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AMENDED IN ASSEMBLY MAY 19, 2022

AMENDED IN ASSEMBLY APRIL 6, 2022

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CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 2223

Introduced by Assembly Member Wicks
(Principal coauthor: Assembly Member Mullin)
**(Coauthors: Assembly Members *Bauer-Kahan*, *Bennett*, *Berman*,
Cristina Garcia, *Haney*, *Jones-Sawyer*, and *Kalra*)**
*(Coauthors: Senators *Gonzalez* and *Wiener*)*

February 15, 2022

An act to amend Section 27491 of the Government Code, and to amend Sections 103005, 123462, 123466, and 123468 of, to add Sections 123467 and 123469 to, and to repeal Section 103000 of, the Health and Safety Code, relating to reproductive health.

LEGISLATIVE COUNSEL'S DIGEST

AB 2223, as amended, Wicks. Reproductive health.

(1) Existing law requires a county coroner to hold inquests to inquire into and determine the circumstances, manner, and cause of violent, sudden, or unusual deaths, including deaths related to or following known or suspected self-induced or criminal abortion. Existing law requires a coroner to register a fetal death after 20 weeks of gestation, unless it is the result of a legal abortion. If a physician was not in attendance at the delivery of the fetus, existing law requires the fetal death to be handled as a death without medical attendance. Existing

law requires the coroner to state on the certificate of fetal death the time of fetal death, the direct causes of the fetal death, and the conditions, if any, that gave rise to these causes.

This bill would delete the requirement that a coroner hold inquests for deaths related to or following known or suspected self-induced or criminal abortion, and would delete the requirement that an unattended fetal death be handled as a death without medical attendance. The bill would prohibit using the coroner's statements on the certificate of fetal death to establish, bring, or support a criminal prosecution or civil cause of damages against ~~any person~~. *a person who is immune from liability based on their actions or omissions with respect to their pregnancy or actual, potential, or alleged pregnancy outcome, or who aids a pregnant person in exercising their rights under the Reproductive Privacy Act, as specified.*

(2) Existing law, the Reproductive Privacy Act, provides that every individual possesses a fundamental right of privacy with respect to their personal reproductive decisions. Existing law prohibits the state from interfering with a pregnant person's right to choose or obtain an abortion before the fetus is viable or when it is necessary to protect the life and health of the pregnant person. Under existing law, an abortion is unauthorized if either the person performing the abortion is not a health care provider that is authorized to perform an abortion or the fetus is viable.

Existing law, the Tom Bane Civil Rights Act, authorizes an individual whose exercise or enjoyment of rights secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of this state, has been interfered with, or attempted to be interfered with, to institute or prosecute in their own name and on their own behalf an action for damages, as prescribed.

This bill would prohibit a person from being subject to civil or criminal liability, or otherwise deprived of their rights, based on their actions or omissions with respect to their pregnancy or actual, potential, or alleged pregnancy outcome or based solely on their actions to aid or assist a pregnant person who is exercising their reproductive rights. The bill would clarify that an abortion is unauthorized if performed by a person other than the pregnant person and either the person performing the abortion is not a health care provider that is authorized to perform an abortion or the fetus is viable. The bill would authorize a party ~~aggrieved by a violation of~~ *whose rights are protected by* the Reproductive Privacy Act to bring a civil action against an offending

