

Date of Hearing: May 6, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

SB 233 (Skinner) – As Amended May 2, 2024

SENATE VOTE: 29-9

SUBJECT: Practice of medicine: Arizona physicians: abortions and abortion-related care for Arizona patients

SUMMARY: Establishes a temporary registration program under the Medical Board of California (MBC) and the Osteopathic Medical Board of California (OMBC) to allow for physicians licensed to practice medicine in Arizona to perform abortions or provide abortion-related care in California to patients traveling from Arizona for that care.

EXISTING LAW:

- 1) Establishes the Department of Consumer Affairs (DCA) within the Business, Consumer Services, and Housing Agency. (Business and Professions Code (BPC) § 100)
- 2) Enumerates various regulatory boards, bureaus, committees, and commissions under the DCA's jurisdiction, including healing arts boards under Division 2. (BPC § 101)
- 3) Requires each board under the DCA to register an applicant who is a servicemember or spouse of a servicemember and who holds a professional license in another state, and provides that once registered, the applicant is deemed a licensee for the duration of the servicemember's military orders in California. (BPC § 115.10)
- 4) Establishes the MBC, which regulates physicians and surgeons under the Medical Practice Act. (BPC §§ 2000 *et seq.*)
- 5) Establishes the OMBC, which regulates physicians and surgeons under the Osteopathic Act who possess the same privileges as licensees regulated by the MBC. (BPC § 2450)
- 6) Authorizes the MBC to take action against persons guilty of violating the Medical Practice Act. (BPC § 2220)
- 7) Authorizes the MBC to either deny an application for licensure as a physician and surgeon or issue a probationary license, subject to specified conditions and limitations. (BPC § 2221)
- 8) Requires the MBC, the OMBC, the Board of Registered Nursing, and the Physician Assistant Board to expedite the licensure process for applicants who demonstrate that they intend to provide abortions within the scope of practice of their license. (BPC § 870)
- 9) Provides that the revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license to practice medicine issued by that state, that would have been grounds for discipline in California by the MBC, constitutes grounds for disciplinary action for unprofessional conduct in California. (BPC § 2305)

- 10) Prohibits healing arts boards under the DCA from denying an application for licensure or disciplining a licensee on the basis of a civil judgment, criminal conviction, or disciplinary action in another state that was based solely on the application of another state's law that interferes with a person's right to receive sensitive services, including sexual and reproductive health care, that would be lawful in California, regardless of the patient's location. (BPC § 850.1)
- 11) Prohibits the MBC and the OMBC from denying an application for licensure or suspending or revoking the license of a physician and surgeon solely for performing an abortion in accordance with the provisions of the Medical Practice Act and the Reproductive Privacy Act, including in other states that have banned or restricted abortion. (BPC § 2253)
- 12) Enacts the Reproductive Privacy Act. (Health and Safety Code (HSC) §§ 123460 *et seq.*)
- 13) Finds and declares that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions, including whether to choose to bear a child or to choose to obtain an abortion. (HSC § 123462)
- 14) Defines "abortion" as any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth. (HSC § 123464)
- 15) Prohibits the state from denying or interfering with a woman'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 woman. (HSC § 123466)
- 16) Protects individuals from civil or criminal liability based solely on their actions to aid or assist a pregnant person in exercising their rights under the Reproductive Privacy Act with the pregnant person's voluntary consent. (HSC § 123467)
- 17) Provides that a law of another state is contrary to the public policy of California if the law authorizes a person to bring a civil action against a person who receives or seeks an abortion; performs, provides, or induces an abortion; or engages in related acts. (HSC § 123467.5)
- 18) Expressly provides that an abortion is unauthorized if performed by someone other than the pregnant person or a health care provider authorized to perform an abortion pursuant to state law, or if the fetus is considered viable, and the continuation of the pregnancy posed no risk to life or health of the pregnant person, in the good faith medical judgment of the physician. (HSC § 123468)
- 19) Provides that California law governs in any action in the state against a person who provides or receives reproductive health care services if the provider was located in California or any other state where the care was legal at the time of the challenged conduct. (HSC § 123468.5)
- 20) Provides that the State of California shall not deny or interfere with an individual's reproductive freedom in their most intimate decisions, which includes their fundamental right to choose to have an abortion and their fundamental right to choose or refuse contraceptives. (California Constitution, Article I, § 1.1)

