL, Mrs. MURRAY, Mr. SCHUMER, Ms. WARREN, Ms. CORTEZ MASTO, Ms. KLOBUCHAR, Ms. STABENOW, Mrs. GILLIBRAND, Mr. MURPHY, Mr. BENNET, Mr. BOOKER, Mr. BROWN, Ms. CANTWELL, Mr. CARDIN, Mr. CARPER, Mr. COONS, Ms. DUCKWORTH, Mr. DURBIN, Mrs. FEINSTEIN, Mr. FETTERMAN, Ms. HASSAN, Mr. HEINRICH, Mr. HICKENLOOPER, Ms. HIRONO, Mr. KAINE, Mr. KELLY, Mr. KING, Mr. LUJÁN, Mr. MARKEY, Mr. MENENDEZ, Mr. MERKLEY, Mr. OSSOFF, Mr. PADILLA, Mr. PETERS, Mr. REED, Ms. ROSEN, Mr. SANDERS, Mr. SCHATZ, Mrs. SHAHEEN, Ms. SINEMA, Ms. SMITH, Mr. TESTER, Mr. VAN HOLLEN, Mr. WARNER, Mr. WARNOCK, Mr. WELCH, Mr. WHITEHOUSE, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on

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**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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Women’s Health Pro-  
3 tection Act of 2023”.

4 **SEC. 2. PURPOSE.**

5 The purposes of this Act are as follows:

6 (1) To permit people to seek and obtain abor-  
7 tion services, and to permit health care providers to  
8 provide abortion services, without harmful or unwar-  
9 ranted limitations or requirements that single out  
10 the provision of abortion services for restrictions  
11 that are more burdensome than those restrictions  
12 imposed on medically comparable procedures, do not  
13 significantly advance reproductive health or the safe-  
14 ty of abortion services, or make abortion services  
15 more difficult to access.

16 (2) To promote access to abortion services and  
17 thereby protect women’s ability to participate equally  
18 in the economic and social life of the United States.

19 (3) To protect people’s ability to make decisions  
20 about their bodies, medical care, family, and life’s  
21 course.

22 (4) To eliminate unwarranted burdens on com-  
23 merce and the right to travel. Abortion bans and re-  
24 strictions invariably affect commerce over which the  
25 United States has jurisdiction. Health care providers  
26 engage in economic and commercial activity when

1       they provide abortion services. Moreover, there is an  
2       interstate market for abortion services and, in order  
3       to provide such services, health care providers en-  
4       gage in interstate commerce to purchase medicine,  
5       medical equipment, and other necessary goods and  
6       services; to obtain and provide training; and to em-  
7       ploy and obtain commercial services from health care  
8       personnel, many of whom themselves engage in  
9       interstate commerce, including by traveling across  
10      State lines. Congress has the authority to enact this  
11      Act to protect access to abortion services pursuant  
12      to—

13               (A) its powers under the commerce clause  
14               of section 8 of article I of the Constitution of  
15               the United States;

16               (B) its powers under section 5 of the Four-  
17               teenth Amendment to the Constitution of the  
18               United States to enforce the provisions of sec-  
19               tion 1 of the Fourteenth Amendment; and

20               (C) its powers under the necessary and  
21               proper clause of section 8 of Article I of the  
22               Constitution of the United States.

23 **SEC. 3. DEFINITIONS.**

24       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 (including  
13 any hospital, clinic, or pharmacy) or individual (in-  
14 cluding any physician, certified nurse-midwife, nurse  
15 practitioner, pharmacist, or physician assistant)  
16 that—

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

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

23                           (i) is so licensed or certified; or

24                           (ii) would be so licensed or certified

25                           but for their past, present, or potential

1 provision of abortion services protected by  
2 section 4.

