

Senate File 2135 - Introduced

SENATE FILE 2135

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A BILL FOR

1 An Act relating to the right to contraception.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. LEGISLATIVE FINDINGS. The general assembly
2 finds all of the following:

3 1. The right to contraception is a fundamental right,
4 central to a person's privacy, health, well-being, dignity,
5 liberty, equality, and ability to participate in the social and
6 economic life of the state.

7 2. The United States supreme court has repeatedly
8 recognized the constitutional right to contraception.

9 a. In *Griswold v. Connecticut*, 381 U.S. 479 (1965), the
10 United States supreme court first recognized the constitutional
11 right for married people to use contraceptives.

12 b. In *Eisenstadt v. Baird*, 405 U.S. 438 (1972), the United
13 States supreme court confirmed the constitutional right of all
14 people to legally access contraceptives regardless of marital
15 status.

16 c. In *Carey v. Population Services International*, 431
17 U.S. 678 (1977), the United States supreme court affirmed the
18 constitutional right to contraceptives for minors.

19 3. The right to contraceptives is protected under the
20 Iowa Constitution by Article I, section 1, as well as under
21 the United States Constitution right to privacy as determined
22 by *Griswold v. Connecticut*, 381 U.S. 479 (1965), and the due
23 process clause as determined in *Lawrence v. Texas*, 539 U.S.
24 558, 573-74 (2003).

25 4. The right to contraception has been repeatedly
26 recognized internationally as a human right.

27 a. The United Nations population fund has published several
28 reports outlining family planning as a basic human right that
29 advances women's health, economic empowerment, and equality.

30 b. Access to contraceptives is internationally recognized
31 by the world health organization as advancing other human
32 rights such as the right to life, liberty, expression, health,
33 work, and education.

34 5. Contraception is safe, essential health care, and access
35 to contraceptive products and services is central to a person's

1 ability to participate equally in economic and social life.

2 6. Contraception allows a person to make decisions about
3 their families and their lives.

4 7. Contraception is key to sexual and reproductive health.

5 8. Contraception is critical to preventing unintended
6 pregnancy, and many contraceptives are highly effective in
7 preventing and treating a wide array of often severe medical
8 conditions and in decreasing the risk of certain cancers.

9 9. Family planning improves health outcomes for women,
10 their families, and their communities and reduces rates of
11 maternal and infant mortality and morbidity.

12 10. The United States has a long history of reproductive
13 coercion, including the childbearing forced upon enslaved
14 women, as well as the forced sterilization of African American
15 women, Puerto Rican women, indigenous women, immigrant
16 women, and women with disabilities, and reproductive coercion
17 continues to occur.

18 11. The right to make personal decisions about
19 contraceptive use is important for all people, and is
20 especially critical for historically marginalized groups,
21 including African American people, indigenous people, and
22 other people of color; immigrants; lesbian, gay, bisexual,
23 transgender, and queer people; people with disabilities; people
24 with low incomes; and people living in rural and underserved
25 areas. Many people who are part of these marginalized groups
26 already face barriers, exacerbated by social, political,
27 economic, and environmental inequities, to comprehensive health
28 care, including reproductive health care, that reduce their
29 ability to make decisions about their health, families, and
30 lives.

31 12. Policies governing pharmaceutical and insurance
32 policies affect the accessibility of contraceptives and the
33 settings in which contraception services are delivered.

34 13. Despite the clearly established constitutional right to
35 contraception, access to contraceptives, including emergency

1 contraceptives and long-acting reversible contraceptives, has
2 been obstructed in various ways.

3 14. The refusals of providers to offer contraceptives
4 and contraception-related information on the basis of the
5 providers' own personal beliefs impede patients from obtaining
6 their preferred method.

7 15. States have attempted to define abortion expansively in
8 order to include contraceptives in state bans on abortion and
9 have also restricted access to emergency contraception.

10 16. In June 2022, Justice Thomas, in his concurring
11 opinion in *Dobbs v. Jackson Women's Health Organization*, 597
12 U.S. ____ (2022), stated that the United States supreme court
13 "should reconsider all of this Court's substantive due process
14 precedents, including *Griswold*, *Lawrence*, and *Obergefell*" and
15 that the court has "a duty to correct the error established in
16 those precedents" by overruling them.

