



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4410/1
SWB/TJD/PJH/AJM:amn

2015 SENATE BILL 653

January 27, 2016 - Introduced by Senators ERPENBACH, RISSER, SHILLING, C. LARSON, RINGHAND and HARRIS DODD, cosponsored by Representatives C. TAYLOR, ZAMARRIPA, KAHL, BARNES, SARGENT, SINICKI, JOHNSON, BERCEAU, KOLSTE, OHNSTAD, SUBECK, ZEPNICK, HESSELBEIN, BILLINGS, MASON, RIEMER, BROSTOFF, CONSIDINE, GOYKE, HINTZ, HEBL, POPE and SPREITZER. Referred to Committee on Health and Human Services.

1 **AN ACT** *to repeal* 46.245, 69.186 (1) (hf), 69.186 (1) (k), 69.186 (1) (L), 253.09,
2 253.095, 253.10, 253.105, 253.107, 441.06 (6), 441.07 (1g) (f), 448.03 (5) (a),
3 457.26 (2) (gm), 632.8985 and 940.04; *to renumber and amend* 940.32 (1) (a)
4 10.; *to amend* 20.9275 (1) (a), 48.375 (4) (a) 1., 448.02 (3) (a), 625.11 (4), 625.22
5 (1), 628.34 (3) (b), 939.75 (2) (b) 1., 968.26 (1b) (a) 2. a., 990.001 (17) (b) and
6 990.01 (19j) (b); *to repeal and recreate* 448.02 (3) (a); and *to create* 15.194
7 (2), 15.197 (12m), chapter 258, subchapter VIII (title) of chapter 655 [precedes
8 655.90], 655.90, 655.92, 655.94, 655.96 and 940.32 (1) (a) 11. of the statutes;
9 **relating to:** medically accurate information, conscientious beliefs of
10 reproductive health care providers, health care provider liability insurance,
11 eliminating certain abortion requirements, prohibiting employment

SENATE BILL 653

- 1 retribution and discrimination, actions against a person seeking or providing
2 health care, and providing a criminal penalty.
-

Analysis by the Legislative Reference Bureau

This bill creates a right to medically accurate information, creates bodies for researching reproductive health issues, prohibits certain employment retribution and discrimination for health care providers, provides methods for health care providers to assert conscientious beliefs regarding reproductive health care services, makes various changes to abortion laws, specifies prohibited conduct regarding obtaining and providing health care and civil remedies and criminal penalties for committing that conduct, and regulating rates and other aspects of health care liability insurance.

Patient Rights to Medically Accurate Information

This bill creates a right and obligation for a physician to provide medically accurate information to patients to whom the physician provides medical care. The bill also creates a right for a patient to receive medically accurate information from a physician. The bill prohibits interference or other diminishment of the rights and obligations relating to medically accurate information, and further prohibits employment retribution based upon a physician's exercise of the rights and obligations relating to the provision of medically accurate information.

Under the bill, the state, including any political subdivision or instrumentality of the state, may not do either of the following: 1) require any information that is not medically accurate to be included on a procedure or treatment form; or 2) prohibit a physician from including medically accurate information that or from deleting information that in the physician's medical judgment is either not medically accurate or not somehow relevant to the patient's specific request for care or treatment.

The bill creates an Office of Advancement in Medical Knowledge and Care that is required to investigate developments affecting patient rights and to submit an annual report of its findings.

Conscientious Beliefs

The bill requires a hospital that has a department or service offering maternity care services to permit all standard reproductive health care services and all maternity care services if the hospital has the capacity and capability. The hospital must also provide an appropriate medical screening examination to any individual that comes to the hospital and for which a request for examination, treatment, or care for any standard reproductive health care service is made.

Under the bill, if a health care provider is available and it is within his or her training and license to provide or perform care appropriate for a patient's reproductive health care condition, the hospital must allow that provider to provide standard reproductive health care services, and reasonably accommodate and provide sufficient support for that provider in providing the care. If a health care provider is not available to provide or perform care appropriate for a patient's

SENATE BILL 653

reproductive health care condition, and the hospital determines the patient has an emergent or urgent medical condition, the hospital must provide examination and treatment to the extent required to stabilize the patient's condition, counsel the patient on all medically appropriate treatments specific to the patient's reproductive health care condition and circumstances, and offer and provide the patient with a referral for treatment. After fulfilling these requirements, the hospital may transfer the patient to another medical facility when the patient is stable.

The bill allows a reproductive health care provider to provide to a hospital that has a department or service offering maternity care services one of the following: 1) a notice describing in detail the provider's conscientious belief and providing other information regarding that belief; 2) a notice that the provider, within his or her training and professional license, accepts and is ready to provide specific standard reproductive health care services identified in the provider's notice; or 3) a notice that the provider invokes applicable federal or state refusal rights and declines and objects to providing specific standard reproductive health care services identified in the provider's notice. If any of the notices are submitted to a hospital, the bill requires, with certain exceptions, the hospital to honor the provider's stated conscientious beliefs. A hospital may challenge a notice in certain circumstances. If a provider accepts and is ready to provide specified reproductive health services, the hospital must annually prepare, adopt, implement, and make publicly available a written plan designed to estimate and meet the anticipated demand for services. If a provider submits a notice declining and objecting to providing specific standard reproductive health care services and the hospital determines it will lack sufficient personnel to meet the demand for reproductive health care services, the hospital may require applicants for vacant reproductive health care provider positions to provide specific standard reproductive health care services.

The bill prohibits any person from interfering with, penalizing, or punishing a reproductive health care provider for asserting or exercising his or her conscientious beliefs, and provides civil remedies for violations relating to the assertion or exercise of these beliefs.

Abortion

The bill makes various changes to the laws relating to abortion, including:

1. The bill eliminates requirements for voluntary and informed consent before the performance of an abortion. Current law requires that a woman upon whom an abortion is to be performed or induced must give voluntary and informed written consent to an abortion. Except in a medical emergency, a woman's consent to an abortion is considered information only if before the abortion is performed or induced at a time specified in current law, the physician or an assistant has, in person, orally provided the woman with certain information and given to the woman certain written materials.

2. The bill eliminates the requirement, effective February 1, 2016, that except in a medical emergency a physician must determine or rely on another determination of the probable postfertilization age of an unborn child before performing an abortion. The bill also eliminates the prohibition on performing or

SENATE BILL 653

inducing an abortion if the probable postfertilization age of the unborn child is 20 or more weeks.

3. This bill eliminates the prohibition on giving a woman an abortion-inducing drug unless the physician who provided the drug for the woman performs a physical exam on the woman and is physically present in the room when the drug is given to the woman.

4. The bill eliminates the current law prohibition on requiring a hospital to admit a patient for performing a sterilization or removing a human embryo or fetus.

5. The bill eliminates the liability exemption for hospitals or employees of hospitals who refuse to perform a sterilization or removal of a human embryo or fetus for religious or moral reasons.

6. The bill eliminates the prohibition against discriminating against a certain person because that person refuses to recommend, aid, or perform a sterilization or the removal of a human embryo or fetus for religious or moral reasons.

7. The bill eliminates the prohibition on coverage of abortions by qualified health plans offered through an exchange in this state.

8. The bill eliminates the prohibition on performing abortions by a physician that does not have admitting privileges in a hospital within 30 miles of the location where the abortion is to be performed. Under a federal appellate court ruling, the requirement to have admitting privileges currently may not be enforced.

9. Under current law, any person, other than the mother, who intentionally destroys the life of an unborn child may be fined not more than \$10,000, imprisoned for not more than six years, or both. Any person, other than the mother, who intentionally destroys the life of an unborn quick child or causes the mother's death by an act done with intent to destroy the life of an unborn child may be fined not more than \$50,000, imprisoned for not more than 15 years, or both. None of these penalties apply to a therapeutic abortion that is performed by a physician; that is necessary, or advised by two other physicians as necessary, to save the life of the mother; and that is performed, except on an emergency basis, in a licensed maternity hospital. These provisions were cited, along with other provisions not affected by this bill that prohibit performing an abortion generally, in *Roe v. Wade*, 410 U.S. 113 (1973), as substantially similar to a Texas statute that was held to violate the due process clause of the 14th Amendment to the U.S. Constitution. The bill repeals these provisions. The bill, however, does not affect any other criminal prohibition or limitation on abortion in current law, such as the prohibition on performing an abortion after the fetus or unborn child has reached viability, or any other homicide prohibition. The bill also does not affect a separate provision in current law that prohibits prosecution of and imposing or enforcing a fine or imprisonment against a woman who obtains an abortion or otherwise violates any abortion law with respect to her unborn child or fetus.

Employment Retribution and Discrimination Prohibition

The bill prohibits employment retribution and unfair discrimination against a health care provider based on the provider's involvement in a sterilization procedure, biomedical or behavioral research, or assertion or exercise of a conscientious belief to provide, or not provide, any standard reproductive health care

SENATE BILL 653

services as described in the bill. The bill also requires a hospital or health care facility to provide notice to an applicant of these prohibitions.