~~state actor~~, actor when those rights are interfered with by conduct or by statute, ordinance, or other state or local rule, regulation, or enactment in violation of the act, as specified, and would require a court, upon a motion, to award reasonable attorneys' fees and costs to a prevailing plaintiff. The bill would also authorize a person aggrieved by a violation of the Reproductive Privacy Act to bring a civil action pursuant to the Tom Bane Civil Rights Act. The bill would provide for the indemnification of employees or former employees of public agencies who were acting within the scope of their employment.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) Reproductive justice is a framework created by Black women
4 in 1994 to address the intersectional and multifaceted issues that
5 women of color and their families face in society.
6 (b) Reproductive justice is the human right to control our bodies,
7 sexuality, gender, work, and reproduction. That right can only be
8 achieved when all people, particularly women and girls, have the
9 complete economic, social, and political power and resources to
10 make healthy decisions about their bodies, families, and
11 communities in all areas of their lives. At the core of reproductive
12 justice is the belief in the right to bodily autonomy, the right to
13 have children, the right to not have children, and the right to parent
14 the children we have with dignity and respect in safe and
15 sustainable communities.
16 (c) A critical part of realizing reproductive justice for people in
17 California is clarifying that there shall be no civil and criminal
18 penalties for people's actual, potential, or alleged pregnancy
19 outcomes.
20 (d) Across the country, people have been criminally prosecuted
21 for having miscarriages or stillbirths or for self-managing an
22 abortion. California has not been exempt. Despite clear law that
23 ending or losing a pregnancy is not a crime, police have
24 investigated and prosecutors have charged people with homicide
25 for pregnancy losses. *For example, the District Attorney in the*

1 *County of Kings prosecuted two women for murder after they*
2 *suffered stillbirths.*

3 (e) Also across the country, pregnant people are under threat of
4 civil penalties for their actual, potential, or alleged pregnancy
5 outcomes and civil penalties have been threatened against people
6 who aid or assist pregnant people in exercising their rights.

7 (f) Pregnancies can end in a range of outcomes. Nationwide, as
8 many as one in five known pregnancies end in miscarriage. In
9 California, as many as 2,365 pregnancies per year end in stillbirth,
10 meaning perinatal loss after 20 weeks gestation. Many pregnancy
11 losses have no known explanation.

12 (g) People also need to end pregnancies by abortion, including
13 self-managed abortion, which means ending one's own pregnancy
14 outside of the medical system.

15 (h) Every Californian should have the right to feel secure that
16 they can seek medical assistance during pregnancy without fear
17 of civil or criminal liability.

18 (i) The threat of criminal prosecution of pregnancy outcomes
19 is partly traceable to out-of-date provisions that give coroners a
20 duty to investigate certain abortions and pregnancy losses. Based
21 on these provisions, health care providers and institutions report
22 people to law enforcement for pregnancy losses, leading to harmful
23 investigations and even unlawful prosecutions.

24 (j) Civil and criminal penalties imposed on pregnant people is
25 a critical issue for Black, Indigenous, and other people of color,
26 who experience adverse pregnancy outcomes as a result of systemic
27 racial inequities and are more likely to be under scrutiny of state
28 systems like child welfare or immigration.

29 (k) The threat of criminal prosecutions or civil penalties on
30 pregnant people through child welfare, immigration, housing, or
31 other legal systems has a harmful effect on individual and public
32 health. When a person fears state action being taken against them
33 related to their pregnancy, they are less likely to seek medical care
34 when they need it. If they do seek care, punishing them for actual,
35 potential, or alleged pregnancy outcomes interferes with
36 professional care and endangers the relationship between providers
37 and patients. *Existing law prohibits a positive toxicology screen*
38 *at the time of delivery of an infant from being, in and of itself, a*
39 *sufficient basis for reporting child abuse or neglect.*

1 (l) That is why major medical groups like the American Medical
2 Association, the American College of Obstetricians and
3 Gynecologists, and the American Public Health Association oppose
4 civil and criminal penalties for actual, potential, or alleged
5 pregnancy outcomes.

6 SEC. 2. Section 27491 of the Government Code is amended
7 to read:

8 27491. It shall be the duty of the coroner to inquire into and
9 determine the circumstances, manner, and cause of all violent,
10 sudden, or unusual deaths; unattended deaths; deaths where the
11 deceased has not been attended by either a physician or a registered
12 nurse, who is a member of a hospice care interdisciplinary team,
13 as defined by subdivision (g) of Section 1746 of the Health and
14 Safety Code in the 20 days before death; known or suspected
15 homicide, suicide, or accidental poisoning; deaths known or
16 suspected as resulting in whole or in part from or related to accident
17 or injury either old or recent; deaths due to drowning, fire, hanging,
18 gunshot, stabbing, cutting, exposure, starvation, acute alcoholism,
19 drug addiction, strangulation, aspiration, or where the suspected
20 cause of death is sudden infant death syndrome; death in whole or
21 in part occasioned by criminal means; deaths associated with a
22 known or alleged rape; deaths in prison or while under sentence;
23 deaths known or suspected as due to contagious disease and
24 constituting a public hazard; deaths from occupational diseases or
25 occupational hazards; deaths of patients in state hospitals serving
26 the mentally disordered and operated by the State Department of
27 State Hospitals; deaths of patients in state hospitals serving the
28 developmentally disabled and operated by the State Department
29 of Developmental Services; deaths under circumstances that afford
30 a reasonable ground to suspect that the death was caused by the
31 criminal act of another; and any deaths reported by physicians or
32 other persons having knowledge of death for inquiry by coroner.
33 Inquiry pursuant to this section does not include those investigative
34 functions usually performed by other law enforcement agencies.

