



2001 ASSEMBLY BILL 546

October 10, 2001 - Introduced by Representatives GUNDRUM, STARZYK, ALBERS, McCORMICK, OWENS, HUNDERTMARK, KRAWCZYK, LADWIG, SERATTI, MEYERHOFER, SUDER, J. FITZGERALD, GROTHMAN, RYBA, PETTIS, LEIBHAM, NASS, HUEBSCH, DUFF, URBAN, FREESE, KREIBICH, OTT, HAHN, KEDZIE, M. LEHMAN, SYKORA, D. MEYER, KESTELL, GUNDERSON, HOVEN, WALKER, LOEFFELHOLZ, GARD, VRAKAS, PETROWSKI and BIES, cosponsored by Senators BRESKE, KANAVAS, ROESSLER, S. FITZGERALD, LAZICH, WELCH and COWLES. Referred to Committee on Government Operations.

1 **AN ACT** *to repeal* 20.9275 (2m) (c), 20.9275 (3m), 253.02 (2m) (c), 253.07 (1) (a)
2 3. and 253.07 (1) (b) 3.; *to renumber and amend* 20.9275 (1) and 20.9275 (2)
3 (a) 2.; *to amend* 20.9275 (2) (intro.), 20.9275 (2m) (intro.), 20.9275 (3), 253.02
4 (2m) (intro.), 253.07 (1) (a) (intro.) and 253.07 (1) (b) (intro.); and *to create*
5 20.9275 (1g), 20.9275 (1r) (am), 20.9275 (1r) (em), 20.9275 (2) (a) 2. a., 20.9275
6 (2) (a) 2. b., 20.9275 (2) (a) 2. c., 20.9275 (2) (a) 2. d., 20.9275 (2) (a) 2. e., 20.9275
7 (2) (a) 2. f., 20.9275 (2) (a) 2. g., 20.9275 (2n), 20.9275 (6), 20.9275 (7) and
8 20.9275 (8) of the statutes; **relating to:** prohibiting an organization or affiliate
9 of an organization that engages in abortion-related activities from receiving
10 certain public funds, prohibiting an organization that receives certain public
11 funds from using other public and private funds for abortion-related activities,
12 specifying restrictions on affiliation between certain organizations, changing
13 the types of information that may be provided by organizations that receive the

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- 1 funds, changing requirements related to the maternal and child health
2 program and family planning services, and requiring audits.
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Analysis by the Legislative Reference Bureau

Under current law, federal funds passing through the state treasury and state and local funds may not be paid as a grant, subsidy, or other funding that wholly or partially or directly or indirectly involves pregnancy programs, projects, or services and that is a grant, subsidy, or other funding under specific state programs (adolescent pregnancy prevention and pregnancy services, adolescent self-sufficiency and pregnancy prevention, adolescent choices, welfare and hygiene of maternity and infancy, family planning, pregnancy counseling, and outreach to low-income pregnant women and under federal maternal and child health services block grants), if the pregnancy program, project, or service using these federal, state, or local funds, using income derived from the funds, or using matching funds provides abortion services; promotes, encourages, or counsels in favor of abortion services; or makes abortion referrals either directly or through an intermediary in any instance other than when an abortion is directly and medically necessary to save the life of the pregnant woman. The funds also may not be paid if the pregnancy program, project, or service is funded from another source that requires performance of the abortion-related activities. The restriction applies only to the extent that applying it does not result in the loss of any federal funds. An organization that violates the prohibition may not receive the funds for 24 months after the violation and must return all funds paid under the grant, subsidy, or other funding, and the grant, subsidy, or other funding is terminated. This law specifically does not prohibit the providing of nondirective information explaining prenatal care and delivery; infant care, foster care, or adoption; or pregnancy termination.

Also under current law, federal funds passing through the state treasury and state and local funds may not be paid for the performance of an abortion other than an abortion that is directly and medically necessary to save the life of the pregnant woman, in a case of sexual assault or incest, or if, due to a medical condition existing before the abortion, the physician determines that the abortion is directly and medically necessary to prevent grave, long-lasting, physical health damage to the pregnant woman.

This bill expands the prohibition on payment of public funds to an organization that engages in abortion-related activities, in the following ways:

1. The bill applies the prohibition to all public funds for, among other things, prenatal care, pregnancy services, and reproductive health care services that are related to pregnancy.