Unless a health care provider provides express consent, the bill prohibits a hospital or health care facility from disclosing information about a health care provider's procedures, services, or research to the provider's prospective or potential employers, if the disclosure divulges activities that the hospital or health care provider could not use itself for disciplinary or other prohibited purposes under the prohibition of employment retribution and unfair discrimination.

Implementation Health Care Task Force

This bill requires the Department of Health Services (DHS) to establish an Implementation Health Care Task Force with certain law enforcement and medical professionals that is required to examine and report annually upon the challenges and successes in achieving the implementation of state policies and rights described in the bill.

Prohibited Acts; Criminal and Civil Penalties

The bill prohibits several acts (prohibited acts) against a person seeking, obtaining or helping another person to obtain, or providing health care services (health care patient or provider). The bill prohibits any person (actor) from injuring, intimidating, interfering with, or threatening a health care patient or provider. An actor who does so or who intentionally engages in a pattern of aggressive or harassing conduct against a health care patient or provider, or who intentionally interferes with the property of a medical facility to impede or otherwise interfere with its efficiency, is guilty of a Class I felony.

Under the bill, an actor who intentionally damages property, including data or records kept by a health care provider, or who intentionally files frivolous lawsuits against a health care provider or communicates deprecatory information about a health care provider for the purpose of damaging or interfering with the operations of a health care provider is guilty of a Class A misdemeanor.

An actor who engages in a pattern of targeted and dangerous activity, including an act or threat of murder, kidnapping, arson, robbery, extortion, or other dangerous felonies, toward a health care provider is guilty of a Class E felony, as is an actor who commits any of the other prohibited acts toward a health care patient or provider if the actor knows or should know that his or her action will cause a specific person's death or injury, or will cause a reasonable person to suffer serious emotional distress or to reasonably fear death or substantial bodily injury to himself or herself or to his or her family member or member of his or her household, and the acts did have one of those effects.

Under the bill, a patient or health care provider who is affected by a prohibited act may file a civil action against the actor. The bill allows a patient or health care provider to seek, in addition to injunctive relief and punitive damages, compensatory damages that reflect his or her actual damages or statutory damages of \$20,000 per violation.

Under the bill, a patient or physician may also file a civil action for a violation related to the patient's right to accurate medical information and his or her right to access to high quality medical care. The bill allows the person to seek, in addition

SENATE BILL 653

to injunctive relief and punitive damages, compensatory damages that reflect his or her actual damages or statutory damages of \$5,000 per violation.

The statutory damages option of \$20,000 per violation is also available to a physician or health care provider who files a civil action after experiencing employment discrimination for his or her provision of medical care, after being prevented from providing medically accurate information to a patient, or after being required to provide medically inaccurate information to patient. The same option is available to a patient or a health care provider who is negatively affected by a determination regarding the conscientious beliefs of a reproductive health care provider.

The bill also authorizes the attorney general to commence a civil action if he or she has reasonable cause to believe that a hospital or any person is interfering with another's right to health care, committing a criminal act against a patient or health care provider, or otherwise violating a patient's or health care provider's rights.

Under the bill, a court may award injunctive relief and compensatory damages and an additional assessment of up to \$20,000 for the first violation and \$40,000 for each subsequent violation. If the court awards relief for a prohibited act, the court may assess an additional amount up to \$100,000 for a first violation and \$1,000,000 for each subsequent violation.

Insurance Requirements

This bill creates requirements for health care liability insurance policies regarding classification and rates for such insurance, procedures for appealing classification or rates, and health care liability policy mandates. These provisions include the following:

1. The bill requires that an insurer must classify certain procedures and medication regimens related to reproductive health and abortion in the same risk classes as other procedures with similar actuarial risks. The bill also requires medically indicated abortions to be classified in the same risk classes as elective abortions.

2. Under current law, the commissioner of insurance has the authority to promulgate rules for the procedure under which a health care provider may challenge the classification and rates contained in its liability policy. Under this bill, a health care provider is first required to exhaust all remedies contained in its insurance contract for challenging classification and rates. This bill also codifies the procedure promulgated by the commissioner, which permits a health care provider to, after exhausting its remedies under the insurance contract, petition the commissioner for review of the classification and rates. If the health care provider is not satisfied with the result of the petition, the health care provider may then appeal the decision to an administrative law judge.

3. Under current law, an insurer may not provide rates that are unfairly discriminatory. Unfair discrimination occurs when one rate in relation to another does not reflect the differences in expected losses and expenses. Under this bill, rates are also unfairly discriminatory if they consider political, social, ethical, or religious concerns associated with providing insurance for abortion procedures. Rates are also unfairly discriminatory if an insurer charges a higher rate for services when there

SENATE BILL 653

is incomplete actuarial data for assessing the risk. The bill specifies that sound actuarial principles do not include political, social, ethical, and religious considerations, charging higher rates for services of which there is only incomplete data, and using incomplete data to limit liability associated with insuring unknown risks.

4. The bill provides that all health care liability insurance policies must include coverage for certain regimens, methods, and procedures, including contraceptive implant procedures, intrauterine contraception procedures, endometrial biopsies, medically indicated and elective abortions, miscarriages, and other procedures using intrauterine instrumentation for which the health care provider is trained. The policies are also required to include coverage for counseling and follow-up services associated with these regimens, methods, and procedures.

Comprehensive Women's Health Research Council

The bill creates the Comprehensive Women's Health Research Council that is required to identify and assess the needs for research on voluntary termination of pregnancy, prioritize research projects most likely to improve health outcomes for women in Wisconsin, and propose ways and means to fund those projects.

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.** 15.194 (2) of the statutes is created to read:

2 15.194 (2) OFFICE OF ADVANCEMENT IN MEDICAL KNOWLEDGE AND CARE. There is
3 created an office of advancement in medical knowledge and care in the department
4 of health services. The director of the office shall be appointed by, and report directly
5 to, the secretary of health services.

6 **SECTION 2.** 15.197 (12m) of the statutes is created to read:

7 15.197 (12m) COMPREHENSIVE WOMEN'S HEALTH RESEARCH COUNCIL. There is
8 created in the department of health services a comprehensive women's health
9 research council that consists of the following members appointed by the secretary
10 of the department of health services:

SENATE BILL 653

1 (a) The chairperson of a statewide professional medical organization, as
2 defined in s. 258.01 (11), that specializes in obstetrics and gynecology.

3 (b) The chair of the department that specializes in obstetrics and gynecology
4 at a medical school located in this state that is accredited by the Liaison Committee
5 on Medical Education or the American Osteopathic Association Commission on
6 Osteopathic College Accreditation, or the chair's designee.

7 (c) The chair of the department that specializes in family medicine at a medical
8 school located in this state that is accredited by the Liaison Committee on Medical
9 Education or the American Osteopathic Association Commission on Osteopathic
10 College Accreditation, or the chair's designee.

11 (d) The chair of the department that specializes in biostatistics at a medical
12 school located in this state that is accredited by the Liaison Committee on Medical
13 Education or the American Osteopathic Association Commission on Osteopathic
14 College Accreditation, or the chair's designee.

15 (e) The chair of the department that specializes in population health at a
16 medical school in this state that is accredited by the Liaison Committee on Medical
17 Education or the American Osteopathic Association Commission on Osteopathic
18 College Accreditation, or the chair's designee.

19 **SECTION 3.** 20.9275 (1) (a) of the statutes is amended to read:

20 20.9275 (1) (a) "Abortion" has the meaning given in s. 253.10 (2) (a) for "induced
21 abortion" under s. 69.01 (13m).

22 **SECTION 4.** 46.245 of the statutes is repealed.

23 **SECTION 5.** 48.375 (4) (a) 1. of the statutes is amended to read:

24 48.375 (4) (a) 1. The person or the person's agent has, either directly or through
25 a referring physician or his or her agent, received and made part of the minor's

SENATE BILL 653

1 ~~medical record, under the requirements of s. 253.10,~~ the voluntary and informed
2 written consent of the minor and the voluntary and informed written consent of one
3 of her parents; or of the minor's guardian or legal custodian, if one has been
4 appointed; or of an adult family member of the minor; or of one of the minor's foster
5 parents, if the minor has been placed in a foster home and the minor's parent has
6 signed a waiver granting the department, a county department, or the foster parent
7 the authority to consent to medical services or treatment on behalf of the minor.

8 **SECTION 6.** 69.186 (1) (hf) of the statutes, as created by 2015 Wisconsin Act 56,
9 is repealed.

10 **SECTION 7.** 69.186 (1) (k) of the statutes, as created by 2015 Wisconsin Act 56,
11 is repealed.

12 **SECTION 8.** 69.186 (1) (L) of the statutes, as created by 2015 Wisconsin Act 56,
13 is repealed.

14 **SECTION 9.** 253.09 of the statutes is repealed.

15 **SECTION 10.** 253.095 of the statutes is repealed.

16 **SECTION 11.** 253.10 of the statutes, as affected by 2015 Wisconsin Act 56, is
17 repealed.

18 **SECTION 12.** 253.105 of the statutes is repealed.

19 **SECTION 13.** 253.107 of the statutes, as created by 2015 Wisconsin Act 56, is
20 repealed.

