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# SENATE COMMITTEE ON HEALTH

Senator Dr. Richard Pan, Chair

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**BILL NO:** AB 2091  
**AUTHOR:** Mia Bonta  
**VERSION:** May 12, 2022  
**HEARING DATE:** June 29, 2022  
**CONSULTANT:** Melanie Moreno

**SUBJECT:** Disclosure of information: reproductive health and foreign penal civil actions

**SUMMARY:** Establishes requirements to protect the private information of individuals who seek or consider an abortion. Contains an urgency clause that will make this bill effective upon enactment.

**Existing law:**

- 1) Establishes the Reproductive Privacy Act, which prohibits the state from denying or interfering with a woman's 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 woman. [HSC §123460, et seq.]
- 2) Defines, for purposes of the Confidentiality of Medical Information Act (CMIA), medical information to mean any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient's medical history, mental or physical condition, or treatment. Defines individually identifiable information to mean that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient's name, address, electronic mail address, telephone number, social security number, or other information that, alone or in combination with other publicly available information, reveals the individual's identity. [CIV §56, et seq.]
- 3) Establishes the Department of Managed Health Care (DMHC) to regulate health plans under the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act); California Department of Insurance (CDI) to regulate health and other insurance; and, the Department of Health Care Services (DHCS) to administer the Medi-Cal program. [HSC §1340, et seq., INS §106, et seq., and WIC §14000, et seq.]
- 4) Requires a health plan or insurer to accommodate requests for communication in the form and format requested by the individual, if it is readily producible in the requested form and format, or at alternative locations, if the subscriber or enrollee clearly states either that the communication discloses medical information or provider name and address relating to receipt of sensitive services or that disclosure of all or part of the medical information or provider name and address could endanger the subscriber or enrollee. Authorizes a health plan or insurer to require the subscriber or enrollee or insured to make a request for a confidential communication in writing or by electronic transmission. [CIV §56.107 and INS §791.29]

**This bill:**

- 1) Prohibits, under CMIA, a provider of health care, health plan, or contractor from releasing medical information related to an individual seeking or obtaining an abortion in response to a subpoena or request if that subpoena or request is based on either another state’s laws that interfere with a person’s rights under the Reproductive Privacy Act or a civil action authorized by another state’s law of a state, as specified. Prohibits a subpoena from being issued by a court if another state’s subpoena relates to another state’s penal civil action. Prohibits an attorney from issuing a subpoena based on another state’s subpoena.
- 2) Revises the Reproductive Privacy Act to prohibit a person from being compelled in a state, county, city, or other local criminal, administrative, legislative, or other proceeding to identify, or provide information that would identify, an individual who has sought or obtained an abortion if the information is being requested based on either another state’s laws that interfere with a person’s rights to choose or obtain an abortion, or another state’s penal civil action.
- 3) Prohibits prison staff from disclosing identifying medical information related to an incarcerated person’s right to seek and obtain an abortion if the information is being requested is based on either another state’s laws that interfere with a person’s abortion rights or another state’s penal civil action.
- 4) Permits the CDI Commissioner to, if it is determined that an insurer violated existing law related to confidentiality of an insured’s sensitive health care services, after appropriate notice and opportunity for hearing, as specified, to assess a civil penalty not to exceed \$5,000 for each violation, or, if a violation was willful, a civil penalty not to exceed \$10,000 for each violation.
- 5) Makes a number of technical, clarifying changes.
- 6) Includes a severability clause, so that if any provision of this bill is held invalid, that invalidity does not affect other provisions that can be given effect without the invalid provision.
- 7) Contains an urgency clause that will make this bill effective upon enactment. And specifies that this is necessary in order to protect the public from actions authorized under the law of another state that are contrary to the public policy of this state, including actions which interfere with a person’s right to choose or obtain an abortion and foreign penal civil actions.

