

2003 SENATE BILL 544

March 10, 2004 – Introduced by Senators MOORE, RISSER, WIRCH, CARPENTER, PLALE and ROBSON, cosponsored by Representatives BERCEAU, POCAN, RICHARDS, POPE-ROBERTS, SHILLING, SINICKI, TAYLOR, VRUWINK, HEBL, WASSERMAN, BLACK, TURNER, MILLER and BOYLE. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

1 **AN ACT to repeal** 118.019 (2m) (title); **to renumber** 50.38 (1); **to renumber and**
2 **amend** 118.019 (2m); **to amend** 50.38 (2), 118.019 (1), 118.019 (2) (intro.),
3 118.019 (2) (a), 118.019 (2) (b), 118.019 (2) (c), 118.019 (2) (d), 118.019 (2) (e),
4 118.019 (2) (f), 118.019 (3) and 450.09 (2); and **to create** 50.375, 50.376, 50.38
5 (1) (b) and 118.019 (2) (g) of the statutes; **relating to:** school district human
6 growth and development programs; requiring a hospital to provide to an alleged
7 victim of sexual assault, with consent, information and emergency
8 contraception; requiring the availability, in a hospital, of a practitioner to
9 prescribe contraceptive articles; requiring the availability, in a pharmacy, of a
10 pharmacist to dispense contraceptive articles; and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Health and Family Services (DHFS) issues certificates of approval to hospitals that meet DHFS requirements and otherwise regulates approved hospitals.

This bill requires a hospital to do all of the following if it provides emergency services to an alleged victim of sexual assault and has obtained the victim's consent:

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1) provide her with medically and factually accurate and unbiased written and oral information about emergency contraception; 2) orally inform her of her option to receive emergency contraception; and 3) provide emergency contraception immediately to her if she requests it. “Emergency contraception” is defined in the bill to be a contraceptive article that prevents a pregnancy after sexual intercourse. “Contraceptive article” is defined to be a drug, medicine, oral hormonal compound, mixture, preparation, instrument, article, or device that is approved by the federal Food and Drug Administration for use to prevent a pregnancy and that may not be obtained without a prescription. The definition of “contraceptive article” specifically excludes a drug, medicine, oral hormonal compound, mixture, preparation, instrument, article, or device of any nature that is prescribed to terminate the pregnancy of a woman who is known by the prescribing practitioner to be pregnant.

The bill also requires that a hospital that provides emergency care ensure that each hospital employee who provides care to an alleged victim of sexual assault have available medically and factually accurate and unbiased information about emergency contraception. DHFS must respond to complaints about violations of these requirements and must periodically review procedures of hospitals to determine whether they are in compliance. Violators of the requirements are subject to forfeitures. DHFS may, after providing notice to a hospital that has violated the requirements twice, suspend or revoke the hospital’s certificate of approval and deny application for a new certificate of approval.

Additionally, the bill requires that a hospital ensure that at least one person licensed to prescribe and administer drugs be available in the hospital to prescribe to a patient a contraceptive article, as defined in the bill, including emergency contraception.

Under current law, a pharmaceutical service may not be provided in a pharmacy unless a pharmacist is present to provide or supervise the service. This bill requires that a pharmacy ensure that at least one pharmacist is available in the pharmacy to dispense to a patient a contraceptive article, including emergency contraception.

Under current law, a school board may provide an instructional program in human growth and development in grades kindergarten to 12. The program may include instruction in a number of areas, including self-esteem, interpersonal relationships, human sexuality, family life, and sex stereotypes. This bill provides that, if a school board offers a human growth and development program, it must provide instruction in all specified areas. The bill makes several changes in these areas, including the following:

1. Currently, a school board may include instruction in the discouragement of adolescent sexual activity. This bill provides instead that a school board must include instruction in the social, psychological, and health benefits of abstaining from sexual activity.

2. Current law authorizes a school board to include instruction in human immunodeficiency virus and acquired immunodeficiency syndrome. This bill requires a school board to include instruction in all sexually transmitted diseases.

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3. The bill requires instruction relating to sexual exploitation, acquaintance rape, the legal consequences of sexual contact with a minor, and marriage and family responsibility, including financial responsibility.

4. The bill requires that instruction in human sexuality be comprehensive and medically accurate. The bill defines “medically accurate” to mean supported by research, recognized as accurate and objective by leading medical, psychological, psychiatric, and public health organizations and agencies with expertise in the relevant field, and published in peer-reviewed journals.

