

2003 DRAFTING REQUEST

Bill

Received: **03/05/2003**

Received By: **gmalaise**

Wanted: **Soon**

Identical to LRB:

For: **Joseph Leibham (608) 266-2056**

By/Representing: **Dan Lindstedt**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - miscellaneous
Health - abortion**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Leibham@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Parental consent for a minor's abortion

Instructions:

Redraft 2001 AB 812

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>
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FE Sent For:

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2001 ASSEMBLY BILL 812

PWF

February 12, 2002 - Introduced by Representatives ~~LEIBHAM, PLALE, KEDZIE, SUDER, DUFF, OWENS, GUNDRUM, KREIBICH, ALBERS, NASS, HAHN, URBAN, OTT, J. FITZGERALD, FREESE, GROTHMAN, PETROWSKI, KESTELL, RYBA, GUNDERSON, VRAKAS, LOEFFELHOLZ and SYKORA, cosponsored by Senators WELCH, ROESSLER, S. FITZGERALD, ZIEN and LAZICH. Referred to Committee on Judiciary.~~

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AN ACT ~~to repeal~~ 48.375 (2) (b), 48.375 (2) (em), 48.375 (4) (b) 1m. and 48.375 (7) (bm); ~~to renumber and amend~~ 48.375 (4) (a) 1.; ~~to amend~~ 46.24, 48.23 (1) (cm), 48.257 (1) (h), 48.257 (4), 48.27 (9), 48.273 (4) (b), 48.375 (2) (c), 48.375 (4) (b) 1., 48.375 (4) (b) 3., 48.375 (6), 48.375 (7) (a) (intro.), 48.375 (7) (a) 4., 48.375 (7) (b) (intro.), 48.375 (7) (d) 1., 48.375 (7) (d) 1m., 48.375 (7) (d) 2., 48.375 (7) (f), 69.186 (1) (j), 809.105 (2), 809.105 (3) (a), 809.105 (3) (d), 809.105 (5), 809.105 (8), 809.105 (8m), 809.105 (9), 809.105 (10), 809.105 (11) (a) (intro.), 809.105 (11) (a) 3., 809.105 (11) (cm), 809.105 (11) (d), 809.105 (11) (e), 809.105 (13) and 895.037 (3) (a); and ~~to create~~ 48.375 (2) (fm), 48.375 (4) (a) 1. a., 48.375 (4) (a) 1. b., 48.375 (4) (a) 1. c. and 48.375 (7) (b) 2m. of the statutes; relating to: the requirement that an unemancipated minor obtain parental or other consent or a judicial waiver of that consent requirement before she may have an abortion.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the law that requires an unemancipated minor to obtain parental or other consent or a judicial waiver of that consent

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requirement before she may have an abortion (generally referred to as "the parental consent" law).

Consent or judicial waiver requirement

~~Under current law, subject to certain exceptions, before an unemancipated minor may have an abortion, she must have the written consent of one of her parents; or of her guardian or legal custodian, if one has been appointed; or of an adult family member; or of one of her foster parents or treatment foster parents, if the minor has been placed in a foster home or a treatment foster home and the minor's parent has signed a waiver granting the department of health and family services, a county department of human services or social services, the foster parent, or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor; unless the minor obtains a waiver of this requirement from the circuit court. Current law defines "adult family member" as a grandparent, aunt, uncle, sister, or brother who is at least 25 years of age.~~

This bill eliminates the authority of an adult family member, a foster parent, a treatment foster parent, or a parent who does not have legal custody of an unemancipated minor to consent to an abortion for the minor.

The bill also requires the parent, guardian, or legal custodian who consents to the minor's abortion to sign and acknowledge the consent document, ~~that is declare~~ that he or she has signed the consent document for the purpose stated in the consent document, ~~before a notary public who must~~ determine, either from personal knowledge or from satisfactory evidence consisting of one or more forms of identification issued by a governmental agency, that the person appearing before the notary public and making the acknowledgment is the person whose signature is on the consent document. In addition, the bill requires the parent, guardian, or legal custodian to verify upon oath or affirmation before the notary public that he or she is the parent, guardian, or legal custodian of the minor, and requires the notary public to determine, either from personal knowledge or from satisfactory evidence consisting of one or more forms of identification issued by a governmental agency, that the person appearing before the notary public and making the verification is the person whose signature is on the statement verified. The bill also requires the notary public to keep confidential any information acquired in taking the acknowledgment and verification.

Exceptions to consent or judicial waiver requirement

Under current law, the consent or judicial waiver requirement does not apply if the person who intends to perform or induce the abortion believes, to the best of his or her medical judgment based on the facts of the case before him or her, that a medical emergency exists that complicates the pregnancy so as to require an immediate abortion. This bill provides that the consent or judicial waiver requirement does not apply if a medical emergency, as defined in the law requiring voluntary and informed consent to an abortion (informed consent law), exists. The informed consent law defines a "medical emergency" as a condition that, in a physician's reasonable medical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a 24-hour delay in the performance or inducement of the

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which means that the parent, guardian, or legal custodian must declare before a notary public

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abortion will create a serious risk of substantial and irreversible impairment of one or more of the woman's major bodily functions.