THIS BILL:

- 1) Authorizes a physician licensed in Arizona who meets specified requirements to practice medicine in California through a registration program under either the MBC or the OMBC, through November 30, 2024, solely for the purpose of providing abortions and abortion-related care to patients who are Arizona residents traveling from Arizona seeking abortions or abortion-related care in California.
- 2) Prohibits registered physicians from Arizona from providing care or consultation to any patient that is not related to either performing an abortion or abortion-related care, or from providing care or consultation to any patient unless they are Arizona residents who have traveled from Arizona to California for that care or consultation.
- 3) Establishes specified requirements that a physician from Arizona must meet to be eligible for registration to provide care in California, including requirements that the physician must:
 - a) Hold a medical license in good standing in Arizona that confers on the physician the authority to practice abortions and abortion-related care within a similar scope as defined in the Reproductive Privacy Act.
 - b) Have performed at least one activity within the scope of the Reproductive Privacy Act under the authority of their Arizona medical license during the two years immediately preceding their registration submission to the MBC or the OMBC.
 - c) Submit to the MBC or the OMBC written verification from the Arizona Medical Board or the Arizona Board of Osteopathic Examiners in Medicine and Surgery, as applicable, or documentation printed from an online licensing system, that the physician's Arizona license is in good standing.
 - d) For a physician provider who is licensed in more than one jurisdiction, maintain an Arizona medical license in good standing and submit to the MBC or the OMBC written verification from the state licensing board, or documentation printed from an online licensing system, for each jurisdiction that the registrant's license is in good standing.
 - e) Submit to the MBC or the OMBC their Arizona address of record, their temporary California address of record, if any, and an affidavit attesting that the provider meets all of the requirements for registration and the information submitted to the MBC or the OMBC is accurate to the best of the provider's knowledge.
- 4) Penalizes any person who provides false information in the required affidavit with a fine not exceeding \$10,000, by imprisonment in a county jail not exceeding one year, or by both.
- 5) Requires the MBC or the OMBC to register a physician who meets the requirements within 5 business days of receiving all applicable documentation.
- 6) Requires registered physicians from Arizona to submit the street address of each location in California at which the physician will practice medicine to the applicable board.
- 7) Provides that all registrations shall expire on November 30, 2024.

- 8) Prohibits the MBC or the OMBC from registering any physician from Arizona who fails to provide all applicable documentation and requires the applicable board to deem the physician's request for registration incomplete, at which time the physician may not engage in the practice of medicine in California unless the board later deems the physician's registration complete.
- 9) Prohibits the MBC or the OMBC from posting information on their websites regarding registered physicians from Arizona and prohibits public disclosure of any information about registrants beyond the registrant's name, registration status, and Arizona license number.
- 10) Provides that a registered physician from Arizona shall be deemed to be a licensee of the MBC or the OMBC for purposes of the laws administered by the applicable board relating to standards of practice and discipline, for the duration of the registration.
- 11) Exempts registered physicians from Arizona from the Radiologic Technology Act's requirements relating to the use of X-ray equipment for diagnostic purposes.
- 12) Restricts a registered physician from Arizona to only practice medicine within the scope of providing abortions and abortion-related care to patients traveling from Arizona seeking abortions or abortion-related care in California.
- 13) Authorizes the MBC or the OMBC to take appropriate enforcement action against a registered physician from Arizona, including, but not limited to, revoking or suspending the registration of a person who does not meet the registration requirements or the laws applicable to licensees pursuant to either the Medical Practice Act or the Osteopathic Act.
- 14) Prohibits the MBC or the OMBC from imposing a fee for the registration program for physicians from Arizona.
- 15) Allows the MBC and the OMBC to develop and publish guidance to implement the bill.
- 16) Defines "good standing" as an active license to practice medicine with no restrictions or limitations on that license in effect and no accusation, or similar filing initiating disciplinary action, is pending, unless that accusation or filing is for an offense solely related to the performance of an abortion in that state.
- 17) Subjects the bill to inoperability on December 1, 2024, and to repeal on January 1, 2025.
- 18) Declares that it is necessary for the bill's provisions to take effect immediately in order to increase access to abortion care for Arizonans following the recent Arizona Supreme Court ruling law by increasing the ability for Arizonans to see an Arizona provider in California.

