2013 DRAFTING REQUEST

Bill

Received:	**5/28/2013**	Received By:	**tdodge**
Wanted:	**As time permits**	Same as LRB:	**-2453**
For:	**Patricia Strachota (608) 264-8486**	By/Representing:	**Trevor**
May Contact:		Drafter:	**tdodge**
Subject:	**Health - abortion/maternal/child**	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
Requester's email: **Rep.Strachota@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Requiring ultrasound before abortion is performed or induced; require physician to have admitting privileges to certain hospital

Instructions:

Companion to LRB-2453.

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	tdodge 5/28/2013	scalvin 5/28/2013	phenry 5/28/2013	_____ _____	mbarman 5/28/2013	mbarman 5/31/2013	State

FE Sent For:

At Intro.

<END>

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/1	tdodge	/1 sac 05/28/2013	5/28 pl				State

FE Sent For:

<END>

5/28/13

Tricia Sieg from Sen. Lazich's office confirmed that
Rep. Strachota is the companion author.

Tyler from Rep Strachota's office had called for companion to LRB-2453.

State of Wisconsin
2013 – 2014 LEGISLATURE

In 5/28/13 Today

LRB–2453/1
TJD:sac:jm

2458/1

stays

Companion redraft makes run

2013 BILL

Companion – no changes

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AN ACT ***to repeal*** 253.10 (3) (c) 1. g.; ***to amend*** 253.10 (3) (c) (intro.), 253.10 (3) (c) 5., 253.10 (3) (d) 1., 253.10 (3m) (a) (intro.), 253.10 (5) and 253.10 (6) (b); and ***to create*** 253.095, 253.10 (3) (c) 1. gm., 253.10 (3) (em), 253.10 (3g), 253.10 (6) (am) and 253.10 (6) (dm) of the statutes; **relating to:** requirements to perform abortions, requiring an ultrasound before informed consent for an abortion, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a woman upon whom an abortion is to be performed or induced must give voluntary and informed written consent to the abortion. Consent is voluntary only if it is given freely and without coercion. Current law requires the physician who is to perform or induce the abortion to determine whether or not the woman's consent is, in fact, voluntary by speaking to her in person, out of the presence of anyone other than a person working for or with the physician. Under current law, a woman's consent to an abortion is considered informed only if, at least 24 hours before the abortion is performed or induced, the physician or an assistant has, in person, orally provided the woman with certain information and given to the woman certain written materials. If the pregnancy is the result of sexual assault or incest, the 24–hour period, but not the provision of information, may be waived or reduced under certain circumstances.

This bill requires, except in a medical emergency and except in the situation where the pregnancy is the result of sexual assault or incest, that before a person may

perform or induce an abortion the physician who is to perform or induce the abortion or any physician requested by the pregnant woman must do all of the following: perform, or arrange for a qualified person to perform, an ultrasound on the pregnant woman using whichever transducer the woman chooses; provide a simultaneous oral explanation during the ultrasound including the number of unborn children and presence and location of the unborn child; display the ultrasound images so that the pregnant woman may view them; provide a medical description of the ultrasound images including the dimensions of the unborn child and a description of any viewable external features and internal organs of the unborn child; and provide a means for the pregnant woman to visualize any fetal heartbeat, in a quality consistent with current medical practice, and a simultaneous oral explanation of the visual display of the heartbeat in a manner understandable to a layperson (ultrasound requirements). No person may require the pregnant woman to view the ultrasound images or visualize any fetal heartbeat and no person, including the pregnant woman, may be subject to any penalty if the pregnant woman declines to view the images or visualize any heartbeat. In a medical emergency, the performance of an ultrasound is not required if the physician certifies in writing that the pregnant woman is undergoing a medical emergency and what medical condition constitutes the emergency. Under the bill, the ultrasound requirements are waived for a woman whose pregnancy is the result of sexual assault and she satisfies certain requirements, which are the same for waiving the 24–hour period for consent to be informed.

