
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No: SB 345 **Hearing Date:** April 18, 2023
Author: Skinner
Version: April 10, 2023
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Health care services: legally protected health care activities*

HISTORY

Source: ACCESS Reproductive Justice
Black Women for Wellness Action Project
NARAL Pro-Choice California
Training in Early Abortion for Comprehensive Healthcare (TEACH)

Prior Legislation: Proposition 1, approved by California voters on Nov. 8, 2022
SB 107 (Wiener), Ch. 810, Stats. 2022
AB 1242 (Bauer-Kahan), Ch. 627, Stats. 2022
AB 1666 (Bauer-Kahan), Ch. 42, Stats. 2022
AB 2091 (Bonta), Ch. 628, Stats. 2022
AB 2223 (Wicks), Ch. 629, Stats. 2022

Support: Aria Medical; California Public Defenders Association; California Women's Law Center; Choix Inc.; Conference of California Bar Associations; Equality California; Essential Health Access Los Angeles; Feminist Majority; Gender Spectrum; Houston Women's Reproductive Services; Kopcho Reproductive Justice Fund; MYAbortion Network; National Council of Jewish Women Kansas City; Oakland Privacy; Plan C; Tia, Inc.; University of California, San Francisco; USC Institute on Global Inequities; 1 private individual

Opposition: California Catholic Conference; Frederick Douglass Foundation of California

PURPOSE

The purpose of this bill is to protect patients and health care providers who provide patients with a legally protected health care activity, as defined, by:

(1) Prohibiting the suspension or revocation of the license of a person solely because the person provided legally protected health care activity;

(2) Stating that California law governs in specified actions related to reproductive or gender-affirming health care services, except as required by federal law;

(3) Authorizing a person to file a civil action against a person who engages in abusive litigation, as defined, that infringes on or interferes with a legally protected health care activity;

(4) Requiring a court to grant a stay of enforcement of a sister state judgment if a money judgment or lien on real property was obtained for the exercise of a right guaranteed by the United States Constitution at the time the right was exercised, a right guaranteed by the California Constitution, or for aiding and abetting the exercise of those rights;

(5) Prohibiting the Governor from recognizing a demand for the extradition of a person charged with legally protected health care activity, as defined, unless the demanding state alleges that the person was physically present in the demanding state at the time of the commission of the alleged crime and then fled, except as required by federal law; and,

(6) Requiring any out-of-state subpoena to include an affidavit or declaration under penalty of perjury that the discovery request is not in connection with an out-of-state proceeding relating to a legally protected health care activity, except as specified.

Existing law establishes the Reproductive Privacy Act which provides that the Legislature finds and declares that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care. Accordingly, it is the public policy of the State of California that:

- Every individual has the fundamental right to choose or refuse birth control;
- Every individual has the fundamental right to choose to bear a child or to choose to obtain an abortion, with specified limited exceptions; and,
- The state shall not deny or interfere with a person's fundamental right to choose to bear a child or to choose to obtain an abortion, except as specifically permitted. (Health & Saf. Code, § 123462.)

Existing law provides that the state may not deny or interfere with a person'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 person. (Health & Safe. Code § 123466, subd. (a).)

This bill states that California law governs in any action, whether civil, administrative, or criminal, against any person who provides, receives, aids or abets in providing or receiving, or attempts to provide or receive, by any means, including telehealth, reproductive health care services and gender-affirming health care services, including gender-affirming mental health care services if the care was legal in the state in which it was provided at the time of the challenged conduct.

This bill declares that access to reproductive health care services and gender-affirming health care services is a right secured by the Constitution and laws of California and that interference with this right, whether or not under the color of law, is against the public policy of California.

