

2011 DRAFTING REQUEST

Bill

Received: 10/21/2011

Received By: **fknepp**

Wanted: **Today**

Companion to LRB:

For: **Mary Lazich (608) 266-5400**

By/Representing: **Andrew Hanus**

May Contact:

Drafter: **tdodge**

Subject: **Health - abortion**

Addl. Drafters: **fknepp
phurley**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Lazich@legis.wisconsin.gov**

Carbon copy (CC:) to: **tamara.dodge@legis.wisconsin.gov
fern.knepp@legis.wisconsin.gov
peggy.hurley@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Voluntary and informed consents for abortions and prohibiting telemedicine for abortion inducing drugs

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tdodge 10/21/2011	kfollett 10/21/2011		_____			State
/1			jfrantze 10/21/2011	_____	sbasford 10/21/2011		State
/2	fknepp	kfollett	rschluet	_____	sbasford	ggodwin	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	10/21/2011	10/21/2011	10/21/2011 _____		10/21/2011	10/26/2011	

FE Sent For:

atw
11/28

<END>

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/1		<i>12/5/11</i> <i>15/21</i> <i>10/21</i>	jfrantze 10/21/2011 <i>10/21/11</i>	_____	sbasford 10/21/2011		

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/?	tdodge	11/gf 10/21	gf 10/21	kg 10/21			

FE Sent For:

Knepp, Fern

From: Hanus, Andrew
Sent: Friday, October 21, 2011 9:34 AM
To: Knepp, Fern
Subject: Drafting instructions - abortion

Hi Fern,

Below is language for a bill that I am looking to get drafted ASAP. If some of the cites don't make sense, or if you think we need any adjustments, please just give me a call.

Thanks,

Andrew Hanus
Sen. Lazich's Office
6-5400

DRAFT

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.

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 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.

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.

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.

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.

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.

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.

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.

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.

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.

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

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.



State of Wisconsin
2011 - 2012 LEGISLATURE

In 10-21-11
Out Today
2011 BILL



LRB-3305/1
JD, FFK/PJH: [initials]
RMNR
nwn+kj

Regen

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* 20.435 (1) (gf), 253.095, 253.10 (2) (am),
3 253.10 (3) (c) 1. hm., 253.10 (3) (c) 1. jm., 253.10 (3) (c) 2. fm., 253.10 (7m) and
4 253.105 of the statutes; **relating to:** voluntary and informed consent to an
5 abortion, information on domestic abuse services, abortion facility regulation,
6 giving a woman an abortion-inducing drug, repealing criminal sanctions
7 against women who perform or obtain certain abortion procedures, requiring
8 the exercise of rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau
VOLUNTARY AND INFORMED CONSENT AND INFORMATION
ON DOMESTIC ABUSE SERVICES

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. The physician must determine if the woman's consent is voluntary by speaking to her in person, out of the presence of anyone other than a person working for or with the physician. If the physician has reason to

**BILL**

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 considered informed only if, at least 24 hours before the abortion is performed or induced, the physician or an assistant has, in person, orally provided the woman with certain information and given the woman written materials prepared by the Department of Health Services (DHS). 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. Any person who violates the informed consent requirements is required to forfeit not less than \$1,000 nor more than \$10,000 and is liable to the woman upon whom the abortion is performed or induced.

The bill requires that, at least 24 hours before the abortion is performed or induced, the physician or another qualified physician inform the woman that she has a right to refuse or 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. The physician or another qualified physician must also inform the woman, at least 24 hours before the abortion is induced that, if the abortion is induced by an abortion-inducing drug, the woman must return to the abortion facility for a follow-up visit 12 to 18 days after use of the drug to confirm the termination of the pregnancy and evaluate the woman's medical condition. The bill requires that the physician or assistant inform the woman that the materials prepared by DHS, which must be given to her, contain information on services available for victims or individuals at risk of domestic abuse. Additionally, the bill requires DHS to include in the printed materials information on services in the state that are available for victims or individuals at risk of domestic abuse. The bill specifies that none of the penalties for violating the informed consent requirements may be assessed against the woman upon whom the abortion is to be performed or induced or attempted to be performed or induced.

