



ENGROSSED 2013 SENATE BILL 206

1 **AN ACT** *to repeal* 253.10 (3) (c) 1. g.; *to amend* 253.10 (3) (c) (intro.), 253.10 (3)
2 (c) 5., 253.10 (3) (d) 1., 253.10 (3m) (a) (intro.), 253.10 (5) and 253.10 (6) (b); and
3 **to create** 253.095, 253.10 (3) (c) 1. gm., 253.10 (3) (em), 253.10 (3g), 253.10 (6)
4 (am) and 253.10 (6) (dm) of the statutes; **relating to:** requirements to perform
5 abortions, requiring an ultrasound before informed consent for an abortion, and
6 providing a penalty.

Analysis by the Legislative Reference Bureau

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

7 **SECTION 1.** 253.095 of the statutes is created to read:
8 **253.095 Requirements to perform abortions.** (1) **DEFINITION.** In this
9 section, "abortion" has the meaning given in s. 253.10 (2) (a).

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1 **(2) ADMITTING PRIVILEGES REQUIRED.** No physician may perform an abortion, as
2 defined in s. 253.10 (2) (a), unless he or she has admitting privileges in a hospital
3 within 30 miles of the location where the abortion is to be performed.

4 **(3) PENALTY.** Any person who violates this section shall be required to forfeit
5 not less than \$1,000 nor more than \$10,000. No penalty may be assessed against the
6 woman upon whom the abortion is performed or induced or attempted to be
7 performed or induced.

8 **(4) CIVIL REMEDIES.** (a) Any of the following individuals may bring a claim for
9 damages, including damages for personal injury and emotional and psychological
10 distress, against a person who performs, or attempts to perform, an abortion in
11 violation of this section:

12 1. A woman on whom an abortion is performed or attempted.

13 2. The father of the aborted unborn child or the unborn child that is attempted
14 to be aborted.

15 3. Any grandparent of the aborted unborn child or the child that is attempted
16 to be aborted.

17 (b) A person who has been awarded damages under par. (a) shall, in addition
18 to any damages awarded under par. (a), be entitled to not less than \$1,000 nor more
19 than \$10,000 in punitive damages for a violation that satisfies a standard under s.
20 895.043 (3).

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

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

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

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

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

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

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

23 **SECTION 2.** 253.10 (3) (c) (intro.) of the statutes is amended to read:

ENGROSSED SENATE BILL 206**SECTION 2**

1 253.10 (3) (c) *Informed consent.* (intro.) Except if a medical emergency exists
2 and subject to sub. (3g), a woman’s consent to an abortion is informed only if all of
3 the following first take place:

4 **SECTION 3.** 253.10 (3) (c) 1. g. of the statutes is repealed.

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

6 253.10 (3) (c) 1. gm. That the pregnant woman is required to obtain an
7 ultrasound that meets the requirements under sub. (3g), if she has not already had
8 an ultrasound that meets those requirements. The physician, or other qualified
9 physician, shall provide to the pregnant woman a list of providers that perform an
10 ultrasound at no cost to the woman, as described in par. (em) 1.

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

12 253.10 (3) (c) 5. The woman certifies in writing on a form that the department
13 shall provide, prior to performance or inducement of the abortion, that the
14 information that is required under subds. 1. and 2. has been provided to her in the
15 manner specified in subd. 3., that the ultrasound required under sub. (3g) has been
16 performed or that requirement is waived under sub. (3m) (a), that she has been
17 offered the information described in par. (d) and that all of her questions, as specified
18 under subd. 4., have been answered in a satisfactory manner. The physician who is
19 to perform or induce the abortion or the qualified person assisting the physician shall
20 write on the certification form the name of the physician who is to perform or induce
21 the abortion. The woman shall indicate on the certification form who provided the
22 information to her and when it was provided and who performed the ultrasound and
23 when it was performed, unless the ultrasound requirement is waived under sub. (3m)
24 (a). If the ultrasound required under sub. (3g) was performed at a facility other than
25 the facility where the physician who is to perform or induce the abortion is located,

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1 the woman shall provide to the physician who is to perform or induce the abortion
2 the certification form described under sub. (3g) (d).