FISCAL EFFECT: Unknown.

COMMENTS:

Purpose. This bill is sponsored by **Governor Gavin Newsom** and the **California Legislative Women's Caucus**, along with co-sponsors **Lieutenant Governor Eleni Kounalakis**, **Secretary of State Shirley N. Weber, Ph.D.**, and **State Treasurer Fiona Ma**. According to the author:

“A recent Arizona Supreme Court decision upholding an 1864 abortion ban will result in Arizonans effectively losing all access to abortion care within their state as of June 8, 2024, and will reinstate criminal punishments to any and all providers of abortion related services or abortion related drugs with a state prison sentence of two to five years. In response, Assemblymember Aguiar-Curry and I are jointly authoring SB 233, a bill sponsored by Governor Newsom and the Legislative Women’s Caucus. SB 233 will temporarily allow (through November 30, 2024) licensed Arizona doctors to provide abortion and abortion related care to patients in California. These provisions are comparable to the medical licensing California granted to military spouses with the passage of AB 107 last year. Under SB 233 Arizona doctors who provide abortion services within California will be under the oversight of California’s Medical and Osteopathic Medical Boards, and would be required to provide registration information to those boards to ensure safety and accountability. All information related to doctors registered under this program will remain private. This urgent but temporary measure will ensure Arizonans have an option to seek out abortion related services, and protect their physicians delivering this care in California from criminal prosecution.”

Background.

Medical Board of California. The first Medical Practice Act in California was enacted in 1876. Early iterations of the MBC consisted of members appointed by professional medical societies; in 1901, the Act was completely rewritten and a Board of Examinations was established, and further significant changes to the Act were made in 1976. The MBC underwent more structural reform in 2008 with the elimination of its Divisions of Licensing and Medical Quality and the creation of a unified board. Today, the MBC is comprised of 15 members: eight physician members and seven public members. Protection of the public is the MBC’s highest priority.

The MBC is primarily responsible for licensing and regulating physicians and surgeons, whose certificates authorize the plenary practice of all recognized fields of medicine. The MBC also has jurisdiction over special program registrants and organizations and special faculty permits, which allow those who are not MBC licensees but who meet certain licensure exemption criteria to perform duties in specified settings. The MBC also has authority over licensed midwives, medical assistants, and registered polysomnographic professionals. The MBC additionally approves accreditation agencies that accredit outpatient surgery settings and issues fictitious name permits to physicians practicing under a name other than their own.

Osteopathic Medical Board of California. The Osteopathic Initiative Act was approved by California voters in 1922, establishing a Board of Osteopathic Examiners tasked with licensing osteopathic physicians and surgeons. In 2002, the OMBC volunteered to be included under the umbrella of the DCA. The OMBC is responsible for licensing and regulating physicians and surgeons who received their training as Doctors of Osteopathic Medicine (D.O.s). Osteopathic physicians and surgeons are authorized to prescribe medication and to practice in all the same medical and surgical specialty areas as Medical Doctors (M.D.s) licensed by the MBC, but are trained to consider the health of the whole person and use their hands in an integrated approach to help diagnose and treat their patient. As of Fiscal Year 2022-23 there were approximately 14,478 osteopathic physicians and surgeons licensed by the OMBC in California, in comparison to approximately 156,418 physicians and surgeons licensed by the MBC.

