

118TH CONGRESS
1ST SESSION

S. _____

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

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

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 priate 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.