

AMENDED IN ASSEMBLY MAY 1, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2336

Introduced by Assembly Member Grove

*(Coauthors: Assembly Members Conway, Beth Gaines, Harkey, Olsen,
Melendez, and Waldron)*

(Coauthor: Senator Fuller)

February 21, 2014

An act to amend Section 2253 of the Business and Professions Code, and to add Article 2.7 (commencing with Section 123470) to Chapter 2 of Part 2 of Division 106 of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 2336, as amended, Grove. Abortion: gender selection.

Existing law generally ensures the right of a woman to choose or obtain an abortion, but provides that the performance of an abortion is unauthorized under certain circumstances, including when the abortion is performed on a viable fetus and continuation of the pregnancy posed no risk to the life or health of the pregnant woman, as specified.

This bill would enact the Prenatal Nondiscrimination Act. The bill would prohibit a person from intentionally performing or attempting to perform an abortion with knowledge that the pregnant woman is seeking the abortion ~~on account~~ *because* of the gender of the unborn child. The bill would provide for injunctive relief, civil damages, and civil fines for a violation of this provision. The bill would also prohibit

the public disclosure of the woman’s identity, unless she consents to that disclosure.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 Prenatal Nondiscrimination Act or PRENDA.

3 SEC. 2. Section 2253 of the Business and Professions Code is
4 amended to read:

5 2253. (a) Except as otherwise prohibited by Article 2.7
6 (commencing with Section 123470) of Chapter 2 of Part 2 of
7 Division 106 of the Health and Safety Code, failure to comply
8 with the Reproductive Privacy Act (Article 2.5 (commencing with
9 Section 123460) of Chapter 2 of Part 2 of Division 106 of the
10 Health and Safety Code) constitutes unprofessional conduct.

11 (b) (1) Except as provided in paragraph (2), a person is subject
12 to Section 2052 if he or she performs an abortion, and at the time
13 of so doing, does not have a valid, unrevoked, and unsuspended
14 license to practice as a physician and surgeon.

15 (2) A person shall not be subject to Section 2052 if he or she
16 performs an abortion by medication or aspiration techniques in
17 the first trimester of pregnancy, and at the time of so doing, has a
18 valid, unrevoked, and unsuspended license or certificate obtained
19 in accordance with the Nursing Practice Act (Chapter 6
20 (commencing with Section 2700)) or the Physician Assistant
21 Practice Act (Chapter 7.7 (commencing with Section 3500)), that
22 authorizes him or her to perform the functions necessary for an
23 abortion by medication or aspiration techniques.

24 (c) In order to perform an abortion by aspiration techniques
25 pursuant to paragraph (2) of subdivision (b), a person shall comply
26 with Section 2725.4 or 3502.4.

27 SEC. 3. Article 2.7 (commencing with Section 123470) is
28 added to Chapter 2 of Part 2 of Division 106 of the Health and
29 Safety Code, to read:

1 Article 2.7. Abortion: Gender Selection and Prenatal
2 Nondiscrimination
3

4 123470. For purposes of this article, the following definitions
5 shall apply:

6 (a) “Abortion” means the use or prescription of any instrument,
7 medicine, drug, or any other substance or device to terminate the
8 pregnancy of a woman known to be pregnant with an intention
9 other than to increase the probability of a live birth, to preserve
10 the life or health of the child after live birth, or to remove a dead
11 fetus who died as the result of natural causes in utero, accidental
12 trauma, or a criminal assault on the pregnant woman or her unborn
13 child.

14 (b) “Attempt to perform an abortion” means to do or omit to do
15 anything that, under the circumstances as the actor believes them
16 to be, is an act or omission constituting a substantial step in a
17 course of conduct planned to culminate in an abortion. Substantial
18 steps include, but are not limited to, agreeing with an individual
19 to perform an abortion on that individual or on some other person,
20 regardless of whether the term “abortion” is used in the agreement,
21 and regardless of whether the agreement is contingent on another
22 factor such as receipt of payment or a determination of pregnancy;
23 or scheduling or planning a time to perform an abortion on an
24 individual, regardless of whether the term “abortion” is used, and
25 regardless of whether the performance is contingent on another
26 factor such as receipt of payment or a determination of pregnancy.
27 This definition does not require that an abortion procedure actually
28 be initiated for an attempt to occur.

