



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-4931/P2
TJD:ekg

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal** 46.245, 253.095, 253.10, 253.105, 441.07 (1g) (f), 457.26 (2)
2 (gm), 632.8985, 940.04 and 940.15 (5); **to amend** 48.375 (4) (a) 1., 69.186 (1)
3 (hf), 69.186 (1) (k), 253.107 (1) (b), 448.02 (3) (a), 939.75 (2) (b) 1. and 968.26 (1b)
4 (a) 2. a.; and **to create** 253.094 of the statutes; **relating to:** right to choose an
5 abortion and elimination of certain abortion-related regulations.

Analysis by the Legislative Reference Bureau

The bill specifies that every individual has the fundamental right to choose to obtain a safe and legal abortion. Under the bill, the state may prohibit an individual from obtaining an abortion after viability unless the individual's life or health is endangered. Also under the bill, a law or rule of this state that restricts an individual's access to abortion is unenforceable if the law or rule does not confer any legitimate health benefit. Any person that is or may be aggrieved by the enforcement of a law or rule passed or promulgated after the effective date of the bill that would be unenforceable under the bill may bring an action in state or federal court for injunctive relief or damages against a state or local official who enforces or attempts to enforce such a law or rule.

In addition, the bill repeals various abortion-related laws, including all of the following:

1. The bill eliminates requirements for voluntary and informed consent before the performance of an abortion. Current law requires that a woman upon whom an abortion is to be performed or induced must give voluntary and informed written

consent to an abortion. Except in a medical emergency, a woman's consent to an abortion is considered informed only if, before the abortion is performed or induced at a time specified in current law, the physician or an assistant has, in person, orally provided the woman with certain information and given to the woman certain written materials.

2. This bill eliminates the prohibition on giving a woman an abortion-inducing drug unless the physician who provided the drug for the woman performs a physical exam on the woman and is physically present in the room when the drug is given to the woman.

3. The bill eliminates the prohibition on coverage of abortions by qualified health plans offered through an exchange in this state.

4. The bill eliminates the prohibition on performing abortions by a physician who does not have admitting privileges in a hospital within 30 miles of the location where the abortion is to be performed. Under a federal appellate court ruling, the requirement to have admitting privileges currently may not be enforced.

5. Under current law, any person, other than the mother, who intentionally destroys the life of an unborn child may be fined not more than \$10,000, imprisoned for not more than six years, or both. Any person, other than the mother, who intentionally destroys the life of an unborn quick child or causes the mother's death by an act done with intent to destroy the life of an unborn child may be fined not more than \$50,000, imprisoned for not more than 15 years, or both. None of these penalties apply to a therapeutic abortion that is performed by a physician; that is necessary, or advised by two other physicians as necessary, to save the life of the mother; and that is performed, except on an emergency basis, in a licensed maternity hospital. These provisions were cited, along with other provisions not affected by this bill that prohibit performing an abortion generally, in *Roe v. Wade*, 410 U.S. 113 (1973), as substantially similar to a Texas statute that was held to violate the due process clause of the 14th Amendment to the U.S. Constitution. The bill repeals these provisions. The bill also repeals the criminal penalty on a person who is not a physician and who intentionally performs an abortion. The bill, however, does not affect any other criminal prohibition or limitation on abortion in current law, such as the prohibition on performing an abortion after the fetus or unborn child has reached viability, or any other homicide prohibition. The bill also does not affect a separate provision in current law that prohibits prosecution of and imposing or enforcing a fine or imprisonment against a woman who obtains an abortion or otherwise violates any abortion law with respect to her unborn child or fetus.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 46.245 of the statutes is repealed.

2 **SECTION 2.** 48.375 (4) (a) 1. of the statutes is amended to read:

1 48.375 (4) (a) 1. The person or the person's agent has, either directly or through
2 a referring physician or his or her agent, received and made part of the minor's
3 medical record, ~~under the requirements of s. 253.10~~, the voluntary and informed
4 written consent of the minor and the voluntary and informed written consent of one
5 of her parents; or of the minor's guardian or legal custodian, if one has been
6 appointed; or of an adult family member of the minor; or of one of the minor's foster
7 parents, if the minor has been placed in a foster home and the minor's parent has
8 signed a waiver granting the department, a county department, or the foster parent
9 the authority to consent to medical services or treatment on behalf of the minor.