21 **SECTION 14.** Chapter 258 of the statutes is created to read:

22 **CHAPTER 258**

23 **PATIENTS' REPRODUCTIVE**

24 **HEALTH ACT**

25 **258.01 Definitions.** In this chapter:

SENATE BILL 653

1 (1) “Biomedical and behavioral research” includes studies designed primarily
2 to increase the scientific base of information about normal or abnormal physiology
3 and development; studies primarily intended to evaluate the safety, effectiveness, or
4 usefulness of a medical product, procedure, or intervention; and studies on the
5 behavior of individuals and populations to establish a body of demonstrable,
6 replicable facts and theories that contribute to knowledge and amelioration of
7 human problems.

8 (2) “Department” means the department of health services.

9 (3) “Deprecatory matter” means, in the context of patient and health care
10 provider protection, any knowingly false communication or publication that exposes
11 an individual who is seeking, is obtaining, or has obtained health care services, who
12 is aiding or has aided an individual to obtain health care services, or who provides
13 health care services to hatred, contempt, ridicule, degradation, or disgrace in society
14 or exposes that individual or health care provider to injury in the individual’s or
15 health care provider’s business or occupation.

16 (4) “Employment retribution” means a retaliatory action taken by an employer
17 in response to an exercise of a health care provider’s rights specifically created or
18 recognized in law, including termination of employment, employment suspensions
19 or probationary periods, written or oral warnings, failure to promote, diminishment
20 in employment responsibilities, adverse changes in compensation, removal from or
21 adverse changes in titled positions, denial of medical staff or other privileges, or
22 unwanted work schedule changes.

23 (5) “Health care provider” means an employer, employee, independent
24 contractor, or consultant who provides health care under state law, a business or
25 corporation providing health care services authorized by the state, including a

SENATE BILL 653

1 physician of medicine or osteopathy, a physician's assistant, a specialist assistant,
2 a nurse, a nurse practitioner, a hospital, a critical access hospital, a skilled nursing
3 facility, a comprehensive outpatient rehabilitative facility, a health center, a home
4 health agency, an ambulatory surgery center, a dialysis center, or a hospice program.

5 (6) "Immediate family member" means, for a certain individual, in the context
6 of patient and health care provider protection, a spouse, parent, brother or sister,
7 child or person to whom the individual stands in loco parentis, or any other person
8 living in the individual's household and related to that individual by blood or
9 marriage.

10 (7) "Medically accurate" means information relevant to informed
11 decision-making based on the weight of current scientific evidence, derived from
12 research using accepted scientific methods, consistent with generally recognized
13 scientific theory, and, if available, published in peer-reviewed journals, and
14 recognized as accurate, objective, and complete by professional medical
15 organizations including the American Medical Association, the American Congress
16 of Obstetricians and Gynecologists, the American Public Health Association, or the
17 American Academy of Pediatrics; by government agencies, including the Center for
18 Disease Control, the Food and Drug Administration, the National Cancer Institute,
19 the American Psychological Association, or the National Institute of Health; or by
20 scientific advisory groups including the Institute of Medicine and the Advisory
21 Committee on Immunization Practices.

22 (8) "Physical obstruction" means, in the context of patient and health care
23 provider protection, willfully or recklessly doing any of the following:

SENATE BILL 653

1 (a) Obstructing, hindering, detaining, depriving, impeding the clear passage
2 to, or blocking an individual's access to or egress from, a health care facility or from
3 the common areas of the real property upon which the facility is located.

4 (b) Without the consent of the individual, intruding within 6 feet of an
5 individual entering or exiting a health care facility or from the common areas of the
6 real property upon which the facility is located in a manner that deprives or delays
7 the individual from obtaining, aiding another to obtain, or providing health care
8 services.

9 (9) "Physician" has the meaning given in s. 448.01 (5).

10 (10) "Procedure or treatment form" means any information a patient receives
11 relating to giving consent to a procedure or treatment the patient may elect to
12 proceed with, whether in a brochure, a notice, a posting, an agreement, or other
13 document, provided in writing, electronically, or by video, without regard to whether
14 or not the communication requires a signature.

15 (11) "Professional medical organization" means an entity widely regarded as
16 the leading organization or association within its field that serves a single profession,
17 or a specialty within a single profession, that possesses a primary standing in that
18 profession that requires of its members a significant amount of education, training,
19 or experience, or a license or certificate from a state or authorized private authority
20 to practice the profession or specialty.

21 (12) "Referral" means providing names and contact information of health care
22 providers, securing or assisting a patient in scheduling appointments with health
23 care providers, and communicating with referred health care providers about
24 medical care that may be in the patient's best interest in the judgment of the health
25 care provider.

SENATE BILL 653

1 **(13)** “Scientific advisory group” means, in the context of providing medically
2 accurate information to patients, a group that is recognized as an authoritative
3 scientific source by the medical profession and is comprised of knowledgeable,
4 prominent, and credible members in their field of expertise and that offers scientific
5 opinions on health matters.

6 **(14)** “Suffer serious emotional distress” means to feel terrified, intimidated,
7 threatened, harassed, or tormented on account of an actor’s intentional conduct or
8 behavior if such conduct or behavior would cause a reasonable person under the
9 same circumstances to feel terrified, intimidated, threatened, harassed, or
10 tormented.

11 **(15)** “Targeted and dangerous activity” means any of the following:

12 (a) Any act or threat involving murder, kidnapping, arson, robbery, other
13 substantial bodily harm, bribery, or extortion, which is chargeable under the law and
14 punishable by imprisonment for more than one year.

15 (b) Any act dangerous to human life that is a violation of the laws of the United
16 States or of this state.

17 **258.05 Patient rights to medically accurate information.** **(1)** In this
18 section, “patient” means any individual who presents himself or herself at or before
19 a health care provider for the purpose of obtaining medical investigation,
20 examination, diagnosis, stabilization, consultation, treatment, procedure, or
21 referral.

22 **(2)** A patient has the right to receive medically accurate information from a
23 physician providing medical care, including but not limited to, investigation,
24 examination, diagnosis, stabilization, consultation, treatment, procedure, and
25 referral.

SENATE BILL 653

1 **(3)** A physician has the right and obligation to provide medically accurate
2 information to patients to whom the physician provides medical care, and to make
3 referrals for patients to other licensed physicians and health care providers.

4 **(4)** No person, including the state or any political subdivision of the state, may
5 interfere with or otherwise diminish the rights and obligations specified in sub. (2)
6 or (3).

7 **(5)** Employment retribution by any person against a physician based on the
8 physician's exercise of the rights and obligations specified in subs. (2) and (3), or the
9 physician's provision of medical care to a patient based on such rights and
10 obligations, is prohibited.

11 **(6)** The state, including any political subdivision or instrumentality of the
12 state, may not do any of the following:

13 (a) Require the inclusion of any content in a procedure or treatment form that
14 is not medically accurate, or promote or support, in any manner, an entity that
15 promulgates, for distribution to a patient or other person seeking medical advice
16 from an entity, information that is not medically accurate.

17 (b) Prohibit a physician from adding medically accurate information or from
18 deleting information in a procedure or treatment form that, in the physician's
19 medical judgment, is either not medically accurate or that does not align with a
20 patient's specific request for medical care concerning diagnosis, reservations
21 relevant to the diagnosis, the nature and purpose of the proposed procedure or
22 treatment, risks and consequences of the proposed procedure or treatment,
23 reasonable alternatives to the procedure or treatment appropriate for the patient's
24 situation, patient counseling, or prognosis if a patient elects not to proceed with a
25 proposed procedure or treatment.

SENATE BILL 653

1 **(7)** (a) A patient in this state has the right to all of the following:

2 1. Access, generally, to continually improving, medically accurate, high quality,
3 safe patient care.

4 2. Access, particularly, to continually improving, medically accurate, high
5 quality, safe patient care from obstetricians, gynecologists, pediatricians, emergency
6 room physicians, and family medicine physicians who attended medical residency
7 programs that provided training in evidence-based, clinically sound and current,
8 comprehensive reproductive health care with reliance on up-to-date, medically
9 accurate didactic materials.

10 (b) The office of advancement in medical knowledge and care shall investigate
11 developments affecting the policy of the state and patient rights under this section,
12 submit an annual report of its findings to the appropriate standing committees of the
13 legislature handling issues relating to health, as determined by the speaker of the
14 assembly and the president of the senate under s. 13.172 (3), and distribute the
15 report to the governor, the deans of all schools of medicine in the state, and the
16 directors of all medical residency programs in the state.

17 **(8)** Whoever violates this section shall be subject to the civil remedies under
18 s. 258.55.

19 **258.10 Employment retribution and discrimination prohibition. (1)**

20 In this section, “adverse employment action” means any of the following actions
21 engaged in or taken by an employer:

22 (a) Employment retribution, or unfair discrimination in employment under s.
23 111.31, in the hiring, licensing, terms or conditions of employment, compensation,
24 promotion, privileges, or termination of any health care provider.

SENATE BILL 653

1 (b) Employment retribution, or unfair discrimination in employment under s.
2 111.31, in the extension of staff or other privileges to any health care provider.

3 (c) Any adverse action against a health care provider with respect to hiring,
4 licensing, terms or conditions of employment, compensation, promotion, privileges,
5 termination, or quantity, schedule, or nature of the health care provider's
6 assignments or duties.

