



**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO 1997 ASSEMBLY BILL 220**

May 20, 1997 - Offered by Representative WASSERMAN.

1 **AN ACT to create** 448.15, 895.038, 940.16 and 971.10 (3) (d) of the statutes;
2 **relating to:** prohibiting performance of certain partial-birth abortions,
3 imposing civil liability for performance of certain partial-birth abortions,
4 providing for review of partial-birth abortions by the medical examining board,
5 granting rule-making authority and providing a penalty.

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

6 **SECTION 1.** 448.15 of the statutes is created to read:

7 **448.15 Review of partial-birth abortions.** (1) In this section,
8 “partial-birth abortion” has the meaning given in s. 940.16 (1) (b).

9 (2) At the request of a physician charged with a violation of s. 940.16 (2), the
10 board shall conduct a hearing as to whether the physician’s performance of the
11 partial-birth abortion was necessary to save the life of a woman whose life is
12 endangered by a physical disorder, physical illness or physical injury, including a

1 life-endangering physical disorder, physical illness or physical injury caused by or
2 arising from the pregnancy itself, as provided in s. 940.16 (3).

3 (3) The findings by the board at a hearing under sub. (2) may be admitted at
4 the criminal trial of the physician who requested the hearing.

5 (4) The board shall promulgate rules relating to the conduct of hearings under
6 sub. (2).

7 **SECTION 2.** 895.038 of the statutes is created to read:

8 **895.038 Partial-birth abortions; liability.** (1) In this section:

9 (a) "Child" has the meaning given in s. 940.16 (1) (a).

10 (b) "Partial-birth abortion" has the meaning given in s. 940.16 (1) (b).

11 (2) (a) Except as provided in par. (b), any of the following persons has a claim
12 for appropriate relief against a person who performs a partial-birth abortion:

13 1. If the person on whom a partial-birth abortion was performed was a minor,
14 the parent of the minor.

15 2. The father of the child aborted by the partial-birth abortion.

16 (b) A person specified in par. (a) 1. or 2. does not have a claim under par. (a) if
17 any of the following applies:

18 1. The person consented to performance of the partial-birth abortion.

19 2. The pregnancy of the minor was the result of a sexual assault in violation
20 of s. 940.225, 944.06, 948.02, 948.025, 948.06 or 948.09 that was committed by the
21 person.

22 (3) The relief available under sub. (2) shall include all of the following:

23 (a) If the abortion was performed in violation of s. 940.16, damages arising out
24 of the performance of the partial-birth abortion, including damages for personal
25 injury and emotional and psychological distress.

1 (b) Exemplary damages equal to 3 times the cost of the partial-birth abortion.

2 (4) Subsection (2) applies even if the mother of the child aborted by the
3 partial-birth abortion consented to the performance of the partial-birth abortion.

4 **SECTION 3.** 940.16 of the statutes is created to read:

5 **940.16 Partial-birth abortion. (1)** In this section:

6 (a) "Child" means a human being from the time of fertilization until it is
7 completely delivered from a pregnant woman.

8 (b) "Partial-birth abortion" means an abortion in which a person intentionally
9 delivers a living child or a substantial portion of a living child into the vagina for the
10 purpose of performing a procedure that the person knows will cause the death of the
11 child, causes the death of the child with the intent to kill the child, and then
12 completes the delivery of the child.

13 (2) Except as provided in sub. (3), whoever intentionally performs a
14 partial-birth abortion is guilty of a Class E felony.

15 (3) Subsection (2) does not apply if the partial-birth abortion is necessary to
16 save the life of a woman whose life is endangered by a physical disorder, physical
17 illness or physical injury, including a life-endangering physical disorder, physical
18 illness or physical injury caused by or arising from the pregnancy itself.

19 **SECTION 4.** 971.10 (3) (d) of the statutes is created to read:

20 971.10 (3) (d) Notwithstanding par. (a), the court shall grant a continuance to
21 a physician charged with a violation of s. 940.16 (2) if the physician has requested
22 a hearing before the medical examining board under s. 448.15 (2) and the hearing
23 has not yet taken place. The continuance shall be of sufficient length to permit the
24 hearing under s. 448.15 (2) to be held. A motion for a continuance filed under this

1 paragraph extends the time limit for commencing the trial under sub. (2) (a) by the
2 number of days for which the continuance is granted.

3 (END)