


(Original Signature of Member)

117TH CONGRESS
2D SESSION

H. R. _____

To protect a person's ability to access contraceptives and to engage in contra-
ception, and to protect a health care provider's ability to provide contra-
ceptives, contraception, and information related to contraception.

IN THE HOUSE OF REPRESENTATIVES

Ms. MANNING introduced the following bill; which was referred to the
Committee on _____

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:

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

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

16 (3) GOVERNMENT.—The term “government”
17 includes each branch, department, agency, instru-
18 mentality, and official of the United States or a
19 State.

20 (4) HEALTH CARE PROVIDER.—The term
21 “health care provider” means any entity or indi-
22 vidual (including any physician, certified nurse-mid-
23 wife, nurse, nurse practitioner, physician assistant,
24 and pharmacist) that is engaged or seeks to engage
25 in health care services.

1 (5) STATE.—The term “State” includes each of
2 the 50 States, the District of Columbia, the Com-
3 monwealth of Puerto Rico, and each territory and
4 possession of the United States, and any subdivision
5 of any of the foregoing, including any unit of local
6 government, such as a county, city, town, village, or
7 other general purpose political subdivision of a
8 State.

9 **SEC. 3. FINDINGS.**

10 Congress finds the following:

11 (1) The right to contraception is a fundamental
12 right, central to a person’s privacy, health,
13 wellbeing, dignity, liberty, equality, and ability to
14 participate in the social and economic life of the na-
15 tion.

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

18 (3) In *Griswold v. Connecticut* (381 U.S. 479
19 (1965)), the Supreme Court first recognized the
20 Constitutional right for married people to use con-
21 traceptives;

22 (4) In *Eisenstadt v. Baird* (405 U.S. 438
23 (1972)), the Supreme Court confirmed the constitu-
24 tional right of all people to legally access contracep-
25 tives regardless of marital status;

1 (5) In *Carey v. Population Services Inter-*
2 *national* (431 U.S. 678 (1977)), the Supreme Court
3 affirmed the constitutional right to contraceptives
4 for minors.

5 (6) The right to contraception has been repeat-
6 edly recognized internationally as a human right.
7 The United Nations Population Fund has published
8 several reports outlining family planning as a basic
9 human right that advances women’s health, eco-
10 nomic empowerment, and equality.

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

15 (8) Contraception is safe, essential health care,
16 and access to contraceptive products and services is
17 central to people’s ability to participate equally in
18 economic and social life in the United States and
19 globally. Contraception allows people to make deci-
20 sions about their families and their lives.

21 (9) Contraception is key to sexual and repro-
22 ductive health. It is critical to preventing unintended
23 pregnancy, is highly effective in preventing and
24 treating a wide array of often severe medical condi-
25 tions, and decreases the risk of certain cancers.

1 (10) Family planning improves health outcomes
2 for women, their families, and their communities
3 and reduces rates of maternal and infant mortality
4 and morbidity;

5 (11) The United States has a long history of
6 reproductive coercion, including the childbearing
7 forced upon enslaved women, as well as the forced
8 sterilization of Black women, Puerto Rican women,
9 indigenous women, immigrant women, and disabled
10 women, and reproductive coercion continues to
11 occur.

12 (12) The right to make personal decisions about
13 contraceptive use is important for all Americans,
14 and is especially critical for historically marginalized
15 groups, including Black, indigenous, and other peo-
16 ple of color; immigrants; LGBTQ people; people with
17 disabilities; people with low incomes; and people liv-
18 ing in rural and underserved areas. Many people
19 who are part of these marginalized groups already
20 face barriers – exacerbated by social, political, eco-
21 nomic, and environmental inequities – to comprehen-
22 sive health care, including reproductive health care,
23 that reduce their ability to make decisions about
24 their health, families, and lives.

1 (13) State and Federal policies governing phar-
2 maceutical and insurance policies affect the accessi-
3 bility of contraceptives, and the settings in which
4 contraception services are delivered.

5 (14) People engage in interstate commerce to
6 access contraception services.

7 (15) To provide contraception services, health
8 care providers employ and obtain commercial serv-
9 ices from doctors, nurses, and other personnel who
10 engage in interstate commerce and travel across
11 State lines.

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

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

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

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

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

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

10 (19) In 1972, Congress required Medicaid to
11 cover family planning services and supplies, and
12 Medicaid currently accounts for 75 percent of fed-
13 eral funds spent on family planning.

14 (20) In 2010, Congress enacted the Patient
15 Protection and Affordable Care Act (Public Law
16 111–148) (referred to in this section as the “ACA”).
17 Among other provisions, the ACA included provi-
18 sions to expand the affordability and accessibility of
19 contraception by requiring that most health insur-
20 ance plans provide coverage for preventive health
21 care with no patient cost-sharing.

22 (21) Despite the clearly established constitu-
23 tional right to contraception, access to contracep-
24 tives, including emergency contraceptives and long-
25 acting reversible contraceptives, has been obstructed

1 across the United States in various ways by Federal
2 and State governments.

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

10 (23) Providers’ refusals to offer contraceptives
11 and information related to contraception based on
12 their own personal beliefs impede patients from ob-
13 taining their preferred method, with laws in 12
14 States as of the date of introduction of this Act spe-
15 cifically allowing health care providers to refuse to
16 provide services related to contraception.

17 (24) States have attempted to define abortion
18 expansively so as to include contraceptives in State
19 bans on abortion and have also restricted access to
20 emergency contraception.