Abortion Rights in California. In 2002, the Legislature enacted the Reproductive Privacy Act, which recognized that every woman in California possessed the fundamental right to choose to bear a child or to choose and obtain an abortion. Under the Reproductive Privacy Act, the state may not deny or interfere with a woman’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 woman. The only restriction on abortion is when, in the good faith medical judgment of a physician, the fetus is viable and there is no risk to the life or health of the pregnant woman associated with the continuation of the pregnancy. Currently in California, medical providers who can perform abortions within their scope of practice are physicians and, under physician supervision, nurse practitioners, certified nurse-midwives, and physician assistants.

The Reproductive Privacy Act codified the right to choose whether to have an abortion as a form of exercising the implicit right to privacy under the Fourteenth Amendment of the United States Constitution, as previously affirmed by the Supreme Court of the United States in *Roe v. Wade*, which found that Texas’s criminal abortion statute violated the Due Process Clause. The Court ruled in *Roe* that during the first trimester, “the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman’s attending physician.” The Court ruled that during the second trimester, a state may only choose to “regulate the abortion procedure in ways that are reasonably related to maternal health,” but that states may ban abortion altogether during the third trimester, “except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.”¹ This holding was later expanded upon in the Court’s 1992 decision in *Planned Parenthood v. Casey*, which declared state laws to be unconstitutional if they placed an “undue burden” on access to abortion before fetal viability.²

However, recent judicial activism within the Court nationally imperiled the constitutional protections previously recognized in *Roe*. In 2021, the Texas Legislature passed Senate Bill 8, referred to as the Texas Heartbeat Act. That bill criminalized abortion after the detection of embryonic or fetal cardiac activity, essentially banning abortion after approximately six weeks. The constitutionality of the Texas Heartbeat Act was challenged in *Whole Woman’s Health v. Jackson*, which sought to enforce the *Roe* precedent and overturn Senate Bill 8. However, the Court declined to enjoin the Texas Heartbeat Act, which many pro-choice advocates viewed as portending a future decision by the Court to overturn or severely diminish the constitutional rights guaranteed under *Roe*.

Subsequently, on December 1, 2021, the Court heard oral arguments in *Dobbs v. Jackson Women’s Health Organization*, a case regarding a 2018 law in the State of Mississippi that banned abortion after 15 weeks of pregnancy. *Dobbs* was a direct challenge to the legal precedents set in *Roe* and *Casey* and was the first time the Court ruled on the constitutional right to pre-viability abortion since *Roe*. On June 24, 2022, the Court published its ruling that abortion is *not* a right protected under the Constitution of the United States. This decision effectively overturned *Roe* and left the question of whether to ban abortion and other forms of reproductive care up to individual states.³

¹ *Roe v. Wade*, 410 U.S. 113 (1973)

² *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)

³ *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022)

Immediately following the Court’s decision, State Senate President pro Tempore Toni Atkins sponsored Senate Constitutional Amendment 10, which placed a proposition on the 2022 ballot titled *Constitutional Right to Reproductive Freedom*. Proposition 1 explicitly made abortion and access to contraceptives a constitutional right in California. The ballot proposition passed with over 66 percent of voters in favor, formally enshrining the protections of *Roe* into the state’s constitution and securing essential reproductive rights for pregnant people in California.