**FISCAL EFFECT:** According to the Assembly Appropriations Committee, no costs to the CDI to consider whether an insurance provider violated the provisions of this bill and assess a civil penalty, if appropriate

**PRIOR VOTES:**

Assembly Floor:	54 - 16
Assembly Appropriations Committee:	12 - 4
Assembly Judiciary Committee:	7 - 2

**COMMENTS:**

- 1) *Author's statement.* According to the author, states throughout the U.S. have been restricting abortion access. Now that the United States Supreme Court has overturned *Roe v. Wade*, it is crucial for states like California to double down on abortion access and strong abortion related privacy protections. Regressive abortion laws, like most recently seen in Texas, which allow private citizens to sue anyone who even utters the word abortion, are a huge infringement on a person's constitutional right. We know people are coming to California to seek reproductive care. However, we worry private citizens will demand the medical records of those who seek care here in California, to punish them. No one should be able to manipulate California's legal system to target people who seek care and refuge here. This bill will ensure out of state subpoenas, which seek information related to a patient who received reproductive healthcare in California, are not granted. By doing this, California will protect the medical privacy of those patients who may be targeted under these hostile states' laws. California must proactively protect the confidentiality of medical records, related to abortion care, now more than ever as we see states rolling back abortion access.
  
- 2) *Abortion.* According to the Center for Disease Control and Prevention (CDC), a legal induced abortion is defined as an intervention performed by a licensed clinician that is intended to terminate an ongoing pregnancy. Ending a pregnancy with medications is an option for women who are less than ten weeks pregnant and would like to have an abortion at home with a less invasive procedure. The CDC reports that a total of 629,898 abortions were reported nationally from 49 reporting areas in 2019. From 2018 to 2019, the total number of abortions increased 2%, and from 2010 to 2019, the total number of reported abortions decreased 18%. In 2019, women in their 20s accounted for more than half of abortions (56.9%). By contrast, adolescents under 15 years (0.2%) and women over 40 (3.7%) years accounted for the lowest percentages of abortions. In 2019, 79.3% of abortions were performed at or less than nine weeks' gestation, and nearly all (92.7%) were performed at or less than 13 weeks gestation. In 2019, the highest proportion of abortions were performed by surgical abortion at or less than 13 weeks gestation (49.0%), followed by early medication abortion at or less than nine weeks' gestation (42.3%). In 2018, the most recent year for which data were reviewed for pregnancy-related deaths, two women died as a result of complications from legal induced abortion.

According to the Guttmacher Institute, in 2017, there were 1,587 facilities providing abortion in the U.S., representing a 5% decrease from the 1,671 facilities in 2014. Sixteen percent of facilities in 2017 were abortion clinics (i.e., clinics where more than half of all patient visits were for abortion), 35% were nonspecialized clinics, 33% were hospitals and 16% were private physicians' offices. Sixty percent of all abortions were provided at abortion clinics, 35% at nonspecialized clinics, 3% at hospitals and 1% at physicians' offices. In 2017, 89% of U.S. counties had no clinics providing abortions. Any of the 38% of reproductive-age women living in those counties who needed an abortion during that time would have had to travel out of their county to obtain an abortion. Of patients who had an abortion in 2014, one-third had to travel more than 25 miles one way to reach a facility.

- 3) *California data.* According to the Guttmacher Institute, in 2017, 132,680 abortions were provided in California, though not all abortions that occurred in California were provided to state residents. There was a 16% decline in the abortion rate in California between 2014 and 2017, from 19.5 to 16.4 abortions per 1,000 women of reproductive age. Abortions in California represent 15.4% of all abortions in the U.S. There were 419 facilities providing abortion in California in 2017, and 161 of those were clinics. These numbers represent a 6%

increase in clinics from 2014, when there were 512 abortion-providing facilities overall, of which 152 were clinics. In 2017, some 40% of California counties had no clinics that provided abortions, and 3% of California women lived in those counties.

