

2003 SENATE BILL 84

March 26, 2003 – Introduced by Senators LEIBHAM, KANAVAS, S. FITZGERALD, KEDZIE, LAZICH, ZIEN, A. LASEE, STEPP, BRESKE, ROESSLER, REYNOLDS and BROWN, cosponsored by Representatives SUDER, KESTELL, LEMAHIEU, GROTHMAN, GUNDRUM, M. LEHMAN, NISCHKE, BIES, KRAWCZYK, HAHN, HINES, ALBERS, J. FITZGERALD, HUNDERTMARK, WEBER, PETROWSKI, KREIBICH, OTT, OWENS, J. WOOD, FREESE, GIELOW, LADWIG, NASS, TOWNS and MCCORMICK. Referred to Committee on Judiciary, Corrections and Privacy.

1 **AN ACT** *to repeal* 20.9275 (2m) (c), 20.9275 (3m), 253.02 (2m) (c), 253.07 (1) (a)
2 3. and 253.07 (1) (b) 3.; *to renumber and amend* 20.9275 (1) and 20.9275 (2)
3 (a) 2.; *to amend* 20.9275 (2) (intro.), 20.9275 (2m) (intro.), 20.9275 (3), 253.02
4 (2m) (intro.), 253.07 (1) (a) (intro.) and 253.07 (1) (b) (intro.); and *to create*
5 20.9275 (1g), 20.9275 (1r) (am), 20.9275 (1r) (em), 20.9275 (2) (a) 2. a., 20.9275
6 (2) (a) 2. b., 20.9275 (2) (a) 2. c., 20.9275 (2) (a) 2. d., 20.9275 (2) (a) 2. e., 20.9275
7 (2) (a) 2. f., 20.9275 (2) (a) 2. g., 20.9275 (2n), 20.9275 (3p), 20.9275 (6), 20.9275
8 (7) and 20.9275 (8) of the statutes; **relating to:** prohibiting an organization or
9 affiliate of an organization that engages in abortion-related activities from
10 receiving certain public funds, prohibiting an organization that receives
11 certain public funds from using other public and private funds for
12 abortion-related activities, specifying restrictions on affiliation between
13 certain organizations, changing the types of information that may be provided
14 by organizations that receive the funds, changing requirements related to the

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1 maternal and child health program and family planning services, and requiring
2 audits.

Analysis by the Legislative Reference Bureau

Under current law, federal funds passing through the state treasury and state and local funds may not be paid as funding that involves a pregnancy program, project, or service under a specific state program (adolescent pregnancy prevention and pregnancy services, adolescent self-sufficiency and pregnancy prevention, adolescent choices, welfare and hygiene of maternity and infancy, family planning, pregnancy counseling, and outreach to low-income pregnant women and a program under federal maternal and child health services block grants), if the pregnancy program, project, or service using these federal, state, or local funds, using income derived from the funds, or using matching funds provides abortion services; promotes, encourages, or counsels in favor of abortion services; or makes abortion referrals either directly or through an intermediary in any instance other than when an abortion is directly and medically necessary to save the life of the pregnant woman. The funds also may not be paid if the pregnancy program, project, or service is funded from another source that requires performance of the abortion-related activities. The restriction applies only to the extent that applying it does not result in the loss of any federal funds. An organization that violates the prohibition may not receive the funds for 24 months after the violation and must return all funds paid under the grant, subsidy, or other funding; and the grant, subsidy, or other funding is terminated. This law exempts from the prohibition the providing of nondirective information explaining prenatal care and delivery; infant care, foster care, or adoption; or pregnancy termination.

Also under current law, federal funds passing through the state treasury and state and local funds may not be paid for the performance of an abortion other than an abortion that is directly and medically necessary to save the life of the pregnant woman, in a case of sexual assault or incest, or if, due to a medical condition existing before the abortion, the physician determines that the abortion is directly and medically necessary to prevent grave, long-lasting, physical health damage to the pregnant woman.