21 (25) In June 2022, Justice Thomas, in his con-
22 ccurring opinion in *Dobbs v. Jackson Women’s*
23 *Health Organization* (597 U.S. ____ (2022)), stated
24 that the Supreme Court “should reconsider all of
25 this Court’s substantive due process precedents, in-

1 including Griswold, Lawrence, and Obergefell” and
2 that the Court has “a duty to correct the error es-
3 tablished in those precedents” by overruling them.

4 (26) In order to further public health and to
5 combat efforts to restrict access to reproductive
6 health care, congressional action is necessary to pro-
7 tect access to contraceptives, contraception, and in-
8 formation related to contraception for everyone, re-
9 gardless of actual or perceived race, ethnicity, sex
10 (including gender identity and sexual orientation),
11 income, disability, national origin, immigration sta-
12 tus, or geography.

13 **SEC. 4. PERMITTED SERVICES.**

14 (a) GENERAL RULE.—A person has a statutory right
15 under this Act to obtain contraceptives and to engage in
16 contraception, and a health care provider has a cor-
17 responding right to provide contraceptives, contraception,
18 and information related to contraception.

19 (b) LIMITATIONS OR REQUIREMENTS.—The statu-
20 tory rights specified in subsection (a) shall not be limited
21 or otherwise infringed through any limitation or require-
22 ment that—

23 (1) expressly, effectively, implicitly, or as imple-
24 mented singles out the provision of contraceptives,
25 contraception, or contraception-related information;

1 health care providers who provide contraceptives,
2 contraception, or contraception-related information;
3 or facilities in which contraceptives, contraception,
4 or contraception-related information are provided;
5 and

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

8 (e) EXCEPTION.—To defend against a claim that a
9 limitation or requirement violates a health care provider’s
10 or patient’s statutory rights under subsection (b), a party
11 must establish, by clear and convincing evidence, that—

12 (1) the limitation or requirement significantly
13 advances access to contraceptives, contraception, and
14 information related to contraception; and

15 (2) access to contraceptives, contraception, and
16 information related to contraception or the health of
17 patients cannot be advanced by a less restrictive al-
18 ternative measure or action.

19 **SEC. 5. APPLICABILITY AND PREEMPTION.**

20 (a) IN GENERAL.—

21 (1) GENERAL APPLICATION.—Except as stated
22 under subsection (b), this Act supersedes and ap-
23 plies to the law of the Federal Government and each
24 State government, and the implementation of such
25 law, whether statutory, common law, or otherwise,

1 and whether adopted before or after the date of en-
2 actment of this Act, and neither the Federal Govern-
3 ment nor any State government shall administer,
4 implement, or enforce any law, rule, regulation,
5 standard, or other provision having the force and ef-
6 fect of law that conflicts with any provision of this
7 Act, notwithstanding any other provision of Federal
8 law, including the Religious Freedom Restoration
9 Act of 1993 (42 U.S.C. 2000bb et seq.).

10 (2) SUBSEQUENTLY ENACTED FEDERAL LEGIS-
11 LATION.—Federal statutory law adopted after the
12 date of the enactment of this Act is subject to this
13 Act unless such law explicitly excludes such applica-
14 tion by reference to this Act.

15 (b) LIMITATIONS.—The provisions of this Act shall
16 not supersede or apply to insurance or medical assistance
17 coverage, such as coverage provided under section
18 1905(A)(4)(c) of the Social Security Act and section 2713
19 of Public Health Service Act, so long as such coverage
20 does not limit the rights established under section 4(a).

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

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

3 **SEC. 6. RULES OF CONSTRUCTION.**

4 (a) IN GENERAL.—In interpreting the provisions of
5 this Act, a court shall liberally construe such provisions
6 to effectuate the purposes of the Act.

7 (b) RULE OF CONSTRUCTION.—Nothing in this Act
8 shall be construed to authorize any government to inter-
9 fere with a health care provider’s ability to provide contra-
10 ceptives or information related to contraception or a pa-
11 tient’s ability to obtain contraceptives or to engage in con-
12 traception.

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

19 **SEC. 7. ENFORCEMENT.**

20 (a) ATTORNEY GENERAL.—The Attorney General
21 may commence a civil action on behalf of the United
22 States against any State that violates, or against any gov-
23 ernment official (including a person described in section
24 6(c)) that implements or enforces a limitation or require-
25 ment that violates, section 3. The court shall hold unlawful

1 and set aside the limitation or requirement if it is in viola-
2 tion of this Act.

3 (b) PRIVATE RIGHT OF ACTION.—

4 (1) IN GENERAL.—Any individual or entity, in-
5 cluding any health care provider or patient, ad-
6 versely affected by an alleged violation of this Act,
7 may commence a civil action against any State that
8 violates, or against any government official (includ-
9 ing a person described in section 6(c)) that imple-
10 ments or enforces a limitation or requirement that
11 violates, section 4. The court shall hold unlawful and
12 set aside the limitation or requirement if it is in vio-
13 lation of this Act.

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

19 (c) EQUITABLE RELIEF.—In any action under this
20 section, the court may award appropriate equitable relief,
21 including temporary, preliminary, or permanent injunctive
22 relief.

23 (d) COSTS.—In any action under this section, the
24 court shall award costs of litigation, as well as reasonable
25 attorney's fees, to any prevailing plaintiff. A plaintiff shall

1 not be liable to a defendant for costs or attorney's fees
2 in any non-frivolous action under this section.

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

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

18 **SEC. 8. SEVERABILITY.**

19 If any provision of this Act, or the application of such
20 provision to any person, entity, government, or cir-
21 cumstance, is held to be unconstitutional, the remainder
22 of this Act, or the application of such provision to all other
23 persons, entities, governments, or circumstances, shall not
24 be affected thereby.