The bill requires that, as part of the information a physician must provide a pregnant woman at least 24 hours before an abortion is performed or induced, the physician must tell the pregnant woman that she is required to obtain an ultrasound and must provide her a list of facilities that provide ultrasounds at no cost. The Department of Health Services is required, under the bill, to compile this list of facilities that perform ultrasounds at no cost, make the list available to the public, and provide the list to every facility that performs or induces an abortion. If a physician at a location other than the facility where the abortion is to be performed or induced does the activities necessary to satisfy the ultrasound requirements, that physician must certify on a form that the ultrasound requirements are satisfied and provide the date on which the ultrasound requirements are satisfied. The pregnant woman must provide this form to the physician who is to perform or induce the abortion before the abortion is performed or induced.

Under current law, any person who violates the voluntary and informed consent requirements is required to forfeit not less than $1,000 nor more than $10,000. None of the penalties for violating the informed consent requirements may be assessed against the woman upon whom the abortion is to be performed or induced or attempted to be performed or induced. Under the bill, any person who violates the ultrasound requirement is subject to the same forfeiture as any person who violates another of the voluntary and informed consent requirements.

Current law specifies that a person who violates certain voluntary and informed consent requirements is liable for damages to the woman on or for whom an abortion is performed or induced. Someone who has been awarded damages for

that violation is also entitled to additional punitive damages of not less than $1,000 nor more than $10,000 if the violation satisfies the standard to obtain punitive damages. A person who recovers damages may also recover reasonable attorney fees. The bill specifies that, in addition to the woman on whom an abortion is performed or attempted, the father and any grandparent of the aborted unborn child, or the unborn child that is attempted to be aborted, may bring a claim for damages against a person who violates the ultrasound requirements. The bill allows a person who recovers damages for a violation of the ultrasound requirements to recover the same additional amounts of punitive damages as another violation of voluntary and informed consent requirements if the standard for obtaining punitive damages is satisfied but does not allow a person who recovers damages for a violation of the ultrasound requirements to recover reasonable attorney fees. Additionally, a district attorney or the attorney general, under the bill, may institute an action against any person who performs, or attempts to perform, an abortion in violation of the ultrasound requirements for an injunction to enjoin continued violation of those requirements.

Under current law, in any court proceeding brought for a violation of the voluntary and informed consent requirements, the court, upon request of a party to the proceeding or on its own accord, must rule whether the identity of any woman upon whom an abortion was performed or induced, or attempted to be performed or induced, must be kept confidential, unless the woman waives confidentiality. If the court determines that the woman's identity should be kept confidential the court must issue orders to the parties, witnesses, and counsel and must direct the sealing of the record and exclude individuals from the hearing rooms or courtrooms to safeguard the woman's identity. Any person, except a public official, who brings an action regarding a violation of voluntary or informed consent requirements must do so under a pseudonym unless the person obtains written consent of the woman. The confidentiality requirements, however, are not to be construed to allow the identity of the plaintiff or witness to be concealed from a defendant. Under the bill, these confidentiality procedures and provisions also apply to violations of the ultrasound requirements.

The bill prohibits a physician from performing an abortion unless he or she has admitting privileges in a hospital within 30 miles of the location where the abortion is to be performed (admitting privilege requirement). Under the bill, a person who violates the admitting privilege requirement is required to forfeit not less than $1,000 nor more than $10,000 and may have an claim for damages brought against him or her by the woman on whom an abortion is performed or attempted or the father or any grandparent of the aborted unborn child, or the unborn child that is attempted to be aborted. A person who is awarded damages for a violation of the admitting privilege requirement may recover additional punitive damages in the same amounts as a violation of the voluntary and informed consent requirements and may also recover reasonable attorney fees. Under the bill, the same confidentiality procedures and provisions apply to a proceeding brought for a violation of the admitting privilege requirement as apply to a proceeding brought for a violation of the voluntary and informed consent requirements.

For further information see the ***state*** 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.** 253.095 of the statutes is created to read:

2 **253.095 Requirements to perform abortions. (1)** DEFINITION. In this
3 section, "abortion" has the meaning given in s. 253.10 (2) (a).

4 **(2)** ADMITTING PRIVILEGES REQUIRED. No physician may perform an abortion, as
5 defined in s. 253.10 (2) (a), unless he or she has admitting privileges in a hospital
6 within 30 miles of the location where the abortion is to be performed.

