



1995 SENATE BILL 274

July 12, 1995 - Introduced by Senators DRZEWIECKI, PETAK, BUETTNER, ANDREA, COWLES, RUDE, FITZGERALD, BRESKE, A. LASEE, ZIEN, FARROW, SCHULTZ and WEEDEN, cosponsored by Representatives GROTHMAN, GROBSCHMIDT, LADWIG, WALKER, ALBERS, RYBA, DUFF, VANDER LOOP, OURADA, HOVEN, SCHNEIDERS, MUSSER, SILBAUGH, LEHMAN, NASS, HUEBSCH, GREEN, HUTCHISON, DOBYNS, GARD, LAZICH, URBAN, WARD, ZUKOWSKI, OWENS, KREIBICH, F. LASEE, SERATTI, JOHNSRUD, GOETSCH, AINSWORTH, LORGE, GUNDERSON, COLEMAN, HAHN, OLSEN, WOOD, OTTE, FREESE, BRANDEMUEHL, OTT, PORTER, HANDRICK, KELSO and POWERS. Referred to Committee on Health, Human Services and Aging.

1 **AN ACT to amend** 48.375 (4) (a) 1. and 448.02 (3) (a); **to repeal and recreate**
2 46.245 and 253.10; and **to create** 69.186 (1) (j), 441.07 (1) (f), 441.07 (1r), 448.02
3 (3) (bm), 457.26 (2) (gm), 457.26 (2m) and 893.55 (3m) of the statutes; **relating**
4 **to:** expanding requirements for a woman's informed consent for performance
5 or inducement of an abortion and for consent to a minor's obtaining an abortion
6 and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, before performing an abortion that is otherwise permitted by law, unless an emergency requires performance of an abortion because continuation of the pregnancy poses an immediate threat and grave risk to the life and health of the woman, the attending physician or a person who is assisting the attending physician must verbally provide the pregnant woman with accurate information on all of the following:

1. Whether or not the woman is pregnant.
2. The number of weeks that have elapsed from the probable time of conception.
3. The availability of public and private agencies and services to provide birth control information and to assist the woman during pregnancy and after childbirth, if the woman chooses not to have an abortion.
4. For minors, the availability of services from a county department of social services or human services to assist a minor in seeking consent for the abortion or in petitioning a court for a waiver of the consent requirement.
5. Any particular risks associated with the pregnancy and with the abortion technique to be employed.

The attending physician or person who is assisting the attending physician may verbally provide the woman with accurate information on the probable physical

characteristics of the fetus or unborn child at the gestational point of development of the fetus or unborn child at the time that the abortion is to be performed. After the required information is provided, the pregnant woman must sign a statement acknowledging that she has received the information and stating that she consents to the abortion.

This bill modifies and expands the requirements for obtaining informed consent prior to the performance of otherwise-lawful abortions and applies the modified and expanded requirements to both adults and minors who are seeking abortions. Under the bill, unless a medical emergency (as defined in the bill) exists, the physician who is to perform or induce the abortion must, at least 24 hours before the abortion is performed or induced, in person orally inform the woman and, if the woman is a minor, the individual who is also giving consent for the abortion for the minor, of all of the following, in addition to the requirements of current law:

1. The name of the physician who will perform or induce the abortion.
2. In language designed to be understood by the woman taking into account her level of maturity, age and intellectual capability, the probable anatomical and physiological characteristics of the unborn child.
3. The details of the medical or surgical method that will be used in performing or inducing the abortion.
4. That the state encourages the woman to view an ultrasonic image and hear the heartbeat of her unborn child before she decides to have an abortion. If the woman chooses to view the ultrasonic image or hear the heartbeat, the physician must provide the heartbeat transmittal or ultrasound service free of charge or at a nominal charge or order the service for the woman at a facility.
5. That if, in the reasonable medical judgment of the physician, the woman's unborn child has reached viability, the physician is required to take all steps necessary to preserve and maintain the life and health of the child.
6. Any other information that a reasonable patient would consider material and relevant to a decision of whether or not to carry a child to birth or to undergo an abortion.
7. That the woman may withdraw her consent to have an abortion at any time before the abortion is performed or induced.
8. That the woman is not required to pay for performance or inducement of the abortion until at least 24 hours have elapsed.

The bill deletes requirements for provision of information on the availability of public and private agencies to provide birth control information and on the availability of services to assist a minor in seeking consent for the abortion or in petitioning a court for a waiver of the consent requirement. The bill also modifies the requirement for the provision of information on the medical risks associated with the abortion to require mention, if medically applicable, of the risks of infection, psychological trauma, hemorrhage, endometriosis, perforated uterus, incomplete abortion, failed abortion, danger to subsequent pregnancies, infertility and breast cancer.

