

AMENDED IN ASSEMBLY MAY 12, 2022

AMENDED IN ASSEMBLY APRIL 6, 2022

AMENDED IN ASSEMBLY MARCH 24, 2022

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2091**

---

---

**Introduced by Assembly Member Mia Bonta  
(Coauthor: Assembly Member Bennett)**

February 14, 2022

---

---

An act to add Section 56.108 to the Civil Code, to amend Sections 2029.200, 2029.300, and 2029.350 of the Code of Civil Procedure, to amend Section 123466 of the Health and Safety Code, to amend Section 791.29 of the Insurance Code, and to amend Section 3408 of the Penal Code, relating to information ~~disclosure~~: *disclosure, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2091, as amended, Mia Bonta. Disclosure of information: reproductive health and foreign penal civil actions.

(1) Existing law provides that every individual possesses a fundamental right of privacy with respect to their personal reproductive decisions. Existing law prohibits the state from denying or interfering 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. Existing law requires a health insurer to take specified steps to protect the confidentiality of an insured's medical information, and prohibits an insurer from disclosing medical information related to sensitive health care services to the policyholder or any insureds other than the protected individual receiving care.

Existing law generally prohibits a provider of health care, a health care service plan, or a contractor from disclosing medical information regarding a patient, enrollee, or subscriber without first obtaining an authorization, unless a specified exception applies, including that the disclosure is in response to a subpoena. Existing law authorizes a California court or attorney to issue a subpoena if a foreign subpoena has been sought in this state.

This bill would prohibit 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, as defined. The bill would authorize the Insurance Commissioner to assess a civil penalty, as specified, against an insurer that has disclosed an insured's confidential medical information. The bill would prohibit a provider of health care, a health care service plan, or a contractor from releasing medical information related to an individual seeking or obtaining an abortion in response to a subpoena or a request if that subpoena or request is based on either another state's laws that interfere with a person's rights to choose or obtain an abortion or a foreign penal civil action. The bill would prohibit issuance of a subpoena if the submitted foreign subpoena relates to a foreign penal civil action.

(2) Existing law sets forth the health care access rights of an incarcerated pregnant person and an incarcerated person who is identified as possibly pregnant or capable of becoming pregnant. Existing law prohibits the imposition of conditions or restrictions on an incarcerated person's ability to obtain an abortion.

This bill would prohibit prison staff from disclosing identifying medical information related to an incarcerated person's right to seek and obtain an abortion if the information is being requested based on another state's law that interferes with a person's rights to choose or obtain an abortion or a foreign penal civil action.

(3) *This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~<sup>2/3</sup>. 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) Abortion care is a constitutional right and an integral part  
4 of comprehensive sexual and reproductive health care and overall  
5 health and well-being.

6 (b) In May 2019, the Governor signed the California  
7 Proclamation on Reproductive Freedom, reaffirming California’s  
8 commitment to ensuring access to reproductive health care services,  
9 including abortion.

10 (c) If the United States Supreme Court overturns the protections  
11 under *Roe v. Wade*, people in more than one-half of the states in  
12 the country – more than 36 million women and other people who  
13 may become pregnant – will lose access to abortion care.

14 (d) In December 2021, more than 40 organizations joined  
15 together to form the California Future of Abortion Council to  
16 identify barriers to abortion services and recommend proposals to  
17 support equitable and affordable access to abortion care for  
18 Californians and all who seek care in California.

19 (e) California is committed to building upon existing protections  
20 that preserve the right to abortion and implement innovative and  
21 bold programs and policies to truly be a reproductive freedom  
22 state.

23 (f) Other states and certain California localities have increased  
24 their efforts to limit abortion access and impose criminal, civil,  
25 and administrative liability on patients, providers, and those  
26 coordinating care.

27 (g) Actions against California abortion providers, patients, and  
28 supporters based on hostile antiabortion statutes in other states  
29 would interfere with protected rights under the Reproductive  
30 Privacy Act (Article 2.5 (commencing with Section 123460) of  
31 Chapter 2 of Part 2 of Division 106 of the Health and Safety Code)  
32 and the confidentiality of patient medical records.

