

111TH CONGRESS  
2D SESSION

# S. 3357

To establish certain duties for pharmacies to ensure provision of Food and Drug Administration-approved contraception, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 13, 2010

Mr. LAUTENBERG (for himself, Mr. BROWN of Ohio, Mrs. GILLIBRAND, Mr. WYDEN, Mr. WHITEHOUSE, Mrs. FEINSTEIN, and Mr. FRANKEN) 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 certain duties for pharmacies to ensure provision of Food and Drug Administration-approved contraception, 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 “Access to Birth Control  
5 Act”.

6       **SEC. 2. FINDINGS.**

7       Congress finds as follows:

8               (1) Family planning is basic health care for  
9       women. Access to contraception helps women pre-

1 vent unintended pregnancy and control the timing  
2 and spacing of planned births.

3 (2) Although the Centers for Disease Control  
4 and Prevention included family planning in its pub-  
5 lished list of the Ten Great Public Health Achieve-  
6 ments in the 20th Century, the United States still  
7 has one of the highest rates of unintended preg-  
8 nancies among industrialized nations.

9 (3) Each year, 3,000,000 pregnancies, nearly  
10 half of all pregnancies, in the United States are un-  
11 intended, and nearly half of unintended pregnancies  
12 end in abortion.

13 (4) Women rely on prescription contraceptives  
14 for a range of medical purposes in addition to birth  
15 control, such as regulation of cycles and endo-  
16 metriosis.

17 (5) The Food and Drug Administration has de-  
18 clared emergency contraception to be safe and effec-  
19 tive in preventing unintended pregnancy and has ap-  
20 proved over-the-counter access to emergency contra-  
21 ception for individuals aged 17 and older.

22 (6) If taken soon after unprotected sex or pri-  
23 mary contraceptive failure, emergency contraception  
24 can significantly reduce a woman's chance of unin-  
25 tended pregnancy.

1           (7) Emergency contraception works like other  
2 hormonal birth control by preventing pregnancy. It  
3 also does not harm or terminate an already-estab-  
4 lished pregnancy.

5           (8) Access to legal contraception is a protected  
6 fundamental right in the United States and should  
7 not be impeded by one individual's personal beliefs.

8           (9) Reports of pharmacists refusing to fill pre-  
9 scriptions for contraceptives, including emergency  
10 contraceptives, have surfaced in States across the  
11 Nation, including Alabama, Arizona, California, the  
12 District of Columbia, Georgia, Illinois, Louisiana,  
13 Massachusetts, Michigan, Minnesota, Missouri, Mon-  
14 tana, New Hampshire, New York, North Carolina,  
15 Ohio, Oklahoma, Oregon, Rhode Island, Tennessee,  
16 Texas, Washington, West Virginia, and Wisconsin.  
17 Since emergency contraception became available  
18 without a prescription for certain individuals, refus-  
19 als to provide non-prescription emergency contracep-  
20 tion have also been reported.

21 **SEC. 3. DUTIES OF PHARMACIES TO ENSURE PROVISION OF**  
22 **FDA-APPROVED CONTRACEPTION.**

23           Part B of title II of the Public Health Service Act  
24 (42 U.S.C. 238 et seq.) is amended by adding at the end  
25 the following:

1 **“SEC. 249. DUTIES OF PHARMACIES TO ENSURE PROVISION**  
2 **OF FDA-APPROVED CONTRACEPTION.**

3 “(a) IN GENERAL.—Subject to subsection (c), a  
4 pharmacy that receives Food and Drug Administration-  
5 approved drugs or devices in interstate commerce shall  
6 maintain compliance with the following:

7 “(1) If a customer requests a contraceptive that  
8 is in stock, the pharmacy shall ensure that the con-  
9 traceptive is provided to the customer without delay.

10 “(2) If a customer requests a contraceptive that  
11 is not in stock and the pharmacy in the normal  
12 course of business stocks contraception, the phar-  
13 macy shall immediately inform the customer that the  
14 contraceptive is not in stock and without delay offer  
15 the customer the following options:

16 “(A) If the customer prefers to obtain the  
17 contraceptive through a referral or transfer, the  
18 pharmacy shall—

19 “(i) locate a pharmacy of the cus-  
20 tomer’s choice or the closest pharmacy  
21 confirmed to have the contraceptive in  
22 stock; and

23 “(ii) refer the customer or transfer  
24 the prescription to that pharmacy.

25 “(B) If the customer prefers for the phar-  
26 macy to order the contraceptive, the pharmacy

1 shall obtain the contraceptive under the phar-  
2 macy's standard procedure for expedited order-  
3 ing of medication and notify the customer when  
4 the contraceptive arrives.