In addition, under current law, the consent or judicial waiver requirement does not apply if a psychiatrist or psychologist states in writing that he or she believes that the minor is likely to commit suicide rather than seek consent or a judicial waiver. This bill eliminates that exception.

Civil liability for violation of consent or judicial waiver requirement

Under current law, a person who intentionally performs or induces an abortion on or for a minor without prior consent or waiver of the consent requirement by a court is liable to the minor and to the minor's parent, guardian, ^(step) ~~and~~ legal custodian for damages arising out of the performance or inducement of the abortion. This bill eliminates the requirement that the violation of the consent or judicial waiver requirement be intentional and instead requires that the violation be committed under circumstances in which the person knew or, in the exercise of reasonable care, should have known that the consent or judicial waiver requirement was not complied with.

Judicial waiver procedures

Under current law, a minor who is seeking an abortion, or a member of the clergy on behalf of the minor, may petition a circuit court for a waiver of the consent requirement. If the minor files a petition on her own behalf, the minor must be present at an initial appearance at which the court appoints counsel for the minor and sets a date for a hearing to determine whether the minor is mature and well-informed enough to make the abortion decision on her own or whether the performance or inducement of an abortion is in the minor's best interests. If a member of the clergy files a petition on behalf of the minor, the member of the clergy may be present at the initial appearance instead of the minor, and the court need not appoint counsel for the minor or set a date for a hearing on the petition. Instead, the member of the clergy must file with the petition an affidavit stating that the member of the clergy has explored with the minor alternative choices for managing the minor's pregnancy, including keeping the baby or placing the baby for adoption, and has discussed with the minor the possibility of obtaining consent for the abortion and whether or not obtaining that consent would be in the minor's best interests. The court may grant the petition, without hearing, based on the member of the clergy's affidavit.

This bill eliminates the option of permitting a member of the clergy to file a petition and affidavit on behalf of the minor. Under the bill, the minor must file her own petition and be present at the initial appearance, and the court must appoint counsel for the minor and hold a hearing on the petition.

In addition, under current law, the court must hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor and the understanding of the minor about the nature of, possible consequences of, and alternatives to the intended abortion before the court may grant a waiver of the consent requirement. This bill requires the court, in addition to hearing the evidence that the court must hear under current law, to hear evidence relating to the nature

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of the relationship between the minor and her parents before the court may grant a waiver of the consent requirement.

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. 46.24[✓] of the statutes is amended to read:

2 **46.24 Assistance to minors concerning parental consent for abortion.**

3 If a minor who is contemplating an abortion requests assistance from a county
4 department under s. 46.215, 46.22, or 46.23 in seeking the consent of the minor's
5 parent, guardian, or legal custodian, ~~or in seeking the consent of an adult family~~
6 ~~member, as defined in s. 48.375 (2) (b),~~ for the contemplated abortion or in seeking
7 a waiver from the circuit court, the county department shall provide assistance,
8 including, if so requested, accompanying the minor as appropriate.

9 SECTION 2. 48.23[✓] (1)^(lm) of the statutes is amended to read:

10 48.23 (1)^(lm) Any minor who is subject to the jurisdiction of the circuit court
11 under s. 48.16 ~~and who is required to appear in court~~ shall be represented by counsel.

12 SECTION 3. 48.257[✓] (1) (h) of the statutes is amended to read:

13 48.257 (1) (h) If the minor is not represented by counsel, the place where and
14 the manner in which the minor wishes to be notified of proceedings under s. 48.375
15 (7) until appointment of counsel under s. 48.375 (7) (a) 1. ~~If the petition is filed by~~
16 ~~a member of the clergy on behalf of the minor, the place where and manner in which~~
17 ~~the member of the clergy wishes to be notified of proceedings under s. 48.375 (7).~~

18 SECTION 4. 48.257[✓] (4) of the statutes is amended to read:

19 48.257 (4) The clerk of circuit court shall give a copy of the petition to the minor
20 ~~or to the member of the clergy who files a petition on behalf of the minor, if any.~~

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1 SECTION 5. 48.27[✓](9) of the statutes is amended to read:

2 48.27 (9) Subsections (1) to (8) do not apply in any proceeding under s. 48.375
3 (7). For proceedings under s. 48.375 (7), the circuit court shall provide notice only
4 to the minor, her counsel, ~~if any, the member of the clergy who filed the petition on~~
5 ~~behalf of the minor, if any,~~ and her guardian ad litem, if any. The notice shall contain
6 the title and case number of the proceeding, and the nature, location, date, and time
7 of the hearing or other proceeding. Notice to the minor ~~or to the member of the clergy,~~
8 ~~if any,~~ shall be provided as requested under s. 48.257 (1) (h) and, after appointment
9 of the minor's counsel, ~~if any,~~ by her counsel.

