



State of Wisconsin
2005 - 2006 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 1,
TO 2005 SENATE BILL 138**

June 14, 2005 – Offered by COMMITTEE ON HEALTH, CHILDREN, FAMILIES, AGING AND
LONG TERM CARE.

1 **AN ACT** *to amend* 253.10 (3) (d) 2. and 253.10 (4); and *to create* 253.10 (1) (a)
2 4m. and 253.10 (3) (c) 1. dm. of the statutes; **relating to:** voluntary and
3 informed consent for abortions.

Analysis by the Legislative Reference Bureau

Under current law, except in the case of a medical emergency, no abortion may be performed or induced unless the woman seeking the abortion first gives voluntary, written consent after numerous requirements are fulfilled. One of the requirements is that, at least 24 hours before the abortion is to be performed, the physician who is to perform the abortion, another physician, or an assistant orally informs the woman of her right to receive and review certain written materials. The physician or assistant must physically give the woman the materials and inform her that they are free of charge, have been provided by the state, describe the unborn child, and list agencies that offer alternatives to abortion. The Department of Health and Family Services (DHFS) must print the materials and distribute them to county departments; physicians who intend to perform or induce abortions must request copies of the materials from DHFS or a county department.

This substitute amendment requires that a physician who is to perform an abortion or another physician orally inform a woman who is seeking an abortion that, if the probable gestational age of the woman's unborn child is 20 weeks or more, all of the following apply:

1. The unborn child has the physical structures necessary to experience pain.
2. There is evidence that by 20 weeks' gestation unborn children seek to evade certain stimuli in a manner that in an infant or an adult would be interpreted to be a response to pain.
3. There is evidence that the abortion methods most commonly used when an unborn child is at 20 weeks' gestation or older cause substantial pain to the unborn child.

The substitute amendment further requires that the materials that DHFS is required to print and distribute and that physicians are required to provide to women seeking abortions contain several statements, as specified in the substitute amendment, concerning pain experienced by unborn children of 20 weeks' or more gestation who are aborted.

Lastly, the substitute amendment requires that DHFS revise the current materials that are required to be provided to women seeking abortions so as to include the required statements, publish and distribute the materials, and notify physicians of the availability of the revised materials. Physicians who intend to perform abortions and county departments must replace any current materials with the materials revised as specified in the substitute amendment.

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

1 **SECTION 1.** 253.10 (1) (a) 4m. of the statutes is created to read:

2 253.10 (1) (a) 4m. By 20 weeks' gestation, an unborn child has the physical
3 structures necessary to experience pain. There is substantial evidence that by 20
4 weeks' gestation unborn children seek to evade certain stimuli in a manner that in
5 an infant or an adult would be interpreted to be a response to pain. Anesthesia is
6 routinely administered to unborn children who are 20 weeks' gestational age or older
7 who undergo prenatal surgery. There is evidence that the abortion methods most
8 commonly used when an unborn child is at 20 weeks' gestation or older cause
9 substantial pain to the unborn child.

10 **SECTION 2.** 253.10 (3) (c) 1. dm. of the statutes is created to read:

11 253.10 (3) (c) 1. dm. If the probable gestational age of the woman's unborn child
12 is 20 weeks or more, that the woman's unborn child has the physical structures

1 necessary to experience pain; that there is evidence that by 20 weeks' gestation
2 unborn children seek to evade certain stimuli in a manner that in an infant or an
3 adult would be interpreted to be a response to pain; and that there is evidence that
4 the abortion methods most commonly used when an unborn child is at 20 weeks'
5 gestation or older cause substantial pain to the unborn child.

6 **SECTION 3.** 253.10 (3) (d) 2. of the statutes is amended to read:

7 253.10 (3) (d) 2. Materials, including photographs, pictures or drawings, that
8 are designed to inform the woman of the probable anatomical and physiological
9 characteristics of the unborn child at 2-week gestational increments for the first 16
10 weeks of her pregnancy and at 4-week gestational increments from the 17th week
11 of the pregnancy to full term, including any relevant information regarding the time
12 at which the unborn child could possibly be viable. The pictures or drawings must
13 contain the dimensions of the unborn child and must be realistic and appropriate for
14 the stage of pregnancy depicted. The materials shall be objective, nonjudgmental
15 and designed to convey only accurate scientific information about the unborn child
16 at the various gestational ages, including appearance, mobility, brain and heart
17 activity and function, tactile sensitivity, the physical structures necessary to
18 experience pain, and the presence of internal organs and external members. The
19 materials shall also contain objective, accurate information describing the methods
20 of abortion procedures commonly employed, the medical and psychological risks
21 commonly associated with each such procedure, including the risks of infection,
22 psychological trauma, hemorrhage, endometritis, perforated uterus, incomplete
23 abortion, failed abortion, danger to subsequent pregnancies and infertility, and the
24 medical risks commonly associated with carrying a child to birth. The materials
25 shall contain the following statement: "By 20 weeks' gestation, an unborn child has

1 the physical structures necessary to experience pain. There is substantial evidence
2 that by 20 weeks' gestation unborn children seek to evade certain stimuli in a
3 manner that in an infant or an adult would be interpreted to be a response to pain.
4 Anesthesia is routinely administered to unborn children who are 20 weeks'
5 gestational age or older who undergo prenatal surgery. There is evidence that the
6 abortion methods most commonly used when an unborn child is at 20 weeks'
7 gestation or older cause substantial pain to the unborn child."

8 **SECTION 4.** 253.10 (4) of the statutes is amended to read:

9 253.10 (4) HOTLINE AND INTERNET ACCESS. The department may maintain a
10 toll-free telephone number that is available 24 hours each day or maintain access
11 to an Internet Web page on the department's Web site, or both, to provide the
12 materials specified in sub. (3) (d) 1.

13 **SECTION 5. Nonstatutory provisions.**

14 (1) REVISION, PUBLICATION, AND DISTRIBUTION OF PRINTED INFORMATION. By the
15 date that is 60 days after publication of this act, the department of health and family
16 services shall revise the materials specified under section 253.10 (3) (d) of the
17 statutes in accordance with section 253.10 (3) (c) 1. dm. and (d) 2. of the statutes, as
18 affected by this act, publish the revised materials, and distribute the revised
19 materials to county departments, as required under section 253.10 (3) (d) (intro.) of
20 the statutes.

21 (2) NOTIFICATION TO PHYSICIANS. By the date that is 60 days after publication
22 of this act, the department of health and family services shall notify physicians
23 specified under section 253.10 (3) (e) of the statutes of the availability of the revised
24 materials specified in subsection (1).

1 (3) REPLACEMENT OF PRINTED INFORMATION. By the date that is 65 days after
2 publication of this act, all of the following shall take place:

3 (a) A physician specified under section 46.245 of the statutes shall replace any
4 materials specified under section 253.10 (3) (d) of the statutes in his or her possession
5 with the revised materials specified in subsection (1).

6 (b) County departments, as specified in section 253.10 (3) (d) of the statutes,
7 shall replace any materials specified in section 253.10 (3) (d) of the statutes, as
8 affected by this act, with the revised materials distributed by the department of
9 health and family services under subsection (1).

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(END)