5 “(3) The pharmacy shall ensure that its em-  
6 ployees do not—

7 “(A) intimidate, threaten, or harass cus-  
8 tomers in the delivery of services relating to a  
9 request for contraception;

10 “(B) interfere with or obstruct the delivery  
11 of services relating to a request for contracep-  
12 tion;

13 “(C) intentionally misrepresent or deceive  
14 customers about the availability of contracep-  
15 tion or its mechanism of action;

16 “(D) breach medical confidentiality with  
17 respect to a request for contraception or threat-  
18 en to breach such confidentiality; or

19 “(E) refuse to return a valid, lawful pre-  
20 scription for contraception upon customer re-  
21 quest.

22 “(b) CONTRACEPTIVES NOT ORDINARILY  
23 STOCKED.—Nothing in subsection (a)(2) shall be con-  
24 strued to require any pharmacy to comply with such sub-

1 section if the pharmacy does not ordinarily stock contra-  
2 ceptives in the normal course of business.

3 “(c) REFUSALS PURSUANT TO STANDARD PHAR-  
4 MACY PRACTICE.—This section does not prohibit a phar-  
5 macy from refusing to provide a contraceptive to a cus-  
6 tomer in accordance with any of the following:

7 “(1) If it is unlawful to dispense the contracep-  
8 tive to the customer without a valid, lawful prescrip-  
9 tion and no such prescription is presented.

10 “(2) If the customer is unable to pay for the  
11 contraceptive.

12 “(3) If the employee of the pharmacy refuses to  
13 provide the contraceptive on the basis of a profes-  
14 sional clinical judgment.

15 “(d) RULE OF CONSTRUCTION.—Nothing in this sec-  
16 tion shall be construed to invalidate or limit rights, rem-  
17 edies, procedures, or legal standards under title VII of the  
18 Civil Rights Act of 1964.

19 “(e) PREEMPTION.—This section does not preempt  
20 any provision of State law or any professional obligation  
21 made applicable by a State board or other entity respon-  
22 sible for licensing or discipline of pharmacies or phar-  
23 macists, to the extent that such State law or professional  
24 obligation provides protections for customers that are  
25 greater than the protections provided by this section.

1 “(f) ENFORCEMENT.—

2 “(1) CIVIL PENALTY.—A pharmacy that vio-  
3 lates a requirement of subsection (a) is liable to the  
4 United States for a civil penalty in an amount not  
5 exceeding \$1,000 per day of violation, not to exceed  
6 \$100,000 for all violations adjudicated in a single  
7 proceeding.

8 “(2) PRIVATE CAUSE OF ACTION.—Any person  
9 aggrieved as a result of a violation of a requirement  
10 of subsection (a) may, in any court of competent ju-  
11 risdiction, commence a civil action against the phar-  
12 macy involved to obtain appropriate relief, including  
13 actual and punitive damages, injunctive relief, and a  
14 reasonable attorney’s fee and cost.

15 “(3) LIMITATIONS.—A civil action under para-  
16 graph (1) or (2) may not be commenced against a  
17 pharmacy after the expiration of the 5-year period  
18 beginning on the date on which the pharmacy alleg-  
19 edly engaged in the violation involved.

20 “(g) DEFINITIONS.—In this section:

21 “(1) The term ‘contraception’ or ‘contraceptive’  
22 means any drug or device approved by the Food and  
23 Drug Administration to prevent pregnancy.

1           “(2) The term ‘employee’ means a person hired,  
2           by contract or any other form of an agreement, by  
3           a pharmacy.

4           “(3) The term ‘pharmacy’ means an entity  
5           that—

6                   “(A) is authorized by a State to engage in  
7                   the business of selling prescription drugs at re-  
8                   tail; and

9                   “(B) employs one or more employees.

10           “(4) The term ‘product’ means a Food and  
11           Drug Administration-approved drug or device.

12           “(5) The term ‘professional clinical judgment’  
13           means the use of professional knowledge and skills  
14           to form a clinical judgment, in accordance with pre-  
15           vailing medical standards.

16           “(6) The term ‘without delay’, with respect to  
17           a pharmacy providing, providing a referral for, or  
18           ordering contraception, or transferring the prescrip-  
19           tion for contraception, means within the usual and  
20           customary timeframe at the pharmacy for providing,  
21           providing a referral for, or ordering other products,  
22           or transferring the prescription for other products,  
23           respectively.

24           “(h) EFFECTIVE DATE.—This section shall take ef-  
25           fect on the 31st day after the date of the enactment of

- 1 this section, without regard to whether the Secretary has
- 2 issued any guidance or final rule regarding this section.”.

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