

2011 DRAFTING REQUEST

Assembly Amendment (AA-SB306)

Received: 03/12/2012

Received By: **tdodge**

Wanted: 03/13/2012

Companion to LRB:

For: **Mark Pocan (608) 266-8570**

By/Representing: **Craig**

May Contact:

Drafter: **tdodge**

Subject: **Health - abortion**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Pocan@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Require voluntary and informed consent for medications used to treat erectile dysfunction

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>
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/1	tdodge 03/13/2012	csicilia 03/13/2012	rschluet 03/13/2012	_____	mbarman 03/13/2012	mbarman 03/13/2012	

FE Sent For:

<END>

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FE Sent For:

<END>

Dodge, Tamara

From: Knepp, Fern
Sent: Monday, March 12, 2012 10:43 AM
To: Dodge, Tamara
Subject: FW: Equality amendment

Attachments: Pocan Equality Amendment Statement.pdf

FYI-

From: Trost, Craig
Sent: Monday, March 12, 2012 10:19 AM
To: Knepp, Fern
Subject: RE: Equality amendment



Pocan Equality
Amendment State..

Fern,

If you could let Tamara know that Rep. Pocan would like his amendment drafted as a parallel to the informed consent provisions in SB-306, I'd appreciate it.

For example, under the bill, a doctor must talk to the woman 24-hours before having an abortion. Our amendment would do the same with respect to male enhancement drugs.

Under the bill, a woman must come back to the doctor within 12-18 days for a follow-up visit. Our amendment would do the same with respect to male enhancement drugs.

Under the bill, there are penalties. Our amendment should have the same penalties.

Etc.

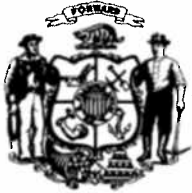
From: Trost, Craig
Sent: Monday, March 12, 2012 10:11 AM
To: Knepp, Fern
Subject: Equality amendment

<< File: Pocan Equality Amendment Statement.pdf >>

Craig Trost

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www.markpocan.net

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MARK POCAN

WISCONSIN STATE ASSEMBLY

PO Box 8953 • Madison, WI 53708 • 608/266-8570 • www.markpocan.net

FOR IMMEDIATE RELEASE:

March 12, 2012

For more information, contact:

Rep. Mark Pocan, 608-266-8570

Pocan announces “equality” amendment to anti-woman legislation

Men would have to watch video to be sure they aren't coerced into taking Viagra

MADISON – In what could be the Assembly’s final regular meeting, lawmakers are scheduled to take up several anti-choice bills tomorrow. The calendar includes Senate Bill 306, an abortion restriction bill that increases criminal penalties for doctors and manipulatively attempts to deter women from having abortions.

Today, Rep. Mark Pocan (D-Madison) issued the following statement announcing, in an effort to highlight the hypocrisy of increased legislative interference in a woman's private medical decisions, he will introduce an amendment to SB-306 that will ensure men aren't coerced into using male enhancement drugs. Here is Rep. Pocan's statement on his amendment:

“This legislative session has been riddled with attacks on the middle class, consumers, education, health care, the environment. Now, we've learned they plan to finish this session with further attacks on women. As we face the final days of session, Republicans have taken it upon themselves to insert their opinions into a woman's very personal and very private medical decisions.

“If this is where the session is going to end, it is only fair that the legislature also treat men with the same level of invasion into their private medical decisions. If the GOP is intent to pass Senate Bill 306, which among other things attempts to ensure women are not 'coerced' into having an abortion, I intend to introduce an 'equality' amendment.

“My amendment will ensure men aren't coerced into taking Viagra or other male sexual enhancements by requiring the patient to watch an educational video about the dangers of these male enhancement drugs. What's good for the goose is good for the gander, literally. Maybe if men have to face the same personal invasions that women are being asked to, we can point out the lunacy of these bills.”

Craig



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBa2759021
TJD:.....

In. 3/13/12 (Due TODAY) before 11am

AMA

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
✓ **ASSEMBLY AMENDMENT,**
✓ **TO 2011 SENATE BILL 306**

95

fullish
SA

- 1 At the locations indicated, amend the bill as follows:
- 2 **1.** Page 1, line 4: after "abortion," insert "voluntary and informed consent for
- 3 erectile dysfunction medications," ✓
- 4 **2.** Page 3, line 1: before that line insert:
- 5 "SECTION 1g. 146.39 of the statutes is created to read:
- 6 **146.39 Voluntary and informed consent; prescription of erectile**
- 7 **dysfunction medications. (1) DEFINITIONS.** In this section:
- 8 (a) "Qualified person assisting the physician" means a social worker certified
- 9 under ch. 457, a registered nurse, or a physician assistant to whom a physician who ✓
- 10 is to prescribe a medication to treat erectile dysfunction has delegated the
- 11 responsibility, as the physician's agent, for providing the information required under
- 12 sub. (2) (c) 2.

