

AMENDED IN ASSEMBLY MARCH 17, 2022

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 2223

Introduced by Assembly Member Wicks
(Principal coauthor: Assembly Member Mullin)

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.

(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.

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 the Reproductive Privacy Act to bring a civil action against an offending state actor, as specified, and would require a court, upon a motion, to award reasonable attorneys' fees and costs to a prevailing plaintiff.

~~Existing law, the Reproductive Privacy Act, provides that every individual possesses a fundamental right of privacy with respect to their personal reproductive decisions.~~

~~This bill would state the intent of the Legislature to enact legislation that would relate to reproductive health.~~

~~Vote: majority. Appropriation: no. Fiscal committee: no-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 multifactored issues that*
5 *women of color and their families face in society.*

1 (b) Reproductive justice is the human right to control our bodies,
2 sexuality, gender, work, and reproduction. That right can only be
3 achieved when all people, particularly women and girls, have the
4 complete economic, social, and political power and resources to
5 make healthy decisions about their bodies, families, and
6 communities in all areas of their lives. At the core of reproductive
7 justice is the belief in the right to bodily autonomy, the right to
8 have children, the right to not have children, and the right to parent
9 the children we have with dignity and respect in safe and
10 sustainable communities.

11 (c) A critical part of realizing reproductive justice for people
12 in California is clarifying that there shall be no civil and criminal
13 penalties for people's actual, potential, or alleged pregnancy
14 outcomes.

15 (d) Across the country, people have been criminally prosecuted
16 for having miscarriages or stillbirths or for self-managing an
17 abortion. California has not been exempt. Despite clear law that
18 ending or losing a pregnancy is not a crime, police have
19 investigated and prosecutors have charged people with homicide
20 for pregnancy losses.

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

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

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

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

36 (i) The threat of criminal prosecution of pregnancy outcomes
37 is partly traceable to out-of-date provisions that give coroners a
38 duty to investigate certain abortions and pregnancy losses. Based
39 on these provisions, health care providers and institutions report

1 *people to law enforcement for pregnancy losses, leading to harmful*
2 *investigations and even unlawful prosecutions.*

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

8 *(k) The threat of criminal prosecutions or civil penalties on*
9 *pregnant people through child welfare, immigration, housing, or*
10 *other legal systems has a harmful effect on individual and public*
11 *health. When a person fears state action being taken against them*
12 *related to their pregnancy, they are less likely to seek medical care*
13 *when they need it. If they do seek care, punishing them for actual,*
14 *potential, or alleged pregnancy outcomes interferes with*
15 *professional care and endangers the relationship between*
16 *providers and patients.*

17 *(l) That is why major medical groups like the American Medical*
18 *Association, the American College of Obstetricians and*
19 *Gynecologists, and the American Public Health Association oppose*
20 *civil and criminal penalties for actual, potential, or alleged*
21 *pregnancy outcomes.*

22 *SEC. 2. Section 27491 of the Government Code is amended to*
23 *read:*

24 27491. It shall be the duty of the coroner to inquire into and
25 determine the circumstances, manner, and cause of all violent,
26 sudden, or unusual deaths; unattended deaths; deaths where the
27 deceased has not been attended by either a physician or a registered
28 nurse, who is a member of a hospice care interdisciplinary team,
29 as defined by subdivision (g) of Section 1746 of the Health and
30 Safety Code in the 20 days before death; ~~deaths related to or~~
31 ~~following known or suspected self-induced or criminal abortion;~~
32 known or suspected homicide, suicide, or accidental poisoning;
33 deaths known or suspected as resulting in whole or in part from
34 or related to accident or injury either old or recent; deaths due to
35 drowning, fire, hanging, gunshot, stabbing, cutting, exposure,
36 starvation, acute alcoholism, drug addiction, strangulation,
37 aspiration, or where the suspected cause of death is sudden infant
38 death syndrome; death in whole or in part occasioned by criminal
39 means; deaths associated with a known or alleged rape or crime
40 against nature; deaths in prison or while under sentence; deaths

1 known or suspected as due to contagious disease and constituting
2 a public hazard; deaths from occupational diseases or occupational
3 hazards; deaths of patients in state-mental hospitals serving the
4 mentally-disabled *disordered* and operated by the State Department
5 of State Hospitals; deaths of patients in state hospitals serving the
6 developmentally disabled and operated by the State Department
7 of Developmental Services; deaths under-sueh circumstances-as
8 to that afford a reasonable ground to suspect that the death was
9 caused by the criminal act of another; and any deaths reported by
10 physicians or other persons having knowledge of death for inquiry
11 by coroner. Inquiry pursuant to this section does not include those
12 investigative functions usually performed by other law enforcement
13 agencies.