7 **(2)** No person may take any adverse employment action against a health care
8 provider because the health care provider does any of the following:

9 (a) Performs or assists or has performed or assisted in a sterilization procedure,
10 an abortion procedure, or other reproductive health service for an employer or as a
11 volunteer.

12 (b) Participates in or has participated in biomedical and behavioral research.

13 (c) Engages or has engaged in activities that support or promote any of the
14 procedures, services, or research described under par. (a) or (b).

15 (d) Has asserted or exercised, under s. 258.25, a conscientious belief to not
16 provide or to provide any standard reproductive health care services, as defined in
17 s. 258.25 (1) (k).

18 **(3)** A hospital or health care facility shall provide a written notice to each
19 health care provider applicant, and annually to each health care provider, describing
20 the employment retribution and discrimination prohibitions under sub. (2). Notices
21 may be provided to applicants and employees electronically.

22 **(4)** A hospital or health care facility may not, without the express consent of
23 a health care provider, disclose information about a health care provider's
24 procedures, services, or research to that health care provider's potential or
25 prospective employers if the disclosure divulges activities that the hospital or health

SENATE BILL 653

1 care facility could not use itself for disciplinary or other prohibited purposes under
2 sub. (2).

3 (5) Whoever engages in employment retribution or discrimination against a
4 health care provider in violation of sub. (2), (3), or (4) shall be subject to the civil
5 remedies under s. 258.55.

6 **258.15 Implementation health care task force.** (1) In this section, “task
7 force” means the implementation health care task force established under sub. (2).

8 (2) The secretary of the department shall establish a special committee under
9 s. 15.04 (1) (c) called the implementation health care task force to examine and report
10 annually upon the challenges and successes in achieving the state policies and rights
11 created or described in this chapter. The task force described in this section shall be
12 comprised of the following members:

13 (a) A law enforcement officer designated by the Wisconsin Professional Police
14 Association who specializes in investigating crimes involving harassment under s.
15 947.013 or stalking under s. 940.32.

16 (b) The state public defender, or his or her designee.

17 (c) A representative designated by a statewide professional medical
18 organization that represents registered nurses.

19 (d) An assistant district attorney designated by the association of state
20 prosecutors who has significant professional experience prosecuting crimes
21 involving harassment under s. 947.013 or stalking under s. 940.32.

22 (e) A representative designated by a statewide nonprofit organization
23 dedicated to advancing access to standard reproductive health care services, as
24 defined in s. 258.25 (1) (k).

SENATE BILL 653

1 (f) A representative designated by a statewide professional medical
2 organization that specializes in the fields of obstetrics and gynecology.

3 (g) A representative designated by a statewide professional medical
4 organization that specializes in the field of family medicine.

5 (h) A representative designated by a scientific advisory group.

6 (i) A representative designated by a nonprofit organization with a multi-year
7 record of advocating for assuring access to comprehensive, community-oriented
8 primary health care services.

9 **(3)** If a vacancy occurs in the task force membership, the vacancy shall be filled
10 in the same manner as the initial appointment.

11 **(4)** The task force shall submit an annual report in December of each year that
12 is made publicly available either in paper or electronic form, published on the
13 department's website, and delivered to the governor and the legislature
14 documenting the progress of the task force and including its findings for the year and
15 containing recommendations for future actions. The report must address all of the
16 following issues:

17 (a) All studies performed and the results of those studies.

18 (b) Evaluations of the effectiveness of existing law in resolving issues within
19 the scope of mandate of the task force.

20 (c) Recommendations for new services, resources, and legislative or
21 administrative policies to secure more effective implementation of state policies,
22 rights, and remedies.

23 (d) Recommendations to enhance public consideration of those issues not
24 susceptible to immediate legal or administrative resolution.

SENATE BILL 653

1 (e) A full presentation of the findings, evaluations, and recommendations of
2 each member who, in whole or in part, does not agree with the findings, evaluations,
3 or recommendations of the majority of the members of the task force.

4 (5) The task force shall meet in person at least twice annually on such dates
5 and times as the members determine. A majority of all the task force members shall
6 constitute a quorum for the transaction of any business, for the performance of any
7 duty, or for the exercise of any action by the task force. The task force may meet in
8 person or by telephone or by using other communication technologies, and may hold
9 meetings to discuss issues even in the absence of quorum. The task force shall
10 attempt to engage, and solicit the input of, a broad and diverse range of groups,
11 organizations, and individuals. In doing so, the task force may use whatever
12 networking and communication technologies will most effectively further its mission
13 and facilitate this outreach.

14 (6) The chair of the task force will be selected by a majority of the members that
15 constitute the task force.

16 (7) No member shall serve beyond the time when he or she holds the office,
17 employment, or status by reason of which he or she was initially eligible for
18 appointment.

19 (8) The task force shall serve without compensation but shall be eligible for
20 reimbursement for necessary and reasonable expenses incurred in the performance
21 of their official duties within the limits of funds appropriated or otherwise made
22 available to the department for its purposes.

23 (9) The task force may draw upon the human resources and expertise of private
24 institutions, including those institutions associated with individuals appointed to
25 the task force to the extent considered appropriate by those institutions. The task

SENATE BILL 653

1 force may not permit financial remuneration for assistance provided under this
2 subsection, and private institutions may not be provide assistance with any intent
3 to influence the deliberations of the task force to the advantage of the participating
4 private entity.

5 (10) The department shall, as part of its routine functions, designate and
6 provide staffing and support services sufficient to ensure that the task force can
7 complete its work and submit its report each year.

8 **258.20 Comprehensive women’s health research council.** (1) In this
9 section:

10 (a) “Council” means the comprehensive women’s health research council.

11 (b) “Research” means basic and clinical research in evidence-based care on
12 voluntary termination of pregnancy in the areas of safety and quality, including
13 improvements of medical and surgical techniques, medication and pain
14 management, psychosocial aspects of care, impacts of medical or surgical care
15 restrictions, patient outcomes, and contraception immediately following pregnancy.

16 (2) The council shall identify and assess the needs for research on voluntary
17 termination of pregnancy, prioritize research projects most likely to improve health
18 outcomes for women in this state, and propose ways and means to fund those
19 projects. To accomplish the duty under this subsection, the council shall review
20 medical and scientific literature and solicit opinions from reproductive health care
21 providers and from medical and scientific researchers on the current status of
22 research on voluntary termination of pregnancy and on improving women’s health
23 outcomes.

SENATE BILL 653

1 **(3)** The council shall meet at least twice annually on dates and at times as the
2 members determine. The council may meet in person, by telephone, or by using other
3 means of communication.

4 **(4)** The council may request human resources and expertise of private
5 institutions, including those institutions associated with individuals appointed to
6 the council. The private institutions may provide those human resources and that
7 expertise as they consider appropriate without compensation and without intent to
8 influence the deliberations of the council to the advantage of the private institution.

9 **(5)** The department shall designate and provide staffing and support services
10 sufficient, including a needs assessment, to ensure that the council is able to conduct
11 its work.

12 **(6)** Annually, in December, the council shall submit to the governor, to the
13 department for publication on the department's Internet site, and to the legislature
14 in the manner described under s. 13.172 (2) a report that addresses all of the
15 following:

16 (a) An assessment of the current status and any gaps in research on voluntary
17 termination of pregnancy and on improving health outcomes for women.

18 (b) An inventory of significant research needed to advance and improve health
19 care outcomes for women.

20 (c) A prioritization of the research considered by the council to most likely
21 result in improving the health outcome of women in this state.

22 (d) The findings of the council regarding the availability of public and private
23 funding to meet the research needs identified by the council under par. (b).

24 (e) An estimate of the funding needed to meet the research needs prioritized
25 by the council under par. (c).

SENATE BILL 653

1 (f) A statement of criteria and standards recommended by the council for
2 awarding grants for the research identified under par. (b) or prioritized under par.
3 (c) when funding is available.

4 (7) It is the policy of the state to support and attain improved health care
5 outcomes for all women who voluntarily terminate a pregnancy in this state. In
6 recognition of this policy, with awareness that national level research directed
7 towards achieving improved outcomes on voluntary termination of pregnancy
8 remains limited and that continuing advances in safe and effective health care in all
9 medical fields requires ongoing evidence-based research, the department shall
10 engage in activities and pursue strategies to continually advance the science and
11 medicine of voluntary termination of pregnancy.

12 **258.25 Enabling patient care while honoring conscience of**
13 **reproductive health care providers. (1) DEFINITIONS.** In this section:

14 (a) “Appropriate medical screening examination” means an examination
15 reasonably tailored to identify reproductive health care issues and conditions
16 specific to the patient and is comparable to a hospital’s standard screening
17 examination for other patients presenting symptoms, health care issues, conditions,
18 illnesses, injuries, or diseases.

19 (b) “Capabilities” means, in the context of a hospital’s provision of services
20 pursuant to sub. (2), the availability of physical space, equipment, supplies, and
21 services that the hospital provides, such as surgery, psychiatry, obstetrics, intensive
22 care, pediatrics, trauma care, and that the level of care that the personnel of the
23 hospital provides is within the training and scope of their professional licenses.