In addition, under the bill, at least 24 hours before the abortion is performed or induced, the physician who is to perform or induce the abortion or a qualified

person assisting the person (who is required, under the bill, to be a certified social worker or licensed registered nurse) must in person orally inform the woman and, if the woman is a minor, the individual who is also giving consent for the abortion for the minor, of all of the following:

1. That benefits for prenatal care, childbirth and neonatal care may be available under the medical assistance program.
2. That the father of the unborn child must assist in the support of the child, if born.
3. That the woman has a legal right to continue her pregnancy and keep the child, place the child with a relative for adoption, place the child in foster care or petition the court for placement of the child for adoption in the home of a nonrelative.
4. That the woman and, if the woman is a minor, the individual who is also giving consent for the abortion for the minor have the right to receive and review certain printed information, provided by the state, free of charge, that describes the unborn child and lists agencies that offer alternatives to abortion. The physician or qualified person must physically give current, updated materials to the woman and, if the woman is a minor, to the individual who is also giving consent for the abortion for the minor.

Under the bill, the information that is required to be provided to the woman and, if the woman is a minor, the individual who is also giving consent for the abortion for the minor must be provided in an individual setting that protects privacy, maintains the confidentiality of the decision and ensures that the information received focuses on the woman's individual circumstances. The woman and, if the woman is a minor, the individual who is also giving consent for the abortion for the minor receiving the information must be provided the opportunity to ask questions and receive requested information, after which the woman and, if the woman is a minor, the individual must certify in writing that the required or requested information has been provided, in the required setting, and that any questions have been answered. The physician or qualified person assisting the physician must place this certification in the woman's medical record prior to performance or inducement of the abortion.

The bill requires that the department of health and social services (DHSS) publish certain printed materials in English, Spanish and certain other languages, distribute the materials to county departments of social services and human services and upon request, annually review the materials for accuracy and exercise reasonable diligence in providing materials that are current. The materials include a listing of services and agencies available to assist a woman through pregnancy, upon childbirth and while the child is dependent, pictures or drawings that are designed to inform the woman of probable anatomical and physiological characteristics of the unborn child at certain increments of the pregnancy and a form to certify that required information is provided. The bill requires DHSS and the county departments to distribute the materials, upon request, and authorizes the charging of a fee, not to exceed the actual costs of preparation and distribution, for them. Under the bill, physicians who intend to perform or induce an abortion must request a reasonably adequate number of these materials from DHSS or a county

department. Other persons may request a reasonably adequate number of these materials. DHSS also is authorized, under the bill, to maintain a 24-hour toll-free telephone service to provide the listing of available agencies in the locality of the caller, a description of the services that the agencies offer and the manner in which they may be contacted.

The bill creates a forfeiture and provides civil remedies for violation of the informed consent requirements. The bill also creates provisions that include violations of the informed consent requirements as bases for allegations of unprofessional conduct for licensed physicians, licensed registered nurses and certified social workers.

The bill creates provisions that permit anonymity and otherwise protect the confidentiality of a woman who has sought or obtained an abortion and who files an action in civil court or who files an informal complaint with the appropriate examining board for an allegation of unprofessional conduct.

Lastly, the bill expands the types of information required to be reported to DHSS concerning induced abortions to include, for a minor, whether consent for the minor's abortion was obtained and, if so, the relationship to the minor of the individual who provided consent or if not, on what basis the abortion was performed.

In *Planned Parenthood v. Casey*, 505 U.S., 112 S.Ct. 2791 (1992), 3 justices of the U.S. supreme court delivered a plurality opinion that specifically overruled the court's previous holding in *City of Akron v. Akron Center for Reproductive Health*, 462 U.S. 416, 103 S.Ct. 2481 (1983) and found that a 24-hour waiting period prior to performance of an abortion does not constitute an undue burden on a woman's procurement of an abortion. *Casey*, at 2825, 2826. With respect to the informed consent requirement of the Pennsylvania law in question, the 3 justices found that "... requiring that the woman be informed of the availability of information relating to fetal development and the assistance available should she decide to carry the pregnancy to full term is a reasonable measure to insure an informed choice" *Id.*, at 2824. They stated, "In attempting to ensure that a woman apprehend the full consequences of her decision, the State furthers the legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed. If the information the State requires to be made available to the woman is truthful and not misleading, the requirement may be permissible." *Id.*, at 2823. (The Pennsylvania law reviewed in *Casey* required that the physician who is to perform the abortion, the referring physician or a qualified physician assistant, health care practitioner, technician or social worker orally inform the pregnant woman about the proposed procedure, medical risks, the probable gestational age of the unborn child, alternatives to abortion, medical assistance benefits and the liability of the father for child support and that the Pennsylvania department publishes and will provide to her, free of charge, if she chooses to review it, printed materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at 2-week gestational increments from fertilization to full term.) The 3 justices noted that the Pennsylvania statute requiring provision of information "... does not require a physician to comply with the informed consent provisions 'if he or