Access to Abortion in Other States. While California law protects a pregnant person’s right to choose in a manner consistent with *Roe*, the Guttmacher Institute initially estimated that approximately 26 states would likely seek to ban abortion with *Roe* overturned, resulting in 36 million women and other people who may become pregnant losing access to abortion care nationwide.⁴ This included 13 states with so-called “trigger ban” statutes, designed to immediately take effect following the Court’s invalidation of *Roe* protections, and a number of additional states with pre-*Roe* laws restricting abortion still in place.⁵

In spite of efforts by numerous states to ban or significantly restrict access to abortion, some medical professionals may still choose to provide abortions in defiance of those state laws, potentially including professionals licensed in California who may travel to other states to provide those health care services. Additionally, many residents of states that have limited abortion access may travel to states like California, where their rights remain undiminished.⁶ Following news reports that the impending decision in *Dobbs* was likely to overturn the protections of *Roe*, Governor Gavin Newsom announced that California would “maintain and improve availability of safe and accessible reproductive health care services and prepare for a potential influx of people from other states seeking reproductive health care and abortion services.” This announcement included \$1 million to launch a state-sponsored website, abortion.ca.gov, which provides both California residents and travelers from other states with information about their reproductive rights and how to seek abortion services in California.

Several states have attempted to impose their abortion laws on their residents even when the services are performed in states that have remained consistent with the protections of *Roe*. The legislatures in Arkansas, South Carolina, Texas, Ohio, Missouri, and Alabama, for example, have all proposed or enacted laws to criminalize residents seeking or assisting those seeking abortions out-of-state. These state laws are arguably unconstitutional; in 2023, the United States Department of Justice filed a statement of interest in two consolidated lawsuits seeking to protect the right to interstate travel, including the right to travel to another state to obtain an abortion that is legal in the destination state. On the day that the *Dobbs* decision was officially published, the governors of California, Oregon and Washington announced a “Multi-State Commitment to defend access to reproductive health care, including abortion and contraceptives, and committed to protecting patients and doctors against efforts by other states to export their abortion bans to our states.”

⁴ <https://www.guttmacher.org/article/2021/10/26-states-are-certain-or-likely-ban-abortion-without-roe-heres-which-ones-and-why>

⁵ <https://www.guttmacher.org/article/2022/06/13-states-have-abortion-trigger-bans-heres-what-happens-when-roe-overturned>

⁶ <https://www.guttmacher.org/2023/12/high-toll-us-abortion-bans-nearly-one-five-patients-now-traveling-out-state-abortion-care>

To prepare for an anticipated surge in demand for abortion services following the Court's decision in *Dobbs*, including from patients traveling from restrictive states, the California State Legislature enacted Assembly Bill 657 (Cooper) in 2022, sponsored by the American College of Obstetricians and Gynecologists – District IX. AB 567 requires the MBC, the OMBC, the Board of Registered Nursing, and the Physician Assistant Board to expedite the license application for applicants who intend to provide abortions. Under this expedited licensing program, the applicant must provide a letter declaring the applicant's intention to provide abortions and a letter from an employer or health care entity indicating that the applicant has accepted employment or entered into a contract to provide abortions, the applicant's starting date, the location where the applicant will be providing abortions, and that the applicant will be providing abortions within the scope of practice of their license in accordance with the Reproductive Privacy Act.

The Legislature also enacted Assembly Bill 2626 (Calderon) in 2022 to provide reassurance to California health care professionals that they would not be subjected to discipline for continuing to provide abortion care and other reproductive services following the ruling in *Dobbs*. That bill reiterated that licensing boards may not subject licensed health care professionals to serious discipline for performing an abortion that is legal under California law, protecting the license of those who provide abortions in states that have banned abortion or to patients who have traveled from those states to California to seek care. While California licensing boards do not have direct jurisdiction over care provided in other states, they are notified when a licensee was either convicted of a crime in another state or subjected to discipline by another state's licensing board. When notified, the California boards may decide whether to take disciplinary action. AB 2626 prohibited boards from suspending or revoking a license solely because the licensee performed an abortion in accordance with California law.

In 2023, Assembly Bill 1707 (Pacheco) was enacted to further protect health care professionals who perform abortions and other forms of care prohibited in other states that patients would have a right to receive in California. Specifically, the bill prohibited healing arts boards from denying or disciplining a licensee on the basis of a civil judgment, criminal conviction, or disciplinary action in another state 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 California, including sexual and reproductive health care and gender affirming care. The bill also enacted similar prohibitions against discipline against health professionals by the California Department of Public Health and licensed health facilities.

