2007 SENATE BILL 218

June 19, 2007 – Introduced by Senators BRESKE, LAZICH, PLALE, A. LASEE, DARLING, ROESSLER, COWLES, KEDZIE, KANAVAS, LEIBHAM and GROTHMAN, cosponsored by Representatives Gundrum, STRACHOTA, MONTGOMERY, KLEEFISCH, ALBERS, NYGREN, HAHN, GOTTLIEB, PETROWSKI, ROTH, ZIPPERER, GUNDESON, ZIEGELBAUER, KERKMAN, PRIENDMORE, BALLWEG, BIES, HONADEL, HINES, MURSAU, VUKMIR, VAN ROY, LEMAHIEU, OWENS, PETERSEN, VOS and A. OTT. Referred to Committee on Health and Human Services.

1 AN ACT to amend 253.10 (3) (b), 253.10 (3) (d) 1. and 253.10 (7); and to create
2 253.10 (3) (c) 1. jm. and 253.10 (3) (c) 2. fm. of the statutes; relating to:
3 voluntary and informed consent to an abortion and requiring provision of
4 information on domestic abuse services.

Analysis by the Legislative Reference Bureau

Under current law, a woman upon whom an abortion is to be performed or induced must give voluntary and informed written consent to the abortion. Consent is voluntary only if it is given freely and without coercion. This bill requires that the physician who is to perform or induce the abortion determine whether or not the woman's consent is, in fact, voluntary. If the physician has reason to suspect that the woman is in danger of being physically harmed by anyone who is coercing the woman to consent to an abortion against her will, the physician must inform the woman of services for victims or individuals at risk of domestic abuse and provide her with private access to a telephone if she states that she wishes to call for assistance.

Currently, a woman's consent to an abortion is informed only if, at least 24 hours before the abortion is performed or induced, the physician or another qualified physician has in person orally provided the woman with certain information. If the pregnancy is the result of sexual assault or incest, the 24-hour period, but not the provision of information, may be waived or reduced under certain circumstances. This bill requires that the physician or other qualified physician inform the woman that she has a right to refuse to consent to an abortion, that her consent is not voluntary if anyone is coercing her to consent to an abortion against her will, and that
it is unlawful for the physician to perform or induce the abortion without her voluntary consent.

Currently, a woman's consent to an abortion is informed only if, at least 24 hours before the abortion is performed or induced, the physician, a qualified person assisting the physician, or another qualified physician has in person orally provided the woman with certain information. If the pregnancy is the result of sexual assault or incest, the 24-hour period, but not the provision of information, may be waived or reduced under certain circumstances. This bill requires that the physician, qualified person assisting the physician, or other qualified physician inform the woman, in person, that certain printed materials that are published and distributed by the Department of Health and Family Services (DHFS) and that must be given to the woman contain information on services available for victims or individuals at risk of domestic abuse. Additionally, the bill requires DHFS, in publishing the materials, to include information on services in the state that are available for victims or individuals at risk of domestic abuse.

For further information see the state 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:

SECTION 1. 253.10 (3) (b) of the statutes is amended to read:

253.10 (3) (b) Voluntary consent. Consent under this section to an abortion is voluntary only if the consent is given freely and without coercion by any person. The physician who is to perform or induce the abortion shall determine whether or not the woman's consent is, in fact, voluntary. If the physician has reason to suspect that the woman is in danger of being physically harmed by anyone who is coercing the woman to consent to an abortion against her will, the physician shall inform the woman of services for victims or individuals at risk of domestic abuse and provide her with private access to a telephone if she states that she wishes to call for assistance.

SECTION 2. 253.10 (3) (c) 1. jm. of the statutes is created to read:

253.10 (3) (c) 1. jm. That the woman has a right to refuse to consent to an abortion, that her consent is not voluntary if anyone is coercing her to consent to an
abortion against her will, and that it is unlawful for the physician to perform or
induce the abortion without her voluntary consent.

SECTION 3. 253.10 (3) (c) 2. fm. of the statutes is created to read:

253.10 (3) (c) 2. fm. That the printed materials described in par. (d) contain
information on services available for victims or individuals at risk of domestic abuse.

SECTION 4. 253.10 (3) (d) 1. of the statutes is amended to read:

253.10 (3) (d) 1. Geographically indexed materials that are designed to inform
a woman about public and private agencies, including adoption agencies, and
services that are available to provide information on family planning, as defined in
s. 253.07 (1) (a), including natural family planning information, to provide
ultrasound imaging services, to assist her if she has received a diagnosis that her
unborn child has a disability or if her pregnancy is the result of sexual assault or
incest and to assist her through pregnancy, upon childbirth and while the child is
dependent. The materials shall include a comprehensive list of the agencies
available, a description of the services that they offer and a description of the manner
in which they may be contacted, including telephone numbers and addresses, or, at
the option of the department, the materials shall include a toll-free, 24-hour
telephone number that may be called to obtain an oral listing of available agencies
and services in the locality of the caller and a description of the services that the
agencies offer and the manner in which they may be contacted. The materials shall
provide information on the availability of governmentally funded programs that
serve pregnant women and children. Services identified for the woman shall include
medical assistance for pregnant women and children under s. 49.47 (4) (am), the
availability of family or medical leave under s. 103.10, the Wisconsin works program
under ss. 49.141 to 49.161, child care services, child support laws and programs and
the credit for expenses for household and dependent care and services necessary for
gainful employment under section 21 of the internal revenue code. The materials
shall state that it is unlawful to perform an abortion for which consent has been
coerced, that any physician who performs or induces an abortion without obtaining
the woman’s voluntary and informed consent is liable to her for damages in a civil
action and is subject to a civil penalty, that the father of a child is liable for assistance
in the support of the child, even in instances in which the father has offered to pay
for an abortion, and that adoptive parents may pay the costs of prenatal care,
childbirth and neonatal care. The materials shall include information, for a woman
whose pregnancy is the result of sexual assault or incest, on legal protections
available to the woman and her child if she wishes to oppose establishment of
paternity or to terminate the father’s parental rights. The materials shall include
information on services in the state that are available for victims or individuals at
risk of domestic abuse. The materials shall state that fetal ultrasound imaging and
auscultation of fetal heart tone services are obtainable by pregnant women who wish
to use them and shall describe the services.

SECTION 5. 253.10 (7) of the statutes is amended to read:

253.10 (7) AFFIRMATIVE DEFENSE. No person is liable under sub. (5) or (6) or
under s. 441.07 (1) (f), 448.02 (3) (a) or 457.26 (2) (gm) for failure under sub. (3) (c)
2. d. to provide the printed materials described in sub. (3) (d) to a woman or for failure
under sub. (3) (c) 2. d., e., f., f., or g. to describe the contents of the printed materials
if the person has made a reasonably diligent effort to obtain the printed materials
under sub. (3) (e) and s. 46.245 and the department and the county department under
s. 46.215, 46.22 or 46.23 have not made the printed materials available at the time
that the person is required to give them to the woman.
SECTION 6. Effective date.

(1) This act takes effect on the first day of the 3rd month beginning after publication.

(END)