The bill also provides that a human growth and development curriculum may include assignments that provide parents with opportunities to communicate to their children their expectations regarding the sexual behavior of their children.

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.** 50.375 of the statutes is created to read:

2 **50.375 Emergency contraception for alleged victims of sexual assault.**

3 **(1)** In this section:

4 (a) “Emergency contraception” means a contraceptive article, as defined in s.
5 50.376 (1) (a), that prevents a pregnancy after sexual intercourse.

6 (b) “Sexual assault” means a violation of s. 940.225 (1), (2), or (3).

7 **(2)** A hospital that provides emergency services to an alleged victim of sexual
8 assault shall, after obtaining the consent of the victim, do all of the following:

9 (a) Provide to the victim medically and factually accurate and unbiased written
10 and oral information about emergency contraception.

11 (b) Orally inform the victim of her option to receive emergency contraception
12 at the hospital.

13 (c) Provide emergency contraception immediately at the hospital to the victim
14 if she requests it.

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1 **(3)** A hospital that provides emergency care shall ensure that each hospital
2 employee who provides care to an alleged victim of sexual assault has available
3 medically and factually accurate and unbiased information about emergency
4 contraception.

5 **(4)** The department shall respond to any complaint received by the department
6 concerning noncompliance by a hospital with the requirements of subs. (2) and (3)
7 and shall periodically review hospital procedures to determine whether a hospital
8 is in compliance with the requirements.

9 **SECTION 2.** 50.376 of the statutes is created to read:

10 **50.376 Availability to prescribe contraceptive articles.** **(1)** In this
11 section:

12 (a) “Contraceptive article” means a drug, medicine, mixture, preparation,
13 instrument, article, or device of any nature that is approved by the federal food and
14 drug administration for use to prevent a pregnancy, that is prescribed by a
15 practitioner, as defined in s. 450.01 (17), for use to prevent a pregnancy, and that may
16 not be obtained without a prescription from a practitioner. “Contraceptive article”
17 does not include any drug, medicine, mixture, preparation, instrument, article, or
18 device of any nature prescribed for use in terminating the pregnancy of a woman who
19 is known by the prescribing practitioner to be pregnant.

20 (b) “Emergency contraception” means a contraceptive article that prevents a
21 pregnancy after sexual intercourse.

22 **(2)** A hospital shall ensure that at least one practitioner, as defined in s. 450.01
23 (17), is available on the hospital premises to prescribe to a patient a contraceptive
24 article, including emergency contraception.

25 **SECTION 3.** 50.38 (1) of the statutes is renumbered 50.38 (1) (a).

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1 **SECTION 4.** 50.38 (1) (b) of the statutes is created to read:

2 50.38 (1) (b) Whoever violates a requirement under s. 50.375 (2) or (3) may be
3 required to forfeit not less than \$2,500 nor more than \$5,000 for each violation. If
4 a hospital violates s. 50.375 (2) twice, the department may, after providing notice to
5 the hospital, suspend or revoke the hospital's certificate of approval and may deny
6 application for a new certificate of approval.

7 **SECTION 5.** 50.38 (2) of the statutes is amended to read:

8 50.38 (2) The department may directly assess forfeitures provided for under
9 sub. (1) (a) or (b). If the department determines that a forfeiture should be assessed
10 for a particular violation, the department shall send a notice of assessment to the
11 hospital. The notice shall specify the amount of the forfeiture assessed, the violation
12 and the statute or rule alleged to have been violated, and shall inform the hospital
13 of the right to a hearing under sub. (3).

14 **SECTION 6.** 118.019 (1) of the statutes is amended to read:

15 118.019 (1) PURPOSE. The purpose of this section is to encourage all school
16 boards to make available to pupils instruction in topics related to human growth and
17 development in order to promote accurate and comprehensive knowledge in this area
18 and responsible decision making and, to support and enhance the efforts of parents
19 to provide moral guidance to their children, to promote abstinence from sexual
20 activity as the safest and best choice for pupils, and to include comprehensive
21 education in human sexuality.

22 **SECTION 7.** 118.019 (2) (intro.) of the statutes is amended to read:

23 118.019 (2) SUBJECTS. (intro.) A school board may provide an instructional
24 program in human growth and development in grades kindergarten to 12. If
25 provided, the program shall offer information and instruction appropriate to each

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1 grade level and the age and level of maturity of the pupils. ~~Except as provided in sub-~~
2 ~~(2m), the program may~~ and shall include instruction in any all of the following areas:

3 **SECTION 8.** 118.019 (2) (a) of the statutes is amended to read:

4 118.019 (2) (a) ~~Self-esteem~~ Instruction in self-esteem, responsible decision
5 making and personal responsibility related to family life, relationships, and sexual
6 behavior.

