

2007 SENATE BILL 398

January 17, 2008 – Introduced by Senators MILLER, RISSER and ERPENBACH, cosponsored by Representatives BERCEAU, KREUSER, SINICKI, KESSLER, BLACK, POCAN, POPE-ROBERTS, SEIDEL, BOYLE, ZEPNICK, YOUNG, RICHARDS, TOLES, SHERIDAN, PARISI, GRIGSBY, BENEDICT, SHILLING and TURNER. Referred to Committee on Health, Human Services, Insurance, and Job Creation.

1 **AN ACT to repeal** 940.04; and **to amend** 939.75 (2) (b) 1. of the statutes; **relating**
2 **to:** eliminating certain abortion prohibitions.

Analysis by the Legislative Reference Bureau

Currently, there are two laws in this state, ss. 940.04 and 940.15, stats., that directly penalize the performance of certain abortions. These laws are, in turn, affected by a third law, s. 940.13, stats.

Section 940.04, stats.

Under this law, any person, other than the mother, who intentionally destroys the life of an unborn child is guilty of a Class H felony, for which the penalty is a fine not to exceed \$10,000 or imprisonment not to exceed six years or both. “Unborn child” is defined as a human being from the time of conception until born alive. Any person, other than the mother, who intentionally destroys the life of an unborn quick child or causes the mother’s death by an act done with intent to destroy the life of an unborn child is guilty of a Class E felony, for which the penalty is a fine not to exceed \$50,000 or imprisonment not to exceed 15 years or both. “Unborn quick child” is not defined. Any pregnant woman who intentionally destroys the life of her unborn child or who consents to the destruction by another may be fined not more than \$200 or imprisoned not more than six months or both, but for the same action with respect to her unborn quick child the penalty is a fine not to exceed \$10,000 or imprisonment not to exceed three years and six months or both. None of these penalties apply to a therapeutic abortion that is performed by a physician; is necessary, or advised by two other physicians as necessary, to save the life of the mother; and, unless a emergency prevents, is performed in a licensed maternity hospital. This statute was