1 (b) "Qualified physician" means a physician who by training or experience is
2 qualified to provide the information required under sub. (2) (c) 1.

3 (2) VOLUNTARY AND INFORMED CONSENT. (a) *Generally*. Medications to treat
4 erectile dysfunction may not be prescribed or given unless the man who is to receive
5 the medications has given voluntary and informed written consent under the
6 requirements of this section. ✓

7 (b) *Voluntary consent*. Consent under this section to erectile dysfunction
8 medications is voluntary only if the consent is given freely and without coercion by
9 any person. The physician who is to prescribe or give the erectile dysfunction
10 medications shall determine whether the individual's consent is, in fact, voluntary.
11 Notwithstanding par. (c) 3., the physician shall make the determination by speaking ✓
12 to the individual in person, out of the presence of anyone other than a person working
13 for or with the physician. If the physician has reason to suspect that the individual
14 is in danger of being physically harmed by anyone who is coercing the individual to
15 consent to erectile dysfunction medications against his will, the physician shall
16 inform the individual of services for victims or individuals at risk of domestic abuse ✓
17 and provide him with private access to a telephone.

18 (c) *Informed consent*. An individual's consent to receive erectile dysfunction
19 medications is informed only if all of the following first take place:

20 1. At least 24 hours before the erectile dysfunction medication is to be given,
21 the physician who prescribes or gives the erectile dysfunction medication or any
22 other qualified physician has, in person, orally informed the individual of all of the
23 following:

24 a. Whether or not, according to the reasonable medical judgment of the
25 physician, the individual is a candidate for erectile dysfunction medications. ✓

1 b. The probable condition of the ^{man's} body and sexual organs at the time that the
 2 information is provided. The physician or other qualified physician shall also
 3 provide this information to the individual in writing at this time.

4 c. The particular medical risks, if any, associated with the man's sexual
 5 condition.

6 d. The probable anatomical and physiological characteristics of the man's
 7 sexual organs.

8 e. The details of the medical method that would be used to treat the erectile
 9 dysfunction.

10 f. The medical risks associated with the particular erectile dysfunction
 11 medications that would be used.

12 g. The recommended general medical instructions for the individual to follow
 13 after taking erectile dysfunction medications to enhance his or her safe recovery and
 14 the name and telephone number of a physician to call if complications arise after
 15 taking an erectile dysfunction medication.

16 h. That the individual has a right to refuse to consent to erectile dysfunction
 17 medications, that his consent is not voluntary if anyone is coercing him to consent
 18 to taking erectile dysfunction medications against his will, and that it is unlawful for
 19 the physician to prescribe or give erectile dysfunction medications without his
 20 voluntary consent.

21 i. That the individual may withdraw his or her consent to take erectile
 22 dysfunction medications at any time.

23 j. That the individual is not required to pay any amount for erectile dysfunction
 24 medications until at least 24 hours have elapsed after the requirements of this
 25 paragraph are met.

That the man must return to the facility for a follow-up visit 12 to 18 days after the use of an erectile dysfunction medical medication to confirm the efficacy of the medication and evaluate the man's condition.

1 2. At least 24 hours before prescribing or giving the erectile dysfunction
2 medication, the physician who is to prescribe or give the medication, a qualified
3 person assisting the physician, or another qualified physician has, in person, done
4 all of the following:

5 a. Orally informed the man that he has the right to receive and review the
6 printed materials described in par. (d). The physician or qualified person assisting
7 the physician shall physically give the materials to the individual and shall, in
8 person, orally inform him or her that the materials are free of charge, ^{and} have been
9 provided by the state and shall provide him with the current updated copies of the
10 printed materials free of charge.

11 b. Orally informed the man that the printed materials described in par. (d)
12 contain information on services available for victims or individuals at risk of
13 domestic abuse.

14 c. ^{Orally informed the man} That the printed materials described in par. (d) contain information on the
15 availability of public and private agencies and services to provide the individual with
16 information on erectile dysfunction.

17 3. The information that is required under subds. 1. and 2. is provided to the
18 individual in an individual setting that protects his privacy, maintains the
19 confidentiality of his decision, and ensures that the information ^{he} receives focuses
20 on his individual circumstances. This subdivision may not be construed to prevent
21 the individual from having a family member, or any other person of her choice,
22 present during his private counseling. ^{his}

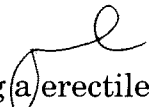
23 4. Whoever provides the information that is required under subd. 1. or 2., or
24 both, provides adequate opportunity for the man to ask questions and provides the

d. Shown the man a video, developed by the department depicting
erectile dysfunction, the risks of taking erectile dysfunction
medications, and alternative treatments for erectile dysfunction.

