

119TH CONGRESS  
1ST SESSION

# S. 2035

To establish statutory rights to choose to receive, provide, and cover fertility treatments, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 11, 2025

Ms. DUCKWORTH (for herself, Mrs. MURRAY, Mr. BOOKER, Mr. SCHUMER, Mr. REED, Ms. WARREN, Mr. PADILLA, Mr. WELCH, Ms. CANTWELL, Mr. FETTERMAN, Mr. HICKENLOOPER, Mr. MERKLEY, Mr. SCHATZ, Mr. WARNER, Ms. KLOBUCHAR, Ms. ALSOBROOKS, Mr. COONS, Mr. KING, Mr. BLUMENTHAL, Mr. WHITEHOUSE, Mr. SANDERS, Mr. PETERS, Mr. GALLEGRO, Mr. DURBIN, Mr. HEINRICH, Ms. HIRONO, Mrs. SHAHEEN, Ms. ROSEN, Mr. MURPHY, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To establish statutory rights to choose to receive, provide, and cover fertility treatments, and for other purposes.

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 “Protect IVF Act”.

5 **SEC. 2. PURPOSES.**

6 The purposes of this Act are as follows:

1           (1) To permit patients to seek and receive fer-  
2           tility treatment, including assisted reproductive tech-  
3           nology services, and to permit health care providers  
4           that choose to provide fertility treatment, to provide  
5           such services without States enacting harmful or un-  
6           warranted limitations or requirements that single  
7           out the provision of assisted reproductive services for  
8           restrictions that are not consistent with widely ac-  
9           cepted and evidence-based medical standards of care,  
10          and which do not significantly advance reproductive  
11          health or the efficacy and safety of fertility treat-  
12          ment, or make fertility treatment more difficult to  
13          access.

14          (2) To promote the right and ability of a pa-  
15          tient residing in any State to choose to receive fer-  
16          tility treatment provided in accordance with widely  
17          accepted and evidence-based medical standards of  
18          care by a health care provider who chooses to pro-  
19          vide such services.

20          (3) To protect an individual's right to make de-  
21          cisions, in consultation with the individual's health  
22          care provider, about the most appropriate medical  
23          care to maximize the chance of becoming pregnant  
24          and giving birth to a healthy, living, human child  
25          with the help of fertility treatment.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) FERTILITY TREATMENT.—The term “fer-  
4 tility treatment” includes the following:

5 (A) Preservation of human oocytes, sperm,  
6 or embryos.

7 (B) Artificial insemination, including  
8 intravaginal insemination, intracervical insemi-  
9 nation, and intrauterine insemination.

10 (C) Assisted reproductive technology, in-  
11 cluding in vitro fertilization and other treat-  
12 ments or procedures in which reproductive ge-  
13 netic material, such as oocytes, sperm, and em-  
14 bryos, are handled, when clinically appropriate.

15 (D) Genetic testing of embryos.

16 (E) Medications prescribed or obtained  
17 over-the-counter, as indicated for fertility.

18 (F) Gamete donation.

19 (G) Such other information, referrals,  
20 treatments, procedures, medications, laboratory  
21 testing, technologies, and services relating to  
22 fertility as the Secretary of Health and Human  
23 Services determines appropriate.

24 (2) HEALTH CARE PROVIDER.—The term  
25 “health care provider” means any entity or indi-  
26 vidual (including any physician, nurse practitioner,

1 physician assistant, pharmacist, health care support  
2 personnel, clinical staff, and any other individual, as  
3 determined by the Secretary of Health and Human  
4 Services) that—

5 (A) is engaged or seeks to engage in the  
6 delivery of fertility treatment, including through  
7 the provision of evidence-based information,  
8 counseling, referrals, or items and services that  
9 relate to, aid in, or provide fertility treatment;  
10 and

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

14 (i) is so licensed, certified, or other-  
15 wise authorized; or

16 (ii) would be so licensed, certified, or  
17 otherwise authorized but for the fact that  
18 the individual or entity has provided, is  
19 providing, or plans to provide fertility  
20 treatment in accordance with section 4.

21 (3) HEALTH INSURANCE ISSUER.—The term  
22 “health insurance issuer” has the meaning given  
23 such term in section 2791(b) of the Public Health  
24 Service Act (42 U.S.C. 300gg–91(b)).

