

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1375 (Atkins)
Version: February 18, 2022
Hearing Date: April 19, 2022
Fiscal: Yes
Urgency: No
AM

SUBJECT

Nursing: nurse practitioners

DIGEST

This bill authorizes nurse practitioners (NPs) who are qualified to independently practice to provide abortion services by aspiration techniques in the first trimester without having to work under existing prescribed standardized procedures and makes conforming changes. The bill also deletes the requirement for the Board of Registered Nursing to define the minimum standards for the postgraduate transition to practice (TTP) and authorizes an NP with a minimum of three-years of full-time practice, as of January 1, 2023, to satisfy TTP requirements.

EXECUTIVE SUMMARY

Reproductive rights are under attack across the nation. Since the U.S. Supreme Court's decision in *Roe v. Wade* in 1973, the Court has continuously held that it is a constitutional right to access abortion before fetal viability exists; however, the Court is reviewing a case that directly challenges this precedent. If the Court were to overturn or weaken *Roe*, people in roughly half the country may lose access to abortion services. Additionally, new tactics to deny people access are also underway evidenced by the recent legislation in Texas. According to the author, 40 percent of counties in California do not have clinics that provide abortions. This bill seeks to ensure that those seeking abortion services in California will be able to access those services by allowing NPs qualified to independently practice the authorization to provide abortion services in the first trimester without having to work under standardized procedures, as is required under existing law.

The sponsor of the bill is the California Association for Nurse Practitioners. The bill is supported by numerous organizations, labor, and local governments. The bill is opposed by various associations representing medical professionals, the California Catholic Conference, groups against the fundamental right to access abortion, and two

individuals. The bill passed out of the Senate Business, Professions and Economic Development Committee on a vote of 9-4.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Holds that the federal constitution's implied right to privacy extends to a woman's decision about whether or not to have an abortion. (*Roe v. Wade* (1973) 410 U.S. 113.)
- 2) Authorizes the government to impose restrictions on abortion as long as those restrictions do not create an undue burden on an individual's right to choose to terminate a pregnancy. (*Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992) 505 U.S. 833.)

Existing state law:

- 1) Holds that the state constitution's express right to privacy extends to a person's decision about whether or not to have an abortion. (*People v. Belous* (1969) 71 Cal.2d 954.)
- 2) Establishes the Reproductive Privacy Act and provides that the Legislature finds and declares that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions. (Health & Saf. Code §§ 123460 et. seq., § 123462.)
 - a) Prohibits the state from denying or interfering with an individual's fundamental right to choose to bear a child or to choose to obtain an abortion, with specified exceptions. (Health & Saf. Code § 123462(c).)
 - b) Provides that every individual has the fundamental right to choose to bear a child or to choose to obtain an abortion, with specified exceptions. (*Id.* at subd. (b).)
- 3) Provides the performance of an abortion is unauthorized if either a) or b) is true.
 - a) The person performing the abortion is not a health care provider authorized to perform an abortion under Section 2253 of the Business and Professions Code.
 - b) The abortion is performed on a viable fetus, and both of the following are established:
 - i. in the good faith medical judgment of the physician, the fetus was viable; and
 - ii. in the good faith medical judgment of the physician, continuation of the pregnancy posed no risk to life or health of the pregnant woman. (Health & Saf. Code § 123468.)

- 4) Authorizes a person with a license or certificate to practice as a nurse practitioner (NP) or a certified nurse-midwife to perform an abortion by medication aspiration techniques in the first trimester of pregnancy if they have completed a training by the Board of Registered Nurses, as provided, and adhere to standardized procedures that specify certain information. (Bus. & Prof. Code §2253 & §2725.4.)
- 5) Authorizes an NP to perform certain functions in specified settings independently if the NP has met various requirements, including TTP in California consisting of a minimum of three full-time equivalent years of practice of 4,600 hours. (Bus. & Prof. Code §2837.103 & § 2837.104.)

This bill:

- 1) Authorizes nurse practitioners (NPs) who are qualified to independently practice to provide abortion services by aspiration techniques in the first trimester without having to work under standardized procedures prescribed in existing law.
- 2) Provides that a nurse practitioner who has been practicing a minimum of three full-time equivalent years or 4,600 hours as of January 1, 2023, satisfies the TTP requirement, and that clinical experience may include experience obtained before January 1, 2023, and be counted towards the three full-time equivalent years or 4,600 hours.
- 3) Clarifies that any health care provider authorized to perform an abortion under Section 2253 of the Business and Professions Code must also comply with the existing provisions in Section 123468 of the Health and Safety Code.

