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

Introduced the following bill; which was read twice and referred to the Committee on

A BILL

To prohibit the limitation of access to assisted reproductive technology, and all medically necessary 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 “Right to Build Families Act of 2022”.

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, and other individuals, 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, such as through the provision of evidence-based information, counseling, or items and services related to 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 3.

(3) 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 of a State.

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

(a) PROHIBITION.—No State, or official or employee of a State acting in the scope of such appointment or employment, may prohibit or unreasonably limit, for reasons other than to enforce regulations described in subsection (c)—

(1) any individual from—

(A) accessing assisted reproductive technology;

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

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

(2) any health care provider from—

(A) performing assisted reproductive technology treatments or procedures; or

(B) providing evidence-based information related to assisted reproductive technology; or
(3) any insurance provider from covering 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, or against any government official, individual, or entity that enacts, implements or enforces a limitation or requirement that violates 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 that violates this section or against any 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) HEATH CARE PROVIDER.—A health care provider may commence an action for relief on its own behalf, on behalf of the provider’s staff, and 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) ABROGATION OF STATE IMMUNITY.—Neither a State that enforces or maintains, nor a government official who is permitted to implement or enforce, any limitation or requirement that violates subsection (a) shall be immune under the Tenth Amendment to the Constitution of the United States, the Eleventh Amendment to the Constitution
of the United States, or any other source of law, from an action in a Federal or State court of com-
petent jurisdiction challenging that limitation or re-
quirement.

(8) RIGHT TO REMOVE.—Any party shall have a right to remove an action brought under this sub-
section 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 may be 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 requires of medical facilities or providers, if such regulations—

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

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

(d) INSURANCE.—Nothing in this Act shall be con-
strued to modify, supersede, or otherwise affect any Fed-
eral or 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. 4. 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.