



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-3349/1
TJD:ahe

2017 BILL

1 **AN ACT** *to repeal* 46.245, 69.186 (1) (hf), 69.186 (1) (k), 69.186 (1) (L), 253.095,
2 253.10, 253.105, 253.107, 441.07 (1g) (f), 457.26 (2) (gm), 632.8985, 940.04 and
3 940.15 (5); *to amend* 20.9275 (1) (a), 48.375 (4) (a) 1., 49.45 (49g) (a) 1d., 448.02
4 (3) (a), 939.75 (2) (b) 1., 968.26 (1b) (a) 2. a., 990.001 (17) (b) and 990.01 (19j) (b);
5 and *to create* 253.094 of the statutes; **relating to:** right to choose an abortion
6 and elimination of certain abortion-related regulations.

Analysis by the Legislative Reference Bureau

The bill specifies that every woman has the fundamental right to choose to obtain a safe and legal abortion. Under the bill, the state may not prohibit a woman from obtaining an abortion before viability or from obtaining an abortion at any time during her pregnancy if the termination is necessary, in the professional judgment of a physician, to protect her life or health. Also under the bill, a law or rule of this state that places a burden on a woman's access to abortion is unenforceable if the law or rule does not confer any legitimate health benefit. The bill describes circumstances that constitute a law or rule placing a burden on access to abortion or conferring a 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.

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In addition, the bill makes various changes to the laws relating to abortion, including:

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. The bill eliminates the requirement that except in a medical emergency a physician must determine or rely on another determination of the probable postfertilization age of an unborn child before performing an abortion. The bill also eliminates the prohibition on performing or inducing an abortion if the probable postfertilization age of the unborn child is 20 or more weeks.

3. 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.

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

5. The bill eliminates the prohibition on performing abortions by a physician that 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.

6. 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

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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.** 20.9275 (1) (a) of the statutes is amended to read:

2 20.9275 (1) (a) “Abortion” has the meaning given ~~in s. 253.10 (2) (a)~~ for “induced
3 abortion” under s. 69.01 (13m).

4 **SECTION 2.** 46.245 of the statutes is repealed.

5 **SECTION 3.** 48.375 (4) (a) 1. of the statutes is amended to read:

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

15 **SECTION 4.** 49.45 (49g) (a) 1d. of the statutes is amended to read:

16 49.45 (49g) (a) 1d. “Abortion” has the meaning given ~~in s. 253.10 (2) (a)~~ for
17 “induced abortion” under s. 69.01 (13m).

18 **SECTION 5.** 69.186 (1) (hf) of the statutes is repealed.

19 **SECTION 6.** 69.186 (1) (k) of the statutes is repealed.

20 **SECTION 7.** 69.186 (1) (L) of the statutes is repealed.

21 **SECTION 8.** 253.094 of the statutes is created to read:

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1 **253.094 Right to abortion. (1)** Every woman has the fundamental right to
2 choose to obtain a safe and legal abortion. The state may not prohibit a woman from
3 obtaining an abortion before viability. The state may not prohibit a woman from
4 obtaining an abortion at any time during her pregnancy if the termination is
5 necessary, in the professional judgment of a physician, to protect her life or health.

6 **(2)** (a) A law or rule of this state that places a burden on a woman's access to
7 abortion, as described in par. (b), is unenforceable if the law or rule does not confer
8 any legitimate health benefit, as described in par. (c).

9 (b) A law or regulation places a burden on access to abortion if the law or rule
10 does any of the following:

- 11 1. Forces abortion providers to close.
- 12 2. Increases the time a woman must wait to have an abortion.
- 13 3. Requires a meaningful increase in the distance a woman must travel to
14 access abortion-related care.
- 15 4. Requires medically unnecessary visits to a health care provider before or
16 after obtaining an abortion.
- 17 5. Requires a health care provider to perform a medical service that the
18 provider would not otherwise perform.
- 19 6. Increases the risk to a woman's health.
- 20 7. Causes a meaningful increase in the cost of an abortion or abortion-related
21 procedure.
- 22 8. Has no purpose other than to stigmatize a patient or an abortion provider.
- 23 9. Has no purpose or effect other than to decrease or eliminate access to
24 abortion.

