
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 1242 (Bauer-Kahan) - Reproductive rights

Version: June 21, 2022

Urgency: Yes

Hearing Date: August 1, 2022

Policy Vote: G.O. 15 - 0, PUB. S. 4 - 0

Mandate: No

Consultant: Matthew Fleming

Bill Summary: AB 1242, an urgency measure, would prohibit law enforcement from making an arrest for performing or aiding an abortion, and would also prohibit law enforcement from cooperating with law enforcement from another state regarding law abortions, with some exceptions.

Fiscal Impact:

- **DOJ:** The Department of Justice (DOJ) reports costs of \$49,000 in Fiscal Year (FY) 2022-23, \$53,000 in 2023-24 and 2024-25, and \$5,000 in 2025-26 (General Fund). The Health Rights and Access Section would be required to defend against legal challenges to the provisions of AB 1242 and therefore anticipates additional attorney workload time that would taper off after FY 2025-26 as case law becomes settled on this issue. Although litigation costs are speculative, the topic of abortion is arguably the most controversial legal topic of the past half century. Beginning with *Roe v. Wade*, the United States Supreme Court has heard ten cases that directly deal with the issue of abortion in the past 50 years. Thousands of abortion lawsuits have been filed in the lower courts in that same time period.
- **Law Enforcement Policies and Training:** Unknown, potentially significant costs for all 608 state and local agencies employing peace officers to update policies regarding cooperation with out-of-state entities and provide the training necessary to comply with the requirements of AB 1242 (Local Funds, General Fund). Costs to the General Fund will depend predominantly on whether the duties imposed by this bill constitute a reimbursable state mandate, as determined by the Commission on State Mandates.
- **POST:** Likely minor and absorbable costs to the Commission on Peace Officers Standards and Training (POST) to update existing training modules.

Background: The California Supreme Court held in 1969 that the state constitution's express right to privacy extends to an individual's decision about whether or not to have an abortion. (*People v. Belous* (1969) 71 Cal.2d 954.) Existing California statutory law provides, under the Reproductive Privacy Act, that the Legislature finds and declares every individual possesses a fundamental right of privacy with respect to personal reproductive decisions; therefore, it is the public policy of the State of California that every individual has the fundamental right to choose or refuse birth control and the right to choose to bear a child or to choose to obtain an abortion. The Act further provides that it is the public policy of the state that the state shall not deny or interfere with a person's fundamental right to choose or obtain an abortion prior to

viability of the fetus or when the abortion is necessary to protect the life or health of the pregnant person.

Roe v. Wade, (1973) 410 U.S. 113, is the landmark U.S. Supreme Court decision holding that the implied constitutional right to privacy extends to a person's decision whether to terminate a pregnancy. This summer, on June 24, 2022, the Supreme Court In *Dobbs vs. Jackson Women's Health Org.* (2022) 597 U.S. _____. The Court held that the United States Constitution does not confer a right to abortion and that the authority to regulate an abortion is up to the people of the states and their elected representatives. The *Dobbs* case overruled *Roe*, and its progeny, *Planned Parenthood vs. Casey*. The Court held that the United States Constitution does not confer a right to abortion and that the authority to regulate an abortion is up to the people of the states and their elected representatives. This bill is one of several legislative efforts that have been introduced in response to *Dobbs*.

Proposed Law:

- Prohibits a peace officer from arresting any person for performing or aiding in the performance of an abortion within this state, or obtaining an abortion in this state, if the abortion falls within the protections of the Reproductive Privacy Act.
- Provides that a peace officer shall not cooperate with or provide information to any individual or agency or department from another state regarding a lawful abortion protected under the Reproductive Privacy Act performed in this state.
- Provides that the investigation of any criminal activity in this state that may involve the performance of an abortion is not prohibited, provided that information relating to any medical procedure performed on a specific individual is not shared with an agency or individual from another state for the purpose of enforcing another state's abortion law.
- Contains an urgency clause so that the bill will take immediate effect.

Related Legislation:

- AB 1666 (Bauer-Kahan) Ch. 42, Stats. of 2022 provides that a law of another state that authorizes a person to bring a civil action against a person or entity that receives or seeks, performs or induces, or aids or abets the performance of an abortion, or who attempts or intends to engage in those actions, is contrary to the public policy of this state. Ab 1666 would prohibit the state from applying such laws of another state to a case or controversy heard in state court and the enforcement or satisfaction of a civil judgment received under that law.
- SCA 10 (Atkins) Ch. 97, Stats. of 2022, resolves to enact a constitutional amendment, expressly providing that the state shall not deny or interfere with an individual's reproductive freedom in their most intimate decisions, which includes their fundamental right to choose to have an abortion and their fundamental right to choose or refuse contraceptives. SCA 10 has qualified for the November ballot, and will be voted on by the people of the State on November 8, 2022.

- AB 2223 (Wicks, 2022), among other provisions, would prohibit a person from being subject to civil or criminal liability based on their actions or omissions with respect to their pregnancy or actual, potential, or alleged pregnancy outcome or based solely on their actions to aid or assist a pregnant person who is exercising their reproductive rights. AB 2223 is pending in this Committee.

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