10 SECTION 6. 48.273[✓](4) (b) of the statutes is amended to read:

11 48.273 (4) (b) Personal service is required for notice of all proceedings under
12 s. 48.375 (7), except that, if the minor is not represented by counsel, notice to the
13 minor shall be in the manner and at the place designated by the minor in the petition
14 under s. 48.257 (1) until appointment of the minor's counsel, ~~if any,~~ under s. 48.375
15 (7) (a) 1. Notice shall be served immediately for any proceeding under s. 48.375 (7)
16 unless the minor waives the immediate notice. If the minor waives the immediate
17 notice, the notice shall be served at least 24 hours before the time of the hearing
18 under s. 48.375 (7) (b) or any other proceeding under s. 48.375 (7). A minor may, in
19 acknowledging receipt of service of the notice, sign the name "Jane Doe" in lieu of
20 providing the minor's full signature.

21 SECTION 7. 48.375[✗](2) (b) of the statutes is repealed.

22 SECTION 8. 48.375[✓](2) (c) of the statutes is amended to read:

23 48.375 (2) (c) "Counselor" means a physician, including a physician
24 specializing in psychiatry, a licensed psychologist, as defined in s. 455.01 (4), or an
25 ordained member of the clergy, as defined in s. 765.002[✓](1). "Counselor" does not

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SECTION 8

1 include any person who is employed by or otherwise affiliated with a reproductive
2 health care facility, a family planning clinic, or a family planning agency; any person
3 affiliated with the performance of abortions, except abortions performed to save the
4 life of the mother; or any person who may profit from giving advice to seek an
5 abortion.

6 SECTION 9. 48.375 (2) ~~(em)~~ of the statutes is repealed.

7 SECTION 10. 48.375 (2) ~~(fm)~~ of the statutes is created to read:

8 48.375 (2) (fm) "Parent who has legal custody of the minor" means a parent who
9 has the right and responsibility to make major decisions concerning the minor,
10 whether that right and responsibility are derived from common law, statute, or court
11 order.

12 SECTION 11. 48.375 (4) ~~(a)~~ 1. of the statutes is renumbered 48.375 (4) (a) 1.
13 (intro.) and amended to read:

14 48.375 (4) (a) 1. (intro.) The person or the person's agent has, either directly
15 or through a referring physician or his or her agent, received and made part of the
16 minor's medical record, under the requirements of s. 253.10, the voluntary and
17 informed written consent of the minor and the voluntary and informed written
18 consent of one of ~~her~~ the minor's parents; who has legal custody of the minor or of the
19 minor's guardian or legal custodian, if one has been appointed; ~~or of an adult family~~
20 ~~member of the minor; or of one of the minor's foster parents or treatment foster~~
21 ~~parents, if the minor has been placed in a foster home or treatment foster home and~~
22 ~~the minor's parent has signed a waiver granting the department, a county~~
23 ~~department, the foster parent or the treatment foster parent the authority to consent~~
24 ~~to medical services or treatment on behalf of the minor.~~ All of the following shall

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1 govern the provision of consent under this subdivision by the parent, guardian, or
2 legal custodian of a minor:

3 SECTION 12. 48.375 (4) (a) 1. a. of the statutes is created to read:

4 48.375 (4) (a) 1. a. The parent, guardian, or legal custodian shall sign and
5 acknowledge the consent document before a notary public, who shall determine,
6 either from personal knowledge or from satisfactory evidence consisting of one or
7 more forms of identification, that the person appearing before the notary public and
8 making the acknowledgment is the person whose signature is on the consent
9 document. The parent, guardian, or legal custodian shall also verify upon oath or
10 affirmation before the notary public that he or she is the parent, guardian, or legal
11 custodian of the minor, and the notary public shall determine, either from personal
12 knowledge or from satisfactory evidence consisting of one or more forms of
13 identification, that the person appearing before the notary public and making the
14 verification is the person whose true signature is on the statement verified. The
15 person signing the consent document and verification upon oath or affirmation shall
16 provide the consent document and verification to the person who intends to perform
17 or induce the abortion or the person's agent, who shall place the consent document
18 and verification in the minor's medical record.

19 SECTION 13. 48.375 (4) (a) 1. b. of the statutes is created to read:

20 48.375 (4) (a) 1. b. For purposes of subd. 1. a., a form of identification constitutes
21 satisfactory evidence of a person's identity if it contains the name, address,
22 signature, and photograph of the person identified and if it has been issued by a
23 federal, state, local, or foreign governmental agency. Forms of identification that
24 constitute satisfactory evidence of a person's identity, when they contain the name,
25 address, signature, and photograph of the person identified, include a valid

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SECTION 13

1 operator's license issued under ch. 343 or under the laws of any other state, an
2 identification card issued under s. 343.50, a military identification card, a valid
3 passport, an alien registration card, or any other identification document issued by
4 a federal, state, local, or foreign governmental agency.

5 SECTION 14. 48.375 (4) (a) 1. c. of the statutes is created to read:

6 48.375 (4) (a) 1. c. A notary public who takes an acknowledgement and a
7 verification upon oath or affirmation under subd. 1. a. shall keep confidential any
8 information acquired in taking the acknowledgement and verification. Any person
9 who under oath or affirmation makes a statement under subd. 1. a. that the person
10 does not believe is true is subject to prosecution for a violation of s. 946.32.