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1 (c) A law or rule confers a legitimate health benefit if the law or rule does any
2 of the following:

- 3 1. Expands a woman's access to health care services.
- 4 2. According to evidence-based research, increases patient safety.

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

10 **SECTION 9.** 253.095 of the statutes is repealed.

11 **SECTION 10.** 253.10 of the statutes is repealed.

12 **SECTION 11.** 253.105 of the statutes is repealed.

13 **SECTION 12.** 253.107 of the statutes is repealed.

14 **SECTION 13.** 441.07 (1g) (f) of the statutes is repealed.

15 **SECTION 14.** 448.02 (3) (a) of the statutes, as affected by 2013 Wisconsin Act
16 240, is amended to read:

17 448.02 (3) (a) The board shall investigate allegations of unprofessional conduct
18 and negligence in treatment by persons holding a license or certificate granted by the
19 board. An allegation that a physician has violated s. ~~253.10(3)~~, 448.30 or 450.13 (2)
20 or has failed to mail or present a medical certification required under s. 69.18 (2)
21 within 21 days after the pronouncement of death of the person who is the subject of
22 the required certificate or that a physician has failed at least 6 times within a
23 6-month period to mail or present a medical certificate required under s. 69.18 (2)
24 within 6 days after the pronouncement of death of the person who is the subject of
25 the required certificate is an allegation of unprofessional conduct. Information

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1 contained in reports filed with the board under s. 49.45 (2) (a) 12r., 50.36 (3) (b),
2 609.17 or 632.715, or under 42 CFR 1001.2005, shall be investigated by the board.
3 Information contained in a report filed with the board under s. 655.045 (1), as created
4 by 1985 Wisconsin Act 29, which is not a finding of negligence or in a report filed with
5 the board under s. 50.36 (3) (c) may, within the discretion of the board, be used as the
6 basis of an investigation of a person named in the report. The board may require a
7 person holding a license or certificate to undergo and may consider the results of one
8 or more physical, mental or professional competency examinations if the board
9 believes that the results of any such examinations may be useful to the board in
10 conducting its investigation.

11 **SECTION 15.** 457.26 (2) (gm) of the statutes is repealed.

12 **SECTION 16.** 632.8985 of the statutes is repealed.

13 **SECTION 17.** 939.75 (2) (b) 1. of the statutes is amended to read:

14 939.75 (2) (b) 1. An act committed during an induced abortion. This
15 subdivision does not limit the applicability of ss. 940.04, 940.13, 940.15 and 940.16
16 to an induced abortion.

17 **SECTION 18.** 940.04 of the statutes is repealed.

18 **SECTION 19.** 940.15 (5) of the statutes is repealed.

19 **SECTION 20.** 968.26 (1b) (a) 2. a. of the statutes is amended to read:

20 968.26 (1b) (a) 2. a. Section ~~940.04~~, 940.11, 940.19 (2), (4), (5), or (6), 940.195
21 (2), (4), (5), or (6), 940.20, 940.201, 940.203, 940.205, 940.207, 940.208, 940.22 (2),
22 940.225 (3), 940.29, 940.302 (2) (c), 940.32, 941.32, 941.38 (2), 942.09 (2), 943.10,
23 943.205, 943.32 (1), 946.43, 946.44, 946.47, 946.48, 948.02 (3), 948.03 (2) (b) or (c),
24 (3), or (4), 948.04, 948.055, 948.095, 948.10 (1) (a), 948.11, 948.13 (2) (a), 948.14,
25 948.20, 948.23 (1), (2), or (3) (c) 2. or 3., or 948.30 (1).

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1 **SECTION 21.** 990.001 (17) (b) of the statutes is amended to read:

2 990.001 (17) (b) If a statute or rule refers to a live birth or to the circumstance
3 in which an individual is born alive, the statute or rule shall be construed so that
4 whoever undergoes a live birth as the result of an induced abortion, as defined in s.
5 ~~253.10 (2) (a)~~ 69.01 (13m), has the same legal status and legal rights as a human
6 being at any point after the human being undergoes a live birth as the result of
7 natural or induced labor or a cesarean section.