17 17. To further public health and to combat efforts to
18 restrict access to reproductive health care, action is
19 necessary to protect access to contraceptives, contraception,
20 and contraception-related information for everyone, regardless
21 of actual or perceived race; ethnicity; sex, including gender
22 identity and sexual orientation; income; disability; national
23 origin; immigration status; or geography.

24 Sec. 2. NEW SECTION. 135S.1 Short title.

25 This chapter shall be known and may be cited as the "*Right to*
26 *Contraception Act*".

27 Sec. 3. NEW SECTION. 135S.2 Definitions.

28 As used in this chapter, unless the context otherwise
29 requires:

30 1. "*Contraception*" means an action taken to prevent
31 pregnancy, including the use of contraceptives or
32 fertility-awareness-based methods and sterilization procedures.

33 2. "*Contraceptive*" means any drug, device, or biological
34 product intended for use in the prevention of pregnancy,
35 whether specifically intended to prevent pregnancy or for

1 other health needs, that is legally marketed under the federal
2 Food, Drug, and Cosmetic Act, such as oral contraceptives,
3 long-acting reversible contraceptives including intrauterine
4 devices, emergency contraceptives, internal and external
5 condoms, injectables, vaginal barrier methods, transdermal
6 patches, vaginal rings, and other contraceptives.

7 3. "*Health care provider*" means the same as defined in
8 section 135P.1.

9 4. "*Political subdivision*" means a city, county, township,
10 village, or school district.

11 Sec. 4. NEW SECTION. 135S.3 **Statutory right — limitations**
12 **or requirements.**

13 1. A person has a statutory right under this chapter to
14 obtain contraceptives and to engage in contraception, and a
15 health care provider has a corresponding right to provide
16 contraceptives, contraception, and contraception-related
17 information.

18 2. The statutory rights specified in subsection 1 shall not
19 be limited or otherwise infringed through any limitation or
20 requirement that does any of the following:

21 a. Expressly, effectively, implicitly, or as implemented
22 singles out:

23 (1) The provision of contraceptives, contraception, or
24 contraception-related information.

25 (2) Health care providers who provide contraceptives,
26 contraception, or contraception-related information.

27 (3) Facilities in which contraceptives, contraception, or
28 contraception-related information is provided.

29 b. Impedes access to contraceptives, contraception, or
30 contraception-related information.

31 3. To defend against a claim that a limitation or
32 requirement violates a health care provider's or patient's
33 statutory rights under subsection 2, a party must establish, by
34 clear and convincing evidence, all of the following:

35 a. The limitation or requirement significantly

1 advances the safety of contraceptives, contraception, and
2 contraception-related information.

3 *b.* The safety of contraceptives, contraception, and
4 contraception-related information or the health of patients
5 cannot be advanced by a less restrictive alternative measure
6 or action.

7 **Sec. 5. NEW SECTION. 135S.4 Applicability.**

8 1. The state and any political subdivision of the state
9 shall not administer, implement, or enforce any law, rule,
10 regulation, standard, or other provision having the force and
11 effect of law in a manner that does any of the following:

12 *a.* Prohibits or restricts the sale, provision, or use of
13 any contraceptives that have been approved by the United States
14 food and drug administration for contraceptive purposes.

15 *b.* Prohibits or restricts any person from aiding another
16 person in obtaining any contraceptives approved by the United
17 States food and drug administration for contraceptive methods.

18 *c.* Exempts any contraceptives approved by the United
19 States food and drug administration from any other generally
20 applicable law in a way that would make it more difficult
21 to sell, provide, obtain, or use those contraceptives or
22 contraceptive methods.

23 2. This section does not supersede or otherwise affect any
24 provision relating to coverage under group health plans or
25 group or individual health insurance coverage and may not be
26 construed as requiring the provision of specific benefits under
27 those plans or coverage.

28 3. A person who is subject to a limitation or requirement
29 that violates this chapter may raise this section as a defense
30 to any cause of action against the person.

31 **Sec. 6. NEW SECTION. 135S.5 Construction.**

32 1. This chapter shall be liberally construed to effectuate
33 its purposes.

34 2. Nothing in this chapter may be construed to do any of the
35 following:

1 *a.* Authorize any government or political subdivision to
2 interfere with a health care provider's ability to provide
3 contraceptives or contraception-related information or a
4 person's ability to obtain contraceptives or to engage in
5 contraception.