2. The bill prohibits payment to an organization that is affiliated with an organization that engages in abortion-related activities or that receives funds from any source that requires, for receipt of the funds that the affiliate engage in abortion-related activities, unless the organizations are physically and financially independent from each other. Specifically, the two organizations may not share the

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same or a similar name; medical or nonmedical facilities, equipment, or supplies; services; income, grants, donations, and other revenue; fund-raising activities; expenses; employees; employee wages or salaries; or databases. They also may not be located in the same building, must be separately incorporated, and must maintain financial and database records that demonstrate that the affiliate receives no economic or marketing benefit from the funded organization.

3. The bill prohibits a publicly funded organization from transferring public funds to another organization or to an affiliate of the organization that provides abortion-related activities or that receives funds from any source that requires, for receipt of the funds, that the affiliate engage in abortion-related activities.

The bill also specifies prohibited abortion-related activities related to promoting, encouraging, or counseling in favor of abortion services, including acting to assist women to obtain abortions; acting to increase the availability or accessibility of abortion for family planning purposes; lobbying for passage of legislation to increase the availability of abortion; providing speakers to promote the use of abortion; paying dues to a group that advocates abortion; using legal action to make abortion available; and developing or disseminating materials advocating abortion.

The bill authorizes the filing of a petition for a writ of mandamus or prohibition with the circuit court of the county where a violation of the prohibitions is alleged to have occurred or is proposed to occur. The bill also requires the legislative audit bureau to conduct an audit of each organization receiving the public funds to determine if the organization or the state agency or local governmental unit has strictly complied with the requirements or prohibitions. If the publicly funded organization is an affiliate of an organization that engages in abortion-related activities or that receives funds from any source that requires, for receipt of the funds, that the affiliate engage in abortion-related activities, the audit must be conducted annually.

Lastly, the bill eliminates authorization, including authorization under the maternal and child health and family planning laws, to provide nondirective information about pregnancy termination and, instead, specifies that an organization that receives the funds is not prohibited from promoting, encouraging, or counseling in favor of or referring directly or through an intermediary for prenatal care and delivery and infant care, foster care, or adoption. The bill eliminates the provision that specifies that the prohibitions on the use of the funds apply only to the extent that applying them does not result in the loss of any federal funds.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 20.9275 (1) of the statutes is renumbered 20.9275 (1r), and 20.9275
2 (1r) (intro.), as renumbered, is amended to read:

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1 20.9275 (1r) (intro.) In this section, except as otherwise specified:

2 **SECTION 2.** 20.9275 (1g) of the statutes is created to read:

3 20.9275 (1g) It is the intent of the legislature that this section shall further the
4 profound and compelling state interest in all of the following:

5 (a) To protect the life of an unborn child throughout pregnancy by favoring
6 childbirth over abortion and implementing that value judgment through the
7 allocation of public resources.

8 (b) To ensure that the state, state agencies, and local governmental units do not
9 lend their imprimatur to abortion-related activities.

10 (c) To ensure that organizations that engage in abortion-related activities do
11 not receive a direct or indirect economic or marketing benefit from public funds.

12 **SECTION 3.** 20.9275 (1r) (am) of the statutes is created to read:

13 20.9275 (1r) (am) “Family planning” means the process of establishing
14 objectives for the number and spacing of one’s children and selecting the means by
15 which those objectives may be achieved, including a broad range of acceptable and
16 effective methods and services to limit or enhance fertility, including contraceptive
17 methods, including natural family planning and abstinence; the management of
18 infertility, including adoption; and preconceptional counseling, education, and
19 general reproductive health care, including diagnosis and treatment of infections
20 that threaten reproductive capability. “Family planning” does not include pregnancy
21 care, including obstetric or prenatal care.

22 **SECTION 4.** 20.9275 (1r) (em) of the statutes is created to read:

23 20.9275 (1r) (em) “Prenatal care” means medical services provided to a
24 pregnant woman to promote maternal and fetal health.

25 **SECTION 5.** 20.9275 (2) (intro.) of the statutes is amended to read:

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1 20.9275 (2) (intro.) No Except as provided in sub. (2m) and notwithstanding
2 s. 20.927 (2), no state agency or local governmental unit may authorize payment of
3 funds of this state, of any local governmental unit or, ~~subject to sub. (3m),~~ of federal
4 funds passing through the state treasury as a grant, subsidy, or other funding that
5 wholly or partially or directly or indirectly involves pregnancy programs, projects,
6 or services, ~~that is~~ including a grant, subsidy, or other funding under s. 46.93, 46.99,
7 46.995, 253.02 (2), 253.05, 253.07, 253.08, or 253.085 or 42 USC 701 to 710, if any of
8 the following applies:

9 **SECTION 6.** 20.9275 (2) (a) 2. of the statutes is renumbered 20.9275 (2) (a) 2.
10 (intro.) and amended to read:

11 20.9275 (2) (a) 2. (intro.) Promotes, encourages, or counsels in favor of abortion
12 services, including by doing any of the following:

13 **SECTION 7.** 20.9275 (2) (a) 2. a. of the statutes is created to read:

14 20.9275 (2) (a) 2. a. Acting to assist women to obtain abortions.