33 (h) California must protect the confidentiality of medical records  
34 related to abortion to protect abortion providers and others who  
35 assist in providing abortion care from frivolous civil lawsuits and  
36 accompanying costs aimed at harassing providers, diverting  
37 resources, and shutting down clinics.

38 SEC. 2. Section 56.108 is added to the Civil Code, to read:

1 56.108. Notwithstanding subdivisions (b) and (c) of Section  
 2 56.10, a provider of health care, health care service plan, or  
 3 contractor shall not release medical information related to an  
 4 individual seeking or obtaining an abortion in response to a  
 5 subpoena or request if that subpoena or request is based on either  
 6 another state’s laws that interfere with a person’s rights under  
 7 Section 123466 of the Health and Safety Code or a foreign penal  
 8 civil action, as defined in Section 2029.200 of the Code of Civil  
 9 Procedure.

10 SEC. 3. Section 2029.200 of the Code of Civil Procedure is  
 11 amended to read:

12 2029.200. In this article:

13 (a) “Foreign jurisdiction” means either of the following:

14 (1) A state other than this state.

15 (2) A foreign nation.

16 (b) “Foreign penal civil action” means a civil action authorized  
 17 by the law of a state other than this state in which the sole purpose  
 18 is to punish an offense against the public justice of that state.

19 (c) “Foreign subpoena” means a subpoena issued under authority  
 20 of a court of record of a foreign jurisdiction.

21 (d) “Person” means an individual, corporation, business trust,  
 22 estate, trust, partnership, limited liability company, association,  
 23 joint venture, public corporation, government, or governmental  
 24 subdivision, agency, or instrumentality, or any other legal or  
 25 commercial entity.

26 (e) “State” means a state of the United States, the District of  
 27 Columbia, Puerto Rico, the Virgin Islands, a federally recognized  
 28 Indian tribe, or any territory or insular possession subject to the  
 29 jurisdiction of the United States.

30 (f) “Subpoena” means a document, however denominated, issued  
 31 under authority of a court of record requiring a person to do any  
 32 of the following:

33 (1) Attend and give testimony at a deposition.

34 (2) Produce and permit inspection, copying, testing, or sampling  
 35 of designated books, documents, records, electronically stored  
 36 information, or tangible things in the possession, custody, or control  
 37 of the person.

38 (3) Permit inspection of premises under the control of the person.

39 SEC. 4. Section 2029.300 of the Code of Civil Procedure is  
 40 amended to read:

1 2029.300. (a) To request issuance of a subpoena under this  
2 section, a party shall submit the original or a true and correct copy  
3 of a foreign subpoena to the clerk of the superior court in the  
4 county in which discovery is sought to be conducted in this state.  
5 A request for the issuance of a subpoena under this section does  
6 not constitute making an appearance in the courts of this state.

7 (b) In addition to submitting a foreign subpoena under  
8 subdivision (a), a party seeking discovery shall do both of the  
9 following:

10 (1) Submit an application requesting that the superior court issue  
11 a subpoena with the same terms as the foreign subpoena. The  
12 application shall be on a form prescribed by the Judicial Council  
13 pursuant to Section 2029.390. No civil case cover sheet is required.

14 (2) Pay the fee specified in Section 70626 of the Government  
15 Code.

16 (c) When a party submits a foreign subpoena to the clerk of the  
17 superior court in accordance with subdivision (a), and satisfies the  
18 requirements of subdivision (b), the clerk shall promptly issue a  
19 subpoena for service upon the person to which the foreign subpoena  
20 is directed.

21 (d) A subpoena issued under this section shall satisfy all of the  
22 following conditions:

23 (1) It shall incorporate the terms used in the foreign subpoena.

24 (2) It shall contain or be accompanied by the names, addresses,  
25 and telephone numbers of all counsel of record in the proceeding  
26 to which the subpoena relates and of any party not represented by  
27 counsel.

28 (3) It shall bear the caption and case number of the out-of-state  
29 case to which it relates.

30 (4) It shall state the name of the court that issues it.