1           (4) MANUFACTURER.—The term “manufac-  
2           turer” means the manufacturer of a drug or device  
3           approved, cleared, authorized, or licensed under sec-  
4           tion 505, 510(k), 513(f)(2), or 515 of the Federal  
5           Food, Drug, and Cosmetic Act (21 U.S.C. 355,  
6           360(k), 360c(f)(2), 360e) or section 351 of the Pub-  
7           lic Health Service Act (42 U.S.C. 262) or otherwise  
8           legally marketed.

9           (5) STATE.—The term “State” includes each of  
10          the 50 States, the District of Columbia, Puerto Rico,  
11          each territory and possession of the United States,  
12          and any political subdivision thereof.

13          (6) WIDELY ACCEPTED AND EVIDENCE-BASED  
14          MEDICAL STANDARDS OF CARE.—The term “widely  
15          accepted and evidence-based medical standards of  
16          care” means any medical services, procedures, and  
17          practices that are in accordance with the guidelines  
18          of the American Society for Reproductive Medicine.

19 **SEC. 4. FERTILITY TREATMENT RIGHTS.**

20          (a) GENERAL RULE.—

21               (1) INDIVIDUAL RIGHTS.—An individual has a  
22               statutory right under this Act, without prohibition,  
23               limitation, interference, or impediment, to the extent  
24               that such prohibition, limitation, interference, or im-  
25               pediment in any way or degree obstructs, delays, or

1 affects commerce over which the Federal Govern-  
2 ment has jurisdiction, to—

3 (A) receive fertility treatment from a  
4 health care provider, in accordance with widely  
5 accepted and evidence-based medical standards  
6 of care;

7 (B) continue or complete an ongoing fer-  
8 tility treatment previously initiated by a health  
9 care provider, in accordance with widely accept-  
10 ed and evidence-based medical standards of  
11 care;

12 (C) make decisions and arrangements re-  
13 garding the donation, testing, use, storage, or  
14 disposition of their own reproductive genetic  
15 material; and

16 (D) establish contractual agreements with  
17 a health care provider relating to the health  
18 care provider's services in handling, testing,  
19 storing, shipping, and disposing of the individ-  
20 ual's reproductive genetic material in accord-  
21 ance with widely accepted and evidence-based  
22 medical standards of care.

23 (2) HEALTH CARE PROVIDER RIGHTS.—A  
24 health care provider has a statutory right under this  
25 Act, without prohibition, limitation, interference, or

1       impediment, to the extent that such prohibition, lim-  
2       itation, interference, or impediment in any way or  
3       degree obstructs, delays, or affects commerce over  
4       which the Federal Government has jurisdiction, to—

5               (A) choose to provide, or assist with the  
6               provision of, fertility treatment provided in ac-  
7               cordance with widely accepted and evidence-  
8               based medical standards of care;

9               (B) continue or complete the provision of,  
10              or assistance with, fertility treatment that was  
11              lawful when commenced and is provided in ac-  
12              cordance with widely accepted and evidence-  
13              based medical standards of care;

14             (C) provide for, or assist with, the testing,  
15             use, storage, or disposition of reproductive ge-  
16             netic material in accordance with widely accept-  
17             ed and evidence-based medical standards of  
18             care; and

19             (D) establish contractual agreements with  
20             individuals or manufacturers relating to the  
21             health care provider’s services in handling, test-  
22             ing, storing, shipping, and disposing of the indi-  
23             vidual’s reproductive genetic material.

24             (3) HEALTH INSURANCE ISSUER RIGHTS.—A  
25             health insurance issuer has a statutory right under

1 this Act, without prohibition, limitation, interference,  
2 or impediment, to the extent that such prohibition,  
3 limitation, interference, or impediment in any way or  
4 degree obstructs, delays, or affects commerce over  
5 which the Federal Government has jurisdiction, to  
6 choose to cover the provision of fertility treatment  
7 provided in accordance with widely accepted and evi-  
8 dence-based medical standards of care.