29 123471. A person shall not intentionally perform or attempt
30 to perform an abortion with knowledge that the pregnant woman
31 is seeking the abortion ~~on account~~ *because* of the gender of the
32 unborn child.

33 123472. (a) (1) Any of the following persons may maintain
34 an action against the person who performed an abortion in violation
35 of Section 123471:

36 (A) The person upon whom the abortion was performed,
37 regardless of that person’s age.

38 (B) The father of the unborn child who was the subject of the
39 abortion that was performed.

1 (C) If the person upon whom the abortion was performed is a
2 minor, a parent, legal guardian, or grandparent of the person.

3 (2) No person shall be estopped from recovery in ~~such~~ an action
4 *described in paragraph (1)* on the ground that either the plaintiff
5 or the person upon whom the abortion was performed gave consent
6 to the abortion.

7 (b) If judgment is rendered in favor of the plaintiff in any action
8 described in this section, the person may recover ten thousand
9 dollars (\$10,000) in punitive damages and treble actual damages.
10 The court shall also award reasonable attorney’s fees in favor of
11 the plaintiff against the defendant. If judgment is rendered in favor
12 of the defendant and the court finds that the plaintiff’s suit was
13 frivolous and brought in bad faith, the court may award reasonable
14 attorney’s fees in favor of the defendant against the plaintiff. For
15 purposes of this section, the term “frivolous” has the same meaning
16 as provided in Section 128.5 of the Code of Civil Procedure.

17 (c) (1) A cause of action for injunctive relief against any person
18 who has knowingly violated this section may be maintained by
19 the female upon whom an abortion was performed or attempted
20 to be performed in violation of this section, by a person who is the
21 spouse, parent, sibling, or guardian of, or a current or former
22 licensed health care provider of, the female upon whom an abortion
23 has been performed or attempted to be performed in violation of
24 this act, ~~by~~ a prosecuting attorney with appropriate jurisdiction,
25 or by the Attorney General. The injunction shall prevent the
26 abortion provider from performing further abortions in violation
27 of this section in this state.

28 (2) A person who knowingly violates the terms of an injunction
29 issued in accordance with this section shall be subject to civil
30 contempt, and shall be fined ten thousand dollars (\$10,000) for
31 the first violation, fifty thousand dollars (\$50,000) for the second
32 violation, one hundred thousand dollars (\$100,000) for the third
33 violation, and for each succeeding violation an amount in excess
34 of one hundred thousand dollars (\$100,000) determined by the
35 court to be an amount sufficient to deter future violations. The
36 fines shall be the exclusive penalties for the contempt. Each
37 performance or attempted performance of an abortion in violation
38 of the terms of an injunction is a separate violation. These fines
39 shall be cumulative. However, no fine may be assessed against the
40 woman on whom an abortion is performed or attempted.

1 (d) Any pleading filed in a proceeding or action brought pursuant
2 to this section shall ensure that the identity of any woman upon
3 whom an abortion is performed or attempted is not publicly
4 disclosed and that all parties substitute a pseudonym for the true
5 name of the woman and other parties as necessary to protect the
6 woman's privacy, unless she gives her written consent to the
7 disclosure of her identity. Absent that written consent, the court,
8 upon motion or sua sponte, shall issue orders to the parties,
9 witnesses, and counsel, and shall direct the sealing of the record
10 and exclude individuals from courtrooms or hearing rooms, to the
11 extent necessary to safeguard the woman's identity from public
12 disclosure.

13 123473. The provisions of this article are severable. If any
14 provision of this section or its application is held invalid, that
15 invalidity shall not affect other provisions or applications that can
16 be given effect without the invalid provision or application.