she can demonstrate by a preponderance of the evidence, that he or she reasonably believed that furnishing the information would have resulted in a severely adverse effect on the physical or mental health of the patient ...” and “... does not prevent the physician from exercising his or her medical judgment.” *Id.*, at 2824.

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.** 46.245 of the statutes is repealed and recreated to read:

2 **46.245 Information for certain pregnant women.** A county department
3 under s. 46.215, 46.22 or 46.23 shall, upon request, distribute the materials
4 described under s. 253.10 (3) (d), as prepared and distributed by the department, and
5 may charge a fee not to exceed the actual cost of preparation and distribution of the
6 materials. A physician who intends to perform or induce an abortion shall request
7 and any individual may request a reasonably adequate number of the materials from
8 the county department under this section or from the department under s. 253.10 (3)
9 (d).

10 **SECTION 2.** 48.375 (4) (a) 1. of the statutes is amended to read:

11 48.375 (4) (a) 1. The person or the person’s agent has, either directly or through
12 a referring physician or his or her agent, received and made part of the minor’s
13 medical record, under the requirements of s. 253.10, the voluntary and informed
14 written consent of the minor and the voluntary and informed written consent of one
15 of her parents; or of the minor’s guardian or legal custodian, if one has been
16 appointed; or of an adult family member of the minor; or of one of the minor’s foster
17 parents or treatment foster parents, if the minor has been placed in a foster home
18 or treatment foster home and the minor’s parent has signed a waiver granting the

1 department, a county department, the foster parent or the treatment foster parent
2 the authority to consent to medical services or treatment on behalf of the minor.

3 **SECTION 3.** 69.186 (1) (j) of the statutes is created to read:

4 69.186 (1) (j) If the patient is a minor, whether consent was provided under s.
5 48.375 (4) (a) 1. for the abortion and, if so, the relationship of the individual providing
6 consent to the minor; or, if consent under s. 48.375 (4) (a) 1. was not provided, on
7 which of the bases under s. 48.375 (4) (a) 2. or (b) 1., 1g., 1m., 2. or 3. the abortion was
8 performed.

9 **SECTION 4.** 253.10 of the statutes is repealed and recreated to read:

10 **253.10 Voluntary and informed consent for abortions. (1) LEGISLATIVE**
11 FINDINGS AND INTENT. (a) The legislature finds that:

12 1. Many women now seek or are encouraged to undergo elective abortions
13 without full knowledge of the medical and psychological risks of abortion,
14 development of the unborn child or of alternatives to abortion. An abortion decision
15 is often made under stressful circumstances.

16 2. The knowledgeable exercise of a woman's decision to have an elective
17 abortion depends on the extent to which the woman receives sufficient information
18 to make a voluntary and informed choice between 2 alternatives of great
19 consequence: carrying a child to birth or undergoing an abortion.

20 3. The U.S. supreme court has stated: "In attempting to ensure that a woman
21 apprehend the full consequences of her decision, the State furthers the legitimate
22 purpose of reducing the risk that a woman may elect an abortion, only to discover
23 later, with devastating psychological consequences, that her decision was not fully
24 informed." *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 112 U.S.
25 2791, 2823 (1992).

1 4. It is essential to the psychological and physical well-being of a woman
2 considering an elective abortion that she receive complete and accurate information
3 on all options available to her in dealing with her pregnancy.

4 5. The vast majority of elective abortions in this state are performed in clinics
5 that are devoted solely to providing abortions and family planning services. Women
6 who seek elective abortions at these facilities normally do not have a prior
7 patient-physician relationship with the physician who is to perform or induce the
8 abortion, normally do not return to the facility for post-operative care and normally
9 do not continue a patient-physician relationship with the physician who performed
10 or induced the abortion. In most instances, the woman's only actual contact with the
11 physician occurs simultaneously with the abortion procedure, with little opportunity
12 to receive personal counseling by the physician concerning her decision. Because of
13 this, certain safeguards are necessary to protect a woman's right to know.