24 (c) “Capacity” means the physical ability of a hospital to accommodate the
25 individual requesting examination or treatment. Capacity encompasses such things

SENATE BILL 653

1 as numbers and availability of qualified staff, beds, and equipment and the hospital's
2 past practices of accommodating additional patients in excess of its occupancy limits.

3 (d) "Conscientious belief" means sincerely held religious, moral, or ethical
4 beliefs held by an individual that stands for the central moral core of the individual's
5 character, and for purposes of this section does not include beliefs that are motivated
6 by or based upon race, color, national origin, ethnicity, sex, creed, or sexual
7 orientation.

8 (e) "Hospital" has the meaning given in s. 50.33 (2), except that "hospital" as
9 used in this section does not include a critical access hospital or a hospital that does
10 not meet the conditions of participation in any federal health care program as
11 specified in 42 USC 1395x (e) and 1395cc.

12 (f) "Maternity care services" means maternity support services, prenatal care,
13 ambulatory care maternity services, complications of pregnancy, neonatal care,
14 inpatient institution maternity care, including labor and delivery, and postpartum
15 care.

16 (g) "Medically necessary care" means health care services or products that a
17 prudent physician would provide to a patient to prevent, diagnose, or treat an illness,
18 injury, disease, condition, or its symptoms in a manner that is all of the following:

- 19 1. In accordance with generally accepted standards of medical practice.
- 20 2. Clinically appropriate in terms of type, frequency, extent, site, and duration.
- 21 3. Not primarily for the economic benefit of the health plans and purchasers
22 or for the convenience of the treating physician or other health care provider.

23 (h) "Reasonably accommodate" means making existing facilities used by
24 reproductive health care providers readily accessible, job restructuring, part-time
25 or modified work schedules, acquisition or modification of equipment or devices,

SENATE BILL 653

1 adjustment or modifications of policies, and the provision of other similar
2 accommodations.

3 (i) "Reproductive health care provider" means a natural person who is an
4 employee, independent contractor, or consultant of a hospital, or is otherwise
5 affiliated with a hospital, and who provides services as a physician of medicine or
6 osteopathy, a physician's assistant, a specialist assistant, a nurse, or a nurse
7 practitioner, and is directly involved in providing medical treatment to a patient
8 during a procedure in which the patient receives medical treatment in the hospital
9 for a standard reproductive health care service.

10 (j) "Stabilizing treatment" means, with respect to an emergent or urgent
11 medical condition covered in sub. (2) (d) of this section, medically appropriate
12 medical measures to ensure that no material deterioration of the condition is likely,
13 within reasonable medical probability, to result from or occur during the transfer of
14 the individual from a hospital if such a transfer were to occur.

15 (k) "Standard reproductive health care services" means family planning;
16 contraception and birth-spacing services; full-spectrum contraceptive education;
17 counseling for and access to emergency contraception; screening, assessment, and
18 treatment of reproductive tract infections and sexually transmitted infections
19 including HIV/AIDS; screening, assessment, and treatment for gynecologic and
20 breast cancers; routine well-woman and preventive exams; pregnancy testing;
21 infertility services; miscarriage and abortion services; sterilization; obstetric care
22 and services; and menopause and perimenopause services.

23 (L) "Transfer" means the movement, including the discharge, of an individual
24 outside a hospital at the direction of any person employed by, or affiliated or
25 associated with, directly or indirectly, the hospital, but does not include such a

SENATE BILL 653

1 movement of an individual who has been declared dead, or leaves the facility without
2 the permission of any person employed by, or affiliated or associated with, directly
3 or indirectly, the hospital.

4 (m) "Undue hardship" means, as determined by the examination of the facts,
5 an actual, as opposed to a speculative, hardship that necessarily and significantly
6 either interferes with a hospital's delivery of safe health care or degrades its
7 provision of medically necessary care to patients.

8 **(2) REPRODUCTIVE HEALTH CARE SERVICES.** (a) A hospital that has a department
9 or service offering maternity care services shall permit all standard reproductive
10 health care services and all maternity care services, provided that such services are
11 within the capacity and capabilities of the hospital.

12 (b) In the case of a hospital that has a department or service that offers
13 maternity care services, if any individual comes to the hospital and a request is made
14 on the individual's behalf for examination, treatment, or care for any standard
15 reproductive health care service, the hospital shall provide an appropriate medical
16 screening examination within the capabilities of the hospital.

17 (c) Whenever a health care provider, within the training and scope of his or her
18 professional license, is available to provide or perform care appropriate for a patient's
19 reproductive health care condition, the hospital must do all of the following:

20 1. Permit that reproductive health care provider to provide standard
21 reproductive health care services.

22 2. Reasonably accommodate that provider in providing any standard
23 reproductive health care service, provided that the provider has given notice to the
24 hospital of his or her readiness to provide such care under sub. (3).

SENATE BILL 653

1 3. Provide sufficient support, including ancillary services routinely available
2 for patients with comparable medical needs or circumstances, to ensure the
3 provision of medically necessary care of the patient.

4 (d) Whenever a health care provider, within the training and scope of his or her
5 professional license, is not available to provide or perform care appropriate for a
6 patient's reproductive health care condition, and the hospital reasonably determines
7 that the individual who came to the hospital seeking examination, treatment, or care
8 for any standard reproductive health care service has an emergent or urgent medical
9 condition, the hospital shall, within the staff and facilities available at the hospital,
10 do all of the following:

11 1. Provide for further medical examination and treatment as may be required
12 to stabilize the medical condition.

13 2. Provide necessary stabilizing treatment for the patient's presented
14 reproductive health care condition.

15 3. Counsel the patient on all medically appropriate treatments specific to the
16 patient's reproductive health care condition and circumstances.

17 4. Offer and provide referral to health care providers who provide those
18 treatments.

19 (e) A hospital that has fulfilled the requirements of par. (d) may transfer the
20 individual to another medical facility when the patient is medically stable.

21 **(3) CONSCIENTIOUS BELIEFS.** Because the provision of medically necessary care
22 for one or more specific standard reproductive health care services may implicate
23 religious, moral, or ethical conscientious beliefs, a reproductive health care provider
24 may do any of the following:

SENATE BILL 653

1 (a) Give written notice to a hospital that has a department or service offering
2 maternity care services, describing in detail the provider's conscientious belief, the
3 core values associated with that belief, how he or she came to hold that belief, and
4 how it affects the provider's readiness to provide specific standard reproductive
5 health care services. If a provider submits a written notice under this paragraph,
6 all of the following apply:

7 1. A provider's assertion in a written notice of his or her conscientious belief
8 under this paragraph is prima facie evidence of its validity.

9 2. A hospital challenging the validity of a conscientious belief has the burden
10 of showing by clear and convincing evidence that the provider's notice does not
11 describe a conscientious belief. If a hospital determines as a matter of fact that a
12 notice does not describe a conscientious belief, the hospital shall issue findings of fact
13 and explain in writing how the hospital has met the clear and convincing evidentiary
14 standard in making its determination that the provider's notice did not describe a
15 conscientious belief.

16 (b) Give written notice to a hospital that has a department or service offering
17 maternity care services that the provider, within his or her training and within the
18 scope of his or her professional license, accepts and is ready to provide specific
19 standard reproductive health care services identified in the notice. If a provider
20 submits a written notice under this paragraph, all of the following apply:

21 1. The hospital shall honor the provider's conscientious belief, unless it is
22 determined that the notice submitted by the provider did not describe a conscientious
23 belief, and shall reasonably accommodate the provider's decisions, including, if
24 specified, a decision to provide certain specific standard reproductive health care
25 services, or for example, a decision to provide abortion services until the limit on the

SENATE BILL 653

1 period of gestation under state law or until viability when no gestation limit is set
2 by state law, provided that the hospital may deny an accommodation if it would
3 create an undue hardship.

4 2. To support, sustain, and accommodate provider decisions to provide specified
5 reproductive health care services, both as a least restrictive means to ensure
6 compliance with this section and as a means to achieve the state interests described
7 in this section, the hospital shall annually prepare, adopt, implement, and make
8 publicly available a written plan designed to estimate and meet the reasonably
9 anticipated demand for all the standard reproductive health care services, and to
10 provide the support and ancillary services as described in sub. (2).

11 (c) Give written notice to a hospital that has a department or service offering
12 maternity care services that the provider, invoking applicable refusal rights in
13 federal or state law, declines and objects to providing specific standard reproductive
14 health care services identified in the notice. If a provider submits a written notice
15 under this paragraph, all of the following apply:

16 1. The hospital shall honor the provider's conscientious belief, unless it
17 determined that the notice submitted by the provider did not identify applicable
18 refusal rights in federal or state law or did not describe a conscientious belief, and
19 shall reasonably accommodate the provider's decisions, provided that the hospital
20 may deny an accommodation if it would create an undue hardship or precludes,
21 under sub. (2), the provision of an appropriate medical screening examination or the
22 provision of medically necessary care to an individual who has come to the hospital
23 as specified in sub. (2).