This bill provides that it is abusive litigation to litigate or take other legal action to deter, prevent, sanction, or punish a person engaging in legally protected health care activity by either of the following:

- Filing or prosecuting an action in a state other than California where liability, in whole or part, directly or indirectly, is based on a legally protected health care activity that was legal in the state in which it occurred, including an action in which liability is based on a theory of vicarious, joint, or several liability; or,
- Attempting to enforce an order or judgment issued in connection with an action described in the paragraph above by a party to the action or a person acting on behalf of a party to the action. A lawsuit shall be considered to be based on conduct that was legal in the state in which it occurred if a part of an act or omission involved in the course of conduct that forms the basis for liability in the lawsuit occurs or is initiated in a state in which the health care was legal, whether or not the act or omission is alleged or included in a pleading or other filing in the lawsuit.

This bill defines “legally protected health care activity” to mean any of the following:

- The exercise and enjoyment, or attempted exercise and enjoyment, by a person of rights to reproductive health care services, gender-affirming health care services, or gender-affirming mental health care services secured by the Constitution or laws of California or the provision of insurance coverage for such services;
- An act or omission undertaken to aid or encourage, or attempt to aid or encourage, a person in the exercise and enjoyment or attempted exercise and enjoyment of rights to reproductive health care services, gender-affirming health care services, or gender-affirming mental health care services secured by the Constitution or laws of California; or,
- The provision of the health care services by a person duly licensed under the laws of California and the provision of insurance coverage for the services, if the service is permitted under the laws of California, regardless of the patient’s location.

This bill specifies that “legally protected health care activity” does not include a service rendered below the applicable professional standard of care or that would violate antidiscrimination laws of California.

This bill states that “reproductive health care services” means and includes all services, care, or products of a medical, surgical, psychiatric, therapeutic, diagnostic, mental health, behavioral health, preventative, rehabilitative, supportive, consultative, referral, prescribing, or dispensing nature relating to the human reproductive system provided in accordance with the constitution and laws of this state, whether provided in person or by means of telehealth services which includes, but is not limited to, all services, care, and products relating to pregnancy, assisted reproduction, contraception, miscarriage management, the termination of a pregnancy, or self-managed terminations.

This bill states that a public act or record of a foreign jurisdiction that prohibits, criminalizes, sanctions, authorizes a person to bring a civil action against, or otherwise interferes with a person, provider, or other entity in California that seeks, receives, causes, aids in access to, aids,

abets, provides, or attempts or intends to seek, receive, cause, aid in access to, aid, abet, or provide, reproductive health care services or gender-affirming health care services shall be an interference with the exercise and enjoyment of the rights secured by the Constitution and laws of California and shall be a violation of the public policy of California.

This bill states that if a person, including a plaintiff, prosecutor, attorney, or law firm, whether or not acting under color of law, engages or attempts to engage in abusive litigation that infringes on or interferes with, or attempts to infringe on or interfere with, a legally protected health care activity, then an aggrieved person, provider, carrier, or other entity, including a defendant in the abusive litigation, may institute and prosecute a civil action for injunctive, monetary, or other appropriate relief within three years after the cause of action accrues.

This bill states that an aggrieved person, provider, or other entity, including a defendant in abusive litigation, may move to modify or quash a subpoena issued in connection with abusive litigation on the grounds that the subpoena is unreasonable, oppressive, or inconsistent with the public policy of California.

This bill provides that if the court finds for the petitioner in a civil action for abusive litigation that infringes on or interferes with, or attempts to infringe on or interfere with, a legally protected health care activity, recovery shall be in the amount of three times the amount of actual damages, which shall include damages for the amount of a judgment issued in connection with an abusive litigation, and any other expenses, costs, or reasonable attorney's fees incurred in connection with the abusive litigation.

This bill authorizes a court to exercise jurisdiction over a person in a civil action for abusive litigation that infringes on or interferes with, or attempts to infringe on or interfere with, a legally protected health care activity if any of the following apply:

- Personal jurisdiction is found;
- The person has commenced an action in a court in California and, during the pendency of that action or an appeal therefrom, a summons and complaint is served on the person or the attorney appearing on the person's behalf in that action or as otherwise permitted by law; or,
- The exercise of jurisdiction is permitted under the Constitution of the United States.