7 **SECTION 9.** 118.019 (2) (b) of the statutes is amended to read:

8 118.019 (2) (b) ~~Interpersonal~~ Instruction in interpersonal relationships,
9 including growth in respect and self-control.

10 **SECTION 10.** 118.019 (2) (c) of the statutes is amended to read:

11 118.019 (2) (c) ~~Discouragement of adolescent~~ Instruction in the social,
12 psychological, and health benefits of abstaining from sexual activity.

13 **SECTION 11.** 118.019 (2) (d) of the statutes is amended to read:

14 118.019 (2) (d) ~~Family~~ Instruction in family life and skills required of a parent.

15 **SECTION 12.** 118.019 (2) (e) of the statutes is amended to read:

16 118.019 (2) (e) ~~Human~~ Comprehensive, medically accurate instruction in
17 human sexuality; reproduction; family planning, as defined in s. 253.07 (1) (a),
18 including natural family planning; and contraception, including emergency
19 contraception; sexually transmitted diseases, including human immunodeficiency
20 virus and acquired immunodeficiency syndrome, and their prevention; prenatal
21 development; childbirth; adoption; available prenatal and postnatal support; and
22 male and female responsibility. In this paragraph, “medically accurate” means
23 supported by research; recognized as accurate and objective by leading medical,
24 psychological, psychiatric, and public health organizations and agencies with
25 expertise in the relevant field, such as the federal Centers for Disease Control and

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1 Prevention, the American Public Health Association, the American Academy of
2 Pediatrics, and the American College of Obstetricians and Gynecologists; and
3 published in peer-reviewed journals.

4 **SECTION 13.** 118.019 (2) (f) of the statutes is amended to read:

5 118.019 (2) (f) Sex Instruction in sex stereotypes and, protective behavior
6 behaviors, sexual exploitation, and acquaintance rape.

7 **SECTION 14.** 118.019 (2) (g) of the statutes is created to read:

8 118.019 (2) (g) Instruction in the legal consequences of sexual contact with a
9 minor.

10 **SECTION 15.** 118.019 (2m) (title) of the statutes is repealed.

11 **SECTION 16.** 118.019 (2m) of the statutes is renumbered 118.019 (2) (h) and
12 amended to read:

13 118.019 (2) (h) ~~If a school board provides instruction in any of the areas under~~
14 ~~sub. (2) (e), the school board shall also provide instruction~~ Instruction in marriage
15 and parental responsibility, including financial responsibility.

16 **SECTION 17.** 118.019 (3) of the statutes is amended to read:

17 118.019 (3) DISTRIBUTION OF CURRICULUM TO PARENTS. Each school board that
18 provides an instructional program in human growth and development shall
19 annually provide the parents of each pupil enrolled in the school district with an
20 outline of the human growth and development curriculum used in the pupil's grade
21 level and information regarding how the parent may inspect the complete
22 curriculum and instructional materials. The school board shall make the complete
23 human growth and development curriculum and all instructional materials
24 available upon request for inspection at any time, including prior to their use in the
25 classroom. The human growth and development curriculum may include

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1 assignments that provide parents with opportunities to communicate to their
2 children their expectations regarding the sexual behavior of their children.

3 **SECTION 18.** 450.09 (2) of the statutes is amended to read:

4 450.09 (2) PRESENCE OF PHARMACIST. No pharmaceutical service may be
5 provided to any person unless a pharmacist is present in the pharmacy to provide or
6 supervise the service. An operator of a pharmacy shall ensure that at least one
7 pharmacist is available on the pharmacy premises to dispense to a patient a
8 contraceptive article, as defined in s. 50.376 (1) (a), including emergency
9 contraception, as defined in s. 50.376 (1) (b).

10 **SECTION 19. Effective dates.** This act takes effect on the day after publication,
11 except as follows:

12 (1) The treatment of section 118.019 (1), (2) (intro.), and (a), (b), (c), (d), (e), (f),
13 and (g), and (3) of the statutes, the repeal of section 118.019 (2m) (title) of the
14 statutes, and the renumbering and amendment of section 118.019 (2m) of the
15 statutes take effect on September 1, 2004.

16 (END)