7 **(3)** PENALTY. Any person who violates this section shall be required to forfeit
8 not less than $1,000 nor more than $10,000. No penalty may be assessed against the
9 woman upon whom the abortion is performed or induced or attempted to be
10 performed or induced.

11 **(4)** CIVIL REMEDIES. (a) Any of the following individuals may bring a claim for
12 damages, including damages for personal injury and emotional and psychological
13 distress, against a person who performs, or attempts to perform, an abortion in
14 violation of this section:

15 1. A woman on whom an abortion is performed or attempted.

16 2. The father of the aborted unborn child or the unborn child that is attempted
17 to be aborted.

18 3. Any grandparent of the aborted unborn child or the child that is attempted
19 to be aborted.

20 (b) A person who has been awarded damages under par. (a) shall, in addition
21 to any damages awarded under par. (a), be entitled to not less than $1,000 nor more

1 than $10,000 in punitive damages for a violation that satisfies a standard under s.
2 895.043 (3).
3 (c) A conviction under sub. (3) is not a condition precedent to bringing an action,
4 obtaining a judgment, or collecting the judgment under this subsection.
5 (d) Notwithstanding s. 814.04 (1), a person who recovers damages under par.
6 (a) or (b) may also recover reasonable attorney fees incurred in connection with the
7 action.
8 (e) A contract is not a defense to an action under this subsection.
9 (f) Nothing in this subsection limits the common law rights of a person that are
10 not in conflict with sub. (2).
11 **(5)** CONFIDENTIALITY IN COURT PROCEEDINGS. (a) In every proceeding brought
12 under this section, the court, upon motion or sua sponte, shall rule whether the
13 identity of any woman upon whom an abortion was performed or induced or
14 attempted to be performed or induced shall be kept confidential unless the woman
15 waives confidentiality. If the court determines that a woman's identity should be
16 kept confidential, the court shall issue orders to the parties, witnesses, and counsel
17 and shall direct the sealing of the record and exclusion of individuals from
18 courtrooms or hearing rooms to the extent necessary to safeguard the woman's
19 identity from public disclosure. If the court issues an order to keep a woman's
20 identity confidential, the court shall provide written findings explaining why the
21 woman's identity should be kept confidential, why the order is essential to that end,
22 how the order is narrowly tailored to its purpose, and why no reasonable less
23 restrictive alternative exists.
24 (b) Any person, except for a public official, who brings an action under this
25 section shall do so under a pseudonym unless the person obtains the written consent

of the woman upon whom an abortion was performed or induced, or attempted to be performed or induced, in violation of this section.

(c) This section may not be construed to allow the identity of a plaintiff or a witness to be concealed from the defendant.

SECTION 2. 253.10 (3) (c) (intro.) of the statutes is amended to read:

253.10 **(3)** (c) *Informed consent.* (intro.) Except if a medical emergency exists and subject to sub. (3g), a woman's consent to an abortion is informed only if all of the following first take place:

SECTION 3. 253.10 (3) (c) 1. g. of the statutes is repealed.

SECTION 4. 253.10 (3) (c) 1. gm. of the statutes is created to read:

253.10 **(3)** (c) 1. gm. That the pregnant woman is required to obtain an ultrasound that meets the requirements under sub. (3g), if she has not already had an ultrasound that meets those requirements. The physician, or other qualified physician, shall provide to the pregnant woman a list of providers that perform an ultrasound at no cost to the woman, as described in par. (em) 1.

SECTION 5. 253.10 (3) (c) 5. of the statutes is amended to read:

253.10 **(3)** (c) 5. The woman certifies in writing on a form that the department shall provide, prior to performance or inducement of the abortion, that the information that is required under subds. 1. and 2. has been provided to her in the manner specified in subd. 3., that the ultrasound required under sub. (3g) has been performed or that requirement is waived under sub. (3m) (a), that she has been offered the information described in par. (d) and that all of her questions, as specified under subd. 4., have been answered in a satisfactory manner. The physician who is to perform or induce the abortion or the qualified person assisting the physician shall write on the certification form the name of the physician who is to perform or induce

1 the abortion. The woman shall indicate on the certification form who provided the
2 information to her and when it was provided and who performed the ultrasound and
3 when it was performed, unless the ultrasound requirement is waived under sub. (3m)
4 (a). If the ultrasound required under sub. (3g) was performed at a facility other than
5 the facility where the physician who is to perform or induce the abortion is located,
6 the woman shall provide to the physician who is to perform or induce the abortion
7 the certification form described under sub. (3g) (d).

