

ABCONCURRENCE IN SENATE AMENDMENTS

AB 1242 (Bauer-Kahan, et al.)

As Amended August 25, 2022

2/3 vote.. Urgency

SUMMARY

Prohibits law enforcement from cooperating with, or providing information to, out-of-state entities regarding a lawful abortion under California law, and from knowingly arresting a person for performing or aiding in the performance of a lawful abortion or for obtaining an abortion. Prohibits specified corporations from providing information to out-of-state entities regarding an abortion that is lawful under California law, except as provided.

Senate Amendments

Delete the Assembly version of this bill and instead:

- 1) Declare that a law of another state that authorizes the imposition of civil or criminal penalties related to an individual performing, supporting, or aiding in the performance of an abortion in this state, or an individual obtaining an abortion in this state, if the abortion is lawful under the laws of this state, is against the public policy of this state.
- 2) Prohibit a law enforcement agency from arresting a person for performing or obtaining an abortion in this state, if the procedure is lawful under California law.
- 3) Prohibit a law enforcement agency from cooperating with, or giving information to, a person, agency, or department from another state regarding a lawful abortion performed in this state and protected under the laws of this state.
- 4) State that these prohibitions do not prohibit the investigation of any criminal activity in this state that may involve the performance of an abortion, as specified.
- 5) Require the countywide bail schedule to set bail at zero dollars for an individual who has been arrested in connection with a proceeding in another state regarding an individual performing, supporting, or aiding in the performance of an abortion in this state, or an individual obtaining an abortion in this state, if the abortion is lawful under California law.
- 6) Define "prohibited violation" as a violation of a law that creates liability for, or arising out of, either providing, facilitating, or obtaining an abortion or intending or attempting to provide, facilitate, or obtain an abortion that is lawful under California law.
- 7) Prohibit a magistrate from entering an ex parte order authorizing a wiretap, interception of electronic communication, use of a pen register, or trap and trace device for purposes of investigating or recovering evidence of a "prohibited violation," as specified
- 8) Prohibit the issuance of a search warrant for items relating to an investigation of a "prohibited violation."
- 9) Prohibit California corporations or those corporations whose principal executive offices are located in the state from producing records, electronic communications, or other information pursuant to a warrant, court order, or subpoena, that the corporation knows, or should know, relates to an investigation or enforcement of a "prohibited violation" as specified.

- 10) Specify that the corporation shall not comply with the out-of-state warrant unless the warrant includes, or is accompanied by, an attestation that the evidence sought is not related to an investigation into or enforcement of a prohibited violation, as defined.
- 11) State that a corporation served with a warrant is entitled to rely on the representations made in an attestation.
- 12) Provide that the provisions of this bill are severable.
- 13) Contain an urgency clause.

COMMENTS

Background: In *Dobbs v. Jackson Women's Health Organization* (2022) United States (U.S.) [142 S.Ct. 2228], the U.S. Supreme Court overturned *Roe v. Wade* (1973) 410 U.S. 113, and *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992) 505 U.S. 833, and held that the federal Constitution does not confer a right to abortion; rather, the authority to regulate abortion belongs to the states and is returned to them. (*Id.* at pp. 2242-2243.)

Two months after the Supreme Court overturned *Roe v. Wade*, about 20.9 million women have lost access to nearly all elective abortions in their home states, and a slate of strict new trigger laws expected to take effect in the coming days will shut out even more. (See *Three More 'Trigger Law' Abortion Bans are Coming Thursday*, R. Roubein, Washington Post, Aug. 23, 2022, available at <https://www.washingtonpost.com/politics/2022/08/23/three-more-trigger-law-abortion-bans-are-coming-thursday/>.) In anticipation of the U.S Supreme Court decision, 13 states had passed "trigger bans" which forbid doctors from providing abortions upon the court overturning *Roe* and which took effect automatically or did so shortly thereafter. And in about 10 states, abortion remains legal but only because there are lawsuits where advocates have sued to block abortion bans. (See *Tracking the States Where Abortion Is Now Banned*, New York Times, Aug. 26, 2022, available at <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html>.)

Because many women have lost the right to have an abortion in their home states, it is anticipated that many will have to travel to other states where abortion remains legal in order to obtain the procedure. It is an open question whether states that ban abortions can legally punish women for leaving the state to get an abortion, or punish people who help them secure an out-of-state abortion. This bill would prohibit a law enforcement agency from arresting a person for performing or obtaining a legal abortion in California. Likewise it would prohibit a law enforcement agency from cooperating with, or providing information to, entities from another state about lawful abortions performed in this state.

