

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1720 (Bauer-Kahan)
Version: July 6, 2023
Hearing Date: July 11, 2023
Fiscal: Yes
Urgency: No
AM

SUBJECT

Clinics: prenatal screening

DIGEST

This bill requires a prenatal ultrasound or fetal ultrasound, Doppler ultrasound, or a similar procedure to only be offered in the following settings: a licensed clinic; an outpatient setting; a licensed health facility; a medical group practice, another form of corporation controlled by physicians and surgeons, a medical partnership, a medical foundation exempt from licensure, or other lawfully organized group of physicians and surgeons that provides health care services; a facility affiliated with any of the previously mentioned settings; or an exempt setting, except as specified. The bill specifies that any person or entity that fails to comply with these requirements is liable for a civil penalty, as provided.

EXECUTIVE SUMMARY

Ultrasound-based imaging is a common technique that uses high-frequency sound waves to generate visual images of organs, tissues, or blood flow. It's most common and well-known use is to provide images of a fetus during pregnancy. Those images can provide obstetricians with information as to the size and age of a fetus, potential birth defects, and other fetal abnormalities. The federal Food and Drug Administration (FDA) says that the medical benefits of this diagnostic procedure outweigh any potential risk to the fetus when performed by licensed medical professionals. In light of this, the bill seeks to only allow a prenatal ultrasound or fetal ultrasound from being performed in regulated medical settings. The bill provides for civil liability for a violation of its provisions.

The bill is author sponsored. There is no known support or opposition. The bill passed the Senate Health Committee on a vote of 10 to 2.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires DPH to licenses and regulate various health facilities, hospitals, skilled nursing facilities, intermediate care facilities, congregate living health facilities, correctional treatment facilities, and hospice facilities. (Health & Saf. Code § 1250 et. seq.)
- 2) Provides for the accreditation of “outpatient settings” by Medical Board of California-approved accrediting agencies. Outpatient settings are defined as any facility, clinic, unlicensed clinic, center, office, or other setting that is not part of a general acute care facility, and where anesthesia, except local anesthesia or peripheral nerve blocks, or both, is used in compliance with the community standard of practice, in doses that, when administered have the probability of placing a patient at risk for loss of the patient’s life-preserving protective reflexes. (Health & Saf. Code § 1248, et seq.)
- 3) Authorizes the formation of certain professional medical corporations under the Moscone-Knox Professional Corporation Act. (Corp. Code § 13401.5.)
- 4) Authorizes the formation of limited partnerships under the Uniform Partnership Act, as provided. (Corp. Code § 16100 et. seq.)

This bill:

- 1) Requires a prenatal ultrasound or fetal ultrasound, Doppler ultrasound, or a similar procedure to only be offered in the following settings: a licensed clinic; an outpatient setting; a licensed health facility; a medical group practice, another form of corporation controlled by physicians and surgeons, a medical partnership, a medical foundation exempt from licensure, or another lawfully organized group of physicians and surgeons that provides health care services; a facility affiliated with any of the previously mentioned settings; or an exempt clinic or facility, except as specified.
- 2) Provides that any person or entity that fails to comply with these requirements is liable for a civil penalty of \$2,500 for a first offense and \$5,000 for each subsequent offense. Specifies that an offense is each ultrasound conducted in violation of these provisions.
- 3) Authorizes the Attorney General, a city attorney, or county counsel to bring an action to impose a civil penalty for a violation of these provisions.

- 4) Provides that a civil penalty is to be deposited into the General Fund if the action is brought by the Attorney General. If an action is brought by a city attorney, the civil penalty is to be paid to the treasurer of the city in which the judgment is entered. If an action is brought by a county counsel, the civil penalty is to be paid to the treasurer of the county in which the judgment is entered.

COMMENTS

1. Stated need for the bill

The author writes:

Ultrasounds are incredibly revealing and sensitive procedures. Currently, California offers no protections for people receiving ultrasound care. The risks of a misread ultrasound are dire and easily avoidable. Requiring a licensed provider or clinic to be involved with ultrasound care is a common sense reform that aligns with the vast majority of ultrasound procedures, while preventing fraud and unlicensed use.