This bill expands the prohibitions on payment of public funds to an organization that engages in abortion-related activities, in the following ways:

1. The bill eliminates the provision that specifies that the prohibitions on the use of the funds apply only to the extent that applying them does not result in the loss of any federal funds; thus, the bill applies the prohibitions to all public funds, except to the extent that applying the prohibitions would result in the loss, by a medical school or medical residency program, of accreditation from a national accrediting organization or agency.

2. The bill applies the prohibition to abortion-related activities other than to abortions that are performed to save the lives of pregnant women, in cases of sexual assault or incest, or to prevent grave, long-lasting, physical health damage to

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pregnant women, as those particular abortions apply to funding for Medical Assistance and Badger Care.

3. The bill prohibits payment to an organization that is affiliated with an organization that engages in abortion-related activities or that receives funds from any source that requires, for receipt of the funds that the affiliate engage in abortion-related activities, unless the organizations are physically and financially independent from each other. Specifically, the two organizations may not share the same or a similar name; medical or nonmedical facilities, equipment, or supplies; services; income, grants, donations, and other revenue; financial accounts; fund-raising activities; expenses; employees; employee wages or salaries; databases; or marketing materials and other promotional products. They also may not be located in the same building, must be separately incorporated, and must maintain financial and database records that demonstrate that the affiliate receives no economic or marketing benefit from the funded organization.

4. The bill prohibits a publicly funded organization from transferring public funds to another organization or to an affiliate of the organization that provides abortion-related activities or that receives funds from any source that requires, for receipt of the funds, that the organization or affiliate engage in abortion-related activities.

5. The bill changes the definition of “pregnancy program, project, or service” so as to apply the prohibitions to funding of an organization that provides *any* of several specified services, rather than *all* of the services.

6. The bill applies the prohibitions to an organization that engages in abortion-related activities, rather than an organization that uses program funds (public funds, income from public funds, or matching funds) for the abortion-related activities, except to the extent that applying the prohibitions would result in the loss, by a medical school or medical residency program, of accreditation from a national accrediting organization or agency.

The bill also expands prohibited abortion-related activities that are related to promoting, encouraging, or counseling in favor of abortion services to include acting to assist women to obtain abortions; acting to increase the availability or accessibility of abortion for family planning purposes; lobbying for passage of legislation to increase the availability of abortion; providing speakers to promote the use of abortion; paying dues to a group that advocates abortion; using legal action to make abortion available; and developing or disseminating materials that advocate abortion.

The bill authorizes the filing of a petition for a writ of mandamus or prohibition with the circuit court of the county where a violation of the prohibitions is alleged to have occurred or is proposed to occur. The bill also requires the Legislative Audit Bureau to conduct an audit every three years of each organization receiving the public funds to determine if the organization or the state agency or local governmental unit has strictly complied with the requirements or prohibitions. If the publicly funded organization is an affiliate of an organization that engages in abortion-related activities or that receives funds from any source that requires, for

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receipt of the funds, that the affiliate engage in abortion–related activities, the audit must be conducted annually.

Lastly, the bill eliminates authorization, including authorization under the maternal and child health and family planning laws, to provide nondirective information about pregnancy termination and, instead, specifies that an organization that receives the funds is not prohibited from promoting, encouraging, or counseling in favor of or referring directly or through an intermediary for prenatal care and delivery and infant care, foster care, or adoption.

For further information see the *state and local* 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.** 20.9275 (1) of the statutes is renumbered 20.9275 (1r), and 20.9275
2 (1r) (intro.) and (e), as renumbered, are amended to read:

3 20.9275 **(1r)** (intro.) In this section, except as otherwise specified:

4 (e) “Pregnancy program, project or service” means a program, project, or service
5 of an organization that provides services for pregnancy prevention, family planning,
6 as defined in s. 253.07 (1) (a), pregnancy testing, pregnancy counseling, prenatal
7 care, pregnancy services ~~and~~ or reproductive health care services that are related
8 to pregnancy.