Access to Abortion in Arizona. While numerous states across the country imposed total or partial bans on abortion following the Court's decision to overturn *Roe*, considerable attention has recently been directed to Arizona and a law enacted in that state during the Civil War era. In 1864, the first legislative assembly of the Arizona Territory enacted what is referred to as the Howell Code, named for a judge appointed by President Abraham Lincoln to establish a comprehensive set of laws for the territory following its segmentation from the New Mexico Territory. While the majority of the Howell Code has been superseded by modern statutes following statehood, one previously dormant section of that law relating to abortion was reactivated following the *Dobbs* decision. Section 45 of the Howell Code reads, in part:

[E]very person who shall administer or cause to be administered or taken, any medicinal substances, or shall use or cause to be used any instruments whatever, with the intention to procure the miscarriage of any woman then being with child, and shall be thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than two years nor more than five years: Provided, that no physician shall be affected by the last clause of this section, who in the discharge of his professional duties deems it necessary to produce the miscarriage of any woman in order to save her life.⁷

This relatively short statute—which immediately follows a series of statutes governing the Arizona Territory’s laws relating to dueling—represents one of the country’s oldest abortion bans on record. It does not contain any exceptions beyond cases where the mother’s life is in immediate jeopardy. Further, the penalty for violating the statute is imprisonment for at least two years. While the 1864 law was recodified in 1901 and 1913 and was never subsequently repealed, its language was long considered inoperative and unenforceable following the Court’s decision in *Roe* in 1973.

At the time of the *Dobbs* decision, Arizona’s legislature had more recently enacted a law in 2021 that prohibited most abortions after 15 weeks of pregnancy; this law was initially blocked based on *Roe* protections but subsequently considered enforceable following the Court’s decision to overturn that decision. However, in 2022, then-Arizona Attorney General Mark Brnovich sought an injunction to reactivate the stricter 1864 ban, with Dr. Eric Hazelrigg, an anti-abortion physician, taking over as intervenor following the election of pro-choice Democrat Kris Mayes as Arizona’s new Attorney General. On April 9, 2024, the Arizona Supreme Court ruled in *Planned Parenthood Arizona v. Mayes* that the 1864 abortion ban was in fact still enforceable, notwithstanding the 2021 law or any previously recognized constitutional protections.

The Arizona Supreme Court found that “the legislature has demonstrated its consistent design to restrict elective abortion to the degree permitted by the Supremacy Clause and an unwavering intent since 1864 to proscribe elective abortions absent a federal constitutional right.” In reaching this conclusion, the Arizona Supreme Court argued that “the abortion issue implicates morality and public policy concerns, and invariably inspires spirited debate and engenders passionate disagreements among citizens. A policy matter of this gravity must ultimately be resolved by our citizens through the legislature or the initiative process.”⁸

Immediately following this decision, Arizona Attorney General Mayes issued, in part, the following statement:

“Today’s decision to reimpose a law from a time when Arizona wasn’t a state, the Civil War was raging, and women couldn’t even vote will go down in history as a stain on our state. This is far from the end of the debate on reproductive freedom, and I look forward to the people of Arizona having their say in the matter. And let me be completely clear, as long as I am Attorney General, no woman or doctor will be prosecuted under this draconian law in this state.”

⁷ <https://azmemory.azlibrary.gov/nodes/view/38227>

⁸ *Planned Parenthood Arizona, Inc. v. Mayes*, No. CV-23-0005-PR (Ariz. Apr. 9, 2024)

Arizona Attorney General Mayes motioned for reconsideration of the Arizona Supreme Court’s decision, but this motion was denied. However, a prior decision issued by the Arizona Supreme Court in a related case, *Isaacson v. State of Arizona*, had previously prohibited the state from enforcing the 1864 ban until 45 days following the issuance of a final mandate in the *Planned Parenthood Arizona v. Mayes* decision, which was procedurally issued 15 days following publication of the decision.⁹ As a result, it is understood that the 1864 law does not officially become reactivated and enforceable until June 27, 2024.