- 4) *Other states.* According to a January 2022 report from the Guttmacher Institute, 108 abortion restrictions had been enacted in 19 states in 2021. This is the highest total in any year since abortion rights were affirmed by the U.S. Supreme Court in 1973. In addition to abortion bans of all types, restrictions on medication abortion were passed by many state legislatures prior to the U.S. Supreme Court striking down *Roe v. Wade* on June 24, 2022. Some examples include:
  - a) Abortion bans: Texas' six-week abortion ban drastically reduced access to care starting on September 1, 2021, after the U.S. Supreme Court refused to block it. Since 2013, 13 states have enacted bans on abortion at six or eight weeks of pregnancy. Texas' ban is the only one in effect. In the other states, courts have blocked enforcement or the ban has yet to take effect. Several states enacted other types of bans this year. Among these, only the South Dakota prohibition is in effect. Arkansas enacted a ban that prohibits all abortions except in cases of life endangerment, and Oklahoma enacted a prohibition that has exceptions only if the patient's life is endangered or there are serious threats to the patient's physical health. Montana enacted an abortion ban at 20 weeks after the last menstrual period, while New Hampshire adopted a ban on abortion at 24 weeks. Arizona enacted an abortion ban in cases of genetic indication, and South Dakota banned abortion if the fetus has Down syndrome. Oklahoma and Texas also enacted bans that would go into effect if *Roe* is overturned.
  - b) Medication abortion restrictions: Now that telehealth has been integrated into medical care as part of the COVID-19 pandemic response—and the FDA has eased some of the restrictions placed on medication abortion by allowing mailing of the pills and expanding access through pharmacies—abortion opponents are enacting additional burdensome and medically unnecessary restrictions on medication abortion. Many of the 2021 restrictions are based on existing and previous FDA protocols, but some states have attempted to further impede access to care. In 2021, eight states (Arizona, Arkansas, Indiana, Montana, Ohio, Oklahoma, South Dakota and Texas) enacted restrictions on medication abortion. Some of these restrictions are not in effect because they have been challenged in court, including the Montana, Ohio and Oklahoma restrictions.
- 5) *California Future of Abortion Council (CA FAB Council).* According to the CA FAB Council website, in September 2021, with the constitutional right to abortion facing the most severe threats since *Roe v. Wade*, the CA FAB Council convened to identify the most pressing barriers to care for patients seeking abortion services in California. More than 40 organizations representing sexual and reproductive health care providers, reproductive rights and reproductive justice advocacy organizations, legal and policy experts, researchers, and advocates, with the support of California policymakers, joined together to recommend policy proposals supporting equitable and affordable access to abortion care for Californians and all who seek care here. The CA FAB Council made 45 policy recommendations relating to seven main areas of focus: a) Investment in abortion funds, direct practical support, and infrastructure to support patients seeking abortion care; b) Cost barriers and adequate reimbursement for abortion and abortion-related services; c) Investment in a diverse California abortion provider workforce and an increase in training opportunities for Black, Indigenous, and people of color (BIPOC) and others historically excluded from health care

professions; d) Reducing administrative and institutional barriers to care; e) Legal protections for abortion patients, providers, and supporting organizations, and individuals; f) Addressing misinformation and disinformation and ensuring access to medically accurate, culturally relevant, and inclusive education about abortion and access to care is widely and equitably available; and g) Efforts to collect data, conduct research, and distribute reports to assess and inform abortion care and education needs in California. CA FAB Council states that it is imperative that California policymakers begin acting upon these policy recommendations and preparing the state to serve potentially millions more people seeking abortion care as other states adopt extreme bans on an essential health service.