15 **SECTION 8.** 20.9275 (2) (a) 2. b. of the statutes is created to read:

16 20.9275 (2) (a) 2. b. Acting to increase the availability or accessibility of
17 abortion for family planning purposes.

18 **SECTION 9.** 20.9275 (2) (a) 2. c. of the statutes is created to read:

19 20.9275 (2) (a) 2. c. Lobbying for the passage of legislation to increase in any
20 way the availability of abortion as a method of family planning.

21 **SECTION 10.** 20.9275 (2) (a) 2. d. of the statutes is created to read:

22 20.9275 (2) (a) 2. d. Providing speakers to promote the use of abortion as a
23 method of family planning.

24 **SECTION 11.** 20.9275 (2) (a) 2. e. of the statutes is created to read:

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1 20.9275 (2) (a) 2. e. Paying dues to a group that as a significant part of its
2 activities advocates abortion as a method of family planning.

3 **SECTION 12.** 20.9275 (2) (a) 2. f. of the statutes is created to read:

4 20.9275 (2) (a) 2. f. Using legal action to make abortion available in any way
5 as a method of family planning.

6 **SECTION 13.** 20.9275 (2) (a) 2. g. of the statutes is created to read:

7 20.9275 (2) (a) 2. g. Developing or disseminating in any way materials,
8 including printed matter and audiovisual materials, advocating abortion as a
9 method of family planning.

10 **SECTION 14.** 20.9275 (2m) (intro.) of the statutes is amended to read:

11 20.9275 (2m) (intro.) Nothing in sub. (2) prohibits the ~~providing of nondirective~~
12 ~~information explaining promotion, encouragement, or counseling in favor of, or~~
13 referral either directly or through an intermediary for, any of the following:

14 **SECTION 15.** 20.9275 (2m) (c) of the statutes is repealed.

15 **SECTION 16.** 20.9275 (2n) of the statutes is created to read:

16 20.9275 (2n) Except as provided in sub. (6), none of the funds specified under
17 sub. (2) (intro.) may be paid to an organization or affiliate of an organization that does
18 any of the following:

19 (a) Engages in an activity that is specified under sub. (2) (a) 1. to 3.

20 (b) Receives funds from any source that requires, as a condition for receipt of
21 the funds, that the organization or affiliate perform any of the activities specified in
22 sub. (2) (a) 1. to 3.

23 **SECTION 17.** 20.9275 (3) of the statutes is amended to read:

24 20.9275 (3) ~~Subject to sub. (3m) Notwithstanding s. 20.927 (2),~~ no organization
25 that receives funds specified under sub. (2) (intro.) may use program funds for an

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1 activity that is specified under sub. (2) (a) 1. to 3. No organization that receives funds
2 specified under sub. (2) (intro.) may transfer any program funds or any other public
3 funds to an organization or affiliate of an organization to which sub. (2n) (a) or (b)
4 applies.

5 **SECTION 18.** 20.9275 (3m) of the statutes is repealed.

6 **SECTION 19.** 20.9275 (6) of the statutes is created to read:

7 20.9275 (6) Subsection (2n) does not apply to an organization that otherwise
8 is qualified to receive funding under sub. (2) and that is affiliated with an
9 organization to which sub. (2n) (a) or (b) applies if the organizations are physically
10 and financially independent from each other under all of the following criteria:

11 (a) The organization that receives funds specified under sub. (2) (intro.) and its
12 independent affiliate to which sub. (2n) (a) or (b) applies are not located in the same
13 building and do not share any of the following:

- 14 1. The same or a similar name.
- 15 2. Medical or nonmedical facilities, including treatment, consultation,
16 examination, or waiting rooms or business offices.
- 17 3. Equipment or supplies, including computers, telephone systems,
18 telecommunications equipment, vehicles, office supplies, or medical supplies.
- 19 4. Services, including management, accounting, or payroll services or
20 equipment or facility maintenance.
- 21 5. Income, grants, donations of cash or property, in-kind gifts, or other revenue.
- 22 6. Fund-raising activities.
- 23 7. Expenses.
- 24 8. Employees.
- 25 9. Employee wages or salaries.

