
THIRD READING

Bill No: SB 345
Author: Skinner (D), et al.
Amended: 5/18/23
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-0, 4/18/23
AYES: Wahab, Bradford, Skinner, Wiener
NO VOTE RECORDED: Ochoa Bogh

SENATE JUDICIARY COMMITTEE: 8-2, 4/25/23
AYES: Umberg, Allen, Ashby, Caballero, Durazo, Laird, Min, Wiener
NOES: Wilk, Niello
NO VOTE RECORDED: Stern

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/18/23
AYES: Portantino, Ashby, Bradford, Wahab, Wiener
NOES: Jones, Seyarto

SUBJECT: Health care services: legally protected health care activities

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

DIGEST: This bill enacts 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.

ANALYSIS:

Existing law:

- 1) 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:
 - a) Every individual has the fundamental right to choose or refuse birth control;
 - b) Every individual has the fundamental right to choose to bear a child or to choose to obtain an abortion, with specified limited exceptions; and,
 - c) 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.)
- 2) 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).)
- 3) 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.)
- 4) 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).)
- 5) 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.)

- 6) 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.)
- 7) 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.)
- 8) Defines murder as the unlawful killing of a human being, or a fetus, with malice aforethought. (Pen. Code, § 187.)
- 9) 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:
 - a) The act complied with the Therapeutic Abortion Act;
 - b) 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;
 - c) If the act is solicited, aided, abetted, or consented to by the mother of the fetus.
- 10) 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.)
- 11) 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.)
- 12) 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.)

- 13) Authorizes a magistrate to issue an arrest warrant, upon application by a bail bondsman, for a person who has been admitted to bail in another state, escapes bail, and is present in this State and after a hearing, issue an order to return the fugitive to the jurisdiction from which they escaped. (Pen. Code, § 847.5.)
- 14) Makes it a misdemeanor for a bail bondsman to take a fugitive into custody without a warrant from a magistrate. (Pen. Code, § 847.5.)
- 15) States, starting July 1, 2023, that no person, other than a certified law enforcement officer, shall be authorized to apprehend, detain, or arrest a bail fugitive unless that person meets one of the following conditions:
 - a) Is a bail as defined in paragraph (2) of subdivision (a) of Section 1299.01 who is also a bail fugitive recovery agent as defined;
 - b) Is a bail fugitive recovery agent as defined; or,
 - c) Is a licensed private investigator who is also a bail fugitive recovery agent as defined. (Pen. Code 1299.02, subd. (a).)
- 16) Defines a “bail fugitive” as a defendant in a pending criminal case who has been released from custody under a financially secured appearance, cash, or other bond and has had than bond declared forfeited, or a defendant in a pending criminal case who has violated a bond condition whereby apprehension and reincarceration are permitted. (Pen. Code, § 1299.01, subd. (a).)
- 17) Defines a “bail fugitive recovery person” as a person provided written authorization by the bail or depositor of bail, and is contracted to investigate, surveil, locate, and arrest a bail fugitive for surrender to the appropriate court, jail, or police department, and any person who is employed to assist a bail or depositor of bail to investigate, surveil, locate, and arrest a bail fugitive for surrender to the appropriate court, jail, or police department. (Pen. Code, § 1299.01, subd. (d).)
- 18) 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.)
- 19) 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.)

- 20) 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.)
- 21) Establishes the CalWORKs program under which each county provides cash assistance and other benefits to qualified low-income families and individuals. (Welf. & Inst. Code, § 11200 et seq.)
- 22) Makes certain individuals ineligible for the CalWORKs program including a person who is fleeing to avoid prosecution, or custody and confinement after conviction, under the laws of the place from which the individual is fleeing, for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual is fleeing, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that state. (Welf. & Inst. Code, § 11486.5, subd. (a).)

This bill:

- 1) States that California law governs in any action in this state, 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 provider was located in this state or any other state where the care was legal at the time of the challenged conduct.
- 2) 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.
- 3) 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:
 - a) 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,

- b) 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.
- 4) Defines “legally protected health care activity” to mean any of the following:
- a) 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;
 - b) 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,
 - c) 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.
- 5) 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.
- 6) 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.

- 7) 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.
- 8) 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.
- 9) 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.
- 10) 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:
 - a) Personal jurisdiction is found;
 - b) 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,
 - c) The exercise of jurisdiction is permitted under the Constitution of the United States.

- 11) 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.
- 12) 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.
- 13) 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.
- 14) 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.
- 15) Provides that the stay of enforcement shall remain in place until such time as the applicable statute of limitations has elapsed or related action has concluded, whichever is later.
- 16) Prohibits a person or business from collecting, using, storing, or selling geographic data that contains the personal information of a person physically located in or in close proximity to a family planning center, unless it is necessary and proportionate to perform the services or provide the goods that the person seeking family center planning services has requested.
- 17) 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.
- 18) Requires that a person or business’s collection, use, or storing of personal information of a person physically located in or in close proximity to a family planning center shall be reasonably necessary and proportionate to achieve the purposes for which the personal information was collected or processed, or for another disclosed purpose that is compatible with the context in which the

personal information was collected, and not further processed in a manner that is incompatible with these purposes.

