

2001 DRAFTING REQUEST

Bill

Received: 01/24/2001

Received By: kenneda

Wanted: As time permits

Identical to LRB:

For: Jon Richards (608) 266-0650

By/Representing: Laura Rose

This file may be shown to any legislator: NO

Drafter: kenneda

May Contact:

Addl. Drafters: mdsida
nelsorp1

Subject: Health - abortion
Criminal Law - abortion
Courts - miscellaneous

Extra Copies: ISR

Submit via email: NO

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Prohibit prevention of passage to and from a health care facility

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	kenneda 03/19/2001 mdsida 03/19/2001	gilfokm 03/19/2001		_____			
/1			pgreensl	_____	lrb_docadmin	lrb_docadmin	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			03/19/2001 _____		03/20/2001	06/20/2001	
			pgreensl _____				
			03/20/2001 _____				

FE Sent For:

<END>

↳ Not
Needed

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1?	kenneda	1-3/19-01 kmj	3/19 PS	3/19 JF/PS			

FE Sent For:

<END>

Kennedy, Debora

From: Rose, Laura
Sent: Monday, January 22, 2001 8:51 PM
To: Kennedy, Debora
Subject: FW: Bubble Zone Bill

Debora,

I have another drafting request for you - actually, for someone on your team. I wasn't sure who to send it to, so I thought I would route it through you. It is a draft for Rep. Richards which creates a "bubble zone" around abortion clinic patients. See my draft below.

Their office would like to know who the drafter will be and how long you think it will take to draft it. :) You can let me know, and I will tell them.

Thanks again !!! As always I am grateful. Take care,

laura

Laura Rose
Deputy Director
Wisconsin Legislative Council Staff
One East Main St., Suite 401
PO Box 2536
Madison, WI 53701-2536
(608) 266-9791; fax (608) 266-3830
laura.rose@legis.state.wi.us

-----Original Message-----

From: Annen, Kathy
Sent: Monday, January 22, 2001 1:07 PM
To: Rose, Laura
Subject: Bubble Zone Bill



00072.pdf

1/24/01 conversation w/ Katie (aide):
Told her it wd. be a matter of
some weeks.

Include private free-standing
clinics on private property

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

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

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

4 **895.78 Injury caused by preventing passage to and from a health care facility. (1)**

5 Any person who suffers physical injury to his or her person or emotional distress by reason
6 of conduct which is prohibited under s. 947.08 has a civil cause of action against the person
7 who causes the physical injury or emotional distress.

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

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

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

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

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

1 **947.08 Preventing passage to and from a health care facility; prohibited activities**

2 **near a facility.** (1) In this section, "health care facility" means a facility, as defined in s.
3 647.01 (4), or any hospital, nursing home, community-based residential facility, county
4 home, county infirmary, county hospital, county mental health center or other place licensed
5 or approved by the department under s. 49.70, 49.71, 49.72, 50.02, 50.03, 50.35, 51.08 or
6 51.09 or a facility under s. 45.365, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

7 (2) Whoever does any of the following is guilty of a Class A misdemeanor:

8 (a) Intentionally obstructs, detains, hinders, impedes or blocks another person's entry
9 to or exit from a health care facility.

10 (b) Intentionally approaches another person within 8 feet of the person, unless the
11 person consents, for the purpose of doing any of the following on a public way or sidewalk
12 area within a radius of 100 feet from any entrance door to a health care facility:

- 13 1. Passing a leaflet or handbill to the person.
14 2. Displaying a sign to the person.
15 3. Engaging in oral protest, education or counseling with the person.

NOTE: This draft is modeled after Colorado Rev. Stats. s. 18-9-122 (3), which makes it unlawful for any person, within 100 feet of a health care facility's entrance, to knowingly approach within 8 feet of another person, without that person's consent, in order to pass a leaflet or handbill to, display a sign to, engage in oral protest, education or counseling with that person.

This statute was upheld by the U.S. Supreme Court in *Hill v. Colorado*, 120 S. Ct. 2480, 147 L. Ed. 2d 597, 2000 US LEXIS 4486 (June 28, 2000). The court held that the Colorado statute's restrictions on speech-related conduct are constitutional.

COMMENTS: 1. This draft uses the same definition of "health care facility" found in ss. 146.977 (1) (c) [health care worker protection], 150.84 (2) [health care cooperative agreements], and 155.01 (6) [power of attorney for health care], Stats.