24 2. To support, sustain, and accommodate provider decisions to not provide
25 specified reproductive health care services, both as a least restrictive means to

SENATE BILL 653

1 ensure compliance with this section and as a means to achieve the state interests
2 described in this section, the hospital is authorized, whenever the hospital
3 determines that it will lack sufficient personnel to meet the reasonably anticipated
4 demand for the services permitted under sub. (2), to obtain services necessary for
5 both the delivery of safe health care and the provision of medically necessary care
6 by requiring applicants for vacant reproductive health care provider positions to
7 provide specific standard reproductive health care services as may be necessary to
8 meet the reasonably anticipated demand for all services permitted under sub. (2).

9 (4) INTERFERENCE. No person may interfere with or otherwise penalize or
10 punish a reproductive health care provider for asserting or exercising his or her
11 conscientious belief under this section.

12 (5) VIOLATIONS. Any person violating this section shall be subject to the civil
13 remedies under s. 258.55.

14 (6) STATE POLICIES. (a) *Discrimination in access to reproductive health care.*
15 Access to health care services and to accurate health care information is a basic and
16 foundational human right. Yet, in the realm of sexual and reproductive health care,
17 in a health care system that is especially challenging to most anyone with a limited
18 education or who lives in poverty or is victimized by family violence, gender-based
19 health care discrimination profoundly limits access to standard reproductive health
20 care services and safe motherhood, and thwarts the state's policy of promoting
21 improved health care outcomes for all women and in honoring and protecting privacy
22 rights inherent in their reproductive health care decisions. With an awareness that
23 some hospitals with a maternity department or services have the capability of
24 permitting standard reproductive health care services but routinely restrict or deny
25 women access to them, the state declares that failure to permit access to standard

SENATE BILL 653

1 reproductive health care services for women and their willing reproductive health
2 care providers is a form of invidious discrimination, and that the state has
3 compelling governmental interests in public health and safety and the well-being of
4 all its residents in ending this form of gender discrimination and in assuring that no
5 one is deprived of privacy rights inherent in reproductive health care decision
6 making. Accordingly, it is the policy of this state that hospitals that offer maternity
7 care services, permit patients with willing reproductive health care providers to have
8 access to all standard reproductive health care services and maternity care services.

9 (b) *Honoring conscientious beliefs.* A commitment to providing standard
10 reproductive health care services to patients and a strong objection to providing such
11 services each qualify as sincerely held conscientious beliefs when predicated on a
12 person's central core beliefs and values. The state's governmental interest in public
13 health and safety and the well-being of all its residents requires that the provision
14 of medically necessary care be the paramount and constant concern of all health care
15 providers. Accordingly, it is the policy of this state, that hospitals that offer
16 maternity care services, consistent with maintaining systems sufficient to ensure
17 that women and their health care providers can access all standard reproductive
18 health care services, shall honor and reasonably accommodate conscientious beliefs
19 of direct providers of all standard reproductive health care services.

20 **258.50 Patient and health care provider protection. (1)** In this section:

21 (a) "Health care provider" includes an individual who aids an individual to seek
22 or obtain health care services.

23 (b) "Patient" has the meaning given in s. 258.05 (1).

24 (2) No person may do any of the following:

SENATE BILL 653

1 (a) Engage in conduct directed at a health care provider or a patient that
2 injures, intimidates, harasses, interferes with, or threatens or attempts to injure,
3 intimidate, harass, interfere with, or threaten the health care provider or patient,
4 by use of force, threat of force, or physical obstruction if the person knows that the
5 conduct will cause the health care provider or patient to suffer serious emotional
6 distress or place him or her in reasonable fear of death or of great bodily harm to
7 himself or herself or a member of his or her family or household, or will cause a
8 reasonable person under the same circumstances to suffer serious emotional
9 distress, or will place a reasonable person under the same circumstances in fear of
10 death or bodily harm to himself or herself or a member of his or her family or
11 household.

12 (b) Intentionally use, obstruct, manipulate, arrange, or rearrange, or attempt
13 to use, obstruct, manipulate, arrange, or rearrange the property of a medical facility
14 to impede or otherwise interfere with its efficiency, or attempt to engage in any of
15 these actions, or file a lawsuit or administrative complaint against a health care
16 provider that, when considering the action in its entirety, cannot be supported by any
17 rational argument based in fact or law, or publish, distribute, or communicate in any
18 form of deprecatory matter relating to a health care provider.

19 (c) For the purpose of damaging or interfering with the operations of a health
20 care provider, and in connection with such purpose, doing any of the following:

21 1. Intentionally damaging or causing the loss of any real or tangible personal
22 property, including records, or data, used by a health care provider or owned or leased
23 by a person having connection to, relationship with, or transactions with a health
24 care provider.

SENATE BILL 653

1 2. Intentionally placing a person in reasonable fear of death or substantial
2 bodily injury or placing a person in reasonable fear of the death of, or of great bodily
3 harm to, a member of the immediate family of that person, or a spouse or intimate
4 partner of that person, by engaging in a pattern of conduct consisting of 2 or more
5 threats or acts of vandalism, property damage, criminal trespass, harassment, or
6 intimidation.

7 3. Conspiring or attempting to engage in intentionally damaging property as
8 described in subd. 1. or conspiring or attempting to intentionally place a person in
9 reasonable fear of death or serious bodily injury as described in subd. 2.

10 (d) Engaging in a pattern of targeted and dangerous activity towards a health
11 care provider. For purposes of this paragraph, a pattern of targeted and dangerous
12 activity exists when a person or group of individuals associated in fact commits 2 or
13 more separate acts of targeted and dangerous activity towards a health care provider
14 in which one act occurred after the effective date of this paragraph [LRB inserts
15 date], and in which the last targeted and dangerous act occurred within 2 years of
16 the commission of a separate act of targeted and dangerous activity by a different
17 person or group of individuals associated in fact that employed or was employed by
18 or was associated directly or indirectly with the person or group of individuals
19 committing a separate act of targeted and dangerous activity toward the same health
20 care provider.

21 **(3)** Any person who aids or abets the commission of conduct proscribed in this
22 section or who commands, induces, or procures conduct proscribed by this section is
23 engaged in conduct in violation of this section.

24 **(4)** Evidence of the habit of a person or of the routine practice of an
25 organization, whether corroborated or not and regardless of the presence of an

SENATE BILL 653

1 eyewitness, is relevant to prove that the conduct of the person or organization on a
2 particular occasion was in conformity with the habit or routine practice.

3 **(5)** (a) Whoever violates this section is subject to penalties provided under s.
4 258.53 and to the civil remedies under s. 258.55.

5 (b) Without limitation, the following affirmative defenses are available to a
6 person who is alleged to have violated this section:

7 1. That the identified specific conduct is protected by the person's right to
8 engage in expressive conduct protected from legal prohibition by the constitutions
9 of the state and the United States.

10 2. When the identified specific conduct concerns the filing of a lawsuit or
11 administrative complaint, that the lawsuit or administrative complaint alleged acts
12 against the party filing the lawsuit or against the party's child that are recognized
13 under state law as constituting domestic violence under s. 813.12 (1) (am), sexual
14 assault including sexual assault under s. 940.225, 948.06, or 948.09, or physical
15 abuse of a child including physical abuse of a child under s. 948.03.

16 3. When the identified specific conduct concerns the publication, distribution,
17 or communication of deprecatory matter, that all individuals specified in the
18 deprecatory matter consented in writing to the publication, distribution, and
19 communication of the deprecatory matter.

20 **(6)** The state hereby establishes, affirms, fosters, and promotes the following
21 3 fundamental policies and interests necessary for the public interest:

22 (a) The protection of health care providers in this state from becoming targets,
23 without remedies, of intentional and frightening conduct directed toward them is
24 critical to the state's significant and substantial governmental interest in health and
25 safety. The public health and welfare of health care patients is preserved and

SENATE BILL 653

1 promoted when unlawful and egregious acts directed towards health care providers
2 are subject to state provided protections that minimize injuries sustained from such
3 conduct.

4 (b) The state legislature, relying on evidence that health care providers have
5 historically and repeatedly been targeted for violence on account of the care they
6 provide, finds that it serves a compelling governmental interest of this state to
7 establish policies and laws that protect health care providers, their families, and
8 their property from violence designed to damage or interfere with their operations,
9 and from targeted and dangerous activities.

10 (c) The availability and assurance that patients have continuing access to
11 medically accurate and comprehensive health care, including reproductive health
12 care, and to health care providers who are neither impeded in providing those
13 services nor exposed to risk of employment retribution and unfair discrimination in
14 employment is central to the well being of all residents in this state, to the
15 preservation of health care integrity and patient privacy, to the respect for the
16 sanctity of the doctor-patient relationship, and to the freedom from governmental
17 intrusion that is central to the doctor-patient relationship.

18 **258.53 Penalties. (1)** Except as provided in sub. (3), a person who violates s.
19 258.50 (2) (a) or (c) is guilty of a Class I felony.

20 **(2)** Except as provided in sub. (3), a person who violates s. 258.50 (2) (b) is guilty
21 of a Class A misdemeanor.

22 **(3)** (a) If all of the following apply, a person who violates s. 258.50 (2) is guilty
23 of the violation indicated in par. (b):

24 1. The person knows that his or her action will cause a specific person's death
25 or injury, or will cause a reasonable person under the same circumstances to suffer

SENATE BILL 653

1 serious emotional distress or to reasonably fear death or great bodily harm to himself
2 or herself or to his or her family member or member of his or her household.