- 6) *Double referral.* This bill was heard in the Senate Judiciary Committee on July 15, 2022, and passed with a 9-2 vote.
- 7) *Related legislation. Related legislation.* SB 1142 (Caballero) requires the California Health and Human Services Agency (CHHSA), or a designated entity, to establish a website where the public can access specified information about abortion services. SB 1142 establishes the Abortion Practical Support Fund (Fund) for the purpose of providing grants to nonprofit entities for abortion supportive services and to public research institutions for research to support equitable access to abortion. Requires the Commission on the Status of Women and Girls to administer the Fund and to provide grants to increase access to abortion services. *SB 1142 passed the Assembly Health Committee with an 11-3 vote on June 21, 2022.*

SB 1245 (Kamlager) establishes the Los Angeles (LA) County Abortion Access Safe Haven Pilot Program for the purpose of expanding and improving access to the full spectrum of sexual and reproductive health care, including abortion, in LA County. *SB 1245 passed the Assembly Health Committee with an 11-3 vote on June 21, 2022.*

AB 2205 (Carillo) requires health plans and insurers providing a qualified health plan through Covered California to report the total amount of funds for abortion services maintained in a segregated account pursuant to federal law. *AB 2205 passed by a vote of 7-2 when it was heard in this Committee on June 8, 2022.*

AB 2134 (Weber): a) establishes the California Reproductive Health Equity Program (Program) to ensure abortion and contraception services are affordable for and accessible to all patients; b) permits Medi-Cal providers to apply for grant funding to provide abortion and contraception at no cost to certain uninsured or underinsured individuals; c) requires health plans and insurers that provide coverage to employees of a religious employer that does not include coverage for abortion and contraception to provide written information on the excluded benefits and services and that the abortion and contraception benefits and services may be available at no cost through the Program; d) requires an employer that provides health coverage that does not include coverage for abortion and contraception to provide the same information in writing to its employees; and, e) requires the Department of Industrial Relations to impose an annual fee on those employers, excluding religious employers, and to deposit revenues into the California Reproductive Health Equity Fund. *AB 2134 passed by a vote of 8-1 when it was heard in this Committee on June 22, 2022.*

AB 2320 (C. Garcia) requires the California Health and Human Services agency, or its designated entity, to establish and administer a pilot program to direct funds to primary care clinics that provide reproductive health care services in five counties that agree to participate. *AB 2320 passed by a vote of 7-2 when it was heard in this Committee on June 15, 2022.*

AB 2586 (C. Garcia) Requires CDPH to convene a working group to examine the root causes of the reproductive health and sexual health inequities in the state, and requires the workgroup to submit a report to the Legislature with recommendations of how to meaningfully address and eliminate reproductive health and sexual health inequities. Establishes the California Reproductive Justice and Freedom Fund (RJ Fund), and specifies that the goal of the RJ Fund is to dismantle historic and standing systemic reproductive and sexual health inequities. Requires CDPH, upon appropriation by the Legislature, to award grants from the RJ Fund to eligible organizations over a three-year period. Requires grant recipients to use any grant funds to implement a program or fund an existing program that provides and promotes medically accurate, comprehensive reproductive and sexual health education. *AB 2586 passed by a vote of 8-1 when it was heard in this Committee on June 22, 2022.*

- 8) *Prior legislation.* SB 245 (Gonzalez, Chapter 11, Statutes of 2022) prohibits cost-sharing, restrictions, delays, prior authorization and annual or lifetime limits on all abortion services.

AB 133 (Committee on Budget, Chapter 143, Statutes of 2021) requires Covered California, upon appropriation by the Legislature, to make payments to qualified health plan issuers that equal the cost of providing abortion services for which federal funding is prohibited to individuals enrolled in a qualified health plan through Covered California in the individual market. Prohibits the payments from being less than \$1 per enrollee per month.