This bill specifies that the above provision does not apply to a lawsuit or judgment entered in another state that is based on conduct for which a cause of action exists under the laws of California, including a contract, tort, common law, or statutory claims.

This bill states that notwithstanding any other law, the laws of California shall govern in a case or controversy heard in California related to reproductive health care services or gender-affirming health care services, except as may be required by federal law.

This bill specifies that its provisions shall not be construed to provide jurisdiction over a California resident in an out-of-state forum when the California resident has not availed themselves of that forum.

Existing law requires a court to grant a stay of enforcement of a judgment based on a sister state judgment by filing an application with a superior court and requires the court clerk to enter a judgment based on the application under specified circumstances. (Code Civ. Pro., § 1710.50.)

This bill additionally requires a court to grant a stay of enforcement when a money judgment or lien on real property was obtained against a person or entity for exercising a right guaranteed under the United States Constitution as interpreted by the United States Supreme Court precedent at the time the right was exercised, or a right guaranteed under the California Constitution, or against a person or entity for aiding and abetting the exercise of said rights.

Existing law states that a person shall not be compelled in a state, county, city, or other local criminal, administrative, legislative, or other proceeding to identify or provide information that would identify or that is related to 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 or a foreign penal civil action. (Health & Saf. Code, §123466, subd. (b).)

Existing law prohibits, under the Confidentiality of Medical Information Act (CMIA), providers of health care, health care service plans, or contractors, as defined, from sharing medical information without the patient's written authorization, subject to certain exceptions. (Civ. Code § 56 et seq.)

This bill prohibits a business that tracks, uses, collects, or stores geographic location data from tracking, using, storing, or selling data that contains the personally identifying information of a person physically located in or in close proximity to a family planning center.

This bill defines "family planning center" to mean "a business categorized as a family planning center by the North American Industry Classification System adopted by the United States Census Bureau, including, but not limited to, an abortion clinic, birth control clinic, pregnancy counseling center, or reproductive health services center."

This bill authorizes an aggrieved person or entity, including a family planning center, may institute and prosecute a civil action against any person or business who violates this prohibition for injunctive and monetary relief and attorney's fees within three years of discovery of the violation.

Existing law states that the purpose of the Department of Consumer Affairs is ensuring that those private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California. (Bus. & Prof. Code, § 101.6.)

Existing law provides for the licensure and regulation of various categories of medical professionals by boards within the Department of Consumer Affairs, including, among others, the Medical Board of California and the Dental Board of California. (Bus. & Prof. Code, § 101.)

This bill states that notwithstanding any other law, a board shall not suspend or revoke the license of a person solely because that person provided a legally protected health care activity, as defined.

This bill provides that performance, recommendation, or provision of a legally protected health care activity by a health care practitioner acting within their scope of practice for a patient who

resides in a state in which the performance, recommendation, or provision of that legally protected health care activity is illegal, does not, by itself, constitute professional misconduct, upon which discipline or other penalty may be taken.

Existing law defines murder as the unlawful killing of a human being, or a fetus, with malice aforethought. (Pen. Code, § 187.)

Existing law exempts from the definition of murder a person who commits an act that results in the death of a fetus if any of the following apply:

- The act complied with the Therapeutic Abortion Act;
- The act was committed by a holder of a physician's and surgeon's certificate in a case where, to a medical certainty, the result of childbirth would be death of the mother of the fetus or where her death from childbirth, although not medically certain, would be substantially certain or more likely than not.
- If the act is solicited, aided, abetted, or consented to by the mother of the fetus.

This bill expands that exemption to include a mother who committed the act that resulted in the death of the fetus and makes other technical changes.

Existing law states that it is the duty of the Governor of this State to have arrested and delivered up to the executive authority of any other State any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this State. (Pen. Code, § 1548.1.)

Existing law states that no demand for the extradition of a person charged with a crime in another state shall be recognized by the Governor unless it meets specified requirements including that the demand is in writing alleging that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter the person fled from that state. (Pen. Code, § 1548.2.)