LICENSING AND REGULATION OF ABORTION FACILITIES

This bill provides for the licensure and regulation of abortion facilities by DHS. Under this bill, no person may operate, conduct, or maintain an abortion facility without a license issued by DHS. For purposes of licensing, this bill defines an abortion facility as a place, other than a hospital, where any second trimester is performed or five or more first trimester abortions are performed per month.

To apply for license to operate an abortion facility, a person must submit an application, including a statement of ownership, and a \$500 licensing fee to DHS. Under this bill, DHS will issue an abortion facility license to an applicant who DHS determines is fit and qualified, as defined by DHS by rule, for an abortion facility that meets certain requirements, including:

1. At least one physician is responsible for medical supervision at the abortion facility.

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2. Abortions at the abortion facility may only be performed by physicians who, at the time of performing an abortion, have privileges to do surgery in at least one hospital within a 15-mile radius of the abortion facility.

3. If the applicant is a corporation, the corporation's board of directors includes at least one physician.

This bill requires DHS to promulgate rules related to operating a licensed abortion facility, including the following:

1. Minimum standards for the construction of abortion facilities.
2. Staffing requirements for abortion facilities.
3. Adequate equipment at an abortion facility to ensure the health of the patients.
4. Additional programs and services to be provided to patients at the abortion facility.

Under this bill, DHS is required to make at least one unannounced inspection of each licensed abortion facility, each year, and may make additional inspections, as necessary. If DHS finds that the continued operation of an abortion facility poses a serious danger to the health or safety of the abortion facility's patients, this bill authorizes DHS to immediately close the abortion facility. If an abortion facility is closed under these circumstances, the person holding a license for the closed abortion facility may request a hearing and reinspection. If upon reinspection, DHS finds that the abortion facility no longer poses an imminent or serious danger, DHS must allow the abortion facility to reopen.

Under this bill, a person who operates an abortion facility in violation of state law, including a rule promulgated by DHS, is subject to a penalty based on the type of violation and the number of previous violations. Additionally, DHS may issue a conditional license to an abortion facility that it finds has violated the licensing regulations.

RESTRICTIONS ON THE USE OF ABORTION-INDUCING DRUGS

This bill prohibits a person from giving a woman an abortion-inducing drug unless the physician who provided the drug for the woman performs a physical exam on the woman and is physically present in the room when the drug is given to the woman. An abortion-inducing drug is a drug that is prescribed to terminate the pregnancy of a woman who is known to be pregnant. Under this bill, a person who gives a woman an abortion-inducing drug in a manner that violates the prohibition is guilty of a Class I felony and may be subject to a civil action. This bill specifies that a penalty may not be assessed against a woman who receives an abortion-inducing drug.

REPEAL OF CERTAIN ABORTION PROHIBITIONS

Under current law, a pregnant woman who intentionally destroys the life of her unborn child or who consents to such destruction by another may be fined not more than \$200, imprisoned not more than six months, or both. For the same action with respect to an unborn quick child the penalty is a fine not to exceed \$10,000, imprisonment for not more than three years and six month, 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



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mother; and is performed, except on an emergency basis, in a licensed maternity hospital. These provisions were cited, along with other provisions not affected by this bill that prohibit performing an abortion generally, in *Roe v. Wade*, 410 U.S. 113 (1973), as substantially similar to a Texas statute that was held to violate the due process clause of the 14th Amendment to the U.S. Constitution.

A separate provision in current law prohibits prosecution of and imposing or enforcing a fine or imprisonment against a woman who obtains an abortion or otherwise violates any abortion law with respect to her unborn child or fetus. Further, crimes of being a party to a crime, solicitation, and conspiracy do not apply to a woman who obtains an abortion or otherwise violates an abortion law with respect to her unborn child or fetus.