10 **SECTION 3.** 69.186 (1) (hf) of the statutes is amended to read:

11 69.186 (1) (hf) The probable postfertilization age of the unborn child, as defined
12 in s. 253.107 (1) (c), ~~and whether an ultrasound was used to assist in making the~~
13 ~~determination of postfertilization age of the unborn child~~, or, if the probable
14 postfertilization age of the unborn child was not determined, the nature of the
15 medical emergency, as defined in s. ~~253.10 (2) (d)~~ 253.107 (1) (b).

16 **SECTION 4.** 69.186 (1) (k) of the statutes is amended to read:

17 69.186 (1) (k) If the unborn child is considered to be capable of experiencing
18 pain under s. 253.107 (3) (a), the nature of the medical emergency, as defined in s.
19 ~~253.10 (2) (d)~~ 253.107 (1) (b), that the pregnant woman had.

20 **SECTION 5.** 253.094 of the statutes is created to read:

21 **253.094 Right to abortion. (1)** Every individual has the fundamental right
22 to choose to obtain a safe and legal abortion, except that the state may prohibit an
23 individual from obtaining an abortion after viability. The state may not prohibit an
24 individual from obtaining an abortion at any time during the pregnancy if the
25 individual's life or health is endangered.

1 **(2)** (a) Except as provided in sub. (1), a law or rule of this state that restricts
2 an individual's access to abortion is unenforceable if the law or rule does not confer
3 any legitimate health benefit, such as by expanding an individual's access to health
4 care services or by, according to evidence-based research, increasing an individual's
5 safety.

6 (b) Any person that is or may be aggrieved by the enforcement of a law or rule
7 passed or promulgated after the effective date of this paragraph [LRB inserts
8 date], that violates this subsection may bring an action in state or federal court for
9 injunctive relief or damages against a state or local official who enforces or attempts
10 to enforce such a law or rule.

11 **SECTION 6.** 253.095 of the statutes is repealed.

12 **SECTION 7.** 253.10 of the statutes is repealed.

13 **SECTION 8.** 253.105 of the statutes is repealed.

14 **SECTION 9.** 253.107 (1) (b) of the statutes is amended to read:

15 253.107 (1) (b) "Medical emergency" has the meaning given in s. ~~253.10 (2) (d)~~
16 means a condition, in a physician's reasonable medical judgment, that so complicates
17 the medical condition of a pregnant individual as to necessitate the immediate
18 abortion of the pregnancy to avert the individual's death or for which a 24-hour delay
19 in performance or inducement of an abortion will create serious risk of substantial
20 and irreversible impairment of one or more of the individual's major bodily functions.

21 **SECTION 10.** 441.07 (1g) (f) of the statutes is repealed.

22 **SECTION 11.** 448.02 (3) (a) of the statutes is amended to read:

23 448.02 (3) (a) The board shall investigate allegations of unprofessional conduct
24 and negligence in treatment by persons holding a license or certificate granted by the
25 board. An allegation that a physician has violated s. ~~253.10 (3)~~, 448.30 or 450.13 (2)

1 or has failed to mail or present a medical certification required under s. 69.18 (2)
2 within 21 days after the pronouncement of death of the person who is the subject of
3 the required certificate or that a physician has failed at least 6 times within a
4 6-month period to mail or present a medical certificate required under s. 69.18 (2)
5 within 6 days after the pronouncement of death of the person who is the subject of
6 the required certificate is an allegation of unprofessional conduct. Information
7 contained in reports filed with the board under s. 49.45 (2) (a) 12r., 50.36 (3) (b),
8 609.17 or 632.715, or under 42 CFR 1001.2005, shall be investigated by the board.
9 Information contained in a report filed with the board under s. 655.045 (1), as created
10 by 1985 Wisconsin Act 29, which is not a finding of negligence or in a report filed with
11 the board under s. 50.36 (3) (c) may, within the discretion of the board, be used as the
12 basis of an investigation of a person named in the report. The board may require a
13 person holding a license or certificate to undergo and may consider the results of one
14 or more physical, mental or professional competency examinations if the board
15 believes that the results of any such examinations may be useful to the board in
16 conducting its investigation.

17 **SECTION 12.** 457.26 (2) (gm) of the statutes is repealed.

18 **SECTION 13.** 632.8985 of the statutes is repealed.

19 **SECTION 14.** 939.75 (2) (b) 1. of the statutes is amended to read:

20 939.75 (2) (b) 1. An act committed during an induced abortion. This
21 subdivision does not limit the applicability of ss. 940.04, 940.13, 940.15 and 940.16
22 to an induced abortion.

23 **SECTION 15.** 940.04 of the statutes is repealed.

24 **SECTION 16.** 940.15 (5) of the statutes is repealed.