11 SECTION 15. 48.375 (4) (b) 1. of the statutes is amended to read:

12 48.375 (4) (b) 1. ~~The person who intends to perform or induce the abortion~~
13 ~~believes, to the best of his or her medical judgment based on the facts of the case~~
14 ~~before him or her, that a~~ A medical emergency, as defined in s. 253.10 (2) (d), exists
15 ~~that complicates the pregnancy so as to require an immediate abortion.~~

16 SECTION 16. 48.375 (4) (b) 1m. of the statutes is repealed.

17 SECTION 17. 48.375 (4) (b) 3. of the statutes is amended to read:

18 48.375 (4) (b) 3. The minor provides the person who intends to perform or
19 induce the abortion with a written statement, signed and dated by the minor, that
20 a parent who has legal custody of the minor, or the minor's guardian or legal
21 custodian, if one has been appointed, ~~or an adult family member of the minor, or a~~
22 ~~foster parent or treatment foster parent, if the minor has been placed in a foster home~~
23 ~~or treatment foster home and the minor's parent has signed a waiver granting the~~
24 ~~department, a county department, the foster parent or the treatment foster parent~~
25 ~~the authority to consent to medical services or treatment on behalf of the minor, has~~

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1 inflicted abuse on the minor. The person who intends to perform or induce the
2 abortion shall place the statement in the minor's medical record. The person who
3 intends to perform or induce the abortion shall report the abuse as required under
4 s. 48.981 (2).

5 SECTION 18. 48.375 (6) of the statutes is amended to read:

6 48.375 (6) RIGHT TO PETITION COURT FOR WAIVER. Any pregnant minor who is
7 seeking an abortion in this state, ~~and any member of the clergy on the minor's behalf,~~
8 may file a petition specified under s. 48.257 with any court for a waiver of the
9 parental consent requirement under sub. (4) (a) 1.

10 SECTION 19. 48.375 (7) (a) of the statutes is amended to read:

11 48.375 (7) (a) *Receipt of petition; initial appearance.* (intro.) On the ~~date that~~
12 day on which a petition under s. 48.257 is filed, or, if it is impossible to do so on that
13 day, on the next calendar day, the court shall hold an initial appearance in chambers
14 at which the minor ~~or the member of the clergy who filed the petition on behalf of the~~
15 ~~minor, if any,~~ is present and shall do all of the following:

16 SECTION 20. 48.375 (7) (a) 4. of the statutes is amended to read:

17 48.375 (7) (a) 4. Notify the minor, the minor's counsel, ~~if any, the member of the~~
18 ~~clergy who filed the petition on behalf of the minor, if any,~~ and the minor's guardian
19 ad litem, if any, of the time, date, and place of the hearing.

20 SECTION 21. 48.375 (7) (b) of the statutes is amended to read:

21 48.375 (7) (b) *Hearing; evidence.* (intro.) The court shall hold a confidential
22 hearing on ~~a~~ the petition ~~that is filed by a minor.~~ The hearing shall be held in
23 chambers, unless a public fact-finding hearing is demanded by the minor through
24 her counsel. At the hearing, the court shall consider the report of the guardian ad
25 litem, if any, and hear evidence relating to all of the following:

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1 SECTION 22. 48.375 (7) (b) [✓]2m. of the statutes is created to read:

2 48.375 (7) (b) 2m. The nature of the relationship between the minor and her
3 parents.

4 SECTION 23. 48.375 (7) (b) ^X of the statutes is repealed.

5 SECTION 24. 48.375 (7) (d) [✓]1. of the statutes is amended to read:

6 48.375 (7) (d) 1. The court shall make the determination under par. (c) and issue
7 an order within 3 calendar days after the initial appearance unless the minor and
8 her counsel, ~~or the member of the clergy who filed the petition on behalf of the minor,~~
9 ~~if any,~~ consent to an extension of the time period. The order shall be effective
10 immediately. The court shall prepare and file with the clerk of court findings of fact,
11 conclusions of law, and a final order granting or denying the petition within 24 hours
12 after making the determination and order. If the court grants the petition, the court
13 shall immediately so notify the minor by personal service on her counsel, ~~or the~~
14 ~~member of the clergy who filed the petition on behalf of the minor, if any,~~ of a certified
15 copy of the court's order granting the petition. If the court denies the petition, the
16 court shall immediately so notify the minor by personal service on her counsel, ~~or the~~
17 ~~member of the clergy who filed the petition on behalf of the minor, if any,~~ of a copy
18 of the court's order denying the petition and shall also notify the minor by her
19 counsel, ~~or the member of the clergy who filed the petition on behalf of the minor, if~~
20 ~~any,~~ that she has a right to initiate an appeal under s. 809.105.