8 **SECTION 6.** 253.10 (3) (d) 1. of the statutes is amended to read:

9 253.10 **(3)** (d) 1. Geographically indexed materials that are designed to inform
10 a woman about public and private agencies, including adoption agencies, and
11 services that are available to provide information on family planning, as defined in
12 s. 253.07 (1) (a), including natural family planning information, to provide
13 ultrasound imaging services, to assist her if she has received a diagnosis that her
14 unborn child has a disability or if her pregnancy is the result of sexual assault or
15 incest and to assist her through pregnancy, upon childbirth and while the child is
16 dependent. The materials shall include a comprehensive list of the agencies
17 available, a description of the services that they offer and a description of the manner
18 in which they may be contacted, including telephone numbers and addresses, or, at
19 the option of the department, the materials shall include a toll–free, 24–hour
20 telephone number that may be called to obtain an oral listing of available agencies
21 and services in the locality of the caller and a description of the services that the
22 agencies offer and the manner in which they may be contacted. The materials shall
23 provide information on the availability of governmentally funded programs that
24 serve pregnant women and children. Services identified for the woman shall include
25 medical assistance for pregnant women and children under s. 49.47 (4) (am) and

49.471, the availability of family or medical leave under s. 103.10, the Wisconsin works program under ss. 49.141 to 49.161, child care services, child support laws and programs and the credit for expenses for household and dependent care and services necessary for gainful employment under section 21 of the Internal Revenue Code. The materials shall state that it is unlawful to perform an abortion for which consent has been coerced, that any physician who performs or induces an abortion without obtaining the woman's voluntary and informed consent is liable to her for damages in a civil action and is subject to a civil penalty, that the father of a child is liable for assistance in the support of the child, even in instances in which the father has offered to pay for an abortion, and that adoptive parents may pay the costs of prenatal care, childbirth and neonatal care. The materials shall include information, for a woman whose pregnancy is the result of sexual assault or incest, on legal protections available to the woman and her child if she wishes to oppose establishment of paternity or to terminate the father's parental rights. ~~The materials shall state that fetal ultrasound imaging and auscultation of fetal heart tone services are obtainable by pregnant women who wish to use them and shall describe the services.~~ The materials shall include information on services in the state that are available for victims or individuals at risk of domestic abuse.

SECTION 7. 253.10 (3) (em) of the statutes is created to read:

253.10 **(3)** (em) *Ultrasound materials and form.* 1. The department shall compile a list of facilities, including the names, addresses, and phone numbers, that provide ultrasounds at no cost. The department shall make this list available to the public and shall provide the list to every facility that performs or induces an abortion.

2. The department shall provide to every facility that performs ultrasounds at no cost a list of the requirements under sub. (3g).

1 3. Any facility that intends to perform ultrasounds on pregnant women who are
2 seeking to have abortions performed or induced shall create a form on which a
3 physician at that facility certifies that the requirements under sub. (3g) are satisfied
4 and provides a date the requirements under sub. (3g) are satisfied.

5 **SECTION 8.** 253.10 (3g) of the statutes is created to read:

6 253.10 **(3g)** PERFORMANCE OF ULTRASOUND. (a) Except as provided under sub.
7 (3m) and except in a medical emergency and before a person may perform or induce
8 an abortion on a pregnant woman, the physician who is to perform or induce the
9 abortion, or any physician requested by the pregnant woman, shall do all of the
10 following:

11 1. Perform, or arrange for a person who is qualified to perform an ultrasound
12 to perform, an obstetric ultrasound on the pregnant woman using whichever
13 transducer the woman chooses after the options have been explained to her.