3 (4) MEDICALLY COMPARABLE PROCEDURES.—

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, and based on the particular facts of the case  
22 before 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. 4. PROTECTED ACTIVITIES AND SERVICES.**

2 (a) GENERAL RULES.—

3 (1) PRE-VIABILITY.—A health care provider has  
4 a right under this Act to provide abortion services,  
5 and a patient has a corresponding right under this  
6 Act to terminate a pregnancy prior to viability with-  
7 out being subject to any of the following limitations  
8 or requirements:

9 (A) A prohibition on abortion prior to via-  
10 bility, including a prohibition or restriction on  
11 a particular abortion procedure or method, or a  
12 prohibition on providing or obtaining such abor-  
13 tions.

14 (B) A limitation on a health care pro-  
15 vider's ability to prescribe or dispense drugs  
16 that could be used for reproductive health pur-  
17 poses based on current evidence-based regimens  
18 or the provider's good-faith medical judgment,  
19 or a limitation on a patient's ability to receive  
20 or use such drugs, other than a limitation gen-  
21 erally applicable to the prescription, dispensing,  
22 or distribution of drugs.

23 (C) A limitation on a health care provider's  
24 ability to provide, or a patient's ability to re-  
25 ceive, abortion services via telemedicine, other  
26 than a limitation generally applicable to the

1 provision of medically comparable services via  
2 telemedicine.

3 (D) A limitation or prohibition on a pa-  
4 tient's ability to receive, or a provider's ability  
5 to provide, abortion services in a State based on  
6 the State of residency of the patient, or a prohi-  
7 bition or limitation on the ability of any indi-  
8 vidual to assist or support a patient seeking  
9 abortion.

10 (E) A requirement that a health care pro-  
11 vider perform specific tests or medical proce-  
12 dures in connection with the provision of abor-  
13 tion services (including prior to or subsequent  
14 to the abortion), unless generally required for  
15 the provision of medically comparable proce-  
16 dures.

17 (F) A requirement that a health care pro-  
18 vider offer or provide a patient seeking abortion  
19 services medically inaccurate information.

20 (G) A limitation or requirement concerning  
21 the physical plant, equipment, staffing, or hos-  
22 pital transfer arrangements of facilities where  
23 abortion services are provided, or the creden-  
24 tials or hospital privileges or status of personnel  
25 at such facilities, that is not imposed on facili-

1           ties or the personnel of facilities where medi-  
2           cally comparable procedures are performed.

3           (H) A requirement that, prior to obtaining  
4           an abortion, a patient make one or more medi-  
5           cally unnecessary in-person visits to the pro-  
6           vider of abortion services or to any individual or  
7           entity that does not provide abortion services.

8           (I) A limitation on a health care provider's  
9           ability to provide immediate abortion services  
10          when that health care provider believes, based  
11          on the good-faith medical judgment of the pro-  
12          vider, that delay would pose a risk to the pa-  
13          tient's life or health.

14          (J) A requirement that a patient seeking  
15          abortion services at any point or points in time  
16          prior to viability disclose the patient's reason or  
17          reasons for seeking abortion services, or a limi-  
18          tation on providing or obtaining abortion serv-  
19          ices at any point or points in time prior to via-  
20          bility based on any actual, perceived, or poten-  
21          tial reason or reasons of the patient for obtain-  
22          ing abortion services, regardless of whether the  
23          limitation is based on a health care provider's  
24          actual or constructive knowledge of such reason  
25          or reasons.

1 (2) POST-VIABILITY.—

2 (A) IN GENERAL.—A health care provider  
3 has a right under this Act to provide abortion  
4 services and a patient has a corresponding right  
5 under this Act to terminate a pregnancy after  
6 viability when, in the good-faith medical judge-  
7 ment of the treating health care provider, it is  
8 necessary to protect the life or health of the pa-  
9 tient. This subparagraph shall not otherwise  
10 apply after viability.

11 (B) ADDITIONAL CIRCUMSTANCES.—A  
12 State may provide additional circumstances  
13 under which post viability abortions are per-  
14 mitted under this paragraph.