31 (5) It shall be on a form prescribed by the Judicial Council  
32 pursuant to Section 2029.390.

33 (e) A subpoena shall not be issued if the submitted foreign  
34 subpoena relates to a foreign penal civil action.

35 SEC. 5. Section 2029.350 of the Code of Civil Procedure is  
36 amended to read:

37 2029.350. (a) Notwithstanding Sections 1986 and 2029.300,  
38 if a party to a proceeding pending in a foreign jurisdiction retains  
39 an attorney licensed to practice in this state, who is an active  
40 member of the State Bar, and that attorney receives the original

1 or a true and correct copy of a foreign subpoena, the attorney may  
2 issue a subpoena under this article.

3 (b) Notwithstanding subdivision (a), an attorney shall not issue  
4 a subpoena under this article based on a foreign subpoena that  
5 relates to a foreign penal civil action.

6 (c) A subpoena issued under this section shall satisfy all of the  
7 following conditions:

8 (1) It shall incorporate the terms used in the foreign subpoena.

9 (2) It shall contain or be accompanied by the names, addresses,  
10 and telephone numbers of all counsel of record in the proceeding  
11 to which the subpoena relates and of any party not represented by  
12 counsel.

13 (3) It shall bear the caption and case number of the out-of-state  
14 case to which it relates.

15 (4) It shall state the name of the superior court of the county in  
16 which the discovery is to be conducted.

17 (5) It shall be on a form prescribed by the Judicial Council  
18 pursuant to Section 2029.390.

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

21 123466. (a) The state shall not deny or interfere with a  
22 woman’s right to choose or obtain an abortion before the viability  
23 of the fetus, or when the abortion is necessary to protect the life  
24 or health of the woman.

25 (b) A person shall not be compelled in a state, county, city, or  
26 other local criminal, administrative, legislative, or other proceeding  
27 to identify or provide information that would identify an individual  
28 who has sought or obtained an abortion if the information is being  
29 requested based on either another state’s laws that interfere with  
30 a person’s rights under subdivision (a) or a foreign penal civil  
31 action, as defined in Section 2029.200 of the Code of Civil  
32 Procedure.

33 SEC. 7. Section 791.29 of the Insurance Code, as added by  
34 Section 7 of Chapter 190 of the Statutes of 2021, is amended to  
35 read:

36 791.29. Notwithstanding any other law, and to the extent  
37 permitted by federal law, a health insurer shall take the following  
38 steps to protect the confidentiality of an insured’s medical  
39 information:

1 (a) (1) A health insurer shall not require a protected individual  
2 to obtain the policyholder's authorization to receive sensitive  
3 services or to submit a claim for sensitive services if the protected  
4 individual has the right to consent to care.

5 (2) A health insurer shall recognize the right of a protected  
6 individual to exclusively exercise rights granted under this section  
7 regarding medical information related to sensitive services that  
8 the protected individual has received.

9 (3) A health insurer shall direct all communications regarding  
10 a protected individual's receipt of sensitive health care services  
11 directly to the protected individual receiving care as follows:

12 (A) If the protected individual has designated an alternative  
13 mailing address, email address, or telephone number pursuant to  
14 subdivision (b), the health insurer shall send or make all  
15 communications related to the protected individual's receipt of  
16 sensitive services to the alternative mailing address, email address,  
17 or telephone number designated.

18 (B) If the protected individual has not designated an alternative  
19 mailing address, email address, or telephone number pursuant to  
20 subdivision (b), the health insurer shall send or make all  
21 communications related to the protected individual's receipt of  
22 sensitive services in the name of the protected individual at the  
23 address or telephone number on file.

24 (C) Communications subject to this paragraph shall include the  
25 following written, verbal, or electronic communications:

26 (i) Bills and attempts to collect payment.

27 (ii) A notice of adverse benefits determinations.

28 (iii) An explanation of benefits notice.

29 (iv) A health insurer's request for additional information  
30 regarding a claim.

31 (v) A notice of a contested claim.

32 (vi) The name and address of a provider, description of services  
33 provided, and other information related to a visit.