21 SECTION 25. 48.375 (7) (d) [✓]1m. of the statutes ~~as affected by 2001 Wisconsin~~

22 ~~Act 16,~~ is amended to read:

23 48.375 (7) (d) 1m. Except as provided under s. 48.315 (1) (b), (c), (f), ~~and (h)~~ if
24 the court fails to comply with the time limits specified under subd. 1. without the
25 prior consent of the minor and the minor's counsel, ~~if any, or the member of the clergy~~

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ASSEMBLY BILL 812

1 ~~who filed the petition on behalf of the minor, if any,~~ the minor and the minor's counsel,
2 ~~if any, or the member of the clergy, if any,~~ shall select a temporary reserve judge, as
3 defined in s. 753.075 (1) (b), to make the determination under par. (c) and issue an
4 order granting or denying the petition, and the chief judge of the judicial
5 administrative district in which the court is located shall assign the temporary
6 reserve judge selected by the minor and the minor's counsel, ~~if any, or the member~~
7 ~~of the clergy, if any,~~ to make the determination and issue the order. A temporary
8 reserve judge assigned under this subdivision to make a determination under par.
9 (c) and issue an order granting or denying a petition shall make the determination
10 and issue the order within 2 calendar days after the assignment, unless the minor
11 and her counsel, ~~if any, or the member of the clergy who filed the petition on behalf~~
12 ~~of the minor, if any,~~ consent to an extension of that time period. The order shall be
13 effective immediately. The court shall prepare and file with the clerk of court
14 findings of fact, conclusions of law, and a final order granting or denying the petition,
15 and shall notify the minor of the court's order, as provided under subd. 1.

16 SECTION 26. 48.375 (7) (d) 2. [✓] of the statutes is amended to read:

17 48.375 (7) (d) 2. Counsel for the minor, ~~or the member of the clergy who filed~~
18 ~~the petition on behalf of the minor, if any,~~ shall immediately, upon notification under
19 subd. 1. or 1m. that the court has granted or denied the petition, notify the minor.
20 If the court has granted the petition, counsel for the minor, ~~or the member of the~~
21 ~~clergy who filed the petition on behalf of the minor, if any,~~ shall hand deliver a
22 certified copy of the court order to the person who intends to perform or induce the
23 abortion. If with reasonable diligence the person who intends to perform or induce
24 the abortion cannot be located for delivery, then counsel for the minor, ~~or the member~~
25 ~~of the clergy who filed the petition on behalf of the minor, if any,~~ shall leave a certified

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1 copy of the order with the person's agent at the person's principal place of business.
2 If a clinic or medical facility is specified in the petition as the corporation, limited
3 liability company, partnership, or other unincorporated association that employs the
4 person who intends to perform or induce the abortion, then counsel for the minor, ~~or~~
5 ~~the member of the clergy who filed the petition on behalf of the minor, if any,~~ shall
6 hand deliver a certified copy of the order to an agent of the corporation, limited
7 liability company, partnership, or other unincorporated association at its principal
8 place of business. There may be no service by mail or publication. The person or
9 agent who receives the certified copy of the order under this subdivision shall place
10 the copy in the minor's medical record.

11 SECTION 27. 48.375 (7) (f) [✓] of the statutes is amended to read:

12 48.375 (7) (f) *Certain persons barred from proceedings.* No parent, or guardian
13 or legal custodian, if one has been appointed, ~~or foster parent or treatment foster~~
14 ~~parent, if the minor has been placed in a foster home or treatment foster home and~~
15 ~~the minor's parent has signed a waiver granting the department, a county~~
16 ~~department, the foster parent or the treatment foster parent the authority to consent~~
17 ~~to medical services or treatment on behalf of the minor, or adult family member, of~~
18 any minor who is seeking a court determination under this subsection may attend,
19 intervene, or give evidence in any proceeding under this subsection.

20 SECTION 28. 69.186 (1) [✓] (j) of the statutes is amended to read:

21 69.186 (1) (j) If the patient is a minor, whether consent was provided under s.
22 48.375 (4) (a) 1. for the abortion and, if so, the relationship of the individual providing
23 consent to the minor; or, if consent under s. 48.375 (4) (a) 1. was not provided, on
24 which of the bases under s. 48.375 (4) (a) 2. or (b) 1., 1g., ~~1m,~~ [✓] 2., or 3. the abortion
25 was performed.

ASSEMBLY BILL 812

1 SECTION 29. 809.105 (2) of the statutes is amended to read:

2 809.105 (2) INITIATING AN APPEAL. Only a minor may initiate an appeal under
3 this section. The minor shall initiate the appeal by filing, ~~or by a member of the clergy~~
4 ~~filing on the minor's behalf~~, a notice of appeal with the clerk of the trial court in which
5 the order appealed from was entered and shall specify in the notice of appeal the
6 order appealed from. At the same time, the minor ~~or member of the clergy~~ shall notify
7 the court of appeals of the filing of the appeal by sending a copy of the notice of appeal
8 to the clerk of the court of appeals. The clerk of the trial court shall assist the minor
9 ~~or member of the clergy~~ in sending a copy of the notice of appeal to the clerk of the
10 court of appeals. The minor may use the name "Jane Doe" instead of her name on
11 the notice of appeal and all other papers filed with the court of appeals.

12 SECTION 30. 809.105 (3) (a) of the statutes is amended to read:

13 809.105 (3) (a) *Fee*. No fee for filing an appeal in the court of appeals under this
14 section may be required of a minor ~~or of a member of the clergy who files an appeal~~
15 ~~under this section on behalf of the minor~~.