And while abortion remains legal in California, abortion bans in other states raise questions on how California corporations are supposed to respond to search warrants and other requests for information to bolster prosecutions in those states. Electronic data from text messages, internet browsing history, and location services could be used to prosecute individuals obtaining, facilitating, or even performing abortions. For example, a mother from Nebraska is facing felony charges for allegedly helping her teenage daughter illegally abort a pregnancy based on information law enforcement obtained from Facebook Messenger. (See *Search Warrants for Abortion Data Leave Tech Companies Few Options*, N. Nix & E. Dwoskin, Washington Post, Aug. 12, 2022, available at <https://www.washingtonpost.com/technology/2022/08/12/nebraska->

[abortion-case-facebook/](#).) This bill would prohibit the issuance of a warrant for any item or items that pertain to an investigation into any violation of law in another state that creates liability for or arising out of providing, facilitating, or obtaining an abortion that is lawful under California law. Likewise, it would prohibit a magistrate from entering an ex parte order authorizing interception of wire or electronic communications or the installation of a pen register or trap and trace device for these purposes. Further, it prohibits a California corporation from complying with an out-of-state warrant unless the warrant includes, or is accompanied by, an attestation that the evidence sought is not related to an investigation into or enforcement of a law prohibiting an abortion that would otherwise be legal in California.

According to the Author

"Our abortion providers are in peril. With *Roe* overturned, our physicians are gearing up to treat an influx of patients coming from states that have criminalized their right to choose. These extreme measures to eliminate all access to abortion care may criminally implicate anyone who receives, provides, or even assists with an abortion here in California. If California does not act, judgements under these laws could lead to arrest and months of legal limbo for providers in our state. This is unacceptable. California law enforcement has no obligation to cooperate with these abhorrent actions from extremist states. AB 1242 protects our providers from the risk of arrest, as well as protecting in-state patients from any California information-sharing that would serve the brutal attacks to abortion rights."

Arguments in Support

According to the *Attorney General's Office*, the sponsor of this bill, "The Supreme Court's decision to revoke the constitutional right to an abortion has alarming implications on the advancement of women in our country. It is more important than ever that California continues to make reproductive rights a top priority. As such, it is critical the state protect providers of abortion services from punishment and protect individual privacy from out-of-state entities that have adverse interests.

"The overturn of *Roe v Wade* leaves approximately 34 million reproductive-age women at risk of losing access to abortion care nationwide based on the state they currently reside in. At least 26 states either have legislation banning abortion that take effect immediately with the overturn of *Roe v. Wade*, or are likely to pass legislation banning abortion. This would increase the number of out-of-state individuals of reproductive age who would find their nearest clinic in California from 46,000 to 1.4 million – a nearly 3,000 percent increase. Without clear guardrails, abortion providers in California could be subject to enforcement of extremist anti-abortion laws. AB 1242 will protect these providers from out-of-state legal action and further enshrine California as a safe haven for reproductive healthcare."

Arguments in Opposition

According to the *Right to Life League*, "This bill is a companion piece to AB 2223, SB 1666, and SB 2091, all designed to undermine foreign states' laws regulating abortion. And like SB 1666 and SB 2091, two of the three clauses comprising the operative language of SB 1242 violate the Full Faith and Credit Clause of the U.S. Constitution which states: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State...."

"The U.S. Constitution is the supreme law of our land. Thanks to the recent U.S. Supreme Court decision in *Dobbs*, states now decide how to regulate abortion. *Dobbs* did not concern the application of the Full Faith and Credit Clause in Article 4. California may proclaim itself an

'Abortion Sanctuary,' however, California may not thwart the laws of other states to suit its radical pro-abortion agenda."

FISCAL COMMENTS

According to the Senate Appropriations Committee:

- 1) 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). Additional costs may be incurred in order for the DOJ to receive and review verified complaints of person who have been charged with a crime from another state.
- 2) 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 this bill (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.
- 3) POST: Likely minor and absorbable costs to the Commission on Peace Officers Standards and Training (POST) to update existing training modules.

VOTES:

ASM GOVERNMENTAL ORGANIZATION: 20-0-2

YES: Frazier, Bigelow, Aguiar-Curry, Berman, Carrillo, Cooley, Cooper, Daly, Davies, Eduardo Garcia, Gipson, Jones-Sawyer, Villapudua, Mathis, Quirk-Silva, Ramos, Robert Rivas, Blanca Rubio, Salas, Smith

ABS, ABST OR NV: Gallagher, Lackey

ASM APPROPRIATIONS: 12-0-4

YES: Lorena Gonzalez, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

ABS, ABST OR NV: Bigelow, Megan Dahle, Davies, Fong

ASSEMBLY FLOOR: 79-0-0

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

UPDATED

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