14 2. Provide a simultaneous oral explanation to the pregnant woman during the
15 ultrasound of what the ultrasound is depicting, including the presence and location
16 of the unborn child within the uterus, the number of unborn children, and the
17 occurrence of the death of an unborn child, if such a death has occurred.

18 3. Display the ultrasound images so that the pregnant woman may view them.

19 4. Provide to the pregnant woman a medical description of the ultrasound
20 images, including the dimensions of the unborn child and a description of any
21 external features and internal organs that are present and viewable on the image.

22 5. Provide a means for the pregnant woman to visualize any fetal heartbeat,
23 in a quality consistent with current medical practice, and provide to the pregnant
24 woman, in a manner understandable to a layperson, a simultaneous oral explanation
25 of the visual display of any heartbeat.

1 (b) No person may require a pregnant woman to view the ultrasound images
2 that are required to be displayed for and reviewed with her or to visualize to any fetal
3 heartbeat. No person, including the pregnant woman, may be subject to any penalty
4 if the pregnant woman declines to view the displayed ultrasound images or to
5 visualize any fetal heartbeat.

6 (c) The requirement under par. (a) does not apply if, the physician, in a writing
7 that is placed in the woman's medical record, certifies that the pregnant woman is
8 undergoing a medical emergency and certifies the medical condition that constitutes
9 the medical emergency.

10 (d) A physician other than a physician at the facility where the abortion is to
11 be performed or induced may do the activities necessary to satisfy the requirements
12 of this subsection. A physician at a location other than the facility where the abortion
13 is to be performed or induced who does the activities under par. (a) shall certify on
14 a form described under sub. (3) (em) 3. that the requirements of this subsection are
15 satisfied and shall provide the date on which the requirements are satisfied.

16 **SECTION 9.** 253.10 (3m) (a) (intro.) of the statutes is amended to read:

17 253.10 **(3m)** (a) (intro.) A woman seeking an abortion may waive the 24–hour
18 period required under sub. (3) (c) 1. (intro.) and L. and 2. (intro.) <u>and may waive all</u>
19 <u>of the requirements under sub. (3g)</u> if all of the following are first done:

20 **SECTION 10.** 253.10 (5) of the statutes is amended to read:

21 253.10 **(5)** PENALTY. Any person who violates sub. (3)<u>, (3g) (a),</u> or (3m) (a) 2. or
22 (b) 2. shall be required to forfeit not less than $1,000 nor more than $10,000. No
23 penalty may be assessed against the woman upon whom the abortion is performed
24 or induced or attempted to be performed or induced.

25 **SECTION 11.** 253.10 (6) (am) of the statutes is created to read:

1 253.10 **(6)** (am) Any of the following individuals may bring a claim for damages,
2 including damages for personal injury and emotional and psychological distress,
3 against a person who attempts to perform or performs an abortion in violation of sub.
4 (3g):

5 1. A woman on whom an abortion is performed or attempted.

6 2. The father of the aborted unborn child or the unborn child that is attempted
7 to be aborted.

8 3. Any grandparent of the aborted unborn child or the unborn child that is
9 attempted to be aborted.

10 **SECTION 12.** 253.10 (6) (b) of the statutes is amended to read:

11 253.10 **(6)** (b) A person who has been awarded damages under par. (a) <u>or (am)</u>
12 shall, in addition to any damages awarded under par. (a) <u>or (am)</u>, be entitled to not
13 less than $1,000 nor more than $10,000 in punitive damages for a violation that
14 satisfies a standard under s. 895.043 (3).

15 **SECTION 13.** 253.10 (6) (dm) of the statutes is created to read:

16 253.10 **(6)** (dm) A district attorney or the attorney general may institute an
17 action for injunctive relief against any person who performs or attempts to perform
18 an abortion in violation of sub. (3g).

19 **(END)**

Barman, Mike

From: Rep.Strachota
Sent: Friday, May 31, 2013 12:43 PM
To: LRB.Legal
Subject: Draft Review: LRB -2458/1 Topic: Requiring ultrasound before abortion is performed or induced; require physician to have admitting privileges to certain hospital

Please Jacket LRB -2458/1 for the ASSEMBLY.