AB 1184 (Chiu, Chapter 190, Statutes of 2021) revises and recasts provisions to require a health plan or insurer to accommodate requests for confidential communication of medical information regardless of whether there is a situation involving sensitive services or a situation in which disclosure would endanger the individual. Prohibits a health plan or insurer from requiring a protected individual, as defined, to obtain the policyholder, primary subscriber, or other enrollee or insured's authorization to receive health care services or to submit a claim, if the protected individual has the right to consent to care. Requires the health plan or insurer to direct all communications regarding a protected individual's receipt of sensitive health care services directly to the protected individual, and prohibits the disclosure of that information to the policyholder, primary subscriber, or any plan enrollees or insureds without the authorization of the protected individual, as provided.

SB 24 (Leyva, Chapter 740, Statutes of 2019) requires University of California or California State University student health centers to offer abortion by medication onsite.

AB 775 (Chiu and Burke, Chapter 700, Statutes of 2015) enacted the Reproductive Freedom, Accountability, Comprehensive Care, and Transparency (FACT) Act and required clinics and other facilities that provide family planning or pregnancy-related services to provide specified notices to clients about available family planning services (including all FDA-approved methods of contraception), prenatal care, and abortion for eligible women. AB 775 also required specified "unlicensed facilities" (crisis pregnancy centers) to disseminate to clients on site and in any print and digital advertising materials the following notice: "This facility is not licensed as a medical facility by the State of California and has no licensed medical provider who provides or directly supervises the provision of services." *AB 775 was struck down by the U.S. Supreme Court in June 2018.*

SB 1301 (Kuehl, Chapter 385, Statutes of 2002) enacts the Reproductive Privacy Act which provides that every individual possesses a fundamental right of privacy with respect to reproductive decisions, including the fundamental right to choose or refuse birth control, and the fundamental right to choose to bear a child or obtain an abortion.

- 9) *Support.* Planned Parenthood Affiliates of California, sponsor of this bill, writes that this bill takes specific steps to protect patient privacy by prohibiting health plans, health care providers, and their contractors from disclosing medical information of a person seeking an abortion in response to a subpoena based on the violation of another state's law and by ensuring that an out of state subpoena is not immediately granted as it relates to a patient who received an abortion in California. This bill also protects an individual from being compelled to disclose information that would identify an individual who sought or obtained an abortion. Additionally, it authorizes the CDI Commissioner to assess a civil penalty against an insurer that has disclosed an insured's confidential medical information. These actions are just a few steps necessary to protect patient privacy for all patients seeking care in California
- 10) *Opposition.* The Right to Life League contends that this bill will have detrimental consequences for the very women this bill's authors claim they are trying to protect. This bill is a companion piece to AB 1666 (Bauer-Kahan). Like that bill, this bill impermissibly declares another state's subpoenas and judicial orders null and void. This bill violates 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." This bill will effectively grant immunity from foreign subpoenas to sexual abusers and human traffickers who coerce women and minors into pregnancy termination in other states then flee to California to avoid the legal consequences. This bill is dangerous because it declares another state's court orders to have no effect, thwarting enforcement of foreign laws against abusers and human traffickers who may hide in California, denying justice to victims. This bill would remove consequences for proven abuse and neglect by extending legal protection to abusers fleeing other states, thereby covering the tracks of abortion coercion. This bill will embolden bad actors to exploit women.

### **SUPPORT AND OPPOSITION:**

**Support:** Planned Parenthood Affiliates of California (co-sponsor)  
 Equality California (co-sponsor)  
 American College of Obstetricians and Gynecologists District IX  
 Attorney General Rob Bonta  
 California Academy of Family Physicians  
 California Nurse Midwife Association  
 California Nurses Association  
 California Pan-Ethnic Health Network  
 City of Los Angeles  
 Electronic Frontier Foundation  
 Eleni Kounalakis – Lieutenant Governor of California  
 NARAL Pro-Choice California  
 National Association of Social Workers, California Chapter  
 Oakland Privacy  
 Santa Barbara Women Lawyers  
 Stronger Women United

**Oppose:** Concerned Women for America Legislative Action Committee  
Right to Life League  
Right to Life League of Southern California

**-- END --**