COMMENTS

1. Stated need for the bill

The Author writes:

In statehouses and courthouses across the country, all the way up to the Supreme Court, reproductive rights are facing unprecedented threats. With an increasing shortage of health care providers, far too many Californians are struggling to get the care they need, when they need it. Patients – especially pregnant people considering abortion – do not have time to waste. That is why it is so important that highly skilled, qualified nurse practitioners have the opportunity to practice independently, including the ability to provide first trimester abortions and reproductive care.

SB 1375 would help address the shortage of health care professionals projected for California and complements recommendations from the California Future of Abortion Council to strengthen reproductive care. The bill would widen access and

affordability to abortion and healthcare services by increasing the number of nurse practitioners able to provide critically-needed care, especially for marginalized and lower-income communities.

2. The ability to access abortion is under attack across the nation

a. *Access to abortion is a constitutional right under Roe v. Wade*

Roe v. Wade, (1973) 410 U.S. 113, is the landmark U.S. Supreme Court decision holding that the implied constitutional right to privacy extends to an individual's decision whether to terminate a pregnancy, while allowing that some state regulation of abortion access could be permissible. The plaintiff, unable to afford travel to another state to obtain an abortion, challenged the Texas statute making it a crime to perform an abortion unless an individual's life was at stake. The Court struck down the Texas law, finding for the first time that the constitutional right to privacy is "broad enough to encompass a woman's decision whether or not to terminate her pregnancy." At the same time, the high court also defined two compelling state interests that would satisfy restrictions on an person's right to choose to terminate a pregnancy: 1) states may regulate the abortion procedure after the first trimester of pregnancy in ways necessary to promote an individual's health; and 2) after the point of fetal viability outside of the womb, a state may, to protect the potential life of the fetus, prohibit abortions that are not necessary to preserve an person's life or health.

b. *Ongoing legal challenges to Roe v. Wade*

Roe v. Wade has been one of the most debated Supreme Court decisions, and its application and continued validity have frequently been challenged in the courts. Most significantly, in *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992) 505 U.S. 833, the Court reaffirmed the basic holding of *Roe v. Wade*, yet also permitted states to impose restrictions on abortion as long as those restrictions do not create an undue burden on a person's right to choose to terminate a pregnancy.

Exactly what constitutes an undue burden remains a point of frequent legal contention. Recently, the Court applied the standard in *Casey* to strike down a Texas law that required any facility performing abortions to meet the state requirements for an ambulatory surgical center and also required any doctor performing abortions to have admitting privileges at a hospital within 30 miles. (*Whole Woman's Health v. Hellerstedt* (2016) 579 U.S. 582; 136 S. Ct. 2292). Since, in practice, almost no abortion facility or provider could meet these mandates, the Texas law had the effect of dramatically restricting access to abortion services in the state. Although the Court reaffirmed that ruling last year in *June Medical Services, L.L.C. v. Russo* (2020) ___ U.S. ___ (140 S.Ct. 2103), the outcome in that case relied upon the vote of Justice Ruth Bader Ginsburg, who subsequently passed away, and the concurrence of Chief Justice John Roberts, who

joined the majority solely on the basis of *stare decisis* – the doctrine that courts must ordinarily follow prior precedent.

Meanwhile, as the post-*Roe* jurisprudence has evolved, a minority of the U.S. Supreme Court's justices have at various times indicated their belief that *Roe v. Wade* should be overturned altogether. (See, e.g., *Webster v. Reprod. Health Servs.* (1989) 492 U.S. 490.) With President Donald Trump's appointment of Justices Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett to the high court, it may be that a majority for that view now exists. Were the U.S. Supreme Court to overturn *Roe*, state governments or the federal government would then be free to impose additional restrictions on abortion or even outlaw it entirely.

This scenario may be closer than ever before, currently pending at the U.S. Supreme Court is the case of *Dobbs v. Jackson Women's Health* where the court is deciding whether all pre-viability prohibitions on elective abortions are unconstitutional. (*Dobbs v. Jackson Women's Health* (2021) ___U.S.___ (141 S.Ct. 2619).) Oral arguments were heard in December of 2021 and a decision is expected by the end of the Court's term in June 2022. Some legal experts are predicting that the conservative members of the U.S. Supreme Court will use this opportunity to weaken or completely overturn *Roe*. If this happens, as many as 21 states would most definitely ban abortion and five others likely would due to the political make-up of their governments and historical actions.¹ According to the Guttmacher Institute, nine states still have abortion bans in their statutes from before *Roe* was decided, and 12 other states currently have trigger bans that would go into effect if it is overturned.² The Guttmacher Institute estimates that if all the 21 states expected to enact a total ban on abortion actually do, the number of patients who would find their nearest clinic in California would increase by 2,923 percent from 46,000 to 1.4 million.³

c. New challenges to exercising one's constitutional right to an abortion

Recently, Texas perniciously enacted a law with an enforcement scheme that was designed to avoid judicial scrutiny of its clearly unconstitutional provisions.⁴ This law prohibits a physician from knowingly performing or inducing an abortion on a pregnant person if the physician detected a fetal heartbeat for the unborn child, as

