



State of Wisconsin
2023 - 2024 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 3,
TO ASSEMBLY BILL 975**

January 25, 2024 - Offered by Representative WICHGERS.

1 **AN ACT** *to amend* 253.10 (2) (a); and *to repeal and recreate* 940.04 (5) of the
2 statutes; **relating to:** the definition of abortion and requiring a referendum.

Analysis by the Legislative Reference Bureau

This bill changes the definition of abortion for purposes of requiring voluntary and informed consent for abortions to provide that abortion does not include a physician's performance of a medical procedure or treatment designed or intended to prevent the death of a pregnant woman and not designed or intended to kill the unborn child, including an early induction or cesarean section performed due to a medical emergency or the removal of a miscarriage or an ectopic, anembryonic, or molar pregnancy, which results in injury to or death of the woman's unborn child when the physician makes reasonable medical efforts under the circumstances to preserve both the life of the woman and the life of her unborn child in a manner consistent with conventional medical practice. This definition applies to certain other abortion-related provisions, including prohibitions on funding for abortion-related activities, limitations on the prescription and use of abortion-inducing drugs, and the prohibition on abortion if the probable postfertilization age of the unborn child is 20 or more weeks.

The bill also amends a statute that provides that any person, other than the mother, who intentionally destroys the life of an unborn child is guilty of a Class H felony. The statute also provides that 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 is guilty of a Class E felony. None of these penalties apply to a therapeutic abortion that is performed by a physician; is necessary, or advised by two other physicians as necessary, to save the life of the mother; and, unless an emergency prevents, is performed in a licensed maternity hospital. The bill eliminates the therapeutic abortion exception and instead specifies that the statutory prohibitions do not apply to a physician's performance of a medical procedure or treatment designed or intended to prevent the death of a pregnant woman and not designed or intended to kill the unborn child, including an early induction or cesarean section performed due to a medical emergency or the removal of a miscarriage or an ectopic, anembryonic, or molar pregnancy, which results in injury to or death of the woman's unborn child when the physician makes reasonable medical efforts under the circumstances to preserve both the life of the woman and the life of her unborn child in a manner consistent with conventional medical practice.

This bill requires a referendum before giving effect to the provisions of the bill. Under the bill, at the April 2024 election, the electors would vote on the question of whether the statutory provisions treated in the bill shall take effect "thus defining abortion for purposes of the statutes affected, including for purposes of requiring voluntary and informed consent for abortions, to provide that abortion does not include a physician's performance of a medical procedure or treatment designed or intended to prevent the death of a pregnant woman and not designed or intended to kill the unborn child, including an early induction or cesarean section performed due to a medical emergency or the removal of a miscarriage or an ectopic, anembryonic, or molar pregnancy, which results in injury to or death of the woman's unborn child when the physician makes reasonable medical efforts under the circumstances to preserve both the life of the woman and the life of her unborn child in a manner consistent with conventional medical practice; and further, providing that statutory provisions prohibiting any person, other than the mother, from intentionally destroying the life of an unborn child or intentionally destroying the life of an unborn quick child or causing the mother's death by an act done with intent to destroy the life of an unborn child do not apply to a physician's performance of a medical procedure or treatment designed or intended to prevent the death of a pregnant woman and not designed or intended to kill the unborn child, including an early induction or cesarean section performed due to a medical emergency or the removal of a miscarriage or an ectopic, anembryonic, or molar pregnancy, which results in injury to or death of the woman's unborn child when the physician makes reasonable medical efforts under the circumstances to preserve both the life of the woman and the life of her unborn child in a manner consistent with conventional medical practice." If a majority of votes cast in the election approves the question, the related provisions in the bill take effect on the day after the election results are certified. If

the question is not approved by a majority of votes cast, the provisions do not take effect.