3 2. The person's action caused a specific person's death or injury, or caused a
4 person to suffer serious emotional distress or to reasonably fear death or great bodily
5 harm to himself or herself or to his or her family member or member of his or her
6 household.

7 (b) 1. For a violation of s. 258.50 (2) (a) or (c), a Class G felony

8 2. For a violation of s. 258.50 (2) (b), a Class H felony.

9 3. For a violation of s. 258.50 (2) (d), a Class E felony.

10 **258.55 Remedies for health care violations. (1) ACTIONS BY THE ATTORNEY**

11 GENERAL. (a) If the attorney general has reasonable cause to believe that any person
12 is violating s. 258.05, 258.10, 258.25 (4), or 258.50, or that a hospital is violating s.
13 258.25 (2), the attorney general has standing to bring and may commence a civil
14 action against any party in the name of the state in any court with appropriate
15 jurisdiction to vindicate the public interest and protect the rights of citizens of the
16 state.

17 (b) For each violation specified in par. (a), the court may award any appropriate
18 relief, including temporary, preliminary, or permanent injunctive relief and
19 compensatory damages. The court, to vindicate the public interest, may assess
20 against a party other than the state or instrumentality of the state an additional
21 amount not to exceed \$20,000 for the first violation and \$40,000 for each subsequent
22 violation, except that for a violation of s. 258.50 the court may assess an additional
23 amount not to exceed \$100,000 for a first violation and \$1,000,000 for each
24 subsequent violation.

SENATE BILL 653

1 (2) PRIVATE RIGHT OF ACTION. (a) A patient or physician claiming a violation of
2 the right and obligations specified in s. 258.05 and any associated claims under
3 common law may commence a civil action for relief under par. (b).

4 (b) In any action under par. (a), the court may award appropriate relief,
5 including temporary, preliminary, or permanent injunctive relief, and compensatory
6 and punitive damages. With respect to compensatory damages, the plaintiff may
7 elect, at any time prior to the rendering of final judgment, to recover an award of
8 statutory damages in the amount of \$5,000 per violation in lieu of actual damages.

9 (c) A physician or health care provider claiming a violation of s. 258.05 (5) or
10 (6), a health care provider claiming a violation of s. 258.10, a patient claiming a
11 violation of s. 258.25, or a reproductive health care provider challenging a
12 determination that an assertion submitted under s. 258.25 (3) (a) did not describe a
13 conscientious belief may commence a civil action for relief under par. (d).

14 (d) In any action under par. (c), the court may award appropriate relief,
15 including temporary, preliminary, or permanent injunctive relief; back pay or
16 reinstatement or other privileges; and compensatory and punitive damages. With
17 respect to compensatory damages, the plaintiff may elect, at any time before the
18 rendering of final judgment, to recover an award of statutory damages in the amount
19 of \$20,000 per violation, in lieu of actual damages.

20 (e) A person claiming a violation of the rights specified in s. 258.50 and any
21 associated claims under common law may commence a civil action for relief under
22 par. (f).

23 (f) In any action under par. (e), the court may award appropriate relief,
24 including temporary, preliminary, or permanent injunctive relief and compensatory
25 and punitive damages. With respect to compensatory damages, the plaintiff may

SENATE BILL 653

1 elect, at any time before the rendering of final judgment, to recover an award of
2 statutory damages in the amount of \$20,000 per violation, in lieu of actual damages.

3 **258.70 Construction.** Nothing in this chapter shall be construed to do any
4 of the following:

5 (1) To prohibit any expressive conduct, including peaceful picketing or other
6 peaceful demonstration, protected from legal prohibition by the First Amendment to
7 the Constitution of the United States of America.

8 (2) To create any new remedies for interference with activities protected by the
9 free speech or free exercise clauses of the First Amendment to the Constitution of the
10 United States of America, regardless of the point of view expressed, or to limit any
11 existing legal remedies for such interference.

12 (3) To provide exclusive criminal penalties or civil remedies with regard to the
13 conduct prohibited by this chapter or to preempt state or local laws that may provide
14 such penalties or remedies.

15 (4) To have any effect on the rights and obligations or to preempt any state or
16 local laws regarding emergency contraception for sexual assault victims.

17 **SECTION 15.** 441.06 (6) of the statutes is repealed.

18 **SECTION 16.** 441.07 (1g) (f) of the statutes is repealed.

19 **SECTION 17.** 448.02 (3) (a) of the statutes is amended to read:

20 448.02 (3) (a) The board shall investigate allegations of unprofessional conduct
21 and negligence in treatment by persons holding a license, certificate or limited
22 permit granted by the board. An allegation that a physician has violated s. ~~253.10~~
23 ~~(3)~~, 448.30 or 450.13 (2) or has failed to mail or present a medical certification
24 required under s. 69.18 (2) within 21 days after the pronouncement of death of the
25 person who is the subject of the required certificate or that a physician has failed at

SENATE BILL 653

1 least 6 times within a 6-month period to mail or present a medical certificate
2 required under s. 69.18 (2) within 6 days after the pronouncement of death of the
3 person who is the subject of the required certificate is an allegation of unprofessional
4 conduct. Information contained in reports filed with the board under s. 49.45 (2) (a)
5 12r., 50.36 (3) (b), 609.17 or 632.715, or under 42 CFR 1001.2005, shall be
6 investigated by the board. Information contained in a report filed with the board
7 under s. 655.045 (1), as created by 1985 Wisconsin Act 29, which is not a finding of
8 negligence or in a report filed with the board under s. 50.36 (3) (c) may, within the
9 discretion of the board, be used as the basis of an investigation of a person named in
10 the report. The board may require a person holding a license, certificate or limited
11 permit to undergo and may consider the results of one or more physical, mental or
12 professional competency examinations if the board believes that the results of any
13 such examinations may be useful to the board in conducting its investigation.

14 **SECTION 18.** 448.02 (3) (a) of the statutes, as affected by 2013 Wisconsin Act 240
15 and 2015 Wisconsin Act (this act), is repealed and recreated to read:

16 448.02 (3) (a) The board shall investigate allegations of unprofessional conduct
17 and negligence in treatment by persons holding a license or certificate granted by the
18 board. An allegation that a physician has violated s. 448.30 or 450.13 (2) or has failed
19 to mail or present a medical certification required under s. 69.18 (2) within 21 days
20 after the pronouncement of death of the person who is the subject of the required
21 certificate or that a physician has failed at least 6 times within a 6-month period to
22 mail or present a medical certificate required under s. 69.18 (2) within 6 days after
23 the pronouncement of death of the person who is the subject of the required
24 certificate is an allegation of unprofessional conduct. Information contained in
25 reports filed with the board under s. 49.45 (2) (a) 12r., 50.36 (3) (b), 609.17 or 632.715,

SENATE BILL 653

1 or under 42 CFR 1001.2005, shall be investigated by the board. Information
2 contained in a report filed with the board under s. 655.045 (1), as created by 1985
3 Wisconsin Act 29, which is not a finding of negligence or in a report filed with the
4 board under s. 50.36 (3) (c) may, within the discretion of the board, be used as the
5 basis of an investigation of a person named in the report. The board may require a
6 person holding a license or certificate to undergo and may consider the results of one
7 or more physical, mental or professional competency examinations if the board
8 believes that the results of any such examinations may be useful to the board in
9 conducting its investigation.

10 **SECTION 19.** 448.03 (5) (a) of the statutes is repealed.

11 **SECTION 20.** 457.26 (2) (gm) of the statutes is repealed.

12 **SECTION 21.** 625.11 (4) of the statutes is amended to read:

13 625.11 (4) UNFAIR DISCRIMINATION. One rate is unfairly discriminatory in
14 relation to another in the same class if it clearly fails to reflect equitably the
15 differences in expected losses and expenses. Rates are unfairly discriminatory when
16 an insurer assigns a higher rate for services based only on incomplete actuarial data
17 or uses such incomplete data to limit liability associated with insuring an unknown
18 risk. Rates are not unfairly discriminatory because different premiums result for
19 policyholders with like loss exposures but different expense factors, or like expense
20 factors but different loss exposures, so long as the rates reflect the differences with
21 reasonable accuracy. Rates are not unfairly discriminatory if they are averaged
22 broadly among persons insured under a group, franchise or blanket policy.

23 **SECTION 22.** 625.22 (1) of the statutes is amended to read:

24 625.22 (1) ORDER IN EVENT OF VIOLATION. If the commissioner finds after a
25 hearing that a rate is not in compliance with s. 625.11 or 655.92, the commissioner

SENATE BILL 653

1 shall order that its use be discontinued for any policy issued or renewed after a date
2 specified in the order.

3 **SECTION 23.** 628.34 (3) (b) of the statutes is amended to read:

4 628.34 (3) (b) No insurer may refuse to insure or refuse to continue to insure,
5 or limit the amount, extent or kind of coverage available to an individual, or charge
6 an individual a different rate for the same coverage because of a mental or physical
7 disability except when the refusal, limitation or rate differential is based on either
8 sound actuarial principles supported by reliable data or actual or reasonably
9 anticipated experience, subject to ss. 632.746 to 632.7495. Sound actuarial
10 principles may not include political or social considerations, ethical or religious
11 considerations, or the charging of higher rates for services when only incomplete
12 actuarial data are available, using such data to limit liability associated with
13 insuring an unknown risk.