34 (vii) Any written, oral, or electronic communication from a  
35 health insurer that contains protected health information.

36 (4) A health insurer shall not disclose medical information  
37 related to sensitive health care services provided to a protected  
38 individual to the policyholder or any insureds other than the  
39 protected individual receiving care, absent an express written  
40 authorization of the protected individual receiving care.

1 (b) (1) A health insurer shall permit an insured to request, and  
2 shall accommodate requests for, confidential communication in  
3 the form and format requested by the insured, if it is readily  
4 producible in the requested form and format, or at alternative  
5 locations.

6 (2) A health insurer may require the insured to make a request  
7 for a confidential communication described in paragraph (1) in  
8 writing or by electronic transmission.

9 (3) The confidential communication request shall apply to all  
10 communications that disclose medical information or provider  
11 name and address related to receipt of medical services by the  
12 individual requesting the confidential communication.

13 (4) The confidential communication request shall be valid until  
14 the insured submits a revocation of the request, or a new  
15 confidential communication request is submitted.

16 (5) For the purposes of this section, a confidential  
17 communications request shall be implemented by the health insurer  
18 within 7 calendar days of the receipt of an electronic transmission,  
19 telephonic request, or request submitted through the health insurer's  
20 internet website, or within 14 calendar days of receipt by first-class  
21 mail. The health insurer shall acknowledge receipt of the  
22 confidential communications request and advise the insured of the  
23 status of implementation of the request if an insured contacts the  
24 insurer.

25 (c) (1) A health insurer shall notify insureds that they may  
26 request a confidential communication pursuant to subdivision (b)  
27 and how to make the request.

28 (2) The information required to be provided pursuant to this  
29 subdivision shall be provided to insureds with individual or group  
30 coverage upon initial enrollment and annually thereafter upon  
31 renewal. The information shall also be provided in the following  
32 manner:

33 (A) In a conspicuously visible location in the evidence of  
34 coverage.

35 (B) On the health insurer's internet website, accessible through  
36 a hyperlink on the internet website's home page and in a manner  
37 that allows insureds, prospective insureds, and members of the  
38 public to easily locate the information.



1 (d) Notwithstanding subdivision (b), a provider of health care  
2 may make arrangements with the insured for the payment of benefit  
3 cost sharing and communicate that arrangement with the insurer.

4 (e) A health insurer shall not condition coverage on the waiver  
5 of rights provided in this section.

6 (f) If the commissioner determines that an insurer has violated  
7 this section, the commissioner may, after appropriate notice and  
8 opportunity for hearing in accordance with the Administrative  
9 Procedure Act (Chapter 5 (commencing with Section 11500) of  
10 Part 1 of Division 3 of Title 2 of the Government Code), by order,  
11 assess a civil penalty not to exceed five thousand dollars (\$5,000)  
12 for each violation, or, if a violation was willful, a civil penalty not  
13 to exceed ten thousand dollars (\$10,000) for each violation. The  
14 commissioner shall have the discretion to determine the acts or  
15 omissions that constitute a violation of this section.

16 (g) This section shall become operative on July 1, 2022.

17 SEC. 8. Section 3408 of the Penal Code is amended to read:

18 3408. (a) A person incarcerated in the state prison who is  
19 identified as possibly pregnant or capable of becoming pregnant  
20 during an intake health examination or at any time during  
21 incarceration shall be offered a test upon intake or by request.  
22 Pregnancy tests shall be voluntary and not mandatory, and may  
23 only be administered by medical or nursing personnel. An  
24 incarcerated person who declines a pregnancy test shall be asked  
25 to sign an “Informed Refusal of Pregnancy Test” form that shall  
26 become part of their medical file.

27 (b) An incarcerated person with a positive pregnancy test result  
28 shall be offered comprehensive and unbiased options counseling  
29 that includes information about prenatal health care, adoption, and  
30 abortion. This counseling shall be furnished by a licensed health  
31 care provider or counselor who has been provided with training  
32 in reproductive health care and shall be nondirective, unbiased,  
33 and noncoercive. Prison staff shall not urge, force, or otherwise  
34 influence a pregnant person’s decision.

