

SENATE THIRD READING
SB 345 (Skinner)
As Amended September 1, 2023
Majority vote

SUMMARY

Enacts various safeguards against the enforcement of out-of-state anti-abortion and anti-transgender laws to protect individuals seeking and providing gender-affirming health care in California.

Major Provisions

- 1) 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.
- 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) Defines "legally protected health care activity" and "reproductive health care services" as specified.
- 4) Specifies that "legally protected health care activity" does not include any activity that would be deemed unprofessional conduct or that would violate antidiscrimination laws of California.
- 5) Clarifies that the abortion exemption to murder includes an act or omission by a person pregnant with the fetus.
- 6) Prohibits a magistrate from issuing a warrant for the arrest of an individual whose alleged offense or conviction is for the violation of 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, regardless of the recipient's location.
- 7) Provides 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 the laws of another state that authorize a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of sexual or reproductive health care if it is lawful under the laws of this state, regardless of the recipient's location, without a magistrate's order, is ineligible for a license issued as specified, and shall forfeit any license already obtained as specified.

- 8) Prohibits a bail fugitive recovery agent from apprehending, detaining, or arresting a bail fugitive admitted to bail in another state whose alleged offense or conviction was for the violation of the laws of another state that authorize a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of sexual or reproductive health care if it is lawful under the laws of this state, regardless of the recipient's location.
- 9) Provides that a bail fugitive recovery agent who violates the above prohibition is guilty of an infraction punishable by a fine of \$5,000, is ineligible for a license, as specified, and shall forfeit any license already obtained pursuant to those laws.
- 10) Authorizes a person who is taken into custody by a bail agent in violation of the above prohibition to institute and prosecute a civil action for injunctive, monetary, or other appropriate relief against the bail fugitive recovery agent within three years after the cause of action accrues.
- 11) 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 sexual or reproductive health care, including, but not limited to, an abortion, contraception, or gender-affirming care if the care is lawful under the laws of this state.
- 12) Prohibits a state or local government employee, person, or entity contracted by a state or local government, or person or entity acting on behalf of a local or state government from cooperating with or providing information to any individual to apprehend, detain, or arrest a fugitive admitted to bail in another state, or out-of-state agency or department regarding any legally protected health care activity 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 upon a person or entity for any legally protected health care activity that occurred in this state or that would be legal if it occurred in this state.
- 13) Specifies that the above prohibition does not prohibit compliance with a valid, court-issued subpoena, warrant, wiretap order, pen register trap and trace order, or other legal process which does not relate to a law seeking to impose civil or criminal liability or professional sanctions for a legally protected health care activity, or in response to the written request of a person who is the subject of such an investigation or proceeding, to the extent necessary, in each case, to fulfill such request.
- 14) Requires any out-of-state subpoena, warrant, wiretap order, pen register trap and trace order, other legal process, or request from any law enforcement agent or entity to include an affidavit or declaration under penalty of perjury that the discovery is not in connection with an out-of-state proceeding relating to any legally protected health care activity unless the out-of-state proceeding meets all of the following requirements:
 - a) Is based in tort, contract, or on statute;
 - b) Is actionable, in an equivalent or similar manner, under the laws of this state; or,

- c) Was brought by the patient who received a legally protected health care activity or the patient's legal representative.
- 15) Prohibits a state court, judicial officer, court employee or clerk, or authorized attorney to issue a subpoena pursuant to any other state's law unless it includes the affidavit or declaration, as specified.
- 16) Prohibits a California corporation that provides electronic communication services or remote computing services to the general public from complying with an out of state subpoena, warrant, wiretap order, pen register trap and trace order, other legal process, or request by a law enforcement agent or entity seeking records that would reveal the identity of the customers using those services, data stored by, or on behalf of, the customer, the customer's usage of those services, the recipient or destination of communications sent to or from those customers, or the content of those communications, unless the out of state subpoena, warrant, wiretap order, pen register trap and trace order, other legal process, or request from law enforcement includes the affidavit or declaration, as specified.
- 17) 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.
- 18) 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.
- 19) States that if a person, 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.

- 20) Authorizes an aggrieved person, provider, or other entity, including a defendant in abusive litigation, to 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.
- 21) 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.
- 22) 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.
- 23) 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.
- 24) States that 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, and specifies that related 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.
- 25) 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 or a right guaranteed under the California Constitution, or against a person or entity for aiding and abetting the exercise of said rights.
- 26) Prohibits a person or business from collecting, using, disclosing, or retaining the personal information of a person who is physically located at, or within a precise geolocation of, a family planning center, except only as necessary to perform the services or provide the goods requested by the person. A person or business shall not sell or share this personal information.
- 27) Defines "precise geolocation" as a geographic area that is equal to or less than the area of a circle with a radius of 1,850 feet as derived from a device that is used or intended to be used to locate a person.

