



2011 SENATE BILL 306

1 **AN ACT** *to repeal* 940.04 (3) and (4); *to amend* 253.10 (3) (b), 253.10 (3) (d) 1.,
2 253.10 (5) and 253.10 (7); and *to create* 253.10 (2) (am), 253.10 (3) (c) 1. hm.,
3 253.10 (3) (c) 1. jm., 253.10 (3) (c) 2. fm., 253.10 (7m) and 253.105 of the statutes;
4 **relating to:** voluntary and informed consent to an abortion, information on
5 domestic abuse services, giving a woman an abortion-inducing drug, repealing
6 criminal sanctions against women who perform or obtain certain abortion
7 procedures, and providing a penalty.

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

8 **SECTION 1.** 253.10 (2) (am) of the statutes is created to read:
9 253.10 (2) (am) “Abortion-inducing drug” means a drug, medicine, oral
10 hormonal compound, mixture, or preparation, when it is prescribed to terminate the
11 pregnancy of a woman known to be pregnant.

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1 **SECTION 2.** 253.10 (3) (b) of the statutes is amended to read:

2 253.10 **(3)** (b) *Voluntary consent.* Consent under this section to an abortion is
3 voluntary only if the consent is given freely and without coercion by any person. The
4 physician who is to perform or induce the abortion shall determine whether the
5 woman's consent is, in fact, voluntary. Notwithstanding par. (c) 3., the physician
6 shall make the determination by speaking to the woman in person, out of the
7 presence of anyone other than a person working for or with the physician. If the
8 physician has reason to suspect that the woman is in danger of being physically
9 harmed by anyone who is coercing the woman to consent to an abortion against her
10 will, the physician shall inform the woman of services for victims or individuals at
11 risk of domestic abuse and provide her with private access to a telephone.

12 **SECTION 3.** 253.10 (3) (c) 1. hm. of the statutes is created to read:

13 253.10 (3) (c) 1. hm. If the abortion is induced by an abortion-inducing drug,
14 that the woman must return to the abortion facility for a follow-up visit 12 to 18 days
15 after the use of an abortion-inducing drug to confirm the termination of the
16 pregnancy and evaluate the woman's medical condition.

17 **SECTION 4.** 253.10 (3) (c) 1. jm. of the statutes is created to read:

18 253.10 **(3)** (c) 1. jm. That the woman has a right to refuse to consent to an
19 abortion, that her consent is not voluntary if anyone is coercing her to consent to an
20 abortion against her will, and that it is unlawful for the physician to perform or
21 induce the abortion without her voluntary consent.

22 **SECTION 5.** 253.10 (3) (c) 2. fm. of the statutes is created to read:

23 253.10 **(3)** (c) 2. fm. That the printed materials described in par. (d) contain
24 information on services available for victims or individuals at risk of domestic abuse.

25 **SECTION 6.** 253.10 (3) (d) 1. of the statutes is amended to read:

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1 253.10 (3) (d) 1. Geographically indexed materials that are designed to inform
2 a woman about public and private agencies, including adoption agencies, and
3 services that are available to provide information on family planning, as defined in
4 s. 253.07 (1) (a), including natural family planning information, to provide
5 ultrasound imaging services, to assist her if she has received a diagnosis that her
6 unborn child has a disability or if her pregnancy is the result of sexual assault or
7 incest and to assist her through pregnancy, upon childbirth and while the child is
8 dependent. The materials shall include a comprehensive list of the agencies
9 available, a description of the services that they offer and a description of the manner
10 in which they may be contacted, including telephone numbers and addresses, or, at
11 the option of the department, the materials shall include a toll-free, 24-hour
12 telephone number that may be called to obtain an oral listing of available agencies
13 and services in the locality of the caller and a description of the services that the
14 agencies offer and the manner in which they may be contacted. The materials shall
15 provide information on the availability of governmentally funded programs that
16 serve pregnant women and children. Services identified for the woman shall include
17 medical assistance for pregnant women and children under s. 49.47 (4) (am) and
18 49.471, the availability of family or medical leave under s. 103.10, the Wisconsin
19 works program under ss. 49.141 to 49.161, child care services, child support laws and
20 programs and the credit for expenses for household and dependent care and services
21 necessary for gainful employment under section 21 of the ~~internal revenue code~~
22 Internal Revenue Code. The materials shall state that it is unlawful to perform an
23 abortion for which consent has been coerced, that any physician who performs or
24 induces an abortion without obtaining the woman's voluntary and informed consent
25 is liable to her for damages in a civil action and is subject to a civil penalty, that the

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1 father of a child is liable for assistance in the support of the child, even in instances
2 in which the father has offered to pay for an abortion, and that adoptive parents may
3 pay the costs of prenatal care, childbirth and neonatal care. The materials shall
4 include information, for a woman whose pregnancy is the result of sexual assault or
5 incest, on legal protections available to the woman and her child if she wishes to
6 oppose establishment of paternity or to terminate the father's parental rights. The
7 materials shall state that fetal ultrasound imaging and auscultation of fetal heart
8 tone services are obtainable by pregnant women who wish to use them and shall
9 describe the services. The materials shall include information on services in the
10 state that are available for victims or individuals at risk of domestic abuse.

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

12 253.10 (5) PENALTY. Any person who violates sub. (3) or (3m) (a) 2. or (b) 2. shall
13 be required to forfeit not less than \$1,000 nor more than \$10,000. No penalty may
14 be assessed against the woman upon whom the abortion is performed or induced or
15 attempted to be performed or induced.