35 (c) A prison shall not confer authority or discretion to  
36 nonmedical prison staff to decide if a pregnant person is eligible  
37 for an abortion. If a pregnant person decides to have an abortion,  
38 that person shall be offered, but not forced to accept, all due  
39 medical care and accommodations until they are no longer  
40 pregnant. A pregnant person who decides to have an abortion shall

1 be referred to a licensed professional specified in subdivision (b)  
2 of Section 2253 of the Business and Professions Code.

3 (d) A person incarcerated in prison who is confirmed to be  
4 pregnant shall, within seven days of arriving at the prison, be  
5 scheduled for a pregnancy examination with a physician, nurse  
6 practitioner, ~~certified nurse-midwife~~, *nurse-midwife*, or physician  
7 assistant. The examination shall include all of the following:

8 (1) A determination of the gestational age of the pregnancy and  
9 the estimated due date.

10 (2) A plan of care, including referrals for specialty and other  
11 services to evaluate for the presence of chronic medical conditions  
12 or infectious diseases, and to use health and social status of the  
13 incarcerated person to improve quality of care, isolation practices,  
14 level of activities, and bed assignments, and to inform appropriate  
15 specialists in relationship to gestational age and social and clinical  
16 needs, and to guide use of personal protective equipment and  
17 additional counseling for prevention and control of infectious  
18 diseases, if needed.

19 (3) The ordering of prenatal labs and diagnostic studies, as  
20 needed based on gestational age or existing or newly diagnosed  
21 health conditions.

22 (e) Incarcerated pregnant persons shall be scheduled for prenatal  
23 care visits as follows, unless otherwise indicated by the physician,  
24 nurse practitioner, ~~certified nurse-midwife~~, *nurse-midwife*, or  
25 physician assistant:

26 (1) Every four weeks in the first trimester up to 24 to 28 weeks.

27 (2) Every two weeks thereafter up to 36 weeks gestation.

28 (3) Every one week thereafter until birth.

29 (f) Incarcerated pregnant persons shall be provided access to  
30 both of the following:

31 (1) Prenatal vitamins, to be taken on a daily basis, in accordance  
32 with medical standards of care.

33 (2) Newborn care that includes access to appropriate assessment,  
34 diagnosis, care, and treatment for infectious diseases that may be  
35 transmitted from a birthing person to the birthing person's infant,  
36 such as HIV or syphilis.

37 (g) Incarcerated pregnant persons housed in a multitier housing  
38 unit shall be assigned lower bunk and lower tier housing.

39 (h) Incarcerated pregnant persons shall not be tased, pepper  
40 sprayed, or exposed to other chemical weapons.

1 (i) Incarcerated pregnant persons who have used opioids prior  
2 to incarceration, either by admission or written documentation by  
3 a probation officer, or who are currently receiving methadone  
4 treatment, shall be offered ~~medication-assisted~~ *medication-assisted*  
5 treatment with methadone or buprenorphine, pursuant to Section  
6 11222 of the Health and Safety Code, and shall be provided  
7 information on the risks of withdrawal.

8 (j) (1) An eligible incarcerated pregnant person or person who  
9 gives birth after incarceration in the prison shall be provided notice  
10 of, access to, and written application for, community-based  
11 programs serving pregnant, birthing, or lactating incarcerated  
12 persons. At a minimum, the notice shall contain guidelines for  
13 qualification, the timeframe for application, and the process for  
14 appealing a denial of admittance to those programs.

15 (2) If a community-based program is denied access to the prison,  
16 the reason for the denial shall be provided in writing to the  
17 incarcerated person within 15 working days of receipt of the  
18 request. The written denial shall address the safety or security  
19 concerns for the incarcerated person, infant, public, or staff.

20 (k) Each incarcerated pregnant person shall be referred to a  
21 social worker who shall do all of the following:

22 (1) Discuss with the incarcerated person the options available  
23 for feeding, placement, and care of the child after birth, including  
24 the benefits of lactation.