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

1 **SECTION 1.** 253.10 (2) (a) of the statutes is amended to read:

2 253.10 (2) (a) “Abortion” means the use of an instrument, medicine, drug or
3 other substance or device with intent to terminate the pregnancy of a woman known
4 to be pregnant or for whom there is reason to believe that she may be pregnant and
5 with intent other than to increase the probability of a live birth, to preserve the life
6 or health of the infant after live birth or to remove a dead fetus. “Abortion” does not
7 include a physician’s performance of a medical procedure or treatment designed or
8 intended to prevent the death of a pregnant woman and not designed or intended to
9 kill the unborn child, including an early induction or cesarean section performed due
10 to a medical emergency or the removal of a miscarriage or an ectopic, anembryonic,
11 or molar pregnancy, which results in injury to or death of the woman’s unborn child
12 when the physician makes reasonable medical efforts under the circumstances to
13 preserve both the life of the woman and the life of her unborn child in a manner
14 consistent with conventional medical practice.

15 **SECTION 2.** 940.04 (5) of the statutes is repealed and recreated to read:

16 940.04 (5) This section does not apply to a physician’s performance of a medical
17 procedure or treatment designed or intended to prevent the death of a pregnant
18 woman and not designed or intended to kill the unborn child, including an early
19 induction or cesarean section performed due to a medical emergency or the removal
20 of a miscarriage or an ectopic, anembryonic, or molar pregnancy, which results in
21 injury to or death of the woman’s unborn child when the physician makes reasonable

1 medical efforts under the circumstances to preserve both the life of the woman and
2 the life of her unborn child in a manner consistent with conventional medical
3 practice.

4 **SECTION 3. Nonstatutory provisions.**

5 (1) There shall be submitted to the vote of the electors at the April 2024 election
6 the following question: "Shall the statutory provisions treated in 2023 Wisconsin Act
7 (this act) take effect, thus defining abortion for purposes of the statutes affected,
8 including for purposes of requiring voluntary and informed consent for abortions, to
9 provide that abortion does not include a physician's performance of a medical
10 procedure or treatment designed or intended to prevent the death of a pregnant
11 woman and not designed or intended to kill the unborn child, including an early
12 induction or cesarean section performed due to a medical emergency or the removal
13 of a miscarriage or an ectopic, anembryonic, or molar pregnancy, which results in
14 injury to or death of the woman's unborn child when the physician makes reasonable
15 medical efforts under the circumstances to preserve both the life of the woman and
16 the life of her unborn child in a manner consistent with conventional medical
17 practice; and further, providing that statutory provisions prohibiting any person,
18 other than the mother, from intentionally destroying the life of an unborn child or
19 intentionally destroying the life of an unborn quick child or causing the mother's
20 death by an act done with intent to destroy the life of an unborn child do not apply
21 to a physician's performance of a medical procedure or treatment designed or
22 intended to prevent the death of a pregnant woman and not designed or intended to
23 kill the unborn child, including an early induction or cesarean section performed due
24 to a medical emergency or the removal of a miscarriage or an ectopic, anembryonic,
25 or molar pregnancy, which results in injury to or death of the woman's unborn child

1 when the physician makes reasonable medical efforts under the circumstances to
2 preserve both the life of the woman and the life of her unborn child in a manner
3 consistent with conventional medical practice?”.

4 (2) The requirement under s. 8.37 that the referendum question shall be filed
5 with the official or agency preparing the ballot for the election no later than 70 days
6 before the election shall not apply to the referendum question that is to be submitted
7 to the voters under sub. (1).

8 (3) If the question under sub. (1) is approved by a majority of all votes cast on
9 the question at the April 2024 election, the treatment of ss. 253.10 (2) (a) and 940.04
10 (5) by this act shall take effect. Otherwise, the treatment of those statutory
11 provisions by this act shall not take effect.

12 **SECTION 4. Effective dates.** This act takes effect on the day after the election
13 results regarding the question under SECTION 3 (1) of this act are certified as provided
14 under s. 7.70 if the condition set forth in SECTION 3 (3) of this act is satisfied, except
15 as follows:

16 (1) SECTION 3 of this act takes effect on the day after publication.

17 (END)