¹ Elizabeth Nash, *26 States are Certain or Likely to Ban Abortion Without Roe: Here's Which Ones and Why*, Guttmacher Institute (Oct. 2021) available at <https://www.guttmacher.org/article/2021/10/26-states-are-certain-or-likely-ban-abortion-without-roe-heres-which-ones-and-why> (as of Apr. 8, 2022).

² *Ibid.*

³ *If Roe v. Wade Falls: Travel Distance for People Seeking Abortion*, Guttmacher Institute, available at [If Roe v. Wade Falls: Travel Distance for People Seeking Abortion | Guttmacher Institute](#) (as of Apr. 9, 2022).

⁴ See *Whole Woman's Health v. Jackson* (2021) 142 S. Ct. 522, at 543 (conc. opn. Roberts, C.J., Breyer, Sotomayor, & Kagan) that states Texas has passed a law that is contrary to *Roe* and *Casey* because it has "the effect of denying the exercise of what we have held is a right protected under the Federal Constitution" and was "designed to shield its unconstitutional law from judicial review." (footnote omitted).

specified, or failed to perform a test to detect a fetal heartbeat. (Tex. Health & Safety Code § 171.201 et seq. (enacted through Texas Senate Bill 8).) This law essentially places a near-categorical ban on abortions beginning six weeks after a person's last menstrual period, which is before many people even realize they are pregnant and occurs months before fetal viability.⁵ The law provides that any person, other than an officer or employee of a state or local governmental entity in Texas, may bring a civil action to enforce its provisions, which includes liability of \$10,000 plus costs and fees if a plaintiff prevails while a defendant is prohibited from recovering their own costs and fees if they prevail. (*Id.* at (subd. (b) & (i).)

Texas abortion providers, led by Whole Women's Health and others, filed a case in an attempt to stop the law before it took effect seeking pre-enforcement review of the law and an injunction barring its enforcement. On certiorari from the Fifth Circuit, the Supreme Court held that a pre-enforcement challenge to the law under the U.S. Constitution may only proceed against certain defendants but not others.⁶ The court did not address whether the law was constitutionally sound. However, the court's ruling essentially insulated the private enforcement of the law from challenge, allowing the law to remain in effect.

The inability to challenge the law pre-enforcement allows it to stand as an ominous threat to all persons seeking or performing an abortion and results in many Texans' being denied the ability to exercise their constitutionally protected right under *Roe v. Wade*, as evidenced by that fact abortions in Texas decreased by 60 percent in the first month after Texas Senate Bill 8 took effect.⁷ Clinics in states such as Louisiana, Oklahoma, New Mexico, Kansas, and Colorado are reporting that large numbers of patients from Texas are coming into their clinics.⁸ Portentously, other states are already copying the Texas law. Idaho enacted a similar law via Idaho Senate Bill 1309; however, the implementation of that bill has been stayed by the Idaho Supreme Court pending further action of the court and to allow the parties to the case to file their respective briefs.⁹ Missouri has gone even further than Texas, seeking to allow civil suits to punish

⁵ See *Whole Woman's Health v. Jackson* (2021) 141 S. Ct. 2494, at 24998 (dis. opn. Sotomayor, Breyer, & Kagan).

⁶ *Whole Woman's Health v. Jackson* (2021) 142 S. Ct. 522, 530.

⁷ Shafkat Anowar, *Abortions in Texas fell 60% in the first month after its new law took effect*, NPR (Feb. 10, 2022) available at <https://www.npr.org/2022/02/10/1079963293/abortions-in-texas-fell-60-in-the-first-month-after-its-new-law-took-effect> (as of Apr. 8, 2022).

⁸ Elenor Klibanoff, *Six months in, "no end in sight" for Texas' new abortion law*, The Texas Tribune (Mar. 1, 2022) available at <https://www.texastribune.org/2022/03/01/texas-abortion-law-supreme-court/> (as of Apr. 8, 2022).