14 6. A reasonable waiting period is critical to ensure that a woman has the fullest
15 opportunity to give her voluntary and informed consent before she elects to undergo
16 an abortion.

17 (b) It is the intent of the legislature in enacting this section to further the
18 important and compelling state interests in all of the following:

19 1. Protecting the life and health of the woman subject to an elective abortion
20 and, to the extent constitutionally permissible, the life of her unborn child.

21 2. Fostering the development of standards of professional conduct in the
22 practice of abortion.

23 3. Ensuring that prior to the performance or inducement of an elective abortion,
24 a woman considering an elective abortion receive personal counseling by the
25 physician and be given a full range of information regarding her pregnancy, her

1 unborn child, the abortion, the medical and psychological risks of abortion and
2 available alternatives to the abortion.

3 4. Ensuring that a woman who decides to have an elective abortion gives her
4 voluntary and informed consent to the abortion procedure.

5 **(2) DEFINITIONS.** In this section:

6 (a) "Abortion" means the use of an instrument, medicine, drug or other
7 substance or device with intent to terminate the pregnancy of a woman known to be
8 pregnant or for whom there is reason to believe that she may be pregnant and with
9 intent other than to increase the probability of a live birth, to preserve the life or
10 health of the infant after live birth or to remove a dead fetus.

11 (b) "Agency" means a private nonprofit organization or a county department
12 under s. 46.215, 46.22 or 46.23.

13 (c) "Medical emergency" means a condition, in a physician's reasonable medical
14 judgment, that so complicates the medical condition of a pregnant woman as to
15 necessitate the immediate abortion of her pregnancy to avert her death or for which
16 a 24-hour delay in performance or inducement of an abortion will create serious risk
17 of substantial and irreversible impairment of one or more of the woman's major
18 bodily functions.

19 (d) "Probable gestational age of the unborn child" means the number of weeks
20 that have elapsed from the probable time of fertilization of a woman's ovum to the
21 time when an abortion is to be performed or induced, based on the information
22 provided by the woman as to the time of her last menstrual period, her medical
23 history, a physical examination performed by the physician who is to perform or
24 induce the abortion and any appropriate laboratory tests performed on her.

1 (e) "Qualified person assisting the physician" means a social worker certified
2 under ch. 457 or a registered nurse to whom a physician who is to perform or induce
3 an abortion has delegated the responsibility, as the physician's agent, for providing
4 the information required under sub. (3) (c) 2.

5 (f) "Viability" has the meaning given in s. 940.15 (1).

6 **(3) VOLUNTARY AND INFORMED CONSENT.** (a) *Generally.* An abortion that
7 otherwise is permitted to be performed or induced under s. 48.375 (4), 940.04 (5) or
8 940.15 may not be performed or induced unless the woman upon whom the abortion
9 is to be performed or induced has and, if the woman is a minor and s. 48.375 (4) (a)
10 2. does not apply, the individual who also gives consent under s. 48.375 (4) (a) 1. have
11 given voluntary and informed written consent under the requirements of this
12 section.

13 (b) *Voluntary consent.* Consent under this section to an abortion is voluntary
14 only if the consent is given freely and without coercion by any person.

15 (c) *Informed consent.* Except if a medical emergency exists, a woman's consent
16 to an abortion is informed only if all of the following first take place:

17 1. At least 24 hours before the abortion is to be performed or induced, the
18 physician who is to perform or induce the abortion has, in person, orally informed the
19 woman of all of the following:

20 a. Whether or not, according to the reasonable medical judgment of the
21 physician, the woman is pregnant.

22 b. The probable gestational age of the unborn child at the time that the abortion
23 is to be performed or induced.

24 c. The particular medical risks, if any, associated with the woman's pregnancy.

1 d. In language designed to be understood by the woman taking into account her
2 age, level of maturity and intellectual capability, the probable anatomical and
3 physiological characteristics of her unborn child.

4 e. The name of the physician who will perform or induce the abortion.

5 f. The details of the medical or surgical method that will be used in performing
6 or inducing the abortion.

7 g. The medical risks associated with the particular abortion procedure to be
8 used, including, if medically applicable, the risks of infection, psychological trauma,
9 hemorrhage, endometriosis, perforated uterus, incomplete abortion, failed abortion,
10 danger to subsequent pregnancies, infertility and breast cancer.