This bill repeals the provisions in current law under which a pregnant woman who intentionally destroys the life of her unborn child or who consents to such destruction by another may be fined, imprisoned, or both. The bill does not affect any other criminal prohibition or limitation on abortion in current law and does not affect the provision that prohibits the prosecution, fine, or imprisonment against a woman who obtains an abortion or otherwise violates any abortion law with regard to her unborn child or fetus.

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:

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SECTION 1. 20.435 (1) (gf) of the statutes is created to read:

20.435 (1) (gf) *Abortion facility fees.* All moneys received by the department of health services from abortion facilities under s. 253.095 for creating, printing, and distributing the materials described in s. 253.10 (3) (d) 1.

SECTION 2. 253.095 of the statutes is created to read:

253.095 Licensing and regulation of abortion facilities. (1) DEFINITIONS.

In this section:

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

(b) "Abortion facility" means a place other than a hospital, as defined in s. 50.33 (2), where any 2nd trimester or 5 or more first trimester abortions per month are performed.

LPS: delete text from missing pages 5-12 also

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1 injunction to restrain a violation or to prohibit the operation and maintenance of an
2 abortion facility that violates this section or any rule promulgated under this section.

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

6 SECTION 3. 253.10 (2) (am) of the statutes is created to read:

7 253.10 (2) (am) "Abortion-inducing drug" means a drug, medicine, oral
8 hormonal compound, mixture, or preparation, when it is prescribed to terminate the
9 pregnancy of a woman known to be pregnant.

10 SECTION 4. 253.10 (3) (b) of the statutes is amended to read:

11 253.10 (3) (b) *Voluntary consent*. Consent under this section to an abortion is
12 voluntary only if the consent is given freely and without coercion by any person. The
13 physician who is to perform or induce the abortion shall determine whether the
14 woman's consent is, in fact, voluntary. Notwithstanding par. (c) 3., the physician
15 shall make the determination by speaking to the woman in person, out of the
16 presence of anyone other than a person working for or with the physician. If the
17 physician has reason to suspect that the woman is in danger of being physically
18 harmed by anyone who is coercing the woman to consent to an abortion against her
19 will, the physician shall inform the woman of services for victims or individuals at
20 risk of domestic abuse and provide her with private access to a telephone if she states
21 that she wishes to call for assistance.

22 SECTION 5. 253.10 (3) (c) 1. hm. of the statutes is created to read:

23 253.10 (3) (c) 1. hm. If the abortion is induced by an abortion-inducing drug,
24 that the woman must return to the abortion facility for a follow-up visit 12 to 18 days

**BILL****SECTION 5**

1 after the use of an abortion-inducing drug to confirm the termination of the
2 pregnancy and evaluate the woman's medical condition.

3 **SECTION 6.** 253.10 (3) (c) 1. jm. of the statutes is created to read:

4 253.10 (3) (c) 1. jm. That the woman has a right to refuse to consent to an
5 abortion, that her consent is not voluntary if anyone is coercing her to consent to an
6 abortion against her will, and that it is unlawful for the physician to perform or
7 induce the abortion without her voluntary consent.

8 **SECTION 7.** 253.10 (3) (c) 2. fm. of the statutes is created to read:

9 253.10 (3) (c) 2. fm. That the printed materials described in par. (d) contain
10 information on services available for victims or individuals at risk of domestic abuse.

