

AMENDED IN ASSEMBLY APRIL 6, 2022  
AMENDED IN ASSEMBLY MARCH 17, 2022  
CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2223**

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

February 15, 2022

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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.

*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 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. *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.

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

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

35 (g) People also need to end pregnancies by abortion, including  
36 self-managed abortion, which means ending one’s own pregnancy  
37 outside of the medical system.

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

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5 is partly traceable to out-of-date provisions that give coroners a  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

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

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

24 (l) That is why major medical groups like the American Medical  
25 Association, the American College of Obstetricians and  
26 Gynecologists, and the American Public Health Association oppose  
27 civil and criminal penalties for actual, potential, or alleged  
28 pregnancy outcomes.

29 SEC. 2. Section 27491 of the Government Code is amended  
30 to read:

31 27491. It shall be the duty of the coroner to inquire into and  
32 determine the circumstances, manner, and cause of all violent,  
33 sudden, or unusual deaths; unattended deaths; deaths where the  
34 deceased has not been attended by either a physician or a registered  
35 nurse, who is a member of a hospice care interdisciplinary team,  
36 as defined by subdivision (g) of Section 1746 of the Health and  
37 Safety Code in the 20 days before death; known or suspected  
38 homicide, suicide, or accidental poisoning; deaths known or  
39 suspected as resulting in whole or in part from or related to accident  
40 or injury either old or recent; deaths due to drowning, fire, hanging,

1 gunshot, stabbing, cutting, exposure, starvation, acute alcoholism,  
2 drug addiction, strangulation, aspiration, or where the suspected  
3 cause of death is sudden infant death syndrome; death in whole or  
4 in part occasioned by criminal means; deaths associated with a  
5 known or alleged ~~rape or crime against nature~~; *rape*; deaths in  
6 prison or while under sentence; deaths known or suspected as due  
7 to contagious disease and constituting a public hazard; deaths from  
8 occupational diseases or occupational hazards; deaths of patients  
9 in state hospitals serving the mentally disordered and operated by  
10 the State Department of State Hospitals; deaths of patients in state  
11 hospitals serving the developmentally disabled and operated by  
12 the State Department of Developmental Services; deaths under  
13 circumstances that afford a reasonable ground to suspect that the  
14 death was caused by the criminal act of another; and any deaths  
15 reported by physicians or other persons having knowledge of death  
16 for inquiry by coroner. Inquiry pursuant to this section does not  
17 include those investigative functions usually performed by other  
18 law enforcement agencies.

19 (a) If the coroner conducts an inquiry pursuant to this section,  
20 the coroner or a deputy shall personally sign the certificate of  
21 death. If the death occurred in a state hospital, the coroner shall  
22 forward a copy of the report to the state agency responsible for the  
23 state hospital.

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

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

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

39 SEC. 3. Section 103000 of the Health and Safety Code is  
40 repealed.

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

3 103005. (a) The coroner shall, within three days after  
4 examination of the fetus, state on the certificate of fetal death the  
5 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 within three days after examining the body, deliver the death  
10 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, which entails the right to make  
23 and effectuate decisions about all matters relating to pregnancy,  
24 including prenatal care, childbirth, postpartum care, contraception,  
25 sterilization, abortion care, miscarriage management, and infertility  
26 care. Accordingly, it is the public policy of the State of California  
27 that:

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

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

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

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

39 123466. The state shall not deny or interfere with a pregnant  
40 person's right to choose or obtain an abortion prior to viability of

1 the fetus, or when the abortion is necessary to protect the life or  
2 health of the 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 not  
6 be subject to civil or criminal liability or penalty, or otherwise  
7 deprived of their ~~rights~~, *rights under this article*, based on their  
8 actions or omissions with respect to their pregnancy or actual,  
9 potential, or alleged pregnancy outcome, including miscarriage,  
10 stillbirth, or abortion, or perinatal ~~death~~. *death due to a*  
11 *pregnancy-related cause*.

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

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

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

23 (a) The person performing the abortion is not a health care  
24 provider authorized to perform an abortion pursuant to Section  
25 2253 of the Business and Professions Code.

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

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

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

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

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

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

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

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

9 (3) Preventive relief, including permanent or temporary  
10 injunction, restraining order, or other order against the person  
11 or persons responsible for the conduct, as the complainant deems  
12 necessary to ensure the full enjoyment of the rights described in  
13 this article.

14 ~~(b)~~

15 (4) Upon a motion, a court shall award reasonable attorney's  
16 fees and costs, including expert witness fees and other litigation  
17 expenses, to a plaintiff who is a prevailing party in an action  
18 brought pursuant to this section. In awarding reasonable attorney's  
19 fees, the court shall consider the degree to which the relief obtained  
20 relates to the relief sought.

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

23 (d) (1) A party aggrieved by conduct or regulation in violation  
24 of this article may also bring a civil action pursuant to Section  
25 52.1 of the Civil Code. Notwithstanding Section 821.6 of the  
26 Government Code, a civil action pursuant to Section 52.1 of the  
27 Civil Code may be based upon instituting or prosecuting any  
28 judicial or administrative proceeding in violation of this article.

29 (2) For purpose of establishing liability pursuant to this  
30 subdivision, the criminal investigation, arrest, or prosecution, or  
31 threat of investigation, arrest, or prosecution, of a person with  
32 respect to their pregnancy or actual, potential, or alleged  
33 pregnancy outcome, constitutes "threat, intimidation, or coercion"  
34 pursuant to Section 52.1 of the Civil Code.

35 (e) Sections 825, 825.2, 825.4, and 825.6 of the Government  
36 Code, providing for indemnification of an employee or former  
37 employee of a public entity, apply to any cause of action brought



- 1 *under this section against an employee or former employee of a*
- 2 *public entity.*

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