9 (4) MANUFACTURER RIGHTS.—A manufacturer  
10 of a drug or device that is approved, cleared, author-  
11 ized, or licensed under section 505, 510(k),  
12 513(f)(2), or 515 of the Federal Food, Drug, and  
13 Cosmetic Act (21 U.S.C. 355; 360(k); 360c(f)(2);  
14 360e) or section 351 of the Public Health Service  
15 Act (42 U.S.C. 262) or otherwise legally marketed  
16 and intended for use in the provision of fertility  
17 treatment, including the storage or transport of re-  
18 productive genetic material, has a statutory right  
19 under this Act, without prohibition, limitation, inter-  
20 ference, or impediment, to the extent that such pro-  
21 hibition, limitation, interference, or impediment in  
22 any way or degree obstructs, delays, or affects com-  
23 merce over which the Federal Government has juris-  
24 diction, to manufacture, import, market, sell, and  
25 distribute such drug or device.

1           (b) STATE REGULATION OF MEDICINE.—The en-  
2   forcement of State health and safety law regarding med-  
3   ical facilities or health care providers does not constitute  
4   a violation of subsection (a) if—

5           (1) such regulations are in accordance with  
6   widely accepted and evidence-based medical stand-  
7   ards of care for providing fertility treatment; and

8           (2) the safety or health objective cannot be ad-  
9   vanced by a different means that does not prohibit,  
10   limit, interfere with, or impede the rights described  
11   in subsection (a).

12          (c) ENFORCEMENT.—

13           (1) THE ATTORNEY GENERAL.—

14           (A) IN GENERAL.—The Attorney General  
15   may commence a civil action on behalf of the  
16   United States against any State; an individual,  
17   employee, official, agency head, contractor, or-  
18   ganization, or instrumentality acting for, or on  
19   behalf of, such a State; or any individual acting  
20   under the color of, or pursuant to, State law,  
21   that implements, enforces, or threatens to en-  
22   force a limitation or requirement that prohibits,  
23   limits, interferes with, or impedes the statutory  
24   rights of an individual, a health care provider,

1 a health insurance issuer, or a manufacturer  
2 under subsection (a).

3 (B) EFFECT OF VIOLATIONS.—The court  
4 shall hold unlawful and set aside a limitation or  
5 requirement described in subparagraph (A) if it  
6 is in violation of subsection (a).

7 (2) PRIVATE RIGHT OF ACTION.—

8 (A) IN GENERAL.—Any individual or entity  
9 adversely affected by an alleged violation of  
10 subsection (a) may commence a civil action  
11 against an individual, employee, official, agency  
12 head, contractor, organization, or instrumen-  
13 tality acting for, or on behalf of, such a State  
14 that enacts, implements, or enforces a limita-  
15 tion or requirement that prohibits, limits, inter-  
16 feres with, or impedes the statutory rights of an  
17 individual, a health care provider, a health in-  
18 surance issuer, or a manufacturer under sub-  
19 section (a).

20 (B) EFFECT OF VIOLATIONS.—The court  
21 shall hold unlawful and enjoin a limitation or  
22 requirement described in subparagraph (A) if it  
23 is in violation of subsection (a).

24 (3) HEALTH CARE PROVIDER.—

1           (A) IN GENERAL.—A health care provider  
2           may commence a civil action for relief on such  
3           provider’s own behalf, on behalf of the pro-  
4           vider’s staff, or on behalf of the provider’s pa-  
5           tients who are or may be adversely affected by  
6           an alleged violation of subsection (a).

7           (B) EFFECT OF VIOLATIONS.—The court  
8           shall hold unlawful and enjoin a limitation or  
9           requirement described in subparagraph (A) if it  
10          is in violation of subsection (a).

11          (4) EQUITABLE RELIEF.—In any action under  
12          this section, the court may award appropriate equi-  
13          table relief, including temporary, preliminary, or per-  
14          manent injunctive relief.

15          (5) COSTS.—

16                (A) IN GENERAL.—In any action under  
17                this section, the court shall award costs of liti-  
18                gation, as well as reasonable attorney’s fees, to  
19                any prevailing plaintiff.

20                (B) LIABILITY OF PLAINTIFFS.—A plain-  
21                tiff shall not be liable to a defendant for costs  
22                or attorney’s fees in any non-frivolous action  
23                under this section unless such costs or attor-  
24                ney’s fees are imposed by the court as part of

1 sanctions for violations committed during the  
2 discovery process.

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

9 (7) RIGHT TO REMOVE.—

10 (A) IN GENERAL.—Any party shall have a  
11 right to remove an action brought under this  
12 subsection to the district court of the United  
13 States for the district and division embracing  
14 the place where such action is pending.