1 information that is requested or indicates to the man where he can obtain the
2 information.

3 5. The individual certifies in writing on a form that the department shall
4 provide, prior to prescription or giving of erectile dysfunction medications, that the
5 information that is required under subs. 1. and 2. has been provided to him in the
6 manner specified in subd. 3., that he has been offered the information described in
7 par. (d), and that all of his questions, as specified under subd. 4., have been answered
8 in a satisfactory manner. The physician who is to prescribe or give the erectile
9 dysfunction medications or the qualified person assisting the physician shall write
10 on the certification form the name of the physician who is to prescribe or give the
11 erectile dysfunction medications. The individual shall indicate on the certification
12 form who provided the information to him or her and when it was provided.

13 6. Prior to the prescription or giving of erectile dysfunction medications, the
14 physician who is to prescribe or give the medications or the qualified person assisting
15 the physician receives the written certification that is required under subd. 5. The
16 physician or qualified person assisting the physician shall place the certification in
17 the individual's medical record and shall provide the individual with a copy of the
18 certification.

19 7. If the individual considering erectile dysfunction medications is a minor,
20 the requirements to provide information to the minor under subs. 1. to 6. apply also
21 to require provision of the information to the individual whose consent is required.
22 If the individual considering erectile dysfunction medications is an individual
23 adjudicated incompetent in this state, the requirements to provide information to the
24 individual under subs. 1. to 6. apply to also require provision of the information to
25 the person appointed as the individual's guardian.

1 (d) *Printed information.* By the date that is 60 days after May 1, 2012, the
2 department shall cause to be published in English, Spanish, and other languages
3 spoken by a significant number of state residents, as determined by the department,
4 materials that are in an easily comprehensible format and are printed in type of not
5 less than 12-point size. The department shall distribute a reasonably adequate
6 number of the materials to county departments under s. 46.215, 46.22, or 46.23 and
7 upon request, shall annually review the materials for accuracy and shall exercise
8 reasonable diligence in providing materials that are accurate and current. The
9 materials shall be all of the following:

10 1. Geographically indexed materials that are designed to inform an individual
11 about public and private agencies and services that are available to provide
12 information on erectile dysfunction and provide imaging services. The materials
13 shall include a comprehensive list of the agencies available, a description of the
14 services that they offer and a description of the manner in which they may be
15 contacted, including telephone numbers and addresses, or, at the option of the
16 department, the materials shall include a toll-free, 24-hour telephone number that
17 may be called to obtain an oral listing of available agencies and services in the locality
18 of the caller and a description of the services that the agencies offer and the manner
19 in which they may be contacted. The materials shall provide information on the
20 availability of governmentally funded programs that serve individuals with erectile
21 dysfunction. Services identified for the individual shall include Medical Assistance.
22 The materials shall state that it is unlawful to prescribe or give erectile dysfunction
23 medications for which consent has been coerced and that any physician who
24 prescribes or gives erectile dysfunction medication without obtaining the
25 individual's voluntary and informed consent is liable to him or her for damages in a

1 civil action and is subject to a civil penalty. The materials shall state that imaging
2 services may be obtainable by individuals with erectile dysfunction and individuals
3 who wish to use them and shall describe the services. The materials shall include
4 information on services in the state that are available for victims or individuals at
5 risk of domestic abuse.

6 2. Materials, including ^{videos} photographs, pictures, or drawings, that are designed
7 to show erectile dysfunction and treatments for erectile dysfunction. The pictures,
8 ^{and videos} or drawings must be realistic and appropriate for the stage of erectile dysfunction
9 depicted. The materials shall be objective, nonjudgmental and designed to convey
10 only accurate scientific information about erectile dysfunction at the various stages.
11 The materials shall also contain objective, accurate information describing the
12 methods of erectile dysfunction treatments commonly employed, ^{and} the medical and
13 psychological risks commonly associated with each such procedure.

14 3. A certification form for use under par. (c) 5. that lists, in a check-off format,
15 all of the information required to be provided under that subdivision. ✓

16 (e) *Requirement to obtain materials.* A physician who intends to prescribe
17 erectile dysfunction medication or another qualified physician, who reasonably
18 believes that he or she might have a patient for whom the information under par. (d)
19 is required to be given, shall request a reasonably adequate number of the materials
20 that are described under par. (d) from the department under par. (d) or from a county
21 department under s. 46.215, 46.22, or 46.23.

22 (f) *Presumptions.* Satisfaction of the conditions required under par. (c) creates
23 a rebuttable presumption that the individual's consent and, if the individual is a
24 ⁿ minor, the consent of the individual who also gives consent, to a ⁿ erectile dysfunction
25 medication is informed. The presumption of informed consent may be overcome by

1 a preponderance of evidence that establishes that the consent was obtained through
2 fraud, negligence, deception, misrepresentation or omission of a material fact. There
3 is no presumption that consent to erectile dysfunction medication is voluntary.