9 **SECTION 2.** 20.9275 (1g) of the statutes is created to read:

10 20.9275 **(1g)** It is the intent of the legislature that this section shall further the
11 profound and compelling state interest in all of the following:

12 (a) To protect the life of an unborn child throughout pregnancy by favoring
13 childbirth over abortion and implementing that value judgment through the
14 allocation of public resources.

15 (b) To ensure that the state, state agencies, and local governmental units do not
16 lend their imprimatur to abortion–related activities.

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1 (c) To ensure that organizations that engage in abortion-related activities do
2 not receive a direct or indirect economic or marketing benefit from public funds.

3 **SECTION 3.** 20.9275 (1r) (am) of the statutes is created to read:

4 20.9275 (1r) (am) “Family planning” means the process of establishing
5 objectives for the number and spacing of one’s children and selecting the means by
6 which those objectives may be achieved, including a broad range of acceptable and
7 effective methods and services to limit or enhance fertility, including contraceptive
8 methods, including natural family planning and abstinence; the management of
9 infertility, including adoption; and preconceptional counseling, education, and
10 general reproductive health care, including diagnosis and treatment of infections
11 that threaten reproductive capability. “Family planning” does not include pregnancy
12 care, including obstetric or prenatal care.

13 **SECTION 4.** 20.9275 (1r) (em) of the statutes is created to read:

14 20.9275 (1r) (em) “Prenatal care” means medical services provided to a
15 pregnant woman to promote maternal and fetal health.

16 **SECTION 5.** 20.9275 (2) (intro.) of the statutes is amended to read:

17 20.9275 (2) (intro.) ~~No~~ Except as provided in s. 20.927 (2) as it applies to
18 funding under Medical Assistance, as defined in s. 49.43 (8), and Badger Care under
19 s. 49.665, and subject to sub. (3p), no state agency or local governmental unit may
20 authorize payment of funds of this state, of any local governmental unit or, ~~subject~~
21 ~~to sub. (3m),~~ of federal funds passing through the state treasury as a grant, subsidy,
22 or other funding that wholly or partially or directly or indirectly involves pregnancy
23 programs, projects, or services, ~~that is including~~ including a grant, subsidy, or other funding
24 under s. 46.93, 46.99, 46.995, 253.02 (2), 253.05, 253.07, 253.08, or 253.085 or 42 USC
25 701 to 710, if any of the following applies:

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1 **SECTION 6.** 20.9275 (2) (a) 2. of the statutes is renumbered 20.9275 (2) (a) 2.
2 (intro.) and amended to read:

3 20.9275 **(2)** (a) 2. (intro.) Promotes, encourages, or counsels in favor of abortion
4 services, including by doing any of the following:

5 **SECTION 7.** 20.9275 (2) (a) 2. a. of the statutes is created to read:

6 20.9275 **(2)** (a) 2. a. Acting to assist women to obtain abortions.

7 **SECTION 8.** 20.9275 (2) (a) 2. b. of the statutes is created to read:

8 20.9275 **(2)** (a) 2. b. Acting to increase the availability or accessibility of
9 abortion for family planning purposes.

10 **SECTION 9.** 20.9275 (2) (a) 2. c. of the statutes is created to read:

11 20.9275 **(2)** (a) 2. c. Lobbying for the passage of legislation to increase in any
12 way the availability of abortion as a method of family planning.

13 **SECTION 10.** 20.9275 (2) (a) 2. d. of the statutes is created to read:

14 20.9275 **(2)** (a) 2. d. Providing speakers to promote the use of abortion as a
15 method of family planning.

16 **SECTION 11.** 20.9275 (2) (a) 2. e. of the statutes is created to read:

17 20.9275 **(2)** (a) 2. e. Paying dues to a group that as a significant part of its
18 activities advocates abortion as a method of family planning.

19 **SECTION 12.** 20.9275 (2) (a) 2. f. of the statutes is created to read:

20 20.9275 **(2)** (a) 2. f. Using legal action to make abortion available in any way
21 as a method of family planning.