⁹ Order Granting Motion to Reconsider, Idaho Supreme Court, Docket No. 49615-2022, Apr. 8, 2022 available at <https://coi.isc.idaho.gov/docs/Supreme/49615-2022/040822%20Order%20Granting%20Motion%20to%20Reconsider.pdf>.

freedom state it must be prepared and ready to server anyone who comes to California seeking abortion services.¹⁴

c. The bill allows nurse practitioners authorized to practice independently to perform abortion in the first trimester without adhering to standardized procedures

Assembly Bill 890 (Wood, Ch. 265, Stats. 2020) authorizes NPs who meet certain requirements to practice without physician supervision, or to practice independently. This change allowed NPs to utilize the full extent of their education and training while also expanding access to high-quality care, particularly for underserved areas and populations. The bill currently before the Committee seeks to build on AB 890 by allowing NPs qualified to independently practice the authorization to provide abortion services in the first trimester without having to work under procedures, protocols, or supervision of a physician. This change is in line with recommendations by CA FAB, which include addressing workforce barriers allied health professionals, like NPs, face when providing reproductive and abortion care.¹⁵ This change will not only help Californians exercise their fundamental rights under the law, but hopefully also assist those from outside the state that may come to California seeking reproductive health care services due to the numerous restriction on abortion being enacted across the country. The bill makes conforming changes to Section 123468 of the Health and Safety Code and to clarify that any health care provider authorized to perform an abortion under Section 2253 of the Business and Professions Code must also comply with the existing provisions in Section 123468 of the Health and Safety Code.

4. The bill makes changes related to the completion of postgraduate TTP requirements

AB 890 specified various eligibility requirements for NPs to practice independently, including completion of postgraduate TTP requirements in California. TTP is a period of time intended to allow newly licensed NPs to receive hands on experience and mentoring, working under physician supervision, for a period of three full-time equivalent years of practice or 4600 hours. The bill recognizes that NPs with many years of supervised practice experience should be able to apply that experience moving forward independently. The bill provides that a nurse practitioner who has been practicing a minimum of three full-time equivalent years or 4,600 hours, as of January 1, 2023, satisfies the TTP requirement, and allows clinical experience obtained before January 1, 2023, to be counted towards the three full-time equivalent years or 4,600 hours. The bill also deletes the requirement for the Board of Registered Nursing to define the minimum standards for the TTP through regulations.

The California Medical Association (CMA) is opposed unless amended to the bill because of the changes to the TTP requirements and states they are ready and willing to

¹⁴ *Recommendations to Protect, Strengthen, and Expand Abortion Care in California*, Cal. Future Abortion Council (Dec. 2021) at 2.

¹⁵ *Id.* at 9.

work with the author and other stakeholders to develop amendments to address their concerns. CMA writes:

SB 1375 is noble in its goal to increase access to abortions by addressing the shortage of health care professionals who can perform them. As a proud member of the California Future of Abortion Council, CMA is a fierce supporter of advancing reproductive rights. CMA has a long-standing history of supporting efforts to improve abortion access, but SB 1375 fails to address the root cause of the access issue, which is the training pipeline. Currently, there are not enough trainers who have performed at least 200 aspiration abortions per the HWPP guidelines.

The two new categories of NPs (103s and 104s – based on the code sections) created under AB 890 by law need to be existing NPs (practicing under standardized procedures) in order to be eligible to become a 103 or 104 NP. SB 1375 adds these new categories of NPs to be eligible to be trained to perform aspiration abortions, but in the short term this is effectively taking from the same pool of NPs who can already be trained and will not address the shortage of health care professionals who are able to perform these abortions, regardless of the removal of the minimum standards for the transition to practice. Further, the minimum standards for the transition to practice are some of the only consumer protections in AB 890. These minimum standards requiring 103 and 104 NPs to have the necessary clinical training and education is crucial to the high-quality care that all patients deserve. Removing the minimum standards to the transition to practice does not solve the abortion access problem and is a threat to patient safety.

The California Rheumatology Alliance and the California Society of Plastic Surgeons are also in opposition to the changes to the TPP requirements in the bill for many of the same reasons as CMA.

5. Statements in support

The California Association for Nurse Practitioners, sponsor of the bill, writes:

SB 1375 will increase access to affordable, quality abortion services and reproductive care for all Californians. This bill will address the shortage of health care professionals able to provide early abortion care by expanding on AB 154 by allowing NPs authorized to practice independently to provide first trimester abortion care without physician supervision. Additionally, SB 1375 will make necessary clarifications to existing law under AB 890 that allows nurse practitioners (NPs) who meet specified criteria to practice independently without physician supervision. [...]

It is critical that NPs can practice to the full extent of their education and training, especially when it comes to women's health. With a challenge to *Roe v. Wade* pending at the Supreme Court and with 26 states certain or likely to ban abortion if *Roe* is overturned, according to the California Future of Abortion Council, California is poised to become a safe haven for women seeking abortions from other states.