15 (B) REVIEW.—An order remanding the  
16 case to the State court from which it was re-  
17 moved under this paragraph is immediately re-  
18 viewable by appeal or otherwise.

19 (d) RULES OF CONSTRUCTION.—

20 (1) IN GENERAL.—For purposes of this Act, a  
21 State law, or the administration, implementation, or  
22 enforcement of a State law, constitutes a prohibi-  
23 tion, limitation, interference, or impediment on a  
24 health care provider choosing to provide, an indi-  
25 vidual choosing to receive, a health insurance issuer

1 choosing to cover, or a manufacturer choosing to  
2 market drugs or devices for fertility treatment, pro-  
3 vided in accordance with widely accepted and evi-  
4 dence-based medical standards of care, as described  
5 in section 4, if the administration, implementation,  
6 interpretation, or enforcement of such law has an ef-  
7 fect that—

8 (A) imposes requirements or limitations  
9 that are inconsistent with providing, receiving,  
10 providing health insurance coverage for, or pro-  
11 viding drugs or devices for fertility treatment in  
12 accordance with widely accepted and evidence-  
13 based medical standards of care or that other-  
14 wise violate the purpose and requirements of  
15 this Act, which may include—

16 (i) requiring that a health care pro-  
17 vider provide, and patients undertake,  
18 medically unnecessary procedures and serv-  
19 ices, including tests and procedures, pro-  
20 viding medically inaccurate information re-  
21 garding fertility treatment, or requiring  
22 additional unnecessary in-person visits to a  
23 health care provider, that are inconsistent  
24 with widely accepted and evidence-based  
25 medical standards of care;

- 1           (ii) imposing limitations or require-  
2           ments concerning physical offices, clinics,  
3           facilities, equipment, staffing, or hospital  
4           transfer arrangements of facilities where  
5           fertility treatment is provided, or the cre-  
6           dentials or hospital privileges or status of  
7           personnel at such facilities, that are not  
8           consistent with widely accepted and evi-  
9           dence-based medical standards of care; or
- 10           (iii) limiting a health care provider's  
11           right or ability to choose to provide, or a  
12           patient's right to choose to receive, or im-  
13           posing limitations that reduce the efficacy  
14           of, fertility treatment in accordance with  
15           widely accepted and evidence-based medical  
16           standards of care, including retrieval of  
17           multiple eggs during oocyte retrieval; per-  
18           formance of insemination procedures, in-  
19           cluding intrauterine insemination;  
20           intracytoplasmic sperm injections to fer-  
21           tilize multiple human eggs; and  
22           cryopreservation of one or more eggs or  
23           embryos for fertility preservation, if deter-  
24           mined appropriate by the health care pro-  
25           vider and patient;

1 (B) infringes, limits, or restricts the ability  
2 of a health care provider, patient, health insur-  
3 ance issuer, or manufacturer, to exercise or en-  
4 force their statutory rights under this Act on  
5 the basis of marital status, sex (including sex-  
6 ual orientation and gender identity) or any  
7 other protected class that is covered by Federal  
8 law;

9 (C) limits a health care provider's or pa-  
10 tient's right or ability to determine the most ap-  
11 propriate disposition of reproductive genetic  
12 materials, including by defining reproductive  
13 genetic materials in such a way as to prevent  
14 or restrict options for the health care provider  
15 or patient;

16 (D) limits a health care provider's ability  
17 to provide, or a patient's ability to receive, fer-  
18 tility treatment via telemedicine, in accordance  
19 with widely accepted and evidence-based med-  
20 ical standards of care;

21 (E) limits or prohibits a health care pro-  
22 vider's ability to provide, or a patient's ability  
23 to receive, fertility counseling or fertility treat-  
24 ment based on the residency of the patient, or  
25 prohibits or limits the ability of any individual

1 to assist or support a patient seeking fertility  
2 treatment;

3 (F) imposes requirements or limitations  
4 that compel health care providers to provide, or  
5 patients to receive, medically unnecessary care,  
6 or withhold medically necessary care, in a man-  
7 ner that is not consistent with widely accepted  
8 and evidence-based medical standards of care  
9 for fertility treatment, including mandating the  
10 transfer of embryos that a health care provider  
11 would not reasonably expect, based on widely  
12 accepted and evidence-based medical standards  
13 of care, to lead to a healthy pregnancy or a live  
14 birth;

15 (G) limits a health care provider's right or  
16 ability to prescribe or dispense, or a patient's  
17 right or ability to receive or use, medications  
18 for fertility treatment in accordance with widely  
19 accepted and evidence-based medical standards  
20 of care, unless such a limitation is generally ap-  
21 plicable to the prescription, dispensing, or dis-  
22 tribution of medications; or

23 (H) limits a health care provider's right or  
24 ability to perform a human sperm retrieval pro-

1           cedure in accordance with widely accepted and  
2           evidence-based medical standards of care.