11 **SECTION 8.** 253.10 (3) (d) 1. of the statutes is amended to read:

12 253.10 (3) (d) 1. Geographically indexed materials that are designed to inform
13 a woman about public and private agencies, including adoption agencies, and
14 services that are available to provide information on family planning, as defined in
15 s. 253.07 (1) (a), including natural family planning information, to provide
16 ultrasound imaging services, to assist her if she has received a diagnosis that her
17 unborn child has a disability or if her pregnancy is the result of sexual assault or
18 incest and to assist her through pregnancy, upon childbirth and while the child is
19 dependent. The materials shall include a comprehensive list of the agencies
20 available, a description of the services that they offer and a description of the manner
21 in which they may be contacted, including telephone numbers and addresses, or, at
22 the option of the department, the materials shall include a toll-free, 24-hour
23 telephone number that may be called to obtain an oral listing of available agencies
24 and services in the locality of the caller and a description of the services that the
25 agencies offer and the manner in which they may be contacted. The materials shall

BILL

1 provide information on the availability of governmentally funded programs that
2 serve pregnant women and children. Services identified for the woman shall include
3 medical assistance for pregnant women and children under s. 49.47 (4) (am) and
4 49.471, the availability of family or medical leave under s. 103.10, the Wisconsin
5 works program under ss. 49.141 to 49.161, child care services, child support laws and
6 programs and the credit for expenses for household and dependent care and services
7 necessary for gainful employment under section 21 of the ~~internal revenue code~~
8 Internal Revenue Code. The materials shall state that it is unlawful to perform an
9 abortion for which consent has been coerced, that any physician who performs or
10 induces an abortion without obtaining the woman's voluntary and informed consent
11 is liable to her for damages in a civil action and is subject to a civil penalty, that the
12 father of a child is liable for assistance in the support of the child, even in instances
13 in which the father has offered to pay for an abortion, and that adoptive parents may
14 pay the costs of prenatal care, childbirth and neonatal care. The materials shall
15 include information, for a woman whose pregnancy is the result of sexual assault or
16 incest, on legal protections available to the woman and her child if she wishes to
17 oppose establishment of paternity or to terminate the father's parental rights. The
18 materials shall state that fetal ultrasound imaging and auscultation of fetal heart
19 tone services are obtainable by pregnant women who wish to use them and shall
20 describe the services. The materials shall include information on services in the
21 state that are available for victims or individuals at risk of domestic abuse.

22 **SECTION 9.** 253.10 (5) of the statutes is amended to read:

23 253.10 (5) PENALTY. Any person who violates sub. (3) or (3m) (a) 2. or (b) 2. shall
24 be required to forfeit not less than \$1,000 nor more than \$10,000. No penalty may

**BILL****SECTION 9**

1 be assessed against the woman upon whom the abortion is performed or induced or
2 attempted to be performed or induced.

3 **SECTION 10.** 253.10 (7) of the statutes is amended to read:

4 253.10 (7) AFFIRMATIVE DEFENSE. No person is liable under sub. (5) or (6) or
5 under s. 441.07 (1) (f), 448.02 (3) (a), or 457.26 (2) (gm) for failure under sub. (3) (c)
6 2. d. to provide the printed materials described in sub. (3) (d) to a woman or for failure
7 under sub. (3) (c) 2. d., e., f., fm., or g. to describe the contents of the printed materials
8 if the person has made a reasonably diligent effort to obtain the printed materials
9 under sub. (3) (e) and s. 46.245 and the department and the county department under
10 s. 46.215, 46.22, or 46.23 have not made the printed materials available at the time
11 that the person is required to give them to the woman.

12 **SECTION 11.** 253.10 (7m) of the statutes is created to read:

13 253.10 (7m) CONFIDENTIALITY IN COURT PROCEEDINGS. (a) In every proceeding
14 brought under this section, the court, upon motion or sua sponte, shall rule whether
15 the identity of any woman upon whom an abortion was performed or induced or
16 attempted to be performed or induced shall be kept confidential unless the woman
17 waives confidentiality. If the court determines that a woman's identity should be
18 kept confidential, the court shall issue orders to the parties, witnesses, and counsel
19 and shall direct the sealing of the record and exclusion of individuals from
20 courtrooms or hearing rooms to the extent necessary to safeguard the woman's
21 identity from public disclosure. If the court issues an order to keep a woman's
22 identity confidential, the court shall provide written findings explaining why the
23 woman's identity should be kept confidential, why the order is essential to that end,
24 how the order is narrowly tailored to its purpose, and why no reasonable less
25 restrictive alternative exists.