22 **SECTION 13.** 20.9275 (2) (a) 2. g. of the statutes is created to read:

23 20.9275 **(2)** (a) 2. g. Developing or disseminating in any way materials,
24 including printed matter and audiovisual materials, that advocate abortion as a
25 method of family planning.

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1 **SECTION 14.** 20.9275 (2m) (intro.) of the statutes is amended to read:

2 20.9275 **(2m)** (intro.) Nothing in sub. (2) prohibits the providing of nondirective
3 ~~information explaining promotion, encouragement, or counseling in favor of, or~~
4 ~~referral either directly or through an intermediary for, any of the following:~~

5 **SECTION 15.** 20.9275 (2m) (c) of the statutes is repealed.

6 **SECTION 16.** 20.9275 (2n) of the statutes is created to read:

7 20.9275 **(2n)** Except as provided in sub. (6), and subject to sub. (3p), none of the
8 funds specified under sub. (2) (intro.) may be paid to an organization or affiliate of
9 an organization that does any of the following:

10 (a) Engages in an activity that is specified under sub. (2) (a) 1. to 3.

11 (b) Receives funds from any source that requires, as a condition for receipt of
12 the funds, that the organization or affiliate perform any of the activities specified in
13 sub. (2) (a) 1. to 3.

14 **SECTION 17.** 20.9275 (3) of the statutes is amended to read:

15 20.9275 **(3)** ~~Subject to sub. (3m) Except as provided in s. 20.927 (2), as it applies~~
16 ~~to funding under Medical Assistance, as defined in s. 49.43 (8), and Badger Care~~
17 ~~under s. 49.665, and subject to sub. (3p), no organization that receives funds specified~~
18 ~~under sub. (2) (intro.) may use program funds for engage in an activity that is~~
19 ~~specified under sub. (2) (a) 1. to 3. No organization that receives funds specified~~
20 ~~under sub. (2) (intro.) may transfer any program funds or any other public funds to~~
21 ~~an organization or affiliate of an organization to which sub. (2n) (a) or (b) applies.~~

22 **SECTION 18.** 20.9275 (3m) of the statutes is repealed.

23 **SECTION 19.** 20.9275 (3p) of the statutes is created to read:

24 20.9275 **(3p)** The restrictions under subs. (2), (2n), and (3) on the authorization
25 of payment and the payment and use of funds apply only to the extent that the

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1 application of the restrictions does not result in the loss, by a medical school or
2 medical residency program in this state, of accreditation from a national accrediting
3 organization or agency.

4 **SECTION 20.** 20.9275 (6) of the statutes is created to read:

5 20.9275 **(6)** Subsection (2n) does not apply to an organization that otherwise
6 is qualified to receive funding under sub. (2) and that is affiliated with an
7 organization to which sub. (2n) (a) or (b) applies if the organizations are physically
8 and financially independent from each other under all of the following criteria:

9 (a) The organization that receives funds specified under sub. (2) (intro.) and its
10 independent affiliate to which sub. (2n) (a) or (b) applies are not located in the same
11 building and do not share any of the following:

12 1. The same or a similar name.

13 2. Medical or nonmedical facilities, including treatment, consultation,
14 examination, or waiting rooms or business offices.

15 3. Equipment or supplies, including computers, telephone systems,
16 telecommunications equipment, vehicles, office supplies, or medical supplies.

17 4. Services, including management, accounting, or payroll services or
18 equipment or facility maintenance.

19 5. Income, grants, donations of cash or property, in-kind gifts, or other revenue.

20 6. Financial accounts, including checking accounts, savings accounts, and
21 investments.

22 7. Fund-raising activities.

23 8. Expenses.

24 9. Employees.

25 10. Employee wages or salaries.

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1 11. Databases, including client lists.

2 12. Marketing materials and other promotional products.

3 (b) The organization that receives funds specified under sub. (2) (intro.) is
4 separately incorporated from its independent affiliate to which sub. (2n) (a) or (b)
5 applies.