25 (2) Assist the incarcerated pregnant person with access to a  
26 phone in order to contact relatives regarding newborn placement.

27 (3) Oversee the placement of the newborn child.

28 (l) An incarcerated pregnant person shall be temporarily taken  
29 to a hospital outside the prison for the purpose of giving childbirth  
30 and shall be transported in the least restrictive way possible and  
31 in accordance with Section 3407. An incarcerated pregnant person  
32 shall not be shackled to anyone else during transport. An  
33 incarcerated pregnant person in labor or presumed to be in labor  
34 shall be treated as an emergency and shall be transported to the  
35 outside facility, accompanied by prison staff.

36 (m) An incarcerated pregnant person may elect to have a support  
37 person present during labor, childbirth, and during postpartum  
38 recovery while hospitalized. The support person may be an  
39 approved visitor or the prison's staff designated to assist with  
40 prenatal care, labor, childbirth, lactation, and postpartum care. The

1 approval for the support person shall be made by the administrator  
2 of the prison or that person's designee. If an incarcerated pregnant  
3 person's request for an elected support person is denied, reason  
4 for the denial shall be provided in writing to the incarcerated person  
5 within 15 working days of receipt of the request. The written denial  
6 shall address the safety or security concerns for the incarcerated  
7 person, infant, public, or staff. Upon receipt of a written denial,  
8 the incarcerated pregnant person may choose the approved  
9 institution staff to act as the support person.

10 (n) All pregnant and postpartum incarcerated persons shall  
11 receive appropriate, timely, culturally responsive, and medically  
12 accurate and comprehensive care, evaluation, and treatment of  
13 existing or newly diagnosed chronic conditions, including mental  
14 health disorders and infectious diseases.

15 (o) An incarcerated pregnant person in labor and delivery shall  
16 be given the maximum level of privacy possible during the labor  
17 and delivery process. If a guard is present, they shall be stationed  
18 outside the room rather than in the room, absent extraordinary  
19 circumstances. If a guard must be present in the room, the guard  
20 shall stand in a place that grants as much privacy as possible during  
21 labor and delivery. A guard shall be removed from the room if a  
22 professional who is currently responsible for the medical care of  
23 a pregnant incarcerated person during a medical emergency, labor,  
24 delivery, or recovery after delivery determines that the removal  
25 of the guard is medically necessary.

26 (p) Upon return to prison, the physician, nurse practitioner,  
27 ~~certified nurse-midwife~~, *nurse-midwife*, or physician assistant shall  
28 provide a postpartum examination within one week from childbirth  
29 and as needed for up to 12 weeks postpartum, and shall determine  
30 whether the incarcerated person may be cleared for full duty or if  
31 medical restrictions are warranted. Postpartum individuals shall  
32 be given at least 12 weeks of recovery after any childbirth before  
33 they are required to resume normal activity.

34 (q) The rights provided for incarcerated persons by this section  
35 shall be posted in at least one conspicuous place to which all  
36 incarcerated persons have access.

37 (r) Prison staff shall not disclose identifying medical information  
38 related to an incarcerated person's right to seek and obtain an  
39 abortion if the information is being requested based on either  
40 another state's laws that interfere with a person's rights under

1 Section 123466 of the Health and Safety Code or a foreign penal  
2 civil action, as defined in Section 2029.200 of the Code of Civil  
3 Procedure.

4 SEC. 9. The provisions of this act are severable. If any  
5 provision of this act or its application is held invalid, that invalidity  
6 shall not affect other provisions or applications that can be given  
7 effect without the invalid provision or application.

8 SEC. 10. *This act is an urgency statute necessary for the*  
9 *immediate preservation of the public peace, health, or safety within*  
10 *the meaning of Article IV of the California Constitution and shall*  
11 *go into immediate effect. The facts constituting the necessity are:*

12 *In order to protect the public from actions authorized under the*  
13 *law of another state that are contrary to the public policy of this*  
14 *state, including actions which interfere with a person's right to*  
15 *choose or obtain an abortion and foreign penal civil actions, it is*  
16 *necessary that this act take effect immediately.*