16 SECTION 31. 809.105 (3) (d) of the statutes is amended to read:

17 809.105 (3) (d) *Statement on transcript*. A minor ~~or member of the clergy~~ may
18 not be required to file a statement on transcript in an appeal under this section.

19 SECTION 32. 809.105 (5) of the statutes is amended to read:

20 809.105 (5) TRANSCRIPT OF REPORTER'S NOTES. At the time that a minor ~~or~~
21 ~~member of the clergy~~ files a notice of appeal, the minor ~~or member of the clergy~~ shall
22 make arrangements with the reporter for the preparation of a transcript of the
23 reporter's notes of the proceedings under s. 48.375 (7). The reporter shall file the
24 transcript with the trial court within 2 calendar days after the notice of appeal is

ASSEMBLY BILL 812

1 filed. The county of the court that held the proceeding under s. 48.375 (7) shall pay
2 the expense of transcript preparation under this subsection.

3 SECTION 33. 809.105 (8) of the statutes is amended to read:

4 809.105 (8) ASSIGNMENT AND ADVANCEMENT OF CASES. The court of appeals shall
5 take cases appealed under this section in an order that ensures that a judgment is
6 made within 4 calendar days after the appeal has been filed in the court of appeals.
7 The time limit under this subsection may be extended with the consent of the minor
8 and her counsel, ~~if any, or the member of the clergy who initiated the appeal under~~
9 ~~this section, if any.~~

10 SECTION 34. 809.105 (8m) of the statutes is amended to read:

11 809.105 (8m) ORAL ARGUMENT. If the court of appeals determines that a case
12 appealed under this section is to be submitted with oral argument, the oral argument
13 shall be held in chambers or, on motion of the minor through her counsel ~~or through~~
14 ~~the member of the clergy who filed the appeal under this section, if any,~~ or on the
15 court of appeals' own motion, by telephone, unless the minor through her counsel ~~or~~
16 ~~the member of the clergy~~ demands that the oral argument be held in open court.

17 SECTION 35. 809.105 (9) of the statutes is amended to read:

18 809.105 (9) COSTS. The court of appeals may not assess costs against a minor
19 ~~or member of the clergy~~ in an appeal under this section.

20 SECTION 36. 809.105 (10) of the statutes is amended to read:

21 809.105 (10) REMITTITUR. (a) A judgment by the court of appeals under this
22 section is effective immediately, without transmittal to the trial court, as an order
23 either granting or denying the petition. If the court of appeals reverses a trial court
24 order denying a petition under s. 48.375 (7), the court of appeals shall immediately
25 so notify the minor by personal service on her counsel ~~or the member of the clergy~~

ASSEMBLY BILL 812

1 ~~who initiated the appeal under this section, if any,~~ of a certified copy of the order of
2 the court of appeals granting the minor's petition. If the court of appeals affirms the
3 trial court order, it shall immediately so notify the minor by personal service on her
4 counsel ~~or the member of the clergy who initiated the appeal under this section, if~~
5 ~~any,~~ of a copy of the order of the court of appeals denying the petition and shall also
6 notify the minor by her counsel ~~or the member of the clergy who initiated the appeal~~
7 ~~under this section on behalf of the minor, if any,~~ that she may, under sub. (11), file
8 a petition for review with the supreme court under s. 809.62. The court of appeals
9 shall pay the expenses of service of notice under this subsection. The clerk of the
10 court of appeals shall transmit to the trial court the judgment and opinion of the court
11 of appeals and the record in the case filed under sub. (4), within 31 days after the date
12 that on which the judgment and opinion of the court of appeals are filed. If a petition
13 for review is filed under sub. (11), the transmittal shall be made within 31 days after
14 the date that on which the supreme court rules on the petition for review.

15 (b) Counsel for the minor, ~~if any, or the member of the clergy who initiated the~~
16 ~~appeal under this section, if any,~~ shall immediately, upon notification under par. (a)
17 that the court of appeals has granted or denied the petition, notify the minor. If the
18 court of appeals has granted the petition, counsel for the minor, ~~if any, or the member~~
19 ~~of the clergy who initiated the appeal under this section, if any,~~ shall hand deliver
20 a certified copy of the order of the court of appeals to the person who intends to
21 perform or induce the abortion. If with reasonable diligence the person who intends
22 to perform or induce the abortion cannot be located for delivery, then counsel for the
23 minor, ~~if any, or the member of the clergy who initiated the appeal under this section,~~
24 ~~if any,~~ shall leave a certified copy of the order with the person's agent at the person's
25 principal place of business. If a clinic or medical facility is specified in the petition

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SECTION 36

1 as the corporation, limited liability company, partnership, or other unincorporated
 2 association that employs the person who intends to perform or induce the abortion,
 3 then counsel for the minor, ~~if any, or the member of the clergy who initiated the~~
 4 ~~appeal under this section, if any,~~ shall hand deliver a certified copy of the order to an
 5 agent of the corporation, limited liability company, partnership, or other
 6 unincorporated association at its principal place of business. There may be no
 7 service by mail or publication. The person or agent who receives the certified copy
 8 of the order under this paragraph shall place the copy in the minor's medical record.