As the impending enforceability of the 1864 abortion ban in Arizona looms, a ballot committee, Arizona for Abortion Access, has been working to place a citizen’s initiative for a constitutional amendment to establish a “fundamental right to abortion” in Arizona. This initiative would effectively repeal both the 1864 law and the 15-week ban by prohibiting any denial, restriction, or interference with the right to abortion before fetal viability “unless justified by a compelling state interest that is achieved by the least restrictive means.” The Arizona Right to Abortion Initiative, which is supported by Arizona Governor Katie Hobbs, appears likely to appear on the ballot during the state’s November 5, 2024 election, and polling indicates it has favorable odds of passing.

The legislature in Arizona has also recently taken action to legislative repeal the 1864 abortion ban. After several prior failed attempts, on April 24, 2024 the Arizona House of Representatives voted 32-28 to repeal the law, and on May 1, 2024 the Arizona State Senate voted 16-14 to pass the bill, which Arizona Governor Hobbs signed into law on May 2, 2024. However, legislation enacted in Arizona typically does not take effect until 90 days following the end of the legislative session; this means that the 1864 ban will remain enforceable for a considerable amount of time even following its repeal by the Arizona State Legislature.

California Efforts to Assist Arizona Residents. California and Arizona share a border that is several hundred miles long. In the days following the Arizona Supreme Court’s decision to reactivate the 1864 abortion ban, Arizona Attorney General Mayes told media outlets: “One of my visions is that potentially we could have a safe haven in California for our doctors, nurses and abortion providers.” In response, Governor Newsom issued this statement: “We are also working in close coordination with the Arizona Governor’s office to ensure Arizonans know that California has their back and have resources available should they seek care in our state.”

On April 24, 2024, Governor Newsom joined the California Legislative Women’s Caucus and other legislative leaders and health care advocates to announce plans to sponsor “urgency legislation to allow Arizona abortion providers to temporarily provide abortion care to patients from Arizona who travel to California for care.” The proposal, contained in this bill, is intended to be a “stopgap” for Arizona physicians to be able to provide their patients with abortion services between the date the 1864 ban becomes enforceable in June and the date the 1864 ban is expected to be repealed, either by a ballot initiative or through action by Arizona’s legislature. This bill would go into effect immediately and become inoperative on December 1, 2024.

⁹ On April 30, 2024, Arizona Attorney General Mayes motioned for the Arizona Supreme Court to stay the issuance of the mandate for 90 days pending the Attorney General’s consideration of an appeal to the Supreme Court of the United States; this motion is currently pending at the time of this analysis.

Modeled after language recently enacted through a budget trailer bill to comply with federal law requiring state license portability for military spouses, this bill would require the two regulatory boards responsible for licensing physicians and surgeons—the MBC and the OMBC—to establish temporary registration programs for doctors from Arizona. Registration under either board would allow an Arizona physician to practice medicine in California without going through the process of obtaining a full renewable license. Registered physicians would only be authorized to provide abortions, as defined under the Reproductive Privacy Act, and abortion-related care. Furthermore, registered physicians from Arizona would only be allowed to provide that care to patients who are Arizona residents traveling from Arizona.

The intent of this legislation is not to permanently relocate Arizona physicians to California, or to replace existing processes for expediting licensure of abortion providers by healing arts boards. This bill would instead allow physicians licensed in Arizona to continue to provide needed reproductive health care to their patients during a period of time when Arizona law will restrict access to that care. While it is uncertain how many physicians from Arizona will ultimately take advantage of this registration program, those who do will be afforded a safe haven to counsel and provide abortion services to their patients, who will undoubtedly benefit from continuity of care as they exercise their essential reproductive rights in a state that has maintained the protections previously enshrined in *Roe*.