2. This bill requires ultrasounds to be performed in medical settings and provides for civil liability for a violation

The bill requires a prenatal ultrasound or fetal ultrasound, Doppler ultrasound, or a similar procedure to only be offered specified health care settings, except as specified. A violation of the bill makes a person civilly liable for \$2,500 for a first offense and \$5,000 for each subsequent offense. Each ultrasound conducted in violation of these provisions is considered an offense. The Attorney General, a city attorney, or county counsel are authorized to bring an action to enforce these provisions.

The author noted that ultrasounds are some of the most intimate and revealing medical tests one can receive, as they can provide the patient with information, sometimes for the first time, regarding a serious medical issue or development of a fetus. The author further states that misunderstanding a fetus's gestational age, for example, can drastically change the decision-making of a pregnant person, and that unrevealed or overstated abnormalities with a fetus can also rob a pregnant person of their ability to clearly and accurately decide what is the best decision for them. According to the FDA "ultrasound imaging is generally considered safe when used prudently by appropriately trained health care providers, but ultrasound energy has the potential to produce biological effects on the body" and that getting ultrasounds for nonmedical purposes has been discouraged.¹

¹ Fed. Drug Administration, *Ultrasound Imaging*, <https://www.fda.gov/radiation-emitting-products/medical-imaging/ultrasound-imaging>.

The Senate Health Committee analysis notes that the bill is related to prenatal ultrasounds, which are sometimes used in nonmedical settings, such as pregnancy resource centers or CPCs. That Committee further elaborates on the topic of CPCs writing:

According to a 2020 study published in the journal *Perspectives on Sexual and Reproductive Health*, the primary mission of pregnancy resource centers is to dissuade women from choosing abortion. The centers, most of which are religiously affiliated, typically offer services like pregnancy tests and sometimes resources like diapers or baby clothes, alongside counseling with an anti-abortion message. The study, which was conducted by researchers at Advancing New Standards in Reproductive Health (ANSIRH), a group at the UC San Francisco, concluded that pregnancy resource centers play a role in meeting the acute material and social needs of low-income pregnant women. However, the constraints on the resources the centers offer mean that this support cannot be part of a reliable system of care.

The American Medical Association's (AMA) stated position on pregnancy counseling centers states that any entity that represents itself as offering health-related services should uphold the standards of truthfulness, transparency, and confidentiality that govern health care professionals. The AMA urges the development of effective oversight for entities offering pregnancy-related health services and counseling, and that any entity offering crisis pregnancy services truthfully describe the services they offer or for which they refer (including prenatal care, family planning, termination, or adoption services) in communications on site and in their advertising, and before any services are provided to an individual patient; and, be transparent with respect to their funding and sponsorship relationships. The AMA further states that any entity licensed to provide medical or health services to pregnant women ensure that care is provided by appropriately qualified, licensed personnel; and, abide by federal health information privacy laws.²

SUPPORT

None known

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

AB 315 (Bauer-Khan) specifies that a person doing business who performs or intends to perform pregnancy-related services cannot advertise using false or misleading

² Sen. Health Comm. Analysis AB 17200 (2023-24 Reg. Sess.) as amended June 19, 2023 at pp. 2-3.

statements about whether they provide abortion services, and allows public prosecutors to file lawsuits against businesses that violate this provision. AB 315 was held in the Assembly Appropriations Committee.

Prior Legislation:

AB 2360 (Lieu, 2006) would have prohibited, until January 1, 2017, a manufacturer or other person in California from selling, leasing, or otherwise distributing in this state an ultrasound diagnostic imaging machine to any person, with specified exceptions. This bill was vetoed by then Governor Schwarzenegger stating “current law already provides who can and cannot purchase and operate ultrasound diagnostic imaging machines[,]” so the bill causes “unneeded confusion” and “does not make consumers any safer than they are today.”

PRIOR VOTES

This bill was gut and amended on June 19, 2023. The prior votes in the Assembly are based on the bill before it was amended on June 19, 2023, and are therefore not relevant.

Senate Health Committee (Ayes 10, Noes 2)