The U.S. Supreme Court's opinion in *Hill v. Colorado* indicated that the comprehensive coverage of the Colorado statute to include all types of health care facilities, and not just abortion clinics, supported that statute's content neutrality in light of first amendment challenges. In other words, the statute does not single out protesters at abortion clinics; it applies to activities that may occur at any health care facility. Therefore, this draft utilizes a broad definition of "health care facility," rather than using a definition which applies only to abortion clinics.

2. This draft omits the provision into Colorado statute which states that the statute does not prohibit a statutory or home rule city or county from adopting a similar law that is no less restrictive than this statute. Inclusion of such a provision is unnecessary in light of ss. 59.54 (6) and 66.051 (2), stats., which authorize counties and municipalities to adopt ordinances prohibiting criminal conduct.

Kennedy, Debora

From: Plona, Katie
Sent: Thursday, January 25, 2001 9:10 AM
To: Kennedy, Debora
Subject: FW: Bubble Zone Bill Draft

Debora,
Here is the email I was referring to about the bubble zone language -- first paragraph.
Thanks, Katie

-----Original Message-----

From: Vasby, Tara
Sent: Wednesday, January 24, 2001 1:54 PM
To: Plona, Katie; Rose, Laura; Richards, Jon
Subject: FW: Bubble Zone Bill Draft

Passing along FYI!

-----Original Message-----

From: Charles Hoslet [<mailto:hoslet@bascom.wisc.edu>] <[mailto:\[mailto:hoslet@bascom.wisc.edu\]](mailto:[mailto:hoslet@bascom.wisc.edu])>
Sent: Wednesday, January 24, 2001 1:48 PM
To: Tara.Vasby@legis.state.wi.us
Subject: RE: Bubble Zone Bill Draft

Tara -

Thanks for the opportunity to look at this bill. In looking at the language one of our attorneys indicated that as far as she can determine from checking all the citations used to define a health care facility, the bill does not cover private freestanding medical clinics, which I assume you would want covered. If this is your intent you should ask LRB whether they are in fact covered, and if not to include language to do so.

As to the effect of the bill on facilities operated by the UW, the bill does not appear to cover many of the UW-Madison clinics where our faculty provide health care to patients - e.g., Family Practice Clinics of the Medical School around the state, etc. However: (1) there are already provisions in the administrative code that allow the UW to take action against unreasonable harassment and blocking of facilities on UW property, and (2) if LRB includes language to cover private freestanding medical clinics it is likely that most of our "off-site" facilities would be included.

The one type of facility that I don't believe would be taken care of if you made the above changes is a research facility that is on private land (that is not part of a health care facility, etc.). An example might be a private research facility or a biotech business. I don't know how you would draft language to cover these without being overly inclusive, but I thought I would mention it.

If you or Jon have any questions feel free to give me a call.

Charlie

CHARLES B. HOSLET
Senior Special Assistant to the Chancellor
Director, State Relations
UW-Madison
608/263-5510
hoslet@mail.bascom.wisc.edu



TUESDAY a.m.
State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2202/P1

DAK:rs
KMG

D-NOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

MGD+RPN

GEN. CAT.

1 AN ACT ...; relating to: preventing passage to and from a health care facility and
2 prohibited activities near a health care facility, and providing a penalty

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

INSERT
A

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

3 SECTION 1. 895.78 of the statutes is created to read:
4 895.78 Injury caused by preventing passage to and from a health care
5 facility. (1) Any person who suffers physical injury to his or her person or emotional
6 distress by reason of conduct which is prohibited under s. 947.08 has a civil cause of
7 action against the person who causes the physical injury or emotional distress.
8 (2) The burden of proof in a civil action under sub. (1) rests with the person who
9 suffers the physical injury or emotional distress to prove his or her case by a
10 preponderance of the credible evidence.

that

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

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

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

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

11 **947.08 Preventing passage to and from a health care facility;**
 12 **prohibited activities near a facility.** (1) In this section, "health care facility"
 13 means a facility, as defined in s. 647.01 (4) ~~or any hospital, nursing home,~~
 14 ~~community-based residential facility, county home, county infirmary, county~~
 15 ~~hospital, county mental health center or other place licensed or approved by the~~ 3a
 16 department under s. 49.70, 49.71, 49.72, 50.02, 50.03, 50.35, 51.08 or 51.09 or a
 17 facility under s. 45.365, 51.05, 51.06, 233.40, ~~233.41, 233.42~~ or 252.10.