Existing law provides that the Governor may also surrender, on demand of the executive authority of another state any person in this state with committing an act in this state, or in a third state, that results in a crime in the demanding state though the accused was not in the demanding state at the time of the commission of the crime, and has not fled therefrom. (Pen. Code, § 1549.1.)

This bill states that notwithstanding any law, and except as required by federal law, a demand for the extradition of a person charged with any legally protected health care activity shall not be recognized by the Governor unless in accordance with Penal Code section 1548.2 including the requirement that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter the person fled from that state.

This bill replaces the term "unborn children" and "unborn person" to "fetus" in various provisions including, among others, defining low-risk pregnancy conditions for determining the scope of authorization of a certificate to practice nurse-midwifery, defining active labor for health facility licensing provisions, and defining spouse for California State Teachers' Retirement System benefits.

This bill replaces the term “unborn person” to “unborn beneficiary” in various sections of the Probate Code.

This bill contains a severability clause so that if any provision of this bill or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Since *Roe* was overturned last year, California has significantly strengthened and expanded access to reproductive health care and abortion services including legal protections to patients and providers and offered assistance and protection to patients who come to California. We have also protected and affirmed the right to gender-affirming care. But as the assault on essential healthcare accelerates, new challenges are emerging especially to health care providers who are extending a lifeline to their patients who may be in a state where medically safe and effective treatments are now illegal. SB 345 is needed to ensure that California healthcare practitioners are able to provide essential reproductive and gender affirming care to all of their patients, regardless of their patient’s location, knowing that California is doing everything it can to protect them against the draconian laws of other states.

2. Reproductive Rights in California

Roe v. Wade, (1973) 410 U.S. 113 (overruled by *Dobbs v. Jackson Women’s Health* (2022) 142 S. Ct. 2228), was the landmark U.S. Supreme Court decision that held that the implied constitutional right to privacy extends to a person’s decision whether to terminate a pregnancy. Specifically, the Court found for the first time that the constitutional right to privacy is “broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.” *Roe* had been one of the most debated Supreme Court decisions, and its application and validity continued to be challenged time and again. For example, in *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992) 505 U.S. 833, the Court reaffirmed the basic holding of *Roe*, yet also permitted states to impose restrictions on abortion as long as those restrictions do not create an undue burden on a person’s right to choose to terminate a pregnancy.

Last year, in *Dobbs v. Jackson Women’s Health*, *supra*, the U.S. Supreme Court overturned *Roe v. Wade* holding that, contrary to 50 years of precedent, there is no fundamental constitutional right to have an abortion. (*Dobbs*, 142 S. Ct. at 2242.) The majority opinion further provided that states should be allowed to decide how to regulate abortion and that a strong presumption of validity should be afforded to those state laws. (*Id.* at 2283-2284.)

In California, before *Roe v. Wade* was decided by the U.S. Supreme Court, 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. (Health & Safe. Code § 123462, subds. (a)-(b).) 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. (Health & Saf. Code, § 123466.)

In the 2022 general election, California voters approved Proposition 1 to amend the state constitution to guarantee the right to abortion and contraception. This ballot measure was approved by 66.9 percent of voters. (Secretary of State, November 8, 2022 General Election State Ballot Measures by County <<https://elections.cdn.sos.ca.gov/sov/2022-general/sov/props.pdf>> [as of Apr. 11, 2023].)

Last year, several bills were enacted to further protect reproductive rights in California. AB 1242 (Bauer-Kahan), Chapter 627, Statutes of 2022, protects reproductive digital information handled by companies incorporated or headquartered in California and prevents the arrest of individuals or the disclosure by law enforcement of information in an investigation related to any abortion that is legal in California. AB 1666 (Bauer-Kahan), Chapter 42, Statutes of 2022, declares 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 2091 (Bonta), Chapter 628, Statutes of 2022, prohibits a provider of health care, health care service 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 set forth in the Reproductive Privacy Act and prohibits the issuance of a subpoena, from the Superior Court or an attorney licensed in California, based on a civil action authorized by the law of a state other than this state in which the sole purpose is to punish an offense against the public justice of that state. AB 2223 (Wicks), Chapter 629, Statutes of 2022 prohibits a person from being criminally or civilly liable for miscarriage, stillbirth, abortion, or perinatal death due to causes that occurred in utero.