A coalition of various organizations, including reproductive health advocates, health care practitioners, and civil rights organizations, write in support:

SB 1375 updates the statute to clarify that NPs practicing pursuant to AB 890's removal of physician supervision can provide early abortions. Allowing independent NPs to provide abortion care would significantly expand access to critically needed services. At a time when access to abortion services has been greatly diminished, this legislation is a key step forward for women's health care.

SB 1375 also clarifies that NPs who have been practicing for three or more years satisfy the TTP requirement established in AB 890 and allows NPs to utilize prior practice experience to satisfy the TTP. By allowing experienced nurse practitioners, many of whom have been practicing in good standing under physician supervision for decades, to utilize prior experience to fulfill the TTP requirement, California can increase its ability to quickly expand access to high-quality care, especially for those who need it most. NPs are more likely to see and take on new Medi-Cal and uninsured patients and they can help close the provider gap in communities where accessing health care is already a challenge.

There are thousands of experienced, highly qualified NPs in California eager to help close the provider gap and provide abortion and other services for communities who need them. Our organizations agree – NPs are critical to the short- and long-term goals of California to provide access to high-quality health care for everyone.

6. Statements in opposition

The Capitol Resource Institute writes in opposition:

Capitol Resource Institute is a strong defender of life, and we have always strived to promote a culture that recognizes and honors the dignity of every human life. During the past several years, the California State Legislature has actively opposed this standard by enacting legislation that continues to expand abortion services. Now, with SB 1375, the legislature aims to decrease safety standards meant to protect women by removing the mandate for a physician to be present during an abortion procedure. Allowing nurse practitioners to perform abortions not only increases health risks for women, it effectively

expands the number of abortion providers, and therefore, will increase the number of abortions in California. [...]

SUPPORT

California Association for Nurse Practitioners (sponsor)
Access Reproductive Justice
ACLU California Action
ACTIONS (Abortion Care Training Incubator for Outstanding Nurse Scholars)
American Nurses Association/California
Advancing New Standards in Reproductive Health (ANSIRH)
Association of California Healthcare Districts
Association of California Nurse Leaders
Bay Area Council
Board of Registered Nursing
California Hospital Association
California Nurse-Midwives Association
CaliforniaHealth+ Advocates
California Women's Law Center
City of West Hollywood
Essential Access Health
Equality California
Govern for California
Los Angeles LGBT Center
NARAL Pro-Choice California
Nevada County Citizens for Choice
Planned Parenthood Affiliates of California
San Francisco AIDS Foundation
San Francisco Department of Public Health Advanced Practice Providers
SEIU California State Council
Training in Early Abortion for Comprehensive Healthcare
Women's Health Specialists

OPPOSITION

California Catholic Conference
California Medical Association
California Rheumatology Alliance
California Society of Plastic Surgeons
Capitol Resource Institute
Right to Life League of Southern California
San Bernardino Pregnancy and Family Center
Two individuals

RELATED LEGISLATION

Pending Legislation:

SB 1142 (Caballero, 2022) requires the California Health and Human Services Agency (CHHS) to establish an internet website where the public can find information on abortion services in this state, as provided, and requires the Commission on the Status of Women and Girls (Commission) to provide grants to nonprofit organizations that assist pregnant people who are low income or face other financial barriers, as specified. This bill is set to be heard in this Committee on April 19, 2022.

SB 1245 (Kamlager, 2022) establishes the Los Angeles County Abortion Access Safe Haven Pilot Program for the purpose of expanding and improving access to the full spectrum of sexual and reproductive health care, including abortion, in Los Angeles County, as provided. This bill is set to be heard in this Committee on April 26, 2022.

AB 1666 (Bauer-Kahan, 2022) prohibits the enforcement of out-of-state fetal heartbeat abortion restriction laws in California. AB 1666 is currently on the Assembly Floor.

AB 2134 (Weber, 2022), among other things, permits Medi-Cal providers to apply for grant funding to provide abortion and contraception at no cost to certain uninsured or underinsured individuals, as provided. AB 2134 is currently pending consideration in Assembly Health.

Prior Legislation:

AB 890 (Wood, Ch. 265, Stats. 2020) authorized NPs who meet certain requirements to practice without physician supervision, as provided.

AB 154 (Atkins, Ch. 662, Stats. 2013) authorized NPs, certified nurse midwives, and physician assistants to perform abortions during the first trimester if they completed training, as provided, and adhere to standardized procedures and protocols.

PRIOR VOTES:

Senate Business, Professions and Economic Development Committee (Ayes 9, Noes 4)