11 h. That the state of Wisconsin encourages the woman to view an ultrasonic
12 image and hear or view the heartbeat of her unborn child before she decides to have
13 an abortion. If the woman chooses to view an ultrasonic image or hear or view the
14 heartbeat of her unborn child, the physician who is to perform or induce the abortion
15 shall provide the heartbeat transmittal or ultrasound service free of charge or at a
16 nominal charge or order the heartbeat transmittal or ultrasound service for the
17 woman at any facility that provides heartbeat transmittal or ultrasound imaging
18 services. Any person who provides heartbeat transmittal or ultrasound imaging
19 services under this subd. 1. h. shall use the method most likely to give the clearest
20 image or sound.

21 i. The recommended general medical instructions for the woman to follow after
22 her abortion to enhance her safe recovery and the name and telephone number of a
23 physician to call if complications arise after the abortion.

1 j. If, in the reasonable medical judgment of the physician, the woman's unborn
2 child has reached viability, that the physician is required under s. 940.15 to take all
3 steps necessary to preserve and maintain the life and health of the child.

4 k. Any other information that a reasonable patient would consider material
5 and relevant to a decision of whether or not to carry a child to birth or to undergo an
6 abortion.

7 L. That the woman may withdraw her consent to have an abortion at any time
8 before the abortion is performed or induced.

9 m. That the woman is not required to pay any amount for performance or
10 inducement of the abortion until at least 24 hours have elapsed.

11 2. At least 24 hours before the abortion is to be performed or induced, the
12 physician who is to perform or induce the abortion or a qualified person assisting the
13 physician has, in person, orally informed the woman of all of the following:

14 a. That benefits under the medical assistance program may be available for
15 prenatal care, childbirth and neonatal care.

16 b. That the father of the unborn child is liable for assistance in the support of
17 the woman's child, if born, even if the father has offered to pay for the abortion.

18 c. That the woman has a legal right to continue her pregnancy and to keep the
19 child, place the child in foster care, place the child with a relative for adoption or
20 petition the court for placement of the child for adoption in the home of a person who
21 is not a relative.

22 d. That the woman has the right to receive and review the printed materials
23 described in par. (d). The physician or qualified person assisting the physician shall
24 physically give the materials to the woman and shall, in person, orally inform her
25 that the materials are free of charge, have been provided by the state and describe

1 the unborn child and list agencies that offer alternatives to abortion and shall
2 provide her with the current updated copies of the printed materials free of charge.

3 3. The information that is required under subds. 1. and 2. is provided to the
4 woman in an individual setting that protects her privacy, maintains the
5 confidentiality of her decision and ensures that the information she receives focuses
6 on her individual circumstances. This subdivision may not be construed to prevent
7 the woman from having a family member, or any other person of her choice, present
8 during her private counseling.

9 4. The physician who is to perform or induce the abortion and, if the qualified
10 person assisting the physician provides information under subd. 2., the qualified
11 person provide adequate opportunity for the woman to ask questions, including
12 questions concerning the pregnancy, her unborn child, abortion, foster care and
13 adoption, and provide the information that is requested or indicate to the woman
14 where she can obtain the information.

15 5. The woman certifies in writing on a form that the department shall provide,
16 prior to performance or inducement of the abortion, that the information that is
17 required under each subdivision paragraph of subds. 1. and 2. has been provided to
18 her in the manner specified in subd. 3., that she has been offered the information
19 described in par. (d) and that all of her questions, as specified under subd. 4., have
20 been answered in a satisfactory manner. The woman shall indicate on the
21 certification form who provided the information to her.

22 6. Prior to the performance or the inducement of the abortion, the physician
23 who is to perform or induce the abortion or the qualified person assisting the
24 physician receives the written certification that is required under subd. 5. The

1 physician or qualified person assisting the physician shall place the certification in
2 the woman's medical record.

3 7. If the woman whose consent to performance or inducement of an abortion
4 under this paragraph is a minor, unless s. 48.375 (4) (a) 2. applies, the requirements
5 to provide information to the woman under subds. 1. to 6. apply to require provision
6 of the information to the individual who also gives consent under s. 48.375 (4) (a) 1.

7 (d) *Printed information.* By the date that is 60 days after the effective date of
8 this paragraph [revisor inserts date], the department shall cause to be published
9 in English, Spanish, and other languages spoken by a significant number of state
10 residents, as determined by the department, materials that are in an easily
11 comprehensible format and are printed in type of not less than 12-point size. The
12 department shall distribute a reasonably adequate number of the materials to
13 county departments as specified under s. 46.245 and upon request, annually review
14 the materials for accuracy and exercise reasonable diligence in providing materials
15 that are accurate and current. The department may charge a fee not to exceed the
16 actual cost of the preparation and distribution of the materials. The materials shall
17 be all of the following:

18 1. Geographically indexed materials that are designed to inform a woman
19 about public and private agencies, including adoption agencies, and services that are
20 available to provide ultrasound imaging services and to assist her through
21 pregnancy, upon childbirth and while the child is dependent. The materials shall
22 include a comprehensive list of the agencies available, a description of the services
23 that they offer and a description of the manner in which they may be contacted,
24 including telephone numbers and addresses, or, at the option of the department, the
25 materials shall include a toll-free, 24-hour telephone number that may be called to

1 obtain an oral listing of available agencies in the locality of the caller and a
2 description of the services that the agencies offer and the manner in which they may
3 be contacted. The materials shall provide information on the availability of
4 governmentally funded programs that serve pregnant women and children. Services
5 identified for the woman shall include aid to families with dependent children under
6 s. 49.19, medical assistance for pregnant women and children under s. 49.47 (4) (am),
7 the job opportunities and basic skills program under s. 49.193, the availability of
8 family or medical leave under s. 103.10, child care services, child support laws and
9 programs and the credit for expenses for household and dependent care and services
10 necessary for gainful employment under section 21 of the internal revenue code. The
11 materials shall state that it is unlawful for any person to coerce a woman to undergo
12 an abortion, that any physician who performs or induces an abortion without
13 obtaining the woman's voluntary and informed consent is liable to her for damages
14 in a civil action and is subject to a civil penalty, that the father of a child is liable for
15 assistance in the support of the child, even in instances in which the father has
16 offered to pay for an abortion, and that adoptive parents may pay the costs of
17 prenatal care, childbirth and neonatal care. The materials shall state that the state
18 of Wisconsin encourages the woman to view an ultrasonic image and hear or view the
19 heartbeat of her unborn child before she decides to have an abortion.

20 2. Materials, including pictures or drawings, that are designed to inform the
21 woman of the probable anatomical and physiological characteristics of the unborn
22 child at 2-week gestational increments for the first 16 weeks of her pregnancy and
23 at 4-week gestational increments from the 17th week of the pregnancy to full term,
24 including any relevant information regarding the time at which the unborn child
25 could possibly be viable. The pictures or drawings must contain the dimensions of

1 the unborn child and must be realistic and appropriate for the stage of pregnancy
2 depicted. The materials shall be objective, nonjudgmental and designed to convey
3 only accurate scientific information about the unborn child at the various gestational
4 ages, including appearance, mobility, brain and heart activity and function, tactile
5 sensitivity and the presence of internal organs and external members. The materials
6 shall also contain objective, accurate information describing the methods of abortion
7 procedures commonly employed, the medical and psychological risks commonly
8 associated with each such procedure, including the risks of infection, psychological
9 trauma, hemorrhage, endometriosis, perforated uterus, incomplete abortion, failed
10 abortion, danger to subsequent pregnancies, infertility and breast cancer, and the
11 medical risks commonly associated with carrying a child to birth.

12 3. A certification form for use under par. (c) 5. that lists, in a check-off format,
13 all of the information required to be provided under that subdivision.

14 (e) *Requirement to obtain materials.* A physician who intends to perform or
15 induce an abortion shall request a reasonably adequate number of the materials that
16 are described under par. (d) from the department under par. (d) or from a county
17 department as specified under s. 46.245.

18 (f) *Medical emergency.* If a medical emergency exists, the physician who is to
19 perform or induce the abortion necessitated by the medical emergency shall inform
20 the woman, prior to the abortion if possible, of the medical indications supporting the
21 physician's reasonable medical judgment that an immediate abortion is necessary
22 to avert her death or that a 24-hour delay in performance or inducement of an
23 abortion will create a serious risk of substantial and irreversible impairment of one
24 or more of the woman's major bodily functions. If possible, the physician shall obtain
25 the woman's written consent prior to the abortion. The physician shall certify these

1 medical indications in writing and place the certification in the woman's medical
2 record.

3 (g) *Presumptions.* Satisfaction of the conditions required under par. (c) creates
4 a rebuttable presumption that the woman's consent and, if the woman is a minor and
5 if s. 48.375 (4) (a) 2. does not apply, the consent of the individual who also gives
6 consent under s. 48.375 (4) (a) 1. to an abortion is informed. The presumption of
7 informed consent may be overcome by a preponderance of evidence that establishes
8 that the consent was obtained through fraud, negligence, deception,
9 misrepresentation or omission of a material fact. There is no presumption that
10 consent to an abortion is voluntary.

11 (4) **HOTLINE.** The department may maintain a toll-free telephone number that
12 is available 24 hours each day, to provide the materials specified in sub. (3) (d) 1.