35 (a) If the coroner conducts an inquiry pursuant to this section,
36 the coroner or a deputy shall personally sign the certificate of
37 death. If the death occurred in a state hospital, the coroner shall
38 forward a copy of the report to the state agency responsible for the
39 state hospital.

1 (b) The coroner shall have discretion to determine the extent of
 2 inquiry to be made into any death occurring under natural
 3 circumstances and falling within the provisions of this section, and
 4 if inquiry determines that the physician of record has sufficient
 5 knowledge to reasonably state the cause of a death occurring under
 6 natural circumstances, the coroner may authorize that physician
 7 to sign the certificate of death.

8 (c) For the purpose of inquiry, the coroner shall have the right
 9 to exhume the body of a deceased person when necessary to
 10 discharge the responsibilities set forth in this section.

11 (d) A funeral director, physician, or other person who has charge
 12 of a deceased person’s body, when death occurred as a result of
 13 any of the causes or circumstances described in this section, shall
 14 immediately notify the coroner. A person who does not notify the
 15 coroner as required by this section is guilty of a misdemeanor.

16 SEC. 3. Section 103000 of the Health and Safety Code is
 17 repealed.

18 SEC. 4. Section 103005 of the Health and Safety Code is
 19 amended to read:

20 103005. (a) The coroner shall, within three days after
 21 examination of the fetus, state on the certificate of fetal death the
 22 time of fetal death, the direct causes of the fetal death, the
 23 conditions, if any, that gave rise to these causes, and other medical
 24 and health section data as may be required on the certificate, and
 25 shall sign the certificate in attest to these facts. The coroner shall,
 26 within three days after examining the body, deliver the death
 27 certificate to the attending funeral director.

28 (b) This section shall not be used to establish, bring, or support
 29 a criminal prosecution or civil cause of action seeking damages
 30 against any ~~person, whether or not they were the person who was~~
 31 ~~pregnant with the fetus.~~ *person who is immune from liability under*
 32 *Section 123467.* Through its courts and statutes and under its
 33 Constitution, California protects the right to reproductive privacy,
 34 and it is the intent of the Legislature to reaffirm these protections.

35 SEC. 5. Section 123462 of the Health and Safety Code is
 36 amended to read:

37 123462. The Legislature finds and declares that every
 38 individual possesses a fundamental right of privacy with respect
 39 to personal reproductive decisions, which entails the right to make
 40 and effectuate decisions about all matters relating to pregnancy,

1 including prenatal care, childbirth, postpartum care, contraception,
2 sterilization, abortion care, miscarriage management, and infertility
3 care. Accordingly, it is the public policy of the State of California
4 that:

5 (a) Every individual has the fundamental right to choose or
6 refuse birth control.

7 (b) Every *pregnant individual or individual who may become*
8 *pregnant* has the fundamental right to choose to bear a child or to
9 choose to have and to obtain an abortion, except as specifically
10 limited by this article.

11 (c) The state shall not deny or interfere with ~~an individual's~~
12 *the fundamental right of a pregnant individual or an individual*
13 *who may become pregnant* to choose to bear a child or to choose
14 to have and to obtain an abortion, except as specifically permitted
15 by this article.

16 SEC. 6. Section 123466 of the Health and Safety Code is
17 amended to read:

18 123466. The state shall not deny or interfere with a pregnant
19 person's right to choose or obtain an abortion prior to viability of
20 the fetus, or when the abortion is necessary to protect the life or
21 health of the pregnant person.