✓
 INSERT
 2-17

18 (2) Whoever does any of the following is guilty of a Class A misdemeanor:

19 (a) Intentionally obstructs, detains, hinders, impedes ¹ or blocks another
 20 person's entry to or exit from a health care facility.

21 (b) Intentionally approaches another person within 8 feet of the person, unless
 22 the person consents, for the purpose of doing any of the following on a public way or
 23 sidewalk area within a radius of 100 feet from ~~any~~ ^(an) entrance door to a health care
 24 facility:

25 1. Passing a leaflet or handbill to the person.

- 1 2. Displaying a sign to the person.
- 2 3. Engaging in oral protest, education or counseling with the person.

NOTE: This draft is modeled after Colorado Rev. Stats. s. 18-9-122 (3), which makes it unlawful for any person, within 100 feet of a health care facility's entrance, to knowingly approach within 8 feet of another person, without that person's consent, in order to pass a leaflet or handbill to, display a sign to, engage in oral protest, education or counseling with that person.

This statute was upheld by the U.S. Supreme Court in *Hill v. Colorado*, 120 S. Ct. 2480, 147 L. Ed. 2d 597, 2000 US LEXIS 4486 (June 28, 2000). The court held that the Colorado statute's restrictions on speech-related conduct are constitutional.

COMMENTS: 1. This draft uses the same definition of "health care facility" found in ss. 146.977 (1) (c) [health care worker protection], 150.84 (2) [health care cooperative agreements], and 155.01 (6) [power of attorney for health care], Stats.

The U.S. Supreme Court's opinion in *Hill v. Colorado* indicated that the comprehensive coverage of the Colorado statute to include all types of health care facilities, and not just abortion clinics, supported that statute's content neutrality in light of first amendment challenges. In other words, the statute does not single out protesters at abortion clinics; it applies to activities that may occur at any health care facility. Therefore, this draft utilizes a broad definition of "health care facility," rather than using a definition which applies only to abortion clinics.

2. This draft omits the provision into Colorado statute which states that the statute does not prohibit a statutory or home rule city or county from adopting a similar law that is no less restrictive than this statute. Inclusion of such a provision is unnecessary in light of ss. 59.54 (6) and 66.051 (2), stats., which authorize counties and municipalities to adopt ordinances prohibiting criminal conduct.

3

(END)

D-NOTE

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2202/P1ins
DAK:....rs

INSERT A

⋮ ΔΔ

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 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, ~~and~~ is not overbroad; is not unconstitutionally vague; and does not impose a prior restraint on speech. (3)

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.

INSERT 2-17

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

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

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

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

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

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

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

(h) A facility or service that is not included under pars. (a) to (g) and that is certified under s. 49.45 (2) (a) 11. as a provider of health care services.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2202/01dn

DAK:rs

KMG

To Representative Richards:

I entirely reworked the definition of "health care facility" from that proposed. Essentially, I deleted from that definition references to mental health facilities (which cannot properly be termed "health care facilities"). I also deleted explicit references to hospitals, nursing homes, community-based residential facilities, county homes, county infirmaries, and county hospitals, because those references are redundant to the referenced statutory sections. I added reference to adult family homes, residential care apartment complexes, home health agencies, rural medical centers, and hospices. I also added reference to local health departments; to any facility or service, including a rural health clinic, that is certified as a provider of health care services under medical assistance (the term "service" in this context, includes school medical services under medical assistance); and to a care management organization under family care. Since none of the proposed cross-references included a medical clinic, I added explicit reference to one and specified that the term includes a private, free-standing medical clinic that is situated on private property; this reference should sweep in family planning clinics. There is a reference to a "reproductive health care facility" in s. 48.375 (2) (c), stats., but the reference is in the context of a definition of "counselor" and there is no other explicit mention of such a facility in the statutes; hence, I did not include it. Lastly, I excluded two proposed cross-references to the UW Hospital and Clinics, which are redundant to the reference to a hospital (under s. 50.35, stats.) and to the reference to a medical clinic. These references should also sweep in the Medical College of Wisconsin (MCOW), Inc.

Although it would appear to be an enlargement of the Colorado statute, would you be interested in including a medical research facility in the prohibition and civil cause of action? If so, you might wish to look at ss. 70.11 (25) and 448.08 (1) (b), stats. The inclusion would necessitate a change in the titles of ss. 895.78 and 947.08 and would require a definition.

If there are any additions or deletions that you would like to make to the definition, or if you have questions or other changes to make to the draft, please do not hesitate to call.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2202/1dn
DAK:kmg:pg

March 19, 2001

To Representative Richards:

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