6 (c) The organization that receives funds specified under sub. (2) (intro.)
7 maintains financial records and database records that demonstrate that its
8 independent affiliate to which sub. (2n) (a) or (b) applies receives no direct or indirect
9 economic or marketing benefit from the program funds. Separation of program funds
10 from other moneys by means of bookkeeping alone is not sufficient to meet the
11 requirement of this paragraph.

12 **SECTION 21.** 20.9275 (7) of the statutes is created to read:

13 20.9275 (7) At least once every 3 years, the legislative audit bureau shall
14 conduct an audit of each organization that receives the funds specified under sub. (2)
15 (intro.) and the state agency or local governmental unit that authorizes payment of
16 the funds to the organization, to determine if the organization, state agency, or local
17 governmental unit has strictly complied with this section. If the organization is an
18 affiliate of an organization to which sub. (2n) (a) or (b) applies, the legislative audit
19 bureau shall conduct the audit at least annually.

20 **SECTION 22.** 20.9275 (8) of the statutes is created to read:

21 20.9275 (8) A person may file a petition for a writ of mandamus or prohibition
22 with the circuit court for the county where a violation of this section is alleged to have
23 occurred or is proposed to occur.

24 **SECTION 23.** 253.02 (2m) (intro.) of the statutes is amended to read:

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1 253.02 **(2m)** (intro.) Nothing in this section authorizes the performance,
2 promotion, encouragement, or counseling in favor of, or referral either directly or
3 through an intermediary for, voluntary termination of pregnancy. Nothing in this
4 section prohibits the ~~providing of nondirective information explaining promotion,~~
5 ~~encouragement, or counseling in favor of, or referral either directly or through an~~
6 ~~intermediary for,~~ any of the following:

7 **SECTION 24.** 253.02 (2m) (c) of the statutes is repealed.

8 **SECTION 25.** 253.07 (1) (a) (intro.) of the statutes is amended to read:

9 253.07 **(1)** (a) (intro.) “Family planning” means voluntary action by individuals
10 to prevent or aid conception. “Family planning” does not include the performance,
11 promotion, encouragement, or counseling in favor of, or referral either directly or
12 through an intermediary for, voluntary termination of pregnancy, but may include
13 the ~~providing of nondirective information explaining promotion, encouragement, or~~
14 ~~counseling in favor of, or referral either directly or through an intermediary for,~~ any
15 of the following:

16 **SECTION 26.** 253.07 (1) (a) 3. of the statutes is repealed.

17 **SECTION 27.** 253.07 (1) (b) (intro.) of the statutes is amended to read:

18 253.07 **(1)** (b) (intro.) “Family planning services” mean means counseling by
19 trained personnel regarding family planning; distribution of information relating to
20 family planning; and referral to licensed nurse practitioners within the scope of their
21 practice, licensed physicians, or local health departments for consultation,
22 examination, medical treatment, and prescriptions for the purpose of family
23 planning. “Family planning” does not include the performance, promotion,
24 encouragement, or counseling in favor of, or referral either directly or through an
25 intermediary for, voluntary termination of pregnancy, but may include the ~~providing~~

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1 ~~of nondirective information explaining promotion, encouragement, or counseling in~~
2 ~~favor of, or referral either directly or through an intermediary for,~~ any of the
3 following:

4 **SECTION 28.** 253.07 (1) (b) 3. of the statutes is repealed.

5 **SECTION 29. Initial applicability.**

6 (1) PUBLICLY FUNDED ORGANIZATIONS. The treatment of section 20.9275 (1), (1r)
7 (am) and (em), (2) (intro.), (2m) (intro.) and (c), (2n), (3), (3m), (3p), (6), (7), and (8)
8 of the statutes, the renumbering and amendment of section 20.9275 (2) (a) 2. of the
9 statutes, and the creation of section 20.9275 (2) (a) 2. a., b., c., d., e., f., and g. of the
10 statutes first apply to a contract on the day on which the contract expires or is
11 extended, modified, or renewed, whichever first occurs.

12

(END)