6 *b.* Permit or sanction the conduct of any sterilization
7 procedure without the patient's voluntary and informed consent.

8 3. The constitutional protections relating to contraception
9 as a fundamental right shall not be limited statutorily
10 including by the federal Religious Freedom Restoration Act of
11 1993, Pub. L. No. 103-141.

12 Sec. 7. NEW SECTION. 135R.6 **Enforcement.**

13 1. The attorney general may commence a civil action on
14 behalf of the state against any person that violates or
15 enforces a limitation or requirement that violates this
16 chapter. Notwithstanding any provision to the contrary, in a
17 civil action brought under this chapter, the attorney general
18 may compromise and settle the action as the attorney general
19 determines to be in the best interest of the state.

20 2. Any person, including any health care provider or
21 patient, adversely affected by an alleged violation of this
22 chapter may commence a civil action against any person that
23 violates, implements, or enforces a limitation or requirement
24 that violates this chapter.

25 3. A health care provider may commence an action for relief
26 on the health care provider's own behalf, on behalf of the
27 provider's staff, or on behalf of the provider's patients who
28 are or may be adversely affected by an alleged violation of
29 this chapter.

30 4. If a court finds that there has been a violation of
31 this chapter, the court shall set aside the limitation or
32 requirement as unlawful. In any action under this chapter,
33 the court may award appropriate equitable relief, including
34 temporary, preliminary, or permanent injunctive relief.

35 5. Notwithstanding any provision to the contrary, in any

1 action under this chapter, the court shall award costs and
2 reasonable attorney fees to any prevailing plaintiff. Unless a
3 court determines an action is frivolous, the court shall not
4 hold a plaintiff liable to a defendant for costs and attorney
5 fees in an action under this chapter.

6 EXPLANATION

7 The inclusion of this explanation does not constitute agreement with
8 the explanation's substance by the members of the general assembly.

9 This bill relates to the right to contraception.

10 The bill provides legislative findings including the
11 recognition by the United States Supreme Court of the right to
12 contraception as a fundamental right.

13 The bill establishes that a person has a statutory right to
14 obtain contraceptives, to engage in contraception, and that
15 a health care provider has a corresponding right to provide
16 contraceptives, contraception, and contraception-related
17 information. Under the bill, these rights may not be limited
18 or otherwise infringed through any limitation or requirement
19 that expressly, effectively, implicitly, or as implemented
20 singles out: the provision of contraceptives, contraception,
21 or contraception-related information; health care providers who
22 provide contraceptives, contraception, or contraception-related
23 information; or facilities in which contraceptives,
24 contraception, or contraception-related information
25 is provided; or that impedes access to contraceptives,
26 contraception, or contraception-related information. The
27 bill provides that a party may defend against a claim that
28 a limitation or requirement violates the rights established
29 under the bill by establishing, by clear and convincing
30 evidence, both that the limitation or requirement significantly
31 advances the safety of contraceptives, contraception, and
32 contraception-related information, and that the safety of
33 contraceptives, contraception, and contraception-related
34 information or the health of patients cannot be advanced by a
35 less restrictive alternative measure or action.

1 The bill specifically provides that neither the state
2 nor any political subdivision of the state shall administer,
3 implement, or enforce any law, rule, regulation, standard,
4 or other provision having the force and effect of law in a
5 manner that prohibits or restricts the sale, provision, or use
6 of any contraceptives that have been approved by the United
7 States food and drug administration (FDA) for contraceptive
8 purposes; prohibits or restricts any person from aiding another
9 person in obtaining any contraceptives approved by the FDA or
10 contraceptive methods; or exempts any contraceptives approved
11 by the FDA from any other generally applicable law in a way
12 that would make it more difficult to sell, provide, obtain,
13 or use those contraceptives or contraceptive methods. The
14 bill is to be liberally construed and provides limitations
15 regarding how the bill may be construed. The bill provides
16 that the constitutional protections relating to the right to
17 contraception as a fundamental right shall not be limited
18 statutorily including by the federal Religious Freedom
19 Restoration Act of 1993. The bill authorizes the attorney
20 general on behalf of the state or any person, including any
21 health care provider or patient, to bring a cause of action for
22 a violation of the bill.