This bill makes additional changes to civil and criminal laws to protect patients and health care providers who provide patients with a legally protected health care activity. According to the background information provided by the author of this bill, "approximately 53% of abortions are done through medication rather than surgery, and 64% of abortions before the 10th week of gestation are done through medication rather than surgery. Medication abortion ends a pregnancy in its early stages. The medications are generally administered up to 10 weeks into a pregnancy, using a safe and effective two-drug protocol, mifepristone and misoprostol. The first drug, mifepristone, also known as "Mifeprex" or "RU-486," blocks the action of the natural hormone progesterone on the uterus. This causes the lining of the uterus to shed, as it does during a period, and stops the growth of the pregnancy. This medication can be administered in the clinic, mailed to a patient's location, or sent home with a patient. The second drug, misoprostol, causes the uterus to contract and initiates bleeding and cramping. Misoprostol is taken by the patient 6 to 72 hours after taking the first medication, mifepristone. Misoprostol completes the abortion."

Because medication abortion necessarily involves a time lapse between when the patient interacts with the medical professional to receive the pills and two phases of medication, it is possible for people who travel to California to receive such services that they may be in another

state over the course of the treatment, potentially opening them up for criminal prosecution or civil liability in that state.

This bill would address the issue raised by medication abortion by specifically allowing medical providers to provide abortion medication that is legal in California to a patient regardless of where the patient is located. This bill would also prohibit the sharing of information that is sought through subpoenas or a warrant for an out-of-state prosecution or law suit when the information is related to the legally protected health care in California. This bill would also prohibit the suspension or revocation of a person solely because the person provided legally protected health care activity.

This bill also allows medical providers and individuals to bring suit in California against anyone who interferes with the healthcare provider's right to provide care that is legal in California or with a patient's right to receive such care.

3. Gender-Affirming Health Care Protections in California

Last year, in response to a series of laws and executive orders adopted in other states that impose civil and/or criminal liability on transgender youth, their parents and medical providers who assist them in obtaining gender-affirming care, California enacted protections for such individuals obtaining care in this state. The new law, among other things, prohibits the sharing of medical records regarding the receipt of gender-affirming care; the enforcement of out-of-state subpoenas seeking information regarding the receipt of gender-affirming medical care in California; and the enforcement of laws of another state that authorize the removal of a child from their parent or guardian and enforcement of out-of-state criminal laws related to gender-affirming health care. (SB 107 (Wiener), Chapter 810, Statutes of 2022.)

Similar to the issue raised by medication abortion, gender-affirming health care can entail a regimen of hormones and treatment that is legal in California, however patients who take these hormones out of state may subject themselves or their medical provider to another state's laws banning such care. This bill would allow medical providers to provide gender-affirming health care to a patient regardless of where the patient is located. This bill would also prohibit the sharing of information that is sought through subpoenas or a warrant for an out-of-state prosecution or law suit when the information is related to the legally protected health care in California.

This bill also allows medical providers and individuals to bring suit in California against anyone who interferes with the healthcare provider's right to provide care that is legal in California or with a patient's right to receive such care.

4. Full Faith and Credit Clause

Generally, the laws of the state regulate conduct that occurs within that state. However, situations may arise where more than one state's laws may apply such as collection of previously-owed income taxes or child support obligations from another state. Or one state has jurisdiction to criminally prosecute an offense because someone has fled the state or committed part of the crime in the prosecuting state. Under the United States Constitution, states are required to provide full faith and credit to "to the public acts, records, and judicial proceedings of every other state. (U.S. Const. art. IV, sec. 1.)"