13 (5) **PENALTY.** Any person who violates sub. (3) shall be required to forfeit not
14 less than \$5,000 nor more than \$10,000.

15 (6) **CIVIL REMEDIES.** (a) A person who violates sub. (3) is liable to the woman
16 on or for whom the abortion was performed or induced for damages arising out of the
17 performance or inducement of the abortion, including damages for personal injury
18 and emotional and psychological distress.

19 (b) If a person who has been awarded damages under par. (a) proves by clear
20 and convincing evidence that the violation of sub. (3) was wilful, wanton or reckless,
21 that person shall, in addition to any damages awarded under par. (a), be entitled to
22 not less than \$5,000 nor more than \$10,000 in punitive damages.

23 (c) A conviction under sub. (5) is not a condition precedent to bringing an action,
24 obtaining a judgment or collecting the judgment under this subsection.

1 (d) Notwithstanding s. 814.04 (1), a person who recovers damages under par.
2 (a) or (b) may also recover reasonable attorney fees incurred in connection with the
3 action.

4 (e) A contract is not a defense to an action under this subsection.

5 (f) Nothing in this subsection limits the common law rights of a person.

6 **(7) AFFIRMATIVE DEFENSE.** No person is liable under sub. (5) or (6) or under s.
7 441.07 (1) (f) or 457.26 (2) (gm) for failure under sub. (3) (c) 2. d. to provide the printed
8 materials described in sub. (3) (d) to a woman if the person has made a reasonably
9 diligent effort to obtain the printed materials under sub. (3) (e) and s. 46.245 and the
10 department and the county department under s. 46.215, 46.22 or 46.23 have not
11 made the printed materials available at the time that the person is required to give
12 them to the woman.

13 **(8) CONFIDENTIALITY.** (a) Notwithstanding ss. 801.09 (1), 801.095, 802.04 (1)
14 and 815.05 (intro.), in an action brought under sub. (5) or (6), the plaintiff may
15 substitute her initials, or fictitious initials, and her age and county of residence for
16 her name and address on the summons and complaint. The plaintiff's attorney shall
17 supply the court with the name and other necessary identifying information of the
18 plaintiff. The court shall maintain the name and other identifying information, and
19 supply the information to other parties to the action, in a manner that reasonably
20 protects the information from being disclosed to the public.

21 (b) Upon motion by the plaintiff, and for good cause shown, or upon its own
22 motion, the court may make any order that justice requires to protect a plaintiff who
23 is using initials in an action under sub. (5) or (6) from annoyance, embarrassment,
24 oppression or undue burden that would arise if any information identifying the
25 plaintiff were made public.

1 **(9) CONSTRUCTION.** Nothing in this section may be construed as creating or
2 recognizing a right to abortion or as making lawful an abortion that is otherwise
3 unlawful.

4 **SECTION 5.** 441.07 (1) (f) of the statutes is created to read:

5 441.07 **(1)** (f) Violated the requirements of s. 253.10 (3) (c) 2., 3., 4., 5., 6. or 7.

6 **SECTION 6.** 441.07 (1r) of the statutes is created to read:

7 441.07 **(1r)** (a) In a hearing brought to determine if a violation of sub. (1) (f) has
8 occurred, the person who files the informal complaint may substitute her initials, or
9 fictitious initials, and her age and county of residence for her name and address to
10 the extent that her name and address may appear on any pleading, notice, order or
11 other paper filed in the disciplinary proceeding. The attorney of the person who files
12 the informal complaint shall supply the board with the name and other necessary
13 identifying information of the person. The board shall maintain the name and other
14 identifying information, and supply the information to parties to the hearing, in a
15 manner that reasonably protects the information from being disclosed to the public.

16 (b) Upon request by the person who files the informal complaint, and for good
17 cause shown, or upon its own motion, the board may make any order that justice
18 requires to protect a person who files the informal complaint, who is using initials
19 in a hearing brought to determine if a violation of sub. (1) (f) has occurred, from
20 annoyance, embarrassment, oppression or undue burden that would arise if any
21 information identifying the person were made public.