15 (C) LIMITATION.—In the case where a ter-  
16 mination of a pregnancy after viability, in the  
17 good-faith medical judgement of the treating  
18 health care provider, is necessary to protect the  
19 life or health of the patient, a State shall not  
20 impose any of the limitations or requirements  
21 described in paragraph (1)

22 (b) OTHER LIMITATIONS OR REQUIREMENTS.—The  
23 rights described in subsection (a) shall not be limited or  
24 otherwise infringed through any other limitation or re-  
25 quirement that—

1 (1) expressly, effectively, implicitly, or as imple-  
2 mented, singles out abortion, the provision of abor-  
3 tion services, individuals who seek abortion services  
4 or who provide assistance and support to those seek-  
5 ing abortion services, health care providers who pro-  
6 vide abortion services, or facilities in which abortion  
7 services are provided; and

8 (2) impedes access to abortion services.

9 (c) FACTORS FOR CONSIDERATION.—A court may  
10 consider the following factors, among others, in deter-  
11 mining whether a limitation or requirement impedes ac-  
12 cess to abortion services for purposes of subsection (b)(2):

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

18 (2) Whether the limitation or requirement is  
19 reasonably likely to delay or deter a patient in ac-  
20 cessing abortion services.

21 (3) Whether the limitation or requirement is  
22 reasonably likely to directly or indirectly increase the  
23 cost of providing abortion services or the cost for ob-  
24 taining abortion services such as costs associated  
25 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 patient travel that would not otherwise have been re-  
4 quired, including by making it necessary for a pa-  
5 tient to travel out of State to obtain services.

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

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

16          (7) The cumulative impact of the limitation or  
17 requirement combined with other limitations or re-  
18 quirements.

19          (d) EXCEPTION.—To defend against a claim that a  
20 limitation or requirement violates a health care provider’s  
21 or patient’s rights under subsection (b) a party must es-  
22 tablish, by clear and convincing evidence, that the limita-  
23 tion or requirement is essential to significantly advance  
24 the safety of abortion services or the health of the patients  
25 and that the safety or health objective cannot be accom-

1 plished by a different means that does not interfere with  
2 the right protected under subsection (b)).

3 **SEC. 5. PROTECTION OF THE RIGHT TO TRAVEL.**

4 A person has a fundamental right under the Con-  
5 stitution of the United States and this Act to travel to  
6 a State other than the person's State of residence, includ-  
7 ing to obtain reproductive health services such as prenatal,  
8 childbirth, fertility, and abortion services, and a person  
9 has a right under this Act to assist another person to ob-  
10 tain such services or otherwise exercise the right described  
11 in this section.

12 **SEC. 6. APPLICABILITY AND PREEMPTION.**

13 (a) IN GENERAL.—

14 (1) SUPERSEDING INCONSISTENT LAWS.—Ex-  
15 cept as provided under subsection (b), this Act shall  
16 supersede any inconsistent Federal or State law, and  
17 the implementation of such law, whether statutory,  
18 common law, or otherwise, and whether adopted  
19 prior to or after the date of enactment of this Act.  
20 A Federal or State government official shall not ad-  
21 minister, implement, or enforce any law, rule, regu-  
22 lation, standard, or other provision having the force  
23 and effect of law that conflicts with any provision of  
24 this Act, notwithstanding any other provision of

1 Federal law, including the Religious Freedom Res-  
2 toration Act of 1993 (42 U.S.C. 2000bb et seq.).

3 (2) LAWS AFTER DATE OF ENACTMENT.—Fed-  
4 eral law enacted after the date of the enactment of  
5 this Act shall be subject to this Act unless such law  
6 explicitly excludes such application by reference to  
7 this Act.

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

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

12 (2) laws regulating insurance or medical assist-  
13 ance coverage of abortion services;

14 (3) the procedure described in section  
15 1531(b)(1) of title 18, United States Code; or

16 (4) generally applicable State contract law.

17 (c) PREEMPTION DEFENSE.—In any legal or admin-  
18 istrative action against a person or entity who has exer-  
19 cised or attempted to exercise a right protected by section  
20 4 or section 5 or against any person or entity who has  
21 taken any step to assist any such person or entity in exer-  
22 cising such right, this Act shall also apply to, and may  
23 be raised as a defense by, such person or entity, in addi-  
24 tion to the remedies specified in section 8.