The Full Faith and Credit Clause may be implicated when there is a conflict between the laws of the different states. At least one court has held that any effort by a state to apply its criminal laws beyond its state borders to criminalize activity that is otherwise lawful in the other state.

(*Bigelow v. Virginia* (1975) 421 U.S. 809.) However, the Supreme Court has also held that even when criminal conduct takes place outside of the state, extraterritorial jurisdiction may be proper when the conduct was intended to produce or did produce harmful effects within the state.

(*Strassheim v. Daily* (1911) 221 U.S. 280.)

The Supreme Court has also made a distinction between the strength of the Full Faith and Credit Clause's applications to judgements versus state law. "The Full Faith and Credit Clause does not compel 'a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate. Regarding judgments, however, the full faith and credit obligation is exacting. A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land.'" (*Baker v. General Motors Co.*, *supra*, 522 U.S. at 232-233.) This concept is often referred to as the "public policy exception" meaning statutes in one state is given effect only if they do not contravene the public policy of the other state.

By refusing to recognize the laws of another state, this bill appears to implicate the Full Faith and Credit Clause. California has declared that such laws that criminalize abortion, contraceptives and gender-affirming health care are against the public policy of this state and shall not be enforced in a court in this state. This bill further declares that access to reproductive health care services and gender-affirming health care services is a right secured by the Constitution and laws of California and that interference with this right, whether or not under the color of law, is against the public policy of California. Thus, a challenge based on a violation of the Full Faith and Credit Clause would likely be met with a response that the public policy exception applies. Whether such exception applies is ultimately up to the courts.

5. Extradition Process

Extradition refers to the legal process of returning fugitives from justice back to the state in which they allegedly committed a crime or violated the terms of their bail, probation, or parole.

Extradition between states is guaranteed by the Extradition Clause of the United States Constitution, which provides, "A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime." (U.S. Const. art. IV, § 2, cl. 2.) The Extradition Clause has been implemented by 18 USC § 3182. The Extradition Clause in the Constitution is limited, as it refers only to persons "who shall flee from justice" and requires surrender to the state from which they "fled." So, it covers only persons who committed a crime in one state and then flee from there. (*In re Morgan* (1948) 86 Cal.App.2d 217, 223.)

"The federal constitutional and statutory provisions are not exclusive and the state are free to cooperate with one another by extending interstate rendition beyond that required by federal law." (*In re Cooper* (1960) 53 Cal.2d 772, 775.) Besides the Extradition Clause of the United States Constitution, most states, including California, are also bound by the Uniform Criminal Extradition Act (UCEA), which goes beyond the Constitution and its implementing statute. The UCEA is enforceable within any state that adopts it, whether or not the demanding state has a similar statute. (*In re Morgan*, *supra*, 86 Cal.App.2d at p. 224.)

Under the UCEA, the Governor of the state has the duty to have arrested and delivered to the executive authority of any other state a person charged in that state with a crime, who has fled from justice and is found in this State. (Pen. Code, § 1548.1.) Any person, who while present in the demanding state, commits a crime there and is subsequently found in another state, is a “fugitive from justice” and subject to extradition. (Pen. Code, § 1548.1.)

The UCEA provides the manner in which an extradition request must be made: “No demand for the extradition of a person charged with crime in another State shall be recognized by the Governor unless it is in writing alleging that the accused was present in the demanding State at the time of the commission of the alleged crime, and that thereafter he fled from that State. Such demand shall be accompanied by a copy of an indictment found or by information or by a copy of an affidavit made before a magistrate in the demanding State together with a copy of any warrant which was issued thereon; or such demand shall be accompanied by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding State that the person claimed has escaped from confinement or has violated the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that State; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be certified as authentic by the executive authority making the demand.” (Pen. Code, § 1548.2.) However, under the UCEA, the Governor also has discretion to extradite a person who someone who commits an act in California (or another state besides the demanding state) that intentionally results in a crime in the demanding state even if the accused was not in the demanding state at the time of the commission of the crime, and has not fled therefrom. (Pen. Code, § 1549.1.)

