
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2023 - 2024 Regular Session

SB 345 (Skinner) - Health care services: legally protected health care activities

Version: April 27, 2023

Urgency: No

Hearing Date: May 8, 2023

Policy Vote: PUB. S. 4 - 0, JUD. 8 - 2

Mandate: Yes

Consultant: Matthew Fleming

Bill Summary: SB 345 would enact various safeguards against the enforcement of other states' laws that prohibit, criminalize, sanction, authorize civil liability against, or otherwise interfere with a person, provider, or other entity in California that offers reproductive health care services or gender-affirming health care services.

Fiscal Impact: Unknown court workload cost pressures in order to adjudicate civil violations of this bill's provisions (Trial Court Trust Fund, General Fund). See Staff Comments for additional details.

Background: Since the 1973 holding in *Roe v. Wade*, the U.S. Supreme Court has continuously held that it is a constitutional right to access abortion before fetal viability. However, on June 24, 2022 the Court voted 6-3 to overturn the holding in *Roe* and found that there is no federal constitutional right to an abortion. As a result of the *Dobbs* decision, people in roughly half the country may lose access to abortion services or have them severely restricted. In addition, a growing number of states have been passing laws putting residents who seek essential gender-affirming care at risk of being prosecuted. States are attempting to classify the provision and seeking of gender-affirming health care as a crime warranting prison time and are threatening parents with criminal penalties if they attempt to travel to another state in order to secure life-saving gender-affirming care for their child. Though California has enacted numerous laws to protect the right to gender-affirming care and the fundamental right to reproductive freedom, without federal protections there is nothing prohibiting those providing or seeking abortion or gender-affirming health care from being criminalized or held liable in other states.

This bill seeks to address this issue in a number of ways including: prohibiting 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, authorizing a new cause of action for a person who is subject to abusive litigation that infringes on or interferes with, or attempts to infringe on or interfere with, a legally protected health care activity, and prohibiting a business from tracking, using, storing, or selling geographic location data of a person physically located in or in close proximity to a family planning center. Similar laws were passed last year in Massachusetts and Colorado, and states such as New York have similar legislation pending currently.

Proposed Law:

- Provides 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.
- 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 (b) above by a party to the action or a person acting on behalf of a party to the action. A lawsuit is to 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.
- Defines “legally protected health care activity” and other terms for purposes of the bill.
- Provides 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.
- Provides 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.

- Provides 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.
- 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 is to be in the amount of three times the amount of actual damages, which includes 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.
- 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.
- Specifies that the above provisions do 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.
- Provides 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.
- Specifies that these provisions are not to 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.
- 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.
- 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, as defined. Authorizes an aggrieved person or entity, including a family planning center, to 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.

- Provides that notwithstanding any other law, a licensing board under the Department of Consumer Affairs cannot suspend or revoke the license of a person solely because that person provided a legally protected health care activity, as defined.
- 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.
- Expands an exemption to the definition of murder to include a mother who committed the act that resulted in the death of the fetus and makes other technical changes.

Related Legislation:

- SB 36 (Skinner, 2023) prohibits the issuance of warrants for those whose offense pursuant to the laws of another state is related to abortion, contraception, reproductive care, and gender-affirming care legally protected in California. This bill is currently pending in the Senate Appropriations Committee.
- AB 1707 (Pacheco, 2023) prohibits a healing arts board under the Department of Consumer Affairs from denying an application for a license or imposing discipline upon a licensee on the basis of a civil judgment, criminal conviction, or disciplinary action in another state that is based on the application of another state's law that interferes with a person's right to receive sensitive services, as defined. This bill is currently pending in the Assembly Appropriations Committee.
- SB 107 (Wiener, Ch. 810, Stats. 2022) enacted various safeguards against the enforcement of other states' laws that purport to penalize individuals from obtaining gender-affirming care that is legal in California.
- AB 1666 (Bauer-Kahan, Ch. 42, Stats. 2022) prohibited the enforcement in this state of out-of-state laws authorizing 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 and declares those out-of-state laws to be contrary to the public policy of this state.
- AB 2091 (Mia Bonta, Ch. 628, Stats. 2022), among other things, prohibited compelling a person to identify or provide information that would identify an individual who has sought or obtained an abortion in a state, county, city, or other local criminal, administrative, legislative, or other proceeding if the information is being requested based on another state's laws that interfere with a person's right to choose or obtain an abortion or a foreign penal civil action.

- AB 2223 (Wicks, Ch. 629, Stats. 2022), among other things, authorized a party aggrieved by a violation of the Reproductive Privacy Act to bring a civil action against an offending state actor, as specified, and provides 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.

Staff Comments: It is unknown how many violations of SB 345 will occur and necessitate court involvement. It generally costs about \$1,000 to operate a courtroom for one hour. Although courts are not funded on the basis of workload, increased staff time and resources may create a need for increased funding for courts from the General Fund (GF) to perform existing duties. Numerous trial court operations are funded through the imposition and collection of criminal fines and fees. However, the Legislature has reduced and eliminated criminal fines and fees over the past decade. As a result, the 2023-24 proposed budget anticipates an ongoing annual allocation of \$109.3 million from the GF to backfill declining revenue to the Trial Court Trust Fund.

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