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

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

7 **SECTION 12.** 253.105 of the statutes is created to read: ✓

8 **253.105 Prescription and use of abortion-inducing drugs. (1)** In this
9 section:

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

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

12 (c) "Physician" has the meaning given in s. 448.01 (5).

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

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

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

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

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

24 1. A woman to whom an abortion-inducing drug was given in violation of sub.
25 (2).



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SECTION 16

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

3 3. The father of the unborn child aborted as the result of an abortion-inducing
4 drug given in violation of sub. (2), unless the pregnancy of the person to whom the
5 abortion-inducing drug was given was the result of sexual assault in violation of s.
6 940.225, 944.06, 948.02, 948.025, 948.06, 948.085, or 948.09 and the violation was
7 committed by the father.

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

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

11 2. Punitive damages for a violation that satisfies the standard under s. 895.043
12 (3).

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

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

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

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

21 **(5) CONFIDENTIALITY IN COURT PROCEEDINGS.** (a) In every proceeding brought
22 under this section, the court, upon motion or sua sponte, shall rule whether the
23 identity of any woman upon whom an abortion was induced or attempted to be
24 induced shall be kept confidential unless the woman waives confidentiality. If the
25 court determines that a woman's identity should be kept confidential, the court shall

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1 issue orders to the parties, witnesses, and counsel and shall direct the sealing of the
2 record and exclusion of individuals from courtrooms or hearing rooms to the extent
3 necessary to safeguard the woman's identity from public disclosure. If the court
4 issues an order to keep a woman's identity confidential, the court shall provide
5 written findings explaining why the woman's identity should be kept confidential,
6 why the order is essential to that end, how the order is narrowly tailored to its
7 purpose, and why no reasonable less restrictive alternative exists.

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

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

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

17 **SECTION 13.** 940.04 (3) and (4) of the statutes are repealed.

18 **SECTION 14. Nonstatutory provisions.**

19 (1) **PROPOSED RULES.** No later than the first day of the 7th month beginning after
20 publication, the department of health services shall submit in proposed form the
21 rules required under section 253.095 of the statutes, as created by this act, to the
22 legislative council staff under section 227.15 (1) of the statutes.

23 **SECTION 15. Effective dates.** This act takes effect on the day after publication,
24 except as follows:



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SECTION 15

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

4 (2) ABORTION FACILITY LICENSURE. The creation of section 253.095 of the statutes
5 takes effect on the first day of the 13th month beginning after publication.

A handwritten flourish or signature mark consisting of a loop and a tail, located to the right of the circled text.

6 (END)

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Andrew - Lazich's office

Remove "if she states that she wishes to
call for assistance" in p. 4, line 6-7
and corresponding language on p. 2 of
the analysis.

- Jen Knepp



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3305/1

TJD/FFK/PJH:nwn&kjf:jf

In 10-21-11

Out - Today
2011 BILL

Regen

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

**VOLUNTARY AND INFORMED CONSENT AND INFORMATION
ON DOMESTIC ABUSE SERVICES**

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. The physician must determine if the woman's consent is voluntary by speaking to her 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 must

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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 considered informed only if, at least 24 hours before the abortion is performed or induced, the physician or an assistant has, in person, orally provided the woman with certain information and given the woman written materials prepared by the Department of Health Services (DHS). 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. Any person who violates the informed consent requirements is required to forfeit not less than \$1,000 nor more than \$10,000 and is liable to the woman upon whom the abortion is performed or induced.