3           (2) CLARIFICATION.—The descriptions of spe-  
4           cific State laws that would violate the statutory  
5           rights and protections described in paragraph (1)  
6           shall not be construed to limit potential violations of  
7           the statutory rights and protections under this Act  
8           to only the restrictions and limitations listed in  
9           paragraph (1), and potential violations of this Act  
10          may result from novel State restrictions and limita-  
11          tions that are not listed under paragraph (1).

12          (3) EXCLUSION.—It shall not constitute a pro-  
13          hibition, limitation, interference, or impediment to a  
14          health care provider providing, an individual receiv-  
15          ing, a health insurance issuer covering, or a manu-  
16          facturer marketing a drug or device for purposes of,  
17          fertility treatment under this Act for an entity to act  
18          in compliance with the Food and Drug Administra-  
19          tion’s regulation of drugs, devices, biological prod-  
20          ucts, human cells, tissues, or cellular or tissue-based  
21          products used in fertility treatment, consistent with  
22          widely accepted and evidence-based medical stand-  
23          ards of care for fertility treatment.

24 **SEC. 5. APPLICABILITY AND PREEMPTION.**

25          (a) IN GENERAL.—

1 (1) GENERAL APPLICATION.—

2 (A) EFFECT ON STATE LAW.—This Act su-  
3 persedes any State law that is inconsistent with  
4 the statutory rights established under this Act  
5 and precludes the implementation of such a  
6 law, whether statutory, common law, or other-  
7 wise, and whether adopted before or after the  
8 date of enactment of this Act.

9 (B) PROHIBITION.—No State shall admin-  
10 ister, implement, or enforce any law, rule, regu-  
11 lation, standard, or other provision having the  
12 force and effect of law that conflicts with any  
13 provision of this Act, notwithstanding any other  
14 provision of Federal law.

15 (2) EXCLUSION.—Preemption of State law  
16 under paragraph (1) does not apply to—

17 (A) State law regarding the resolution of  
18 disputes between 2 individuals with rights de-  
19 scribed in section 4(a)(1) with respect to the  
20 same reproductive genetic material; or

21 (B) any other State law, to the extent that  
22 such law does not conflict with this Act and  
23 protects an individual's right and ability to re-  
24 ceive fertility treatment in accordance with  
25 widely accepted and evidence-based medical

1 standards of care, including any such law that  
2 holds a health care provider accountable for not  
3 providing fertility treatment in accordance with  
4 widely accepted and evidence-based medical  
5 standards of care.

6 (3) PRESERVATION OF FEDERAL PUBLIC  
7 HEALTH AUTHORITIES.—Nothing in this Act shall  
8 have the effect of superseding, negating, or limiting  
9 provisions of Federal law, including the Federal  
10 Food, Drug, and Cosmetic Act (21 U.S.C. 301 et  
11 seq.) or the Public Health Service Act (42 U.S.C.  
12 201 et seq.), and regulations promulgated under  
13 such statutes, with respect to the regulation of  
14 drugs, devices, biological products, human cells, tis-  
15 sues, or cellular or tissue-based products used in fer-  
16 tility treatment.

17 (4) PRESERVATION OF HIPAA RULES.—Nothing  
18 in this Act shall have the effect of superseding, ne-  
19 gating, or limiting the provisions of the privacy, se-  
20 curity, and breach notification regulations in parts  
21 160 and 164 of title 45, Code of Federal Regula-  
22 tions (or successor regulations).

23 (5) SUBSEQUENTLY ENACTED FEDERAL LEGIS-  
24 LATION.—Federal statutory law adopted after the  
25 date of the enactment of this Act is subject to this

1 Act unless such law explicitly excludes such applica-  
2 tion by reference to this Act.

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

○