1 **SEC. 7. RULES OF CONSTRUCTION.**

2 (a) LIBERAL CONSTRUCTION BY COURTS.—In any  
3 action before a court under this Act, the court shall lib-  
4 erally construe the provisions of this Act to effectuate the  
5 purposes of the Act.

6 (b) PROTECTION OF LIFE AND HEALTH.—Nothing  
7 in this Act shall be construed to authorize any government  
8 official to interfere with, diminish, or negatively affect a  
9 person’s ability to obtain or provide abortion services prior  
10 to viability or after viability when, in the good-faith med-  
11 ical judgment of the treating health care provider, continu-  
12 ation of the pregnancy would pose a risk to the pregnant  
13 patient’s life or health.

14 (c) GOVERNMENT OFFICIALS.—Any person who, by  
15 operation of a provision of Federal or State law, is per-  
16 mitted to implement or enforce a limitation or requirement  
17 that violates section 4 or 5 shall be considered a govern-  
18 ment official for purposes of this Act.

19 **SEC. 8. ENFORCEMENT.**

20 (a) ATTORNEY GENERAL.—The Attorney General  
21 may commence a civil action on behalf of the United  
22 States in any district court of the United States against  
23 any State that violates, or against any government official  
24 (including a person described in section 7(c)) who imple-  
25 ments or enforces a limitation or requirement that vio-  
26 lates, section 4 or 5. The court shall declare unlawful the

1 limitation or requirement if it is determined to be in viola-  
2 tion of this Act.

3 (b) PRIVATE RIGHT OF ACTION.—

4 (1) IN GENERAL.—Any individual or entity ad-  
5 versely affected by an alleged violation of this Act,  
6 including any person or health care provider, may  
7 commence a civil action against any government offi-  
8 cial (including a person described in section 7(e))  
9 that implements or enforces a limitation or require-  
10 ment that violates, section 4 or 5. The court shall  
11 declare unlawful the limitation or requirement if it  
12 is in violation of this Act.

13 (2) HEALTH CARE PROVIDER.—A health care  
14 provider may commence an action for relief on its  
15 own behalf, on behalf of the provider's staff, and on  
16 behalf of the provider's patients who are or may be  
17 adversely affected by an alleged violation of this Act.

18 (c) PRE-ENFORCEMENT CHALLENGES.—A suit under  
19 subsection (a) or (b) may be brought to prevent enforce-  
20 ment or implementation by any government of a State lim-  
21 itation or requirement that is inconsistent with section 4  
22 or 5.

23 (d) DECLARATORY AND EQUITABLE RELIEF.—In  
24 any action under this section, the court may award appro-

1 puate declaratory and equitable relief, including tem-  
2 porary, preliminary, or permanent injunctive relief.

3 (e) COSTS.—In any action under this section, the  
4 court shall award costs of litigation, as well as reasonable  
5 attorney’s fees, to any prevailing plaintiff. A plaintiff shall  
6 not be liable to a defendant for costs or attorney’s fees  
7 in any non-frivolous action under this section.

8 (f) JURISDICTION.—The district courts of the United  
9 States shall have jurisdiction over proceedings under this  
10 Act and shall exercise the same without regard to whether  
11 the party aggrieved shall have exhausted any administra-  
12 tive or other remedies that may be provided for by law.

13 (g) ABROGATION OF STATE IMMUNITY.—Neither a  
14 State that enforces or maintains, nor a government official  
15 (including a person described in section 7(c)) who is per-  
16 mitted to implement or enforce any limitation or require-  
17 ment that violates section 4 or 5 shall be immune under  
18 the Tenth Amendment to the Constitution of the United  
19 States, the Eleventh Amendment to the Constitution of  
20 the United States, or any other source of law, from an  
21 action in a Federal or State court of competent jurisdic-  
22 tion challenging that limitation or requirement, unless  
23 such immunity is required by clearly established Federal  
24 law, as determined by the Supreme Court of the United  
25 States.

1 **SEC. 9. EFFECTIVE DATE.**

2       This Act shall take effect upon the date of enactment  
3 of this Act.

4 **SEC. 10. SEVERABILITY.**

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