14 **SECTION 24.** 632.8985 of the statutes is repealed.

15 **SECTION 25.** Subchapter VIII (title) of chapter 655 [precedes 655.90] of the
16 statutes is created to read:

17 **CHAPTER 655**

18 **SUBCHAPTER VIII**

19 **HEALTH CARE LIABILITY**

20 **INSURANCE REQUIREMENTS**

21 **SECTION 26.** 655.90 of the statutes is created to read:

22 **655.90 Insurance policy requirements.** No health care liability policy or
23 self-insured health care provider may exclude or deny coverage for reproductive
24 health care services, including all of the following:

25 (1) Contraceptive implant procedures.

SENATE BILL 653

- 1 (2) Intrauterine contraception procedures.
- 2 (3) Endometrial biopsies.
- 3 (4) Medically indicated and elective abortions.
- 4 (5) Miscarriages.
- 5 (6) Any other procedures utilizing intrauterine instrumentation for which the
6 health care provider, as defined in 146.81(1), is trained.
- 7 (7) Any treatment regimens or methods attendant to the procedures covered
8 under this section.
- 9 (8) Any follow-up treatment regimens or counseling services attendant to the
10 procedures covered under this section.

11 **SECTION 27.** 655.92 of the statutes is created to read:

12 **655.92 Rates and classification of procedures.** (1) (a) An insurer shall
13 consider medically indicated and elective abortions as having equivalent actuarial
14 risk and shall include medically indicated and elective abortions in the same risk
15 classes or subclasses representing similar actuarial risk.

16 (b) An insurer shall classify intrauterine contraception procedures,
17 contraceptive implant procedures, and the exclusive and entire method applicable
18 for both abortion and the procedures used after miscarriage under family or general
19 medicine, including outpatient gynecology, and in a class or subclass with
20 comparable actuarial risks established for comparable methods and procedures.

21 (c) An insurer shall classify the regimen that involves prescribing and using
22 medication only for abortion under family or general medicine, including outpatient
23 gynecology, in a class or subclass with similar actuarial risks that permit prescribing
24 medications with comparable safety and efficacy in the general practice of medicine.

SENATE BILL 653

1 (d) An insurer shall classify endometrial or related biopsies, procedures using
2 intrauterine instrumentation, and miscarriage and abortion procedures, not
3 including the procedures in pars. (b) and (c), performed during or before the 14th
4 week of gestation in a class or subclass limited to procedures with comparable
5 actuarial risks, including miscarriage treatment procedures and excluding surgical
6 procedures with higher risk factors.

7 (2) Subject to s. 625.11, one rate within a class or subclass for health care
8 liability insurance and liability insurance normally incidental to health care liability
9 insurance is unfairly discriminatory in relation to another rate within the same class
10 or subclass if it fails to reasonably and equitably reflect comparable differences in
11 expected losses and expenses.

12 (3) (a) Rates for health care liability insurance and liability insurance normally
13 incidental to health care liability insurance are excessive and unfairly
14 discriminatory if they are likely to produce a long-run profit that is unreasonably
15 high in relation to the riskiness of the class of business or if expenses are
16 unreasonably high in relation to the services rendered.

17 (b) Rates for health care liability insurance and liability insurance normally
18 incidental to health care liability insurance shall be based on sound actuarial
19 evidence and standards of care, and may not take into account unfairly
20 discriminatory factors, including:

21 1. Political or social concerns associated with providing insurance covering
22 medically indicated and elective abortion procedures.

23 2. Ethical or religious considerations or opinions about abortion.

SENATE BILL 653

1 3. The assignment of higher rates for services when only incomplete actuarial
2 data are available and using such data to limit the liability associated with insuring
3 an unknown risk.

4 **SECTION 28.** 655.94 of the statutes is created to read:

5 **655.94 Petition by health care providers. (1)** Prior to filing a petition to
6 the commissioner, a health care provider shall exhaust all remedies for appealing
7 coverage or rates contained in the provider's health care liability insurance policy or
8 liability insurance normally incidental to health care liability insurance.

9 **(2)** A health care provider may petition the commissioner for a review of the
10 final determination of rates under its health care liability policy for a review of
11 classification or rates. The petition shall state the basis for the health care provider's
12 belief that the classification or rates are incorrect, or that the classification or rates
13 violate ss. 625.11, 625.12, or 655.92. The commissioner shall refer a petition as
14 specified in sub. (3).

15 **(3) (a)** The commissioner shall appoint a committee for the review of
16 classification or rates as follows:

17 1. If the health care provider is a hospital or entity affiliated with a hospital,
18 then consisting of 2 representatives of hospitals, other than the health care
19 provider's hospital, and one other person who is knowledgeable about insurance
20 classifications and rates and not affiliated with the insurer.

21 2. If the health care provider is any entity not specified in subd. 1., then
22 consisting of 2 physicians not directly or indirectly affiliated or associated with the
23 health care provider and one other person who is knowledgeable about insurance
24 classifications and rates and not affiliated with the insurer.

SENATE BILL 653

1 (b) The appointed committee shall review the classification and rates and
2 report its decision in writing to the health care provider and the commissioner within
3 5 days after completing the review.

4 (c) Any party to the review adversely affected by the decision of the committee
5 may file a written request for a hearing under subch. III of ch. 227.

6 **SECTION 29.** 655.96 of the statutes is created to read:

7 **655.96 Cancellation by insurer.** Notwithstanding ss. 631.36, 631.37, and
8 655.24, an insurer may not cancel or refuse to renew a policy of primary health care
9 liability insurance and liability insurance normally incidental to health care liability
10 insurance except for nonpayment of premiums or if the health care provider
11 provider's license is revoked by the appropriate licensing board.

12 **SECTION 30.** 939.75 (2) (b) 1. of the statutes is amended to read:

13 939.75 (2) (b) 1. An act committed during an induced abortion. This
14 subdivision does not limit the applicability of ss. 940.04, 940.13, 940.15 and 940.16
15 to an induced abortion.

16 **SECTION 31.** 940.04 of the statutes is repealed.

17 **SECTION 32.** 940.32 (1) (a) 10. of the statutes is renumbered 940.32 (1) (a) 12.
18 and amended to read:

19 940.32 (1) (a) 12. Causing a person to engage in any of the acts described in
20 subds. 1. to ~~9.~~ 11.

21 **SECTION 33.** 940.32 (1) (a) 11. of the statutes is created to read:

22 940.32 (1) (a) 11. Impeding access to a health care facility where the victim
23 seeks, obtains, or provides health care.

24 **SECTION 34.** 968.26 (1b) (a) 2. a. of the statutes, as created by 2015 Wisconsin
25 Act 64, is amended to read:

SENATE BILL 653

1 968.26 **(1b)** (a) 2. a. Section ~~940.04, 940.11, 940.19 (2), (4), (5), or (6), 940.195~~
2 (2), (4), (5), or (6), 940.20, 940.201, 940.203, 940.205, 940.207, 940.208, 940.22 (2),
3 940.225 (3), 940.29, 940.302 (2) (c), 940.32, 941.32, 941.38 (2), 942.09 (2), 943.10,
4 943.205, 943.32 (1), 946.43, 946.44, 946.47, 946.48, 948.02 (3), 948.03 (2) (b) or (c),
5 (3), or (4), 948.04, 948.055, 948.095, 948.10 (1) (a), 948.11, 948.13 (2) (a), 948.14,
6 948.20, 948.23 (1), (2), or (3) (c) 2. or 3., or 948.30 (1).

7 **SECTION 35.** 990.001 (17) (b) of the statutes is amended to read:

8 990.001 **(17)** (b) If a statute or rule refers to a live birth or to the circumstance
9 in which an individual is born alive, the statute or rule shall be construed so that
10 whoever undergoes a live birth as the result of an induced abortion, as defined in s.
11 ~~253.10 (2) (a)~~ 69.01 (13m), has the same legal status and legal rights as a human
12 being at any point after the human being undergoes a live birth as the result of
13 natural or induced labor or a cesarean section.

14 **SECTION 36.** 990.01 (19j) (b) of the statutes is amended to read:

15 990.01 **(19j)** (b) “Live birth” means the complete expulsion or extraction from
16 his or her mother, of a human being, at any stage of development, who, after the
17 expulsion or extraction, breathes or has a beating heart, pulsation of the umbilical
18 cord, or definite movement of voluntary muscles, regardless of whether the umbilical
19 cord has been cut, and regardless of whether the expulsion or extraction occurs as
20 a result of natural or induced labor, a cesarean section, or an induced abortion, as
21 defined in s. ~~253.10 (2) (a)~~ 69.01 (13m).

22 **SECTION 37. Effective dates.** This act takes effect on the day after publication,
23 except as follows:

24 (1) The treatment of section 448.02 (3) (a) of the statutes (by SECTION 18) takes
25 effect on April 1, 2017.