14 (a) ~~In any case in which~~ *If* the coroner conducts an inquiry
15 pursuant to this section, the coroner or a deputy shall personally
16 sign the certificate of death. If the death occurred in a state hospital,
17 the coroner shall forward a copy of ~~his or her~~ *the* report to the state
18 agency responsible for the state hospital.

19 (b) The coroner shall have discretion to determine the extent of
20 inquiry to be made into any death occurring under natural
21 circumstances and falling within the provisions of this section, and
22 if inquiry determines that the physician of record has sufficient
23 knowledge to reasonably state the cause of a death occurring under
24 natural circumstances, the coroner may authorize that physician
25 to sign the certificate of death.

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

29 (d) ~~Any~~ A funeral director, physician, or other person who has
30 charge of a deceased person's body, when death occurred as a
31 result of any of the causes or circumstances described in this
32 section, shall immediately notify the coroner. ~~Any~~ A person who
33 does not notify the coroner as required by this section is guilty of
34 a misdemeanor.

35 SEC. 3. *Section 103000 of the Health and Safety Code is*
36 *repealed.*

37 ~~103000. All other fetal deaths required to be registered under~~
38 ~~this chapter shall be handled as are deaths without medical~~
39 ~~attendance.~~

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

3 103005. (a) The coroner~~shall~~ shall, within three days after
4 examination of the~~fetus~~*fetus*, state on the certificate of fetal death
5 the time of fetal death, the direct causes of the fetal death, the
6 conditions, if any, that gave rise to these causes, and other medical
7 and health section data as may be required on the certificate, and
8 shall sign the certificate in attest to these facts. The coroner~~shall~~
9 shall, within three days after examining the~~body~~*body*, deliver the
10 death certificate to the attending funeral director.

11 (b) *This section shall not be used to establish, bring, or support
12 a criminal prosecution or civil cause of action seeking damages
13 against any person, whether or not they were the person who was
14 pregnant with the fetus. Through its courts and statutes and under
15 its Constitution, California protects the right to reproductive
16 privacy, and it is the intent of the Legislature to reaffirm these
17 protections.*

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

20 123462. The Legislature finds and declares that every
21 individual possesses a fundamental right of privacy with respect
22 to personal reproductive~~decisions~~*decisions*, which entails the
23 right to make and effectuate decisions about all matters relating
24 to pregnancy, including prenatal care, childbirth, postpartum care,
25 contraception, sterilization, abortion care, miscarriage
26 management, and infertility care. Accordingly, it is the public
27 policy of the State of California that:

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

30 (b) Every~~woman~~*individual* has the fundamental right to choose
31 to bear a child or to choose to have and to obtain an abortion,
32 except as specifically limited by this article.

33 (c) The state shall not deny or interfere with a~~woman's~~*an*
34 individual's fundamental right to choose to bear a child or to
35 choose to have and to obtain an abortion, except as specifically
36 permitted by this article.

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

39 123466. The state~~may~~ shall not deny or interfere with a
40 ~~woman's~~*pregnant person's* right to choose or obtain an abortion

1 prior to viability of the fetus, or when the abortion is necessary to
2 protect the life or health of the ~~woman~~ pregnant person.

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

5 123467. (a) Notwithstanding any other law, a person shall
6 not be subject to civil or criminal liability or penalty, or otherwise
7 deprived of their rights, based on their actions or omissions with
8 respect to their pregnancy or actual, potential, or alleged
9 pregnancy outcome, including miscarriage, stillbirth, or abortion,
10 or perinatal death.

11 (b) A person who aids or assists a pregnant person in exercising
12 their rights under this article shall not be subject to civil or
13 criminal liability or penalty, or otherwise be deprived of their
14 rights, based solely on their actions to aid or assist a pregnant
15 person in exercising their rights under this article with the pregnant
16 person's voluntary consent.

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

19 123468. The performance of an abortion is unauthorized if
20 performed by someone other than the pregnant person and if either
21 of the following is true:

22 (a) The person performing the abortion is not a health care
23 provider authorized to perform an abortion pursuant to Section
24 2253 of the Business and Professions Code.

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

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

29 (2) In the good faith medical judgment of the physician,
30 continuation of the pregnancy posed no risk to life or health of the
31 pregnant ~~woman~~ person.

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

34 123469. (a) A party aggrieved by conduct or regulation in
35 violation of this article may bring a civil action against an
36 offending state actor in a federal district court or state superior
37 court. A state claim brought in federal district court shall be a
38 supplemental claim to a federal claim.

39 (b) Upon a motion, a court shall award reasonable attorney's
40 fees and costs, including expert witness fees and other litigation

1 *expenses, to a plaintiff who is a prevailing party in an action*
2 *brought pursuant to this section. In awarding reasonable attorney's*
3 *fees, the court shall consider the degree to which the relief obtained*
4 *relates to the relief sought.*

5 ~~SECTION 1. It is the intent of the Legislature to enact~~
6 ~~legislation that would relate to reproductive health.~~

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