The bill requires that, at least 24 hours before the abortion is performed or induced, the physician or another qualified physician inform the woman that she has a right to refuse or 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. The physician or another qualified physician must also inform the woman, at least 24 hours before the abortion is induced that, if the abortion is induced by an abortion-inducing drug, the woman must return to the abortion facility for a follow-up visit 12 to 18 days after use of the drug to confirm the termination of the pregnancy and evaluate the woman's medical condition. The bill requires that the physician or assistant inform the woman that the materials prepared by DHS, which must be given to her, contain information on services available for victims or individuals at risk of domestic abuse. Additionally, the bill requires DHS to include in the printed materials information on services in the state that are available for victims or individuals at risk of domestic abuse. The bill specifies that none of the penalties for violating the informed consent requirements may be assessed against the woman upon whom the abortion is to be performed or induced or attempted to be performed or induced.

RESTRICTIONS ON THE USE OF ABORTION-INDUCING DRUGS

This bill prohibits a person from giving a woman an abortion-inducing drug unless the physician who provided the drug for the woman performs a physical exam on the woman and is physically present in the room when the drug is given to the woman. An abortion-inducing drug is a drug that is prescribed to terminate the pregnancy of a woman who is known to be pregnant. Under this bill, a person who gives a woman an abortion-inducing drug in a manner that violates the prohibition is guilty of a Class I felony and may be subject to a civil action. This bill specifies that a penalty may not be assessed against a woman who receives an abortion-inducing drug.

REPEAL OF CERTAIN ABORTION PROHIBITIONS

Under current law, a pregnant woman who intentionally destroys the life of her unborn child or who consents to such destruction by another may be fined not more than \$200, imprisoned not more than six months, or both. For the same action with respect to an unborn quick child the penalty is a fine not to exceed \$10,000,

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imprisonment for not more than three years and six month, 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 is performed, except on an emergency basis, in a licensed maternity hospital. These provisions were cited, along with other provisions not affected by this bill that prohibit performing an abortion generally, in *Roe v. Wade*, 410 U.S. 113 (1973), as substantially similar to a Texas statute that was held to violate the due process clause of the 14th Amendment to the U.S. Constitution.

A separate provision in current law prohibits prosecution of and imposing or enforcing a fine or imprisonment against a woman who obtains an abortion or otherwise violates any abortion law with respect to her unborn child or fetus. Further, crimes of being a party to a crime, solicitation, and conspiracy do not apply to a woman who obtains an abortion or otherwise violates an abortion law with respect to her unborn child or fetus.

This bill repeals the provisions in current law under which a pregnant woman who intentionally destroys the life of her unborn child or who consents to such destruction by another may be fined, imprisoned, or both. The bill does not affect any other criminal prohibition or limitation on abortion in current law and does not affect the provision that prohibits the prosecution, fine, or imprisonment against a woman who obtains an abortion or otherwise violates any abortion law with regard to her unborn child or fetus.

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:

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

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

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

6 253.10 (3) (b) *Voluntary consent.* Consent under this section to an abortion is
7 voluntary only if the consent is given freely and without coercion by any person. The
8 physician who is to perform or induce the abortion shall determine whether the
9 woman’s consent is, in fact, voluntary. Notwithstanding par. (c) 3., the physician

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1 shall make the determination by speaking to the woman in person, out of the
2 presence of anyone other than a person working for or with the physician. If the
3 physician has reason to suspect that the woman is in danger of being physically
4 harmed by anyone who is coercing the woman to consent to an abortion against her
5 will, the physician shall inform the woman of services for victims or individuals at
6 risk of domestic abuse and provide her with private access to a telephone if she states
7 that she wishes to call for assistance.

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

9 253.10 (3) (c) 1. hm. If the abortion is induced by an abortion-inducing drug,
10 that the woman must return to the abortion facility for a follow-up visit 12 to 18 days
11 after the use of an abortion-inducing drug to confirm the termination of the
12 pregnancy and evaluate the woman's medical condition.