This bill states that notwithstanding Penal Code section 1549.1 or any other law, except as required by federal law, a demand for the extradition of a person charged with legally protected health care activity shall not be recognized by the Governor unless it is alleged in writing that the accused was present in the demanding state at the time of the commission of the offense and that the accused thereafter fled from that state. The intent of this provision is to protect against extradition requests from another state criminalizing an act committed by a health care provider or an individual receiving care in California that results in a crime in that state.

6. Abortion Exemption in Murder Definition

Under existing law, murder is the unlawful killing of a human being, or a fetus, with malice aforethought but specifically provides that it does not apply “to any person who commits an act that results in the death of a fetus if...the act is solicited, aided, abetted, or consented to by the mother of the fetus.” (Pen. Code § 187(a) & (b)(3).)

This bill expands the abortion exemption within the definition of murder to include when the mother of the fetus commits the act that results in the death of the fetus. This change would clarify that self-managed abortion is not murder.

7. Double-Referral

This bill is double-referred with the Committee on Judiciary where the bill will be heard next. The Committee on Judiciary will analyze the bill’s implications on civil law and privacy matters.

8. Argument in Support

According to Oakland Privacy:

This bill would provide extra assurances for California providers of essential healthcare services with protections against the jeopardization of their license, extradition and prosecution. Other states are also enacting or in process of enacting laws to protect providers of reproductive and other sensitive health services. Massachusetts passed a law last year to provide protections to healthcare workers who provide abortion services to out of state patients. New York has also introduced a bill this year to extend protections to providers who provide telemedicine abortion services to out of state patients.

Since the COVID pandemic, telehealth whereby health related services and information are delivered via telecommunication technologies - has increased by a factor of 38X. This includes an increase in telehealth services relating to self-managed abortions which then increased even more after the U.S. Supreme Court Dobbs decision. Finally, in December of 2021, the FDA expanded the ability for abortion medication to be dispensed via telehealth, and expanded access through certified pharmacies in addition to certified providers. However, there are several attempts to limit reproductive care through the use of abortion medication and telehealth, as some states require in-person visits, ban telehealth abortion services, or restrict the dispensing of abortion medication. This coupled with the days-old Texas ruling (now on appeal) potentially banning the use of FDA-approved abortion medication Mifepristone, will make it more difficult for providers to navigate providing reproductive care to patients. While not an abortion panacea, telehealth reproductive services and the protection of providers utilizing these services will help fill a need where people may not otherwise readily have access to reproductive care. Furthermore, restrictions on abortions in several states across the country makes this bill expanding protections to providers of reproductive and gender-affirming care - no matter where their patients are located - even more essential.

9. Argument in Opposition

According to California Catholic Conference:

With this bill, the Legislature is overstepping and engaging in ideological colonization against states and citizens that do not want abortion. SB 345 circumvents Article IV, section 1 of the US Constitution, stating “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.” Denying the legitimate interest of other states to protect unborn children and public health is a dangerous precedent. By explicitly contravening the U.S. Constitution, this bill could prompt other states to selectively decide to ignore laws duly enacted by the California Legislature.

This bill would also remove the terms “unborn child” and “unborn person” from the code, replacing with “fetus” and “unborn beneficiary.” From the moment of fertilization, a new, unique, unrepeatable human being’s life begins, as is affirmed throughout embryology textbooks and the consensus of 95% of biologists. Each

of us began at the zygote stage, and modern science shows us the embryo's beating heart at just four weeks post-fertilization. By 8 weeks, all major organs are present, and babies even show a preference for their right or left hand. By 12 weeks, they can smile, yawn, and suck their thumb, all shown on incredible 4D ultrasound. Doctors routinely perform surgery and treat unborn babies right in the womb – and the babies are treated as patients in their own right and given anesthesia for their pain.

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