22 **SECTION 7.** 448.02 (3) (a) of the statutes is amended to read:

23 448.02 **(3)** (a) The board shall investigate allegations of unprofessional conduct
24 and negligence in treatment by persons holding a license, certificate or limited
25 permit granted by the board. An allegation that a physician has violated s. 253.10

1 (3), 448.30 or 450.13 (2) or has failed to mail or present a medical certification
2 required under s. 69.18 (2) within 21 days after the pronouncement of death of the
3 person who is the subject of the required certificate or that a physician has failed at
4 least 6 times within a 6-month period to mail or present a medical certificate
5 required under s. 69.18 (2) within 6 days after the pronouncement of death of the
6 person who is the subject of the required certificate is an allegation of unprofessional
7 conduct. Information contained in reports filed with the board under s. 49.45 (2) (a)
8 12r., 50.36 (3) (b), 609.17 or 632.715 or under 42 CFR 1001.109 (e) and 42 CFR
9 1001.124 (a) (3) and (b) shall be investigated by the board. Information contained
10 in a report filed with the board under s. 655.045 (1), as created by 1985 Wisconsin
11 Act 29, which is not a finding of negligence or in a report filed with the board under
12 s. 50.36 (3) (c) may, within the discretion of the board, be used as the basis of an
13 investigation of the persons named in the reports. The board may require a person
14 holding a license, certificate or limited permit to undergo and may consider the
15 results of one or more physical, mental or professional competency examinations if
16 the board believes that the results of any such examinations may be useful to the
17 board in conducting its investigation.

18 **SECTION 8.** 448.02 (3) (bm) of the statutes is created to read:

19 448.02 **(3)** (bm) 1. In a hearing brought to determine if a violation of s. 253.10
20 (3) has occurred, the person who files the informal complaint may substitute her
21 initials, or fictitious initials, and her age and county of residence for her name and
22 address to the extent that her name and address may appear on any pleading, notice,
23 order or other paper filed in the disciplinary proceeding. The attorney of the person
24 who files the informal complaint shall supply the board with the name and other
25 necessary identifying information of the person. The board shall maintain the name

1 and other identifying information, and supply the information to parties to the
2 hearing, in a manner that reasonably protects the information from being disclosed
3 to the public.

4 2. Upon request by the person who files the informal complaint, and for good
5 cause shown, or upon its own motion, the board may issue any order that justice
6 requires to protect a person who files the informal complaint, who is using initials
7 in a hearing brought to determine if a violation of s. 253.10 (3) has occurred, from
8 annoyance, embarrassment, oppression or undue burden that would arise if any
9 information identifying the person were made public.

10 **SECTION 9.** 457.26 (2) (gm) of the statutes is created to read:

11 457.26 (2) (gm) Violated the requirements of s. 253.10 (3) (c) 2., 3., 4., 5., 6. or
12 7.

13 **SECTION 10.** 457.26 (2m) of the statutes is created to read:

14 457.26 (2m) (a) In a hearing brought to determine if a violation of sub. (2) (gm)
15 has occurred, the person who files the informal complaint may substitute her initials,
16 or fictitious initials, and her age and county of residence for her name and address,
17 to the extent that her name and address may appear on any pleading, notice, order
18 or other paper filed in the disciplinary proceedings. The attorney of the person who
19 files the informal complaint shall supply the social worker section of the examining
20 board with the name and other necessary identifying information of the person. The
21 social worker section of the examining board shall maintain the name and other
22 identifying information, and supply the information to parties to the hearing, in a
23 manner that reasonably protects the information from being disclosed to the public.

24 (b) Upon request by the person who files the informal complaint, and for good
25 cause shown, or upon its own motion, the social worker section of the examining

1 board may issue any order that justice requires to protect a person who files the
2 informal complaint, who is using initials in a hearing brought to determine if a
3 violation of sub. (2) (gm) has occurred, from annoyance, embarrassment, oppression
4 or undue burden that would arise if any information identifying the person were
5 made public.

6 **SECTION 11.** 893.55 (3m) of the statutes is created to read:

7 893.55 **(3m)** (a) Notwithstanding ss. 801.09 (1), 801.095, 802.04 (1) and 815.05
8 (intro.), in an action brought under this section resulting from a violation of s. 253.10
9 (3) or in an action to recover damages for injury that arises from the performance or
10 inducement of an abortion, the plaintiff may substitute her initials, or fictitious
11 initials, and her age and county of residence for her name and address on the
12 summons and complaint. The plaintiff's attorney shall supply the court with the
13 name and other necessary identifying information of the plaintiff. The court shall
14 maintain the name and other identifying information, and supply the information
15 to other parties to the action, in a manner that reasonably protects the information
16 from being disclosed to the public.

17 (b) Upon motion by the plaintiff, and for good cause shown, or upon its own
18 motion, the court may make any order that justice requires to protect a plaintiff who
19 is using initials in an action under this section resulting from a violation of s. 253.10
20 (3) or in an action to recover damages for injury that arises from the performance or
21 inducement of an abortion from annoyance, embarrassment, oppression or undue
22 burden that would arise if any information identifying the plaintiff were made
23 public.

24 **(END)**