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

14 253.10 (3) (c) 1. jm. That the woman has a right to refuse to consent to an
15 abortion, that her consent is not voluntary if anyone is coercing her to consent to an
16 abortion against her will, and that it is unlawful for the physician to perform or
17 induce the abortion without her voluntary consent.

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

19 253.10 (3) (c) 2. fm. That the printed materials described in par. (d) contain
20 information on services available for victims or individuals at risk of domestic abuse.

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

22 253.10 (3) (d) 1. Geographically indexed materials that are designed to inform
23 a woman about public and private agencies, including adoption agencies, and
24 services that are available to provide information on family planning, as defined in
25 s. 253.07 (1) (a), including natural family planning information, to provide

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

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1 incest, on legal protections available to the woman and her child if she wishes to
2 oppose establishment of paternity or to terminate the father's parental rights. The
3 materials shall state that fetal ultrasound imaging and auscultation of fetal heart
4 tone services are obtainable by pregnant women who wish to use them and shall
5 describe the services. The materials shall include information on services in the
6 state that are available for victims or individuals at risk of domestic abuse.

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

8 253.10 (5) PENALTY. Any person who violates sub. (3) or (3m) (a) 2. or (b) 2. shall
9 be required to forfeit not less than \$1,000 nor more than \$10,000. No penalty may
10 be assessed against the woman upon whom the abortion is performed or induced or
11 attempted to be performed or induced.

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

13 253.10 (7) AFFIRMATIVE DEFENSE. No person is liable under sub. (5) or (6) or
14 under s. 441.07 (1) (f), 448.02 (3) (a), or 457.26 (2) (gm) for failure under sub. (3) (c)
15 2. d. to provide the printed materials described in sub. (3) (d) to a woman or for failure
16 under sub. (3) (c) 2. d., e., f., fm., or g. to describe the contents of the printed materials
17 if the person has made a reasonably diligent effort to obtain the printed materials
18 under sub. (3) (e) and s. 46.245 and the department and the county department under
19 s. 46.215, 46.22, or 46.23 have not made the printed materials available at the time
20 that the person is required to give them to the woman.

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

22 253.10 (7m) CONFIDENTIALITY IN COURT PROCEEDINGS. (a) In every proceeding
23 brought under this section, the court, upon motion or sua sponte, shall rule whether
24 the identity of any woman upon whom an abortion was performed or induced or
25 attempted to be performed or induced shall be kept confidential unless the woman

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1 waives confidentiality. If the court determines that a woman's identity should be
2 kept confidential, the court shall issue orders to the parties, witnesses, and counsel
3 and shall direct the sealing of the record and exclusion of individuals from
4 courtrooms or hearing rooms to the extent necessary to safeguard the woman's
5 identity from public disclosure. If the court issues an order to keep a woman's
6 identity confidential, the court shall provide written findings explaining why the
7 woman's identity should be kept confidential, why the order is essential to that end,
8 how the order is narrowly tailored to its purpose, and why no reasonable less
9 restrictive alternative exists.

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

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

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

17 **253.105 Prescription and use of abortion-inducing drugs.** (1) In this
18 section:

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

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

21 (c) "Physician" has the meaning given in s. 448.01 (5).

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

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

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

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

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

9 1. A woman to whom an abortion-inducing drug was given in violation of sub.
10 (2).

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

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

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

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

21 2. Punitive damages for a violation that satisfies the standard under s. 895.043
22 (3).

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

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

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

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

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

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

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

Godwin, Gigi

From: Sen.Lazich

Sent: Wednesday, October 26, 2011 3:18 PM

To: LRB.Legal

Subject: Draft Review: LRB 11-3305/2 Topic: Voluntary and informed consents for abortions and prohibiting telemedicine for abortion inducing drugs

Please Jacket LRB 11-3305/2 for the SENATE.

10/26/2011