9 **SECTION 37.** 809.105 (11) (a) (intro.) of the statutes is amended to read:

10 809.105 (11) (a) (intro.) Only a minor ~~or the member of the clergy who initiated~~
 11 ~~the appeal under this section, if any,~~ may initiate a review of an appeal under this
 12 section. The petition for review of an appeal in the supreme court shall contain:

all of the following

13 **SECTION 38.** 809.105 (11) (a) 3. of the statutes is amended to read:

14 809.105 (11) (a) 3. The judgment and opinion of the court of appeals, and the
 15 findings of fact, conclusions of law, and final order of the trial court that were
 16 furnished to the court of appeals. The court of appeals shall provide a copy of these
 17 papers to the minor, ~~if any, the member of the clergy who initiated the appeal under~~
 18 ~~this section, if any,~~ her counsel, or her guardian ad litem, if any, immediately upon
 19 request.

20 **SECTION 39.** 809.105 (11) (cm) of the statutes is amended to read:

21 809.105 (11) (cm) If the supreme court determines that a case reviewed under
 22 this subsection is to be submitted with oral argument, the oral argument shall be
 23 held in chambers or, on motion of the minor through her counsel ~~or through the~~
 24 ~~member of the clergy who initiated the appeal under this section, if any,~~ or on the

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SECTION 39

1 supreme court's own motion, by telephone, unless the minor through her counsel or
2 ~~the member of the clergy~~ demands that the oral argument be held in open court.

3 SECTION 40. 809.105[✓] (11) (d) of the statutes is amended to read:

4 809.105 (11) (d) A judgment or decision by the supreme court under this section
5 is effective immediately, without transmittal to the trial court, as an order either
6 granting or denying the petition. If the supreme court reverses a court of appeals
7 order affirming a trial court order denying a petition under s. 48.375 (7), the supreme
8 court shall immediately so notify the minor by personal service on her counsel, ~~if any,~~
9 ~~or on the member of the clergy who initiated the appeal under this section, if any,~~ of
10 a certified copy of the order of the supreme court granting the minor's petition. If the
11 supreme court affirms the order of the court of appeals, it shall immediately so notify
12 the minor by her counsel ~~or by the member of the clergy who initiated the appeal~~
13 ~~under this section, if any.~~ The clerk of the supreme court shall transmit to the trial
14 court the judgment, or decision, and opinion of the supreme court and the complete
15 record in the case within 31 days after the date ~~that~~ on which the judgment, or
16 decision, and opinion of the supreme court are filed. The supreme court shall pay the
17 expense of service of notice under this subsection.

18 SECTION 41. 809.105[✓] (11) (e) of the statutes is amended to read:

19 809.105 (11) (e) Counsel for the minor, ~~if any, or the member of the clergy who~~
20 ~~initiated the appeal under this section, if any,~~ shall immediately, upon notification
21 under par. (d) that the supreme court has granted or denied the petition, notify the
22 minor. If the supreme court has granted the petition, counsel for the minor, ~~if any,~~
23 ~~or the member of the clergy who initiated the appeal under this section, if any,~~ shall
24 hand deliver a certified copy of the order of the supreme court to the person who
25 intends to perform or induce the abortion. If with reasonable diligence the person

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SECTION 41

1 who intends to perform or induce the abortion cannot be located for delivery, then
2 counsel for the minor, ~~if any, or the member of the clergy who initiated the appeal~~
3 ~~under this section, if any,~~ shall leave a certified copy of the order with the person's
4 agent at the person's principal place of business. If a clinic or medical facility is
5 specified in the petition as the corporation, limited liability company, partnership,
6 or other unincorporated association that employs the person who intends to perform
7 or induce the abortion, then counsel for the minor, ~~if any, or the member of the clergy~~
8 ~~who initiated the appeal under this section, if any,~~ shall hand deliver a certified copy
9 of the order to an agent of the corporation, limited liability company, partnership, or
10 other unincorporated association at its principal place of business. There may be no
11 service by mail or publication. The person or agent who receives the certified copy
12 of the order under this paragraph shall place the order in the minor's medical record.

13 SECTION 42. 809.105[✓](13) of the statutes is amended to read:

14 809.105 (13) CERTAIN PERSONS BARRED FROM PROCEEDINGS. No parent, or
15 guardian or legal custodian, if one has been appointed, ~~or foster parent or treatment~~
16 ~~foster parent, if the minor has been placed in a foster home or treatment foster home,~~
17 ~~and the minor's parent has signed a waiver granting the department of health and~~
18 ~~family services, a county department under s. 46.215, 46.22 or 46.23, the foster~~
19 ~~parent or the treatment foster parent the authority to consent to medical services or~~
20 ~~treatment on behalf of the minor, or adult family member, as defined in s. 48.375[✓](2)~~
21 ~~(b),~~ of any minor who has initiated an appeal under this section may attend or
22 intervene in any proceeding under this section.

