[118H7056]

(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Access to Family Building Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) ASSISTED REPRODUCTIVE TECHNOLOGY.—The term ''assisted reproductive technology'' has the

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

(2) HEALTH CARE PROVIDER.—The term ''health care provider'' means any entity or individual (including any physician, nurse practitioner, physician assistant, pharmacist, health care support personnel, and any other individual, as determined by the Secretary of Health and Human Services) that—

(A) is engaged or seeks to engage in the delivery of assisted reproductive technology, including through the provision of evidence-based information, counseling, referrals, or items and services that relate to, aid in, or provide fertility treatment; and

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

(i) is so licensed, certified, or otherwise authorized; or

(ii) would be so licensed, certified, or otherwise authorized but for the individual's or entity's past, present, or potential

provision of assisted reproductive technology in accordance with section 4.

(3) PATIENT.—The term ''patient'' means any individual who receives or seeks to receive assisted reproductive technology services and evidence-based information, counseling, referrals, or items and services that relate to, aid in, or provide fertility treatment.

(4) STATE.—The term ''State'' includes each of the 50 States, the District of Columbia, Puerto Rico, each territory and possession of the United States, and any political subdivision thereof.

SEC. 3. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Congress has the authority to enact this Act to protect access to fertility treatments pursuant to—

(A) its powers under the Commerce Clause of section 8 of article I of the Constitution of the United States;

(B) its powers under section 5 of the Fourteenth Amendment to the Constitution of the United States to enforce the provisions of section 1 of the Fourteenth Amendment; and

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

(2) Congress has used its authority in the past to protect and expand access to fertility treatment, information, products, and services.

(b) PURPOSE.—It is the purpose of this Act to permit health care providers to provide, and for patients to receive, assisted reproductive technology services without limitations or requirements that—

(1) are more burdensome than limitations or requirements imposed on medically comparable procedures;

(2) do not significantly advance reproductive health or the safety of such services; or

(3) unduly restrict access to such services.

SEC. 4. ACCESS TO ASSISTED REPRODUCTIVE TECHNOLOGY.

(a) GENERAL RULE.—

(1) INDIVIDUAL RIGHTS.—An individual has a statutory right under this Act, including without prohibition or unreasonable limitation or interference (such as due to financial cost or detriment to the individual's health, including mental health), to—

(A) access assisted reproductive technology;

(B) continue or complete an ongoing assisted reproductive technology treatment or procedure pursuant to a written plan or agreement with a health care provider; and

(C) retain all rights regarding the use or disposition of reproductive genetic materials, including gametes, subject to subsection (c).

(2) HEALTH CARE PROVIDER RIGHTS.—A health care provider has a statutory right under this Act to—

(A) perform or assist with the performance of assisted reproductive technology treatments or procedures; and

(B) provide or assist with the provision of evidence-based information related to assisted reproductive technology.

(3) INSURANCE PROVIDER RIGHTS.—A health insurance provider has a statutory right under this Act to cover assisted reproductive technology treatments or procedures.

(b) ENFORCEMENT.—

(1) THE ATTORNEY GENERAL.—The Attorney General may commence a civil action on behalf of

the United States against any State, local municipality, or against any government official, individual, or entity that enacts, implements, or enforces a limitation or requirement that prohibits, unreasonably limits, or interferes with subsection (a). The court shall hold unlawful and set aside the limitation or requirement if it is in violation of subsection (a).

(2) PRIVATE RIGHT OF ACTION.—Any individual or entity adversely affected by an alleged violation of subsection (a) may commence a civil action against any State or local government official that enacts, implements, or enforces a limitation or requirement that violates subsection (a). The court shall hold unlawful and enjoin the limitation or requirement if it is in violation of subsection (a).

(3) HEALTH CARE PROVIDER.—A health care provider may commence an action for relief on its own behalf, on behalf of the provider's staff, or on behalf of the provider's patients who are or may be adversely affected by an alleged violation of subsection (a).

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

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

(6) JURISDICTION.—The district courts of the United States shall have jurisdiction over proceedings under this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided for by law.

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

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

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

(2) that safety objective cannot be advanced by a less restrictive alternative measure or action.

(d) INSURANCE.—Nothing in this Act shall be construed to modify, supersede, or otherwise affect any State law regarding insurance coverage of assisted reproductive technologies and treatments.

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

SEC. 5. APPLICABILITY AND PREEMPTION.

(a) IN GENERAL.—

(1) GENERAL APPLICATION.—This Act supersedes and applies to the law of the Federal Government and each State government, and the implementation of such law, whether statutory, common law, or otherwise, and whether adopted before or after the date of enactment of this Act, and neither the Federal Government nor any State government shall administer, implement, or enforce any law, rule, regulation, standard, or other provision having the force and effect of law that conflicts with any provision of this Act, notwithstanding any other provision of

Federal law, including the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.).

(2) SUBSEQUENTLY ENACTED FEDERAL LEGISLATION.—Federal statutory law adopted after the date of the enactment of this Act is subject to this Act unless such law explicitly excludes such application by reference to this Act.

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

SEC. 6. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person, entity, government, or circumstance is held to be unconstitutional, the remainder of this Act, or the application of such provision to all other persons, entities, governments, or circumstances shall not be affected thereby.