4 (3) PENALTY. Any person who violates sub. (2) shall be required to forfeit not
5 less than \$1,000 nor more than \$10,000. No penalty may be assessed against the
6 man who is prescribed or who receives erectile dysfunction medication.

7 (4) CIVIL REMEDIES. (a) A person who violates sub. (2) is liable to the man for
8 whom the erectile dysfunction medication was prescribe^d or to whom the erectile
9 dysfunction medication was given for damages arising out of the prescription or
10 giving of erectile dysfunction medication, including damages for personal injury and
11 emotional and psychological distress.

12 (b) A person who has been awarded damages under par. (a) shall, in addition
13 to any damages awarded under par. (a), be entitled to not less than \$1,000 nor more
14 than \$10,000 in punitive damages for a violation that satisfies a standard under s.
15 895.043 (3). ✓

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

18 (d) Notwithstanding s. 814.04 (1), a person who recovers damages under par.
19 (a) or (b) may also recover reasonable attorney fees incurred in connection with the ✓
20 action.

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

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

24 (5) AFFIRMATIVE DEFENSE. No person is liable under sub. (3) or (4) or under s.
25 441.07 (1) (f), 448.02 (3) (a), or 457.26 (2) (gm) for failure under sub. (2) (c) 2. (d) to
✓ ✓ ✓

1 provide the printed materials described in sub. (2) (d) to an individual or for failure
2 under sub. (2) (c) 2. ^ed., e., or f.) to describe the contents of the printed materials if the
3 person has made a reasonably diligent effort to obtain the printed materials under
4 sub. (2) (e) and the department and the county department under s. 46.215, 46.22,
5 or 46.23 have not made the printed materials available at the time that the person
6 is required to give them to the individual.

7 **(6) PRESCRIPTION OF MEDICATIONS.** (a) No person may give a medication to treat
8 erectile dysfunction to a man unless all of the following are satisfied:

9 1. The physician who prescribed the medication to treat erectile dysfunction
10 performs a physical exam on the man before the information is provided under sub.
11 (2).

12 2. The physician who prescribed the medication to treat erectile dysfunction
13 is physically present in the room when the drug is given to the man.

14 (b) Any person who violates this subsection is guilty of a Class I felony. No
15 penalty may be assessed against a man for whom a medication to treat erectile
16 dysfunction is prescribed.”.

17 **3.** Page 3, line 1: delete “**SECTION 1**” and substitute “**SECTION 1r**”.

18 **4.** Page 9, line 23: after that line insert:

19 “**SECTION 10k.** 441.07 (1) (f) of the statutes is amended to read:

20 441.07 (1) (f) A violation of the requirements of s. 146.39 (2) (c) 2., 3., 4., 5., 6.,
21 or 7. or 253.10 (3) (c) 2., 3., 4., 5., 6. or 7.

22 **SECTION 10n.** 448.02 (3) (a) of the statutes is amended to read:

23 448.02 (3) (a) The board shall investigate allegations of unprofessional conduct
24 and negligence in treatment by persons holding a license, certificate or limited

1 permit granted by the board. An allegation that a physician has violated s. 146.39
2 (2), 253.10 (3), 448.30 or 450.13 (2) or has failed to mail or present a medical
3 certification required under s. 69.18 (2) within 21 days after the pronouncement of
4 death of the person who is the subject of the required certificate or that a physician
5 has failed at least 6 times within a 6-month period to mail or present a medical
6 certificate required under s. 69.18 (2) within 6 days after the pronouncement of death
7 of the person who is the subject of the required certificate is an allegation of
8 unprofessional conduct. Information contained in reports filed with the board under
9 s. 49.45 (2) (a) 12r., 50.36 (3) (b), 609.17 or 632.715, or under 42 CFR 1001.2005, shall
10 be investigated by the board. Information contained in a report filed with the board
11 under s. 655.045 (1), as created by 1985 Wisconsin Act 29, which is not a finding of
12 negligence or in a report filed with the board under s. 50.36 (3) (c) may, within the
13 discretion of the board, be used as the basis of an investigation of a person named in
14 the report. The board may require a person holding a license, certificate or limited
15 permit to undergo and may consider the results of one or more physical, mental or
16 professional competency examinations if the board believes that the results of any
17 such examinations may be useful to the board in conducting its investigation.

18 **SECTION 10p.** 457.26 (2) (gm) of the statutes is amended to read:

19 457.26 (2) (gm) Violated the requirements of s. 146.39 (2) (c) 2., 3., 4., 5., 6., or
20 7. or 253.10 (3) (c) 2., 3., 4., 5., 6. or 7."

21 (END)