



2003 ASSEMBLY BILL 186

March 21, 2003 – Introduced by Representatives RICHARDS, SINICKI, BLACK, KRUG, BERCEAU, TURNER, MILLER, POCAN, PLOUFF and TRAVIS, cosponsored by Senators RISSER and CHVALA. Referred to Committee on Judiciary.

1 **AN ACT to create** 895.78 and 947.08 of the statutes; **relating to:** preventing
2 passage to and from a health care facility, prohibited activities near a health
3 care facility, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill prohibits a person from intentionally obstructing, detaining, hindering, impeding, or blocking another person's entry to or exit from a health care facility. The bill also prohibits a person from intentionally approaching within eight feet of another without the other's consent on a public way or sidewalk area within a radius of 100 feet from an entrance door to a health care facility, for the purpose of: 1) passing a leaflet or handbill to the other person; 2) displaying a sign to the other person; or 3) engaging in oral protest, education, or counseling with the other person. "Health care facility" is defined in the bill to be a nursing home, community-based residential facility, adult family home, residential care apartment complex, hospital, home health agency, rural medical center, or hospice; a place that is operated, certified, or licensed by a county as a county home, county infirmary, county hospital, residential care institution, or adult family home; a local health department or a public health dispensary; the Wisconsin Veterans Home at King and the southeastern facility of the Department of Veterans Affairs; a medical clinic, including a private, free-standing medical clinic that is situated on private property; a care management organization under family care; a place in which a provider provides a person with nursing, medical, or personal care services and maintenance services under a continuing care contract; or a facility or service that is certified as

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a provider of health care services under Medical Assistance. In *Hill v. Colorado*, 120 S.Ct. 2480, 147 L. Ed. 2d 597 (2000), six justices of the U. S. Supreme Court found that a Colorado statute with extremely similar language does not violate the First Amendment because the statute is a valid time, place, and manner regulation that is content neutral, is narrowly tailored to serve the state’s significant and legitimate governmental interests, leaves open alternative communication channels; is not overbroad; is not unconstitutionally vague; and does not impose a prior restraint on speech.

Lastly, the bill creates a civil cause of action for an individual who suffers physical injury or emotional distress, against the person who causes the injury or distress, by the prohibited intentional obstructing, detaining, hindering, impeding, or blocking of entry to or exit from a health care facility or by the prohibited intentional approach for the purpose of passing a leaflet or handbill, displaying a sign, or engaging in oral protest, education, or counseling. The burden of proof in such a civil action, by a preponderance of the evidence, is on the injured or distressed individual. A prevailing plaintiff in such an action may recover special and general damages, punitive damages, and costs, including reasonable attorney fees and investigation and litigation costs.

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

1 **SECTION 1.** 895.78 of the statutes is created to read:

2 **895.78 Injury caused by preventing passage to and from a health care**
3 **facility. (1)** Any person who suffers physical injury to his or her person or emotional
4 distress by reason of conduct that is prohibited under s. 947.08 has a civil cause of
5 action against the person who causes the physical injury or emotional distress.

6 **(2)** The burden of proof in a civil action under sub. (1) rests with the person who
7 suffers the physical injury or emotional distress to prove his or her case by a
8 preponderance of the credible evidence.

9 **(3)** If the plaintiff prevails in a civil action under sub. (1), he or she may recover
10 special and general damages, including damages for emotional distress; punitive
11 damages; and costs, including all reasonable attorney fees and other costs of the
12 investigation and litigation that were reasonably incurred.

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1 (4) A person may bring a civil action under sub. (1), regardless of whether there
2 has been a criminal action related to the physical injury or emotional distress under
3 sub. (1) and regardless of the outcome of any such criminal action.

4 (5) This section does not limit the right of a person to recover from any parent
5 or parents under s. 895.035.

6 **SECTION 2.** 947.08 of the statutes is created to read:

7 **947.08 Preventing passage to and from a health care facility;**
8 **prohibited activities near a facility.** (1) In this section, "health care facility"
9 means all of the following:

10 (a) A place or service that is licensed, registered, certified, or approved by the
11 department of health and family services under s. 50.02, 50.03, 50.032, 50.033,
12 50.034, 50.35, 50.49, 50.52, or 50.93.

13 (b) A place that is operated, certified, or licensed by a county under s. 49.70,
14 49.71, 49.72, 49.73, 50.032, or 50.033.

15 (c) A local health department under s. 251.02 or a public health dispensary
16 under s. 252.10.

17 (d) The Wisconsin Veterans Home at King and the southeastern facility under
18 s. 45.365.

19 (e) A medical clinic, including a private, free-standing medical clinic that is
20 situated on private property and a family planning clinic.

21 (f) A care management organization under s. 46.284.

22 (g) A facility, as defined in s. 647.01 (4).

23 (h) A facility or service that is not included under pars. (a) to (g) and that is
24 certified under s. 49.45 (2) (a) 11. as a provider under the Medical Assistance
25 Program.

