

State of Wisconsin



2011 Senate Bill 306

Date of enactment: April 5, 2012
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2011 WISCONSIN ACT 217

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

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

SECTION 1. 253.10 (2) (am) of the statutes is created to read:

253.10 (2) (am) "Abortion-inducing drug" means a drug, medicine, oral hormonal compound, mixture, or preparation, when it is prescribed to terminate the pregnancy of a woman known to be pregnant.

SECTION 2. 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 the woman's consent is, in fact, voluntary. Notwithstanding par. (c) 3., the physician shall make the determination by speaking to the woman in person, out of the presence of anyone other than a person working for or with the physician. 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 individ-

uals at risk of domestic abuse and provide her with private access to a telephone.

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

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

SECTION 4. 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 5. 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 991.11, WISCONSIN STATUTES 2009-10: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

SECTION 6. 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) and 49.471, 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~~ 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 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. The materials shall include information on services in the state that are available for victims or individuals at risk of domestic abuse.

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

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

SECTION 8. 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., ~~fm.~~, 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 9. 253.10 (7m) of the statutes is created to read:

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

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

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

SECTION 10. 253.105 of the statutes is created to read:
253.105 Prescription and use of abortion-inducing drugs. (1) In this section:

(a) "Abortion" has the meaning given in s. 253.10 (2) (a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) CONSTRUCTION. Nothing in this section may be construed as creating or recognizing a right to abortion or as making lawful an abortion that is otherwise unlawful.

SECTION 11. 940.04 (3) and (4) of the statutes are repealed.

SECTION 12. Effective dates. This act takes effect on the day after publication, except as follows:

(1) VOLUNTARY AND INFORMED CONSENT. The treatment of sections 253.10 (3) (b), (c) 1. jm. and 2. fm., (d) 1., and (7) of the statutes takes effect on the first day of the 3rd month beginning after publication.