- 19) 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.
- 20) 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.
- 21) 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.
- 22) Expands the exemption from the definition of murder to include when the death of a fetus was result of an act or omission by the person pregnant with the fetus or was solicited, aided, abetted, or consented to by the person pregnant with the fetus.
- 23) Prohibits a magistrate from issuing an arrest warrant for an individual whose alleged offense or conviction is for the violation of laws of another state that criminalizes an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion, contraception, reproductive care, or gender-affirming care if the abortion, contraception, reproductive care, or gender-affirming care is lawful under the laws of this state, regardless of the recipient's location.
- 24) States that a bondsman or person authorized to apprehend, detain, or arrest a fugitive admitted to bail in another state who takes into custody a fugitive admitted to bail in another state whose alleged offense or conviction is for the violation of laws of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion, contraception, reproductive care, or gender-affirming care if the abortion, contraception, reproductive care, or gender-affirming care is lawful under the laws of this state, regardless of the recipient's location, without a magistrate's order, is ineligible for a license to be a bail fugitive recovery agent and shall forfeit any license already obtained.

- 25) Authorizes a person who is taken into custody by a bail agent in violation of this bill's provisions to institute and prosecute a civil action for injunctive, monetary, or other appropriate relief against the bondman and bond company within three years after the cause of action accrues.
- 26) Makes it a misdemeanor, punishable by a fine of \$5000 and imprisonment in a county jail not to exceed one year, for a bail fugitive recovery agent to apprehend, detain, or arrest a bail fugitive admitted to bail in another state whose alleged offense or conviction was for the violation of laws of another state that criminalizes an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion, contraception, reproductive care, or gender-affirming care if the abortion, contraception, reproductive care, or gender-affirming care that is lawful under the laws of this state, regardless of the recipient's location.
- 27) Provides that a person who violates the above provision is ineligible for a bail fugitive recovery agent license and shall forfeit any license already obtained.
- 28) Prohibits a judge from issuing an order directing a witness to appear if the criminal prosecution is based on the laws of another state that authorize a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion, contraception, reproductive care, or gender-affirming care if the abortion, contraception, reproductive care, or gender-affirming care is lawful under the laws of this state.
- 29) 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.
- 30) Prohibits a state or local government employee, person or entity contracted by a state or local government, from cooperating with or providing information to any individual, including a bondsman or bail fugitive recovery person, regarding any legally protected health care activity, as defined, or otherwise expend or use time, moneys, facilities, property, equipment, personnel, or other resources in furtherance of any investigation or proceeding that seeks to impose civil or criminal liability or professional sanctions for any legally protected health care activity that occurred in this state or that would be legal if it occurred in this state.

- 31) Provides that for purposes CalWORKs ineligibility, an individual is not considered fleeing to avoid prosecution if the felony offense with which the person is charged or convicted is as a result of performing, receiving, supporting, or aiding in the performance or receipt of an abortion, contraception, reproductive care, or gender-affirming care if the abortion, contraception, reproductive care, or gender-affirming care is lawful under the laws of this state, regardless of the recipient's location.
- 32) Specifies that an individual shall be determined to be fleeing to avoid prosecution, or custody and confinement after conviction, if a federal, state, or local law enforcement officer, acting in an official capacity, presents and outstanding felony arrest warrant containing one or more of the specified National Crime Information Center Offense Classification Codes.
- 33) Replaces the term "unborn person" to "unborn beneficiary" in various sections of the Probate Code.
- 34) Contains a severability clause.

Background

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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, unknown court workload cost pressures in order to adjudicate civil violations of this bill's provisions (Trial Court Trust Fund, General Fund).

SUPPORT: (Verified 5/18/23)

ACCESS Reproductive Justice (co-source)
Black Women for Wellness Action Project (co-source)
NARAL Pro-Choice California (co-source)
Training in Early Abortion for Comprehensive Healthcare (co-source)
Abortion Coalition for Telemedicine Access
Aria Medical
Black Women Lawyers Association of Los Angeles
Board of Registered Nursing
California Association of Black Lawyers
California Latinas for Reproductive Justice
California Legislative Women's Caucus
California Nurse Midwives Association
California Public Defenders Association
California Women's Law Center
Choix Inc.
City and County of San Francisco Department on the Status of Women
Conference of California Bar Associations
Health Care Workers
Honeybee Health
John Burton Advocates for Youth
John Langston Bar Association
Mya Network
National Association of Social Workers, California Chapter
National Council of Jewish Women of Kansas City
Oakland Privacy
Physician Assistant Board
Physicians for Reproductive Health
Plan C
Possible Health
QueerDoc
Reproductive Health Access Project
Santa Barbara Women's Political Committee
State Innovation Exchange
Tia, Inc.
VALOR California

OPPOSITION: (Verified 5/18/23)

California Catholic Conference
Frederick Douglass Foundation of California
Right to Life League

ARGUMENTS 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.

ARGUMENTS IN OPPOSITION: According to the 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.

Prepared by: Stella Choe / PUB. S. /
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