23 SECTION 43. 895.037[✓](3) (a) of the statutes is amended to read:

24 895.037 (3) (a) A person who intentionally violates s. 48.375 (4) under
25 circumstances in which the person knew or, in the exercise of reasonable care, should

ASSEMBLY BILL 812

1 have known that the requirements of that subsection have not been complied with
 2 is liable to the minor on or for whom the abortion was performed or induced and to
 3 the minor's parent, guardian, and legal custodian for damages arising out of the
 4 performance or inducement of the abortion including, but not limited to, damages for
 5 personal injury and emotional and psychological distress.

SECTION 44. Initial applicability.

7 (1) ABORTIONS PERFORMED OR INDUCED. The treatment of sections 46.24, 48.375
 8 (2) (b) and (fm) and (4) (b) 1., 1m., and 3., 69.186 (1) (j), and 895.037 (3) (a) of the
 9 statutes, the renumbering and amendment of section 48.375 (4) (a) 1. of the statutes
 10 and the creation of section 48.375 (4) (a) 1. a., b., and c. of the statutes first apply to
 11 abortions performed or induced on the effective date of this subsection. (1m)

12 (2) WAIVER PETITIONS FILED. The treatment of sections 48.23 ~~(a)~~ (cm), 48.257 (1)
 13 (h) and (4), 48.27 (9), 48.273 (4) (b), 48.375 (2) (c) and (em), (6), and (7) (a) (intro.) and
 14 4., (b) (intro.) and 2m., (bm), (d), and (f), and 809.105 (2), (3) (a) and (d), (5), (8), (8m),
 15 (9), (10), (11) (a) (intro.) and 3., (cm), (d), and (e), and (13) of the statutes first applies
 16 to petitions filed to initiate a proceeding under section 48.375 (7) of the statutes, as
 17 affected by this act, on the effective date of this subsection.

18 (END)

1., 1m., and 2.

(Insert A)

LEGISLATIVE REFERENCE BUREAU

, unless she obtains a waiver of this requirement from the circuit court

Under current law, subject to certain exceptions, before an unemancipated minor may have an abortion, she must have the written consent of any of the following:

which is defined under current law

1. One of her parents.
2. Her guardian or legal custodian, if one has been appointed.
3. An adult family member, ~~Current law defines "adult family member"~~ as a grandparent, aunt, uncle, sister, or brother who is at least 25 years of age.
4. One of her foster parents or treatment foster parents, if the minor has been placed in a foster home or a treatment foster home and the minor's parent has signed a waiver granting the department of health and family services, a county department of human services or social services, the foster parent, or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor, unless the minor obtains a waiver of this requirement from the circuit court.

(end of insert)

Barman, Mike

From: Malaise, Gordon
Sent: Tuesday, November 04, 2003 12:42 PM
To: Barman, Mike
Subject: FW: Parental Consent for Abortion Draft

Mike:

Senator Leibham wants LRB-2229/1 jacketed.

Thanks.

Gordon

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

From: Lindstedt, Daniel
Sent: Tuesday, November 04, 2003 12:41 PM
To: Malaise, Gordon
Subject: FW: Parental Consent for Abortion Draft

Gordon:

I don't believe that I ever requested stripes from LRB for LRB-2229/1.

Could you please prepare a jacket and send it over to our office ASAP?

- Dan



Parental Consent
for Abortion ...

Daniel Lindstedt

Clerk, Senate Committee on Transportation and
Information Infrastructure

Office of State Senator Joe Leibham

State Capitol, Room 409 South

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State of Wisconsin

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FAX: (608) 264-6948

STEPHEN R. MILLER
CHIEF

February 10, 2004

MEMORANDUM

To: Senator Leibham

From: Gordon M. Malaise, Sr. Legislative Attorney, (608) 266-9738

Subject: Technical Memorandum to **SB-304** (LRB 03-2229/1)

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

Technical Memo for LRB 03-2229/1, SB 304
February 10, 2004
Dept. of Health and Family Services
Preparer: Ellen Hadidian

There is a possibility that 2003 SB 304 may potentially violate federal MA law. Section 16 of AB 635 would repeal s. 48.375(4)(b)1m., Stats., which provides that the parental consent requirement does not apply if:

"A physician who specializes in psychiatry or a licensed psychologist, as defined in s. 455.01 (4), states in writing that the physician or psychologist believes, to the best of his or her professional judgment based on the facts of the case before him or her, that the minor is likely to commit suicide rather than file a petition under s. 48.257 or approach her parent ... for consent."

Public Law 108-7 [H.J. Res. 2], sec. 102, Feb. 20, 2003 (Consolidated Appropriations Resolution, 2003) (the Hyde Amendment) prohibits use of federal funds to pay for an abortion except where the life of the mother would be endangered if the fetus were carried to term, or in the case of rape. The federal government has in the past taken the position that any abortion for which federal funding is permissible under the Hyde Amendment is medically necessary and thus must be covered by State Medicaid Programs. That is, if federal funding were permitted, then coverage would be required. As far as the Department knows, this interpretation has been neither withdrawn nor re-issued under the current administration. If this interpretation still stands, that part of AB 635 that would prohibit abortions for a minor if a psychiatrist believes the minor would commit suicide if denied the opportunity to have an abortion might be considered to be in violation of federal Medicaid law. This possibility could be raised in litigation, even if the federal government does not raise the issue.