Current Related Legislation.

AB 2670 (Schiavo) would require the California Department of Public Health to develop an awareness campaign to publicize the internet website “abortion.ca.gov.” *This bill is pending in the Assembly Committee on Appropriations.*

Prior Related Legislation.

SB 385 (Atkins, Chapter 178, Statutes of 2023) expanded the training options for physician assistants seeking to perform abortions by aspiration techniques.

AB 1707 (Pacheco, Chapter 258, Statutes of 2023) prohibited licensed health care professionals, clinics, and health facilities from being denied a license or subjected to discipline on the basis of a civil judgment, criminal conviction, or disciplinary action imposed by another state based solely on the application of a law that interferes with a person's right to receive sensitive services that would be lawful in California.

AB 1369 (Bauer-Kahan, Chapter 837, Statutes of 2023) authorized an out-of-state physician to practice medicine in California without a California license if the practice is limited to delivering health care via telehealth to a patient who has an immediate life-threatening disease or condition.

AB 1666 (Bauer-Kahan, Chapter 42, Statutes of 2022) declared that another state’s law authorizing a civil action against a person or entity that receives or seeks, performs or induces, or aids or abets the performance of an abortion, or who attempts or intends to engage in those actions, is contrary to the public policy of this state.

AB 657 (Cooper, Chapter 560, Statutes of 2022) required the MBC, the OMBC, the Board of Registered Nursing, and the Physician Assistant Board to expedite the license application for an applicant who demonstrates that they intend to provide abortions.

AB 2626 (Calderon, Chapter 565, Statutes of 2022) prohibited specified licensing boards from suspending, revoking, or denying a license solely for performing an abortion that is lawful in California in accordance with the licensee's practice act.

AB 1242 (Bauer-Kahan, Chapter 627, Statutes of 2022) prohibited law enforcement and specified corporations from providing information to out-of-state entities regarding a lawful abortion under California law.

AB 2091 (Bonta, Chapter 628, Statutes of 2022) protected the private information of individuals who seek or consider an abortion, including a prohibition against the sharing of reproductive health care information in response to subpoenas related to out-of-state anti-abortion statutes.

SCA 10 (Atkins, Res. Chapter 97, Statutes of 2022) enacted a constitutional amendment to provide that the state shall not deny or interfere with an individual's reproductive freedom in their most intimate decisions, which includes their fundamental right to have an abortion.

SB 1301 (Kuehl, Chapter 385, Statutes of 2002) enacted the Reproductive to Privacy Act to prohibit the state's denial or interference with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when necessary to protect the life or health of the woman.

ARGUMENTS IN SUPPORT:

Planned Parenthood Affiliates of California (PPAC) writes in support of this bill: "The right to access health care is increasingly determined by where someone lives. This is particularly true in the realm of reproductive care. States across the country are taking unprecedented steps to penalize and bar access to abortion. Since the Dobbs decision, abortion access for 25 million people has been either criminalized or limited and this soon will include our neighbor state, Arizona. Many people are and will continue to travel to California for care, increasing demand for abortion access and putting pressure on existing access to care. Though California has enacted extensive protections for abortion within the state, there are still major gaps when people come to California or when Californians themselves seek health care."

Reproductive Freedom for All California also supports this bill, writing: "The provisions in SB 233 that allow Arizona doctors to be temporarily licensed in California are comparable to the licensing California granted to military spouses under last year's AB 107. Arizona doctors who are licensed under SB 233 will be under the oversight of California's Medical and Osteopathic Medical Boards and will be required to provide registration information to ensure safety and accountability. This urgent but temporary measure will ensure Arizonans have additional options to seek out abortion related services and protect their physicians delivering this care in California from criminal prosecution.

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Lieutenant Governor Eleni Kounalakis (*Co-Sponsor*)
Planned Parenthood Affiliates of California
Reproductive Freedom for All California

REGISTERED OPPOSITION:

None on file.

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