

117TH CONGRESS
2D SESSION

S. 5276

To prohibit the limitation of access to assisted reproductive technology, and all medically necessary care surrounding such technology.

IN THE SENATE OF THE UNITED STATES

DECEMBER 15, 2022

Ms. DUCKWORTH (for herself, Mrs. MURRAY, Mrs. GILLIBRAND, and Ms. BALDWIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To prohibit the limitation of access to assisted reproductive technology, and all medically necessary care surrounding such technology.

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 Build Fami-
5 lies Act of 2022”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) ASSISTED REPRODUCTIVE TECHNOLOGY.—

9 The term “assisted reproductive technology” has the

1 meaning given such term in section 8 of the Fertility
2 Clinic Success Rate and Certification Act of 1992
3 (42 U.S.C. 263a–7(1)).

4 (2) HEALTH CARE PROVIDER.—The term
5 “health care provider” means any entity or indi-
6 vidual (including any physician, nurse practitioner,
7 physician assistant, pharmacist, and other individ-
8 uals, as determined by the Secretary of Health and
9 Human Services) that—

10 (A) is engaged or seeks to engage in the
11 delivery of assisted reproductive technology,
12 such as through the provision of evidence-based
13 information, counseling, or items and services
14 related to fertility treatment; and

15 (B) if required by State law to be licensed,
16 certified, or otherwise authorized to engage in
17 the delivery of such services—

18 (i) is so licensed, certified, or other-
19 wise authorized; or

20 (ii) would be so licensed, certified, or
21 otherwise authorized but for the individ-
22 ual’s or entity’s past, present, or potential
23 provision of assisted reproductive tech-
24 nology in accordance with section 3.

1 (3) STATE.—The term “State” includes each of
2 the 50 States, the District of Columbia, Puerto Rico,
3 each territory and possession of the United States,
4 and any political subdivision of a State.

5 **SEC. 3. RIGHT TO ASSISTED REPRODUCTIVE TECHNOLOGY.**

6 (a) PROHIBITION.—No State, or official or employee
7 of a State acting in the scope of such appointment or em-
8 ployment, may prohibit or unreasonably limit, for reasons
9 other than to enforce regulations described in subsection
10 (c)—

11 (1) any individual from—

12 (A) accessing assisted reproductive tech-
13 nology;

14 (B) continuing or completing an ongoing
15 assisted reproductive technology treatment or
16 procedure pursuant to a written plan or agree-
17 ment with a health care provider; or

18 (C) retaining all rights regarding the use
19 of reproductive genetic materials, including
20 gametes;

21 (2) any health care provider from—

22 (A) performing assisted reproductive tech-
23 nology treatments or procedures; or

24 (B) providing evidence-based information
25 related to assisted reproductive technology; or

1 (3) any insurance provider from covering as-
 2 sisted reproductive technology treatments or proce-
 3 dures.

4 (b) ENFORCEMENT.—

5 (1) THE ATTORNEY GENERAL.—The Attorney
 6 General may commence a civil action on behalf of
 7 the United States against any State, or against any
 8 government official, individual, or entity that enacts,
 9 implements or enforces a limitation or requirement
 10 that violates subsection (a). The court shall hold un-
 11 lawful and set aside the limitation or requirement if
 12 it is in violation of subsection (a).

13 (2) PRIVATE RIGHT OF ACTION.—Any indi-
 14 vidual or entity adversely affected by an alleged vio-
 15 lation of subsection (a) may commence a civil action
 16 against any State that violates this section or
 17 against any government official that enacts, imple-
 18 ments, or enforces a limitation or requirement that
 19 violates subsection (a). The court shall hold unlawful
 20 and enjoin the limitation or requirement if it is in
 21 violation of subsection (a).

22 (3) HEALTH CARE PROVIDER.—A health care
 23 provider may commence an action for relief on its
 24 own behalf, on behalf of the provider's staff, and on
 25 behalf of the provider's patients who are or may be

1 adversely affected by an alleged violation of sub-
2 section (a).

3 (4) **EQUITABLE RELIEF.**—In any action under
4 this section, the court may award appropriate equi-
5 table relief, including temporary, preliminary, or per-
6 manent injunctive relief.

7 (5) **COSTS.**—In any action under this section,
8 the court shall award costs of litigation, as well as
9 reasonable attorney’s fees, to any prevailing plain-
10 tiff. A plaintiff shall not be liable to a defendant for
11 costs or attorney’s fees in any non-frivolous action
12 under this section.

13 (6) **JURISDICTION.**—The district courts of the
14 United States shall have jurisdiction over pro-
15 ceedings under this section and shall exercise the
16 same without regard to whether the party aggrieved
17 shall have exhausted any administrative or other
18 remedies that may be provided for by law.

19 (7) **ABROGATION OF STATE IMMUNITY.**—Nei-
20 ther a State that enforces or maintains, nor a gov-
21 ernment official who is permitted to implement or
22 enforce, any limitation or requirement that violates
23 subsection (a) shall be immune under the Tenth
24 Amendment to the Constitution of the United
25 States, the Eleventh Amendment to the Constitution

1 of the United States, or any other source of law,
2 from an action in a Federal or State court of com-
3 petent jurisdiction challenging that limitation or re-
4 quirement.

5 (8) RIGHT TO REMOVE.—Any party shall have
6 a right to remove an action brought under this sub-
7 section to the district court of the United States for
8 the district and division embracing the place where
9 such action is pending. An order remanding the case
10 to the State court from which it was removed under
11 this paragraph may be immediately reviewable by
12 appeal or otherwise.

13 (c) STATE REGULATION OF MEDICINE.—Nothing in
14 this Act shall be construed to prohibit enforcement of
15 health and safety regulations a State requires of medical
16 facilities or providers, if such regulations—

17 (1) advance the safety of health care services or
18 the health of patients; and

19 (2) cannot be advanced by a less restrictive al-
20 ternative measure or action.

21 (d) INSURANCE.—Nothing in this Act shall be con-
22 strued to modify, supersede, or otherwise affect any Fed-
23 eral or State law regarding insurance coverage of assisted
24 reproductive technologies and treatments.

1 (e) REGULATIONS.—Not later than 1 year after the
2 date of enactment of this Act, the Secretary of Health and
3 Human Services shall promulgate regulations to carry out
4 this section.

5 **SEC. 4. SEVERABILITY.**

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