16 **SECTION 8.** 253.10 (7) of the statutes is amended to read:

17 253.10 (7) AFFIRMATIVE DEFENSE. No person is liable under sub. (5) or (6) or
18 under s. 441.07 (1) (f), 448.02 (3) (a), or 457.26 (2) (gm) for failure under sub. (3) (c)
19 2. d. to provide the printed materials described in sub. (3) (d) to a woman or for failure
20 under sub. (3) (c) 2. d., e., f., fm., or g. to describe the contents of the printed materials
21 if the person has made a reasonably diligent effort to obtain the printed materials
22 under sub. (3) (e) and s. 46.245 and the department and the county department under
23 s. 46.215, 46.22, or 46.23 have not made the printed materials available at the time
24 that the person is required to give them to the woman.

25 **SECTION 9.** 253.10 (7m) of the statutes is created to read:

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1 **253.10 (7m)** CONFIDENTIALITY IN COURT PROCEEDINGS. (a) In every proceeding
2 brought under this section, the court, upon motion or sua sponte, shall rule whether
3 the identity of any woman upon whom an abortion was performed or induced or
4 attempted to be performed or induced shall be kept confidential unless the woman
5 waives confidentiality. If the court determines that a woman’s identity should be
6 kept confidential, the court shall issue orders to the parties, witnesses, and counsel
7 and shall direct the sealing of the record and exclusion of individuals from
8 courtrooms or hearing rooms to the extent necessary to safeguard the woman’s
9 identity from public disclosure. If the court issues an order to keep a woman’s
10 identity confidential, the court shall provide written findings explaining why the
11 woman’s identity should be kept confidential, why the order is essential to that end,
12 how the order is narrowly tailored to its purpose, and why no reasonable less
13 restrictive alternative exists.

14 (b) Any person, except for a public official, who brings an action under this
15 section shall do so under a pseudonym unless the person obtains the written consent
16 of the woman upon whom an abortion was performed or induced, or attempted to be
17 performed or induced, in violation of this section.

18 (c) The section may not be construed to allow the identity of a plaintiff or a
19 witness to be concealed from the defendant.

20 **SECTION 10.** 253.105 of the statutes is created to read:

21 **253.105 Prescription and use of abortion-inducing drugs. (1)** In this
22 section:

23 (a) “Abortion” has the meaning given in s. 253.10 (2) (a).

24 (b) “Abortion-inducing drug” has the meaning given in s. 253.10 (2) (am).

25 (c) “Physician” has the meaning given in s. 448.01 (5).

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1 **(2)** No person may give an abortion-inducing drug to a woman unless the
2 physician who prescribed, or otherwise provided, the abortion-inducing drug for the
3 woman:

4 **(a)** Performs a physical exam of the woman before the information is provided
5 under s. 253.10 (3) (c) 1.

6 **(b)** Is physically present in the room when the drug is given to the woman.

7 **(3)** PENALTY. Any person who violates sub. (2) is guilty of a Class I felony. No
8 penalty may be assessed against a woman to whom an abortion-inducing drug is
9 given.

10 **(4)** CIVIL REMEDIES. **(a)** Any of the following persons has a claim against a
11 person who intentionally or recklessly violates sub. (2):

12 1. A woman to whom an abortion-inducing drug was given in violation of sub.
13 (2).

14 2. If the abortion-inducing drug was given to a minor in violation of sub. (2),
15 a parent or guardian of the minor.

16 3. The father of the unborn child aborted as the result of an abortion-inducing
17 drug given in violation of sub. (2), unless the pregnancy of the person to whom the
18 abortion-inducing drug was given was the result of sexual assault in violation of s.
19 940.225, 944.06, 948.02, 948.025, 948.06, 948.085, or 948.09 and the violation was
20 committed by the father.

21 **(b)** A claim for relief under par. (a) may include:

22 1. Damages arising out of the inducement of the abortion, including damages
23 for personal injury and emotional and psychological distress.

24 2. Punitive damages for a violation that satisfies the standard under s. 895.043
25 (3).

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1 (c) Notwithstanding s. 814.04 (1), a person who recovers damages under this
2 subsection may also recover reasonable attorney fees incurred in connection with the
3 action.

4 (d) A conviction under sub. (3) is not a condition precedent to bringing an action,
5 obtaining a judgment, or collecting a judgment under this subsection.

6 (e) A contract is not a defense to an action under this subsection.

7 (f) Nothing in this section limits the common law rights of a person that are not
8 in conflict with sub. (2).

9 **(5) CONFIDENTIALITY IN COURT PROCEEDINGS.** (a) In every proceeding brought
10 under this section, the court, upon motion or sua sponte, shall rule whether the
11 identity of any woman upon whom an abortion was induced or attempted to be
12 induced shall be kept confidential unless the woman waives confidentiality. If the
13 court determines that a woman's identity should be kept confidential, the court shall
14 issue orders to the parties, witnesses, and counsel and shall direct the sealing of the
15 record and exclusion of individuals from courtrooms or hearing rooms to the extent
16 necessary to safeguard the woman's identity from public disclosure. If the court
17 issues an order to keep a woman's identity confidential, the court shall provide
18 written findings explaining why the woman's identity should be kept confidential,
19 why the order is essential to that end, how the order is narrowly tailored to its
20 purpose, and why no reasonable less restrictive alternative exists.

21 (b) Any person, except for a public official, who brings an action under this
22 section shall do so under a pseudonym unless the person obtains the written consent
23 of the woman upon whom an abortion was induced, or attempted to be induced, in
24 violation of this section.