- 28) Authorizes an aggrieved person or entity, including a "family planning center," as specified, to institute and prosecute a civil action against any person or business who violates the prohibition on selling or sharing personal information for injunctive and monetary relief and attorney's fees within three years of discovery of the violation.
- 29) Prohibits a "healing arts board" from denying an application for licensure or suspend, revoke, or otherwise impose discipline upon a licensee or health care practitioner, as specified, on the basis of a civil judgement, criminal prosecution, or disciplinary action in another state if that judgment, conviction, or disciplinary action is based solely on the application of another state's law that interferes with a person's right to receive sensitive services that would be lawful if provided in this state, regardless of the patient's location.
- 30) Provides that the above prohibition does not apply if the action of another state is based upon conduct that would subject an applicant, licenses, or health care practitioner to a similar claim, charge, or action under California law.
- 31) 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.
- 32) Replaces the term "unborn children" and "unborn person" to "fetus" in various provisions of existing law.
- 33) Replaces the term "unborn person" to "unborn beneficiary" in various sections of the Probate Code.
- 34) Contains a severability clause.
- 35) Repeals existing law requiring an unemancipated minor to first obtain the written consent of one of their parents or legal guardians before receiving an abortion.
- 36) Double-joints this bill with SB 667 (Dodd) of the current legislative session to avoid chaptering out issues.

COMMENTS

According to the Author

"In the wake of Roe being overturned last year, California strengthened and expanded access to reproductive health care and abortion services and provided many legal protections to patients and providers. California also affirmed the right to gender-affirming care. But as the assault on essential healthcare accelerates, new challenges are emerging to patients and health care providers who have extended a lifeline to patients who may be in a location where medically safe and effective abortions or gender affirming care are now illegal. SB 345 is necessary to ensure that California healthcare practitioners are legally protected when they provide essential reproductive and gender affirming care to any of their patients, regardless of their patient's location. As the CA Medical Board's letter in support notes, SB 345 'protects healthcare

providers licensed in California ... for performing healthcare activities within the standard of care permitted in California.' Additionally SB 345 makes it unlawful for bounty hunters or others to take enforcement actions against or apprehend people in California related to violations of another state's anti-abortion or anti-gender affirming care law."

Arguments in Support

According to *California Public Defenders Association*, "SB 345 would protect California health care providers and pharmacies from out-of-state criminal and civil actions merely for providing their patients with health care in the form of reproductive and gender-affirming care.

Specifically, it would allow healthcare providers to prescribe and dispense contraception, abortion, and gender-affirming care regardless of where the patient is located without fear of prosecution or extradition due to other states' overreaching laws infringing on Californian physicians' right to practice medical care at a professionally mandated standard of care.

"Due to ongoing assaults on the medical profession, SB 345 would ensure that California is prohibited from co-operating with out-of-state extra-territorial law and interfering with a health care provider's right to provide legal care. In addition to defining "gender affirming health care," "legally protected health activity," "reproductive health services" as being protected from disclosure by other states/persons seeking to impose civil or criminal sanctions for acts occurring within California. SB 345 also amends Penal Code section 187 so that an unlawful killing of a fetus if it was "committed" by the mother is not homicide. This amendment would ensure there is no threat of being charged with homicide for receiving health care services provided within the State.

"Currently, California is a state where hate and bigotry do not interfere with a health care provider's ability to provide appropriate patient care. SB 345 will reaffirm that California is a safe and inclusive state providing the right of access to reproductive and gender-affirming health care."

Arguments 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 [United States (U.S.)] 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.

"As members of the human family, unborn children possess basic human rights. Removing the terms 'child' and 'person', this bill dehumanizes and erases preborn children, even as their factual biological existence and legal rights remain evident in their rights to guardians ad litem in probate court, benefits, and their needs for medical care."

FISCAL COMMENTS

According to the Assembly Appropriations Committee, Costs (Trial Court Trust Fund, General Fund) to the courts of an unknown but potentially significant amount. This bill creates a misdemeanor, creates a civil cause of action, and authorizes counterclaims in certain civil suits. Any criminal cases, civil cases, or counterclaims filed due to this bill will result in additional workload to the courts. Actual costs to the courts will depend on the number of cases and counterclaims filed and the amount of court time needed to resolve each matter. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a need for increased funding for courts from the General Fund. The 2023-24 budget includes \$105 million from the General Fund to backfill declining revenue to the Trial Court Trust Fund.

VOTES

SENATE FLOOR: 32-8-0

YES: Allen, Alvarado-Gil, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hurtado, Laird, Limón, McGuire, Menjivar, Min, Newman, Padilla, Portantino, Roth, Rubio, Skinner, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener

NO: Dahle, Grove, Jones, Nguyen, Niello, Ochoa Bogh, Seyarto, Wilk

ASM JUDICIARY: 8-2-1

YES: Maienschein, Connolly, Haney, Kalra, Pacheco, Papan, Reyes, McKinnor

NO: Dixon, Sanchez

ABS, ABST OR NV: Essayli

ASM PUBLIC SAFETY: 6-1-1

YES: Jones-Sawyer, Bonta, Bryan, Ortega, Santiago, Zbur

NO: Lackey

ABS, ABST OR NV: Alanis

ASM APPROPRIATIONS: 11-4-1

YES: Holden, Bryan, Calderon, Wendy Carrillo, Mike Fong, Hart, Lowenthal, Papan, Pellerin, Weber, Wilson

NO: Megan Dahle, Dixon, Mathis, Sanchez

ABS, ABST OR NV: Soria

UPDATED

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