22 SEC. 7. Section 123467 is added to the Health and Safety Code,
23 to read:

24 123467. (a) Notwithstanding any other law, a person shall not
25 be subject to civil or criminal liability or penalty, or otherwise
26 deprived of their rights under this article, based on their actions
27 or omissions with respect to their pregnancy or actual, potential,
28 or alleged pregnancy outcome, including miscarriage, stillbirth,
29 or abortion, or perinatal death due to causes that occurred in utero.

30 (b) A person who aids or assists a pregnant person in exercising
31 their rights under this article shall not be subject to civil or criminal
32 liability or penalty, or otherwise be deprived of their rights, based
33 solely on their actions to aid or assist a pregnant person in
34 exercising their rights under this article with the pregnant person's
35 voluntary consent.

36 SEC. 8. Section 123468 of the Health and Safety Code is
37 amended to read:

38 123468. The performance of an abortion is unauthorized if
39 performed by someone other than the pregnant person and if either
40 of the following is true:

1 (a) The person performing the abortion is not a health care
2 provider authorized to perform an abortion pursuant to Section
3 2253 of the Business and Professions Code.

4 (b) The abortion is performed on a viable fetus, and both of the
5 following are established:

6 (1) In the good faith medical judgment of the physician, the
7 fetus was viable.

8 (2) In the good faith medical judgment of the physician,
9 continuation of the pregnancy posed no risk to life or health of the
10 pregnant person.

11 SEC. 9. Section 123469 is added to the Health and Safety Code,
12 to read:

13 123469. (a) ~~A party aggrieved by conduct or regulation in~~
14 ~~violation of this article~~ *whose reproductive rights are protected*
15 *by this article and whose reproductive rights are interfered with*
16 *by conduct or by a statute, ordinance, or other state or local rule,*
17 *regulation, or enactment in violation of this article* may bring a
18 civil action against an offending state actor in a state superior court.

19 (b) Whoever denies a right protected by this article, or aids,
20 incites, or conspires in that denial, is liable for each and every
21 offense for the actual damages suffered by any person denied that
22 right and, in addition, all of the following:

23 (1) An amount to be determined by a jury, or a court sitting
24 without a jury, for exemplary damages.

25 (2) A civil penalty of twenty-five thousand dollars (\$25,000),
26 to be awarded to the person denied the right protected by this
27 article.

28 (3) Preventive relief, including permanent or temporary
29 injunction, restraining order, or other order against the person or
30 persons responsible for the conduct, as the complainant deems
31 necessary to ensure the full enjoyment of the rights described in
32 this article.

33 (4) Upon a motion, a court shall award reasonable attorney’s
34 fees and costs, including expert witness fees and other litigation
35 expenses, to a plaintiff who is a prevailing party in an action
36 brought pursuant to this section. In awarding reasonable attorney’s
37 fees, the court shall consider the degree to which the relief obtained
38 relates to the relief sought.

39 (c) An action under subdivision (b) shall be commenced within
40 three years of the alleged practice violation of this article.

1 (d) (1) A party aggrieved by conduct or regulation in violation
2 of this article may also bring a civil action pursuant to Section 52.1
3 of the Civil Code. Notwithstanding Section 821.6 of the
4 Government Code, a civil action pursuant to Section 52.1 of the
5 Civil Code may be based upon instituting or prosecuting any
6 judicial or administrative proceeding in violation of this article.

7 (2) For purpose of establishing liability pursuant to this
8 subdivision, the criminal investigation, arrest, or prosecution, or
9 threat of investigation, arrest, or prosecution, of a person with
10 respect to their pregnancy or actual, potential, or alleged pregnancy
11 outcome, constitutes “threat, intimidation, or coercion” pursuant
12 to Section 52.1 of the Civil Code.

13 (e) Sections 825, 825.2, 825.4, and 825.6 of the Government
14 Code, providing for indemnification of an employee or former
15 employee of a public entity, apply to any cause of action brought
16 under this section against an employee or former employee of a
17 public entity.