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1 10. Databases, including client lists.

2 (b) The organization that receives funds specified under sub. (2) (intro.) is
3 separately incorporated from its independent affiliate to which sub. (2n) (a) or (b)
4 applies.

5 (c) The organization that receives funds specified under sub. (2) (intro.)
6 maintains financial records and database records that demonstrate that its
7 independent affiliate to which sub. (2n) (a) or (b) applies receives no direct or indirect
8 economic or marketing benefit from the program funds. Separation of program funds
9 from other moneys by means of bookkeeping alone is not sufficient to meet the
10 requirement of this paragraph.

11 **SECTION 20.** 20.9275 (7) of the statutes is created to read:

12 20.9275 (7) At least once every 3 years, the legislative audit bureau shall
13 conduct an audit of each organization that receives the funds specified under sub. (2)
14 (intro.) and the state agency or local governmental unit that authorizes payment of
15 the funds to the organization, to determine if the organization, state agency, or local
16 governmental unit has strictly complied with this section. If the organization is an
17 affiliate of an organization to which sub. (2n) (a) or (b) applies, the legislative audit
18 bureau shall conduct the audit at least annually.

19 **SECTION 21.** 20.9275 (8) of the statutes is created to read:

20 20.9275 (8) A person may file a petition for a writ of mandamus or prohibition
21 with the circuit court for the county where a violation of this section is alleged to have
22 occurred or is proposed to occur.

23 **SECTION 22.** 253.02 (2m) (intro.) of the statutes is amended to read:

24 253.02 (2m) (intro.) Nothing in this section authorizes the performance,
25 promotion, encouragement, or counseling in favor of, or referral either directly or

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1 through an intermediary for, voluntary termination of pregnancy. Nothing in this
2 section prohibits the ~~providing of nondirective information explaining promotion,~~
3 ~~encouragement, or counseling in favor of, or referral either directly or through an~~
4 ~~intermediary for,~~ any of the following:

5 **SECTION 23.** 253.02 (2m) (c) of the statutes is repealed.

6 **SECTION 24.** 253.07 (1) (a) (intro.) of the statutes is amended to read:

7 253.07 (1) (a) (intro.) “Family planning” means voluntary action by individuals
8 to prevent or aid conception. “Family planning” does not include the performance,
9 promotion, encouragement, or counseling in favor of, or referral either directly or
10 through an intermediary for, voluntary termination of pregnancy, but may include
11 the ~~providing of nondirective information explaining promotion, encouragement, or~~
12 ~~counseling in favor of, or referral either directly or through an intermediary for,~~ any
13 of the following:

14 **SECTION 25.** 253.07 (1) (a) 3. of the statutes is repealed.

15 **SECTION 26.** 253.07 (1) (b) (intro.) of the statutes is amended to read:

16 253.07 (1) (b) (intro.) “Family planning services” ~~mean~~ means counseling by
17 trained personnel regarding family planning; distribution of information relating to
18 family planning; and referral to licensed nurse practitioners within the scope of their
19 practice, licensed physicians, or local health departments for consultation,
20 examination, medical treatment, and prescriptions for the purpose of family
21 planning. “Family planning” does not include the performance, promotion,
22 encouragement, or counseling in favor of, or referral either directly or through an
23 intermediary for, voluntary termination of pregnancy, but may include the ~~providing~~
24 ~~of nondirective information explaining promotion, encouragement, or counseling in~~

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1 favor of, or referral either directly or through an intermediary for, any of the
2 following:

3 **SECTION 27.** 253.07 (1) (b) 3. of the statutes is repealed.

4 **SECTION 28. Initial applicability.**

5 (1) PUBLICLY-FUNDED ORGANIZATIONS. The treatment of sections 20.9275 (1)
6 (intro.), (am), and (em), (2) (intro.), (a) 2. and a. to g., (2m) (intro.) and (c), (2n), (3),
7 (3m), and (6) to (8) of the statutes first applies to contracts on the day on which the
8 contract expires or is extended, modified, or renewed, whichever first occurs and to
9 employees who are affected by a collective bargaining agreement that contains
10 provisions inconsistent with that treatment on the day on which the collective
11 bargaining agreement expires or is extended, modified, or renewed, whichever first
12 occurs.

13 (END)