8 **SECTION 22.** 990.01 (19j) (b) of the statutes is amended to read:

9 990.01 (19j) (b) “Live birth” means the complete expulsion or extraction from
10 his or her mother, of a human being, at any stage of development, who, after the
11 expulsion or extraction, breathes or has a beating heart, pulsation of the umbilical
12 cord, or definite movement of voluntary muscles, regardless of whether the umbilical
13 cord has been cut, and regardless of whether the expulsion or extraction occurs as
14 a result of natural or induced labor, a cesarean section, or an induced abortion, as
15 defined in s. ~~253.10 (2) (a)~~ 69.01 (13m).

16 **SECTION 23. Nonstatutory provisions.**

17 (1) LEGISLATIVE FINDINGS. The legislature finds all of the following:

18 (a) Comprehensive reproductive health care, including safe abortions, is a vital
19 component of a woman’s overall health and must be protected.

20 (b) Access to abortion is a core component of women’s social and economic
21 equality.

22 (c) Abortion is one of the safest medical procedures in the United States. Data,
23 including data from the Centers for Disease Control and Prevention, show that
24 abortion has over a 99 percent safety record.

25 (d) Any regulation of medical care must have a legitimate purpose.

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1 (e) The goal of medical regulation should be to improve the quality of care and
2 increase access to care.

3 (f) More than 40 years ago, the Supreme Court held in *Roe v. Wade*, 410 U.S.
4 113 (1973), that access to abortion is a constitutional right and that states may not
5 prohibit abortion prior to viability.

6 (g) The right to abortion prior to viability has been upheld time and again by
7 the court, including in the 1992 case *Planned Parenthood of Southeastern*
8 *Pennsylvania v. Casey*, 505 U.S. 833, and most recently in the landmark decision
9 *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), where the court
10 reaffirmed once again a woman's constitutional right to access a safe, legal abortion.

11 (h) In *Whole Woman's Health*, the court struck down 2 Texas laws designed to
12 close abortion providers in the state which the court concluded provided few, if any,
13 health benefits for women.

14 (i) Justice Ruth Bader Ginsburg concluded in her concurrence in *Whole*
15 *Woman's Health* that, given the safety of abortion, "it is beyond rational belief that
16 [Texas] H. B. 2 could genuinely protect the health of women, and certain that the law
17 'would simply make it more difficult for them to obtain abortions.'"

18 (j) In *Whole Woman's Health*, the court held that the Constitution "requires
19 courts to consider the burdens a law imposes on abortion access together with the
20 benefits those laws confer."

21 (k) In *Whole Woman's Health*, the court further held that courts "when
22 determining the constitutionality of laws regulating abortion procedures," must
23 place "considerable weight upon evidence...presented."

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1 (L) In *Whole Woman’s Health*, Justice Ruth Bader Ginsburg said in her
2 concurrence that abortion restrictions that “do little or nothing for health, but rather
3 strew impediments to abortion...cannot survive judicial inspection.”

4 (m) According to the American College of Obstetricians and Gynecologists,
5 American Medical Association, American Academy of Family Physicians, and
6 American Osteopathic Association, leading public health organizations and amici
7 curiae for the petitioners in *Whole Women’s Health*, “Women’s access to high-quality,
8 evidence-based abortion should not be limited by laws enacted under the guise of
9 patient safety but that, in fact, harm women’s health.”

10 (n) The 334 restrictions on abortion providers and their patients adopted
11 nationally, 7 of which were adopted by the state of Wisconsin, since 2011 that were
12 enacted based on pretextual reasons are just a systematic attempt to eliminate
13 access to safe and legal medical care.

14 (o) In accordance with the U.S. Constitution, it is therefore the intent of the
15 legislature of this state to prevent the enforcement of laws or regulations that burden
16 abortion access and do not provide legitimate health benefits.

17 **(END)**