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

4 253.10 (3) (d) 1. Geographically indexed materials that are designed to inform
5 a woman about public and private agencies, including adoption agencies, and
6 services that are available to provide information on family planning, as defined in
7 s. 253.07 (1) (a), including natural family planning information, to provide
8 ultrasound imaging services, to assist her if she has received a diagnosis that her
9 unborn child has a disability or if her pregnancy is the result of sexual assault or
10 incest and to assist her through pregnancy, upon childbirth and while the child is
11 dependent. The materials shall include a comprehensive list of the agencies
12 available, a description of the services that they offer and a description of the manner
13 in which they may be contacted, including telephone numbers and addresses, or, at
14 the option of the department, the materials shall include a toll-free, 24-hour
15 telephone number that may be called to obtain an oral listing of available agencies
16 and services in the locality of the caller and a description of the services that the
17 agencies offer and the manner in which they may be contacted. The materials shall
18 provide information on the availability of governmentally funded programs that
19 serve pregnant women and children. Services identified for the woman shall include
20 medical assistance for pregnant women and children under s. 49.47 (4) (am) and
21 49.471, the availability of family or medical leave under s. 103.10, the Wisconsin
22 works program under ss. 49.141 to 49.161, child care services, child support laws and
23 programs and the credit for expenses for household and dependent care and services
24 necessary for gainful employment under section 21 of the Internal Revenue Code.
25 The materials shall state that it is unlawful to perform an abortion for which consent

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1 has been coerced, that any physician who performs or induces an abortion without
2 obtaining the woman's voluntary and informed consent is liable to her for damages
3 in a civil action and is subject to a civil penalty, that the father of a child is liable for
4 assistance in the support of the child, even in instances in which the father has
5 offered to pay for an abortion, and that adoptive parents may pay the costs of
6 prenatal care, childbirth and neonatal care. The materials shall include
7 information, for a woman whose pregnancy is the result of sexual assault or incest,
8 on legal protections available to the woman and her child if she wishes to oppose
9 establishment of paternity or to terminate the father's parental rights. ~~The~~
10 ~~materials shall state that fetal ultrasound imaging and auscultation of fetal heart~~
11 ~~tone services are obtainable by pregnant women who wish to use them and shall~~
12 ~~describe the services.~~ The materials shall include information on services in the
13 state that are available for victims or individuals at risk of domestic abuse.

14 **SECTION 7.** 253.10 (3) (em) of the statutes is created to read:

15 253.10 (3) (em) *Ultrasound materials and form.* 1. The department shall
16 compile a list of facilities, including the names, addresses, and phone numbers, that
17 provide ultrasounds at no cost. The department shall make this list available to the
18 public and shall provide the list to every facility that performs or induces an abortion.

19 2. The department shall provide to every facility that performs ultrasounds at
20 no cost a list of the requirements under sub. (3g).

21 3. Any facility that intends to perform ultrasounds on pregnant women who are
22 seeking to have abortions performed or induced shall create a form on which a
23 physician at that facility certifies that the requirements under sub. (3g) are satisfied
24 and provides a date the requirements under sub. (3g) are satisfied.

25 **SECTION 8.** 253.10 (3g) of the statutes is created to read:

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1 253.10 (3g) PERFORMANCE OF ULTRASOUND. (a) Except as provided under sub.
2 (3m) and except in a medical emergency and before a person may perform or induce
3 an abortion on a pregnant woman, the physician who is to perform or induce the
4 abortion, or any physician requested by the pregnant woman, shall do all of the
5 following, or shall arrange for a person who is qualified to perform an ultrasound to
6 do all of the following:

7 1. Perform an obstetric ultrasound on the pregnant woman using whichever
8 transducer the woman chooses after the options have been explained to her. A
9 facility that offers ultrasounds at no cost to satisfy the requirements of this
10 subsection shall have available transducers to perform both transabdominal and
11 transvaginal ultrasounds.

12 2. Provide a simultaneous oral explanation to the pregnant woman during the
13 ultrasound of what the ultrasound is depicting, including the presence and location
14 of the unborn child within the uterus, the number of unborn children, and the
15 occurrence of the death of an unborn child, if such a death has occurred.

16 3. Display the ultrasound images so that the pregnant woman may view them.

17 4. Provide to the pregnant woman a medical description of the ultrasound
18 images, including the dimensions of the unborn child and a description of any
19 external features and internal organs that are present and viewable on the image.

20 5. Provide a means for the pregnant woman to visualize any fetal heartbeat,
21 if a heartbeat is detectable by the ultrasound transducer type chosen by the woman
22 under subd. 1., and provide to the pregnant woman, in a manner understandable to
23 a layperson, a simultaneous oral explanation.

24 (b) No person may require a pregnant woman to view the ultrasound images
25 that are required to be displayed for and reviewed with her or to visualize any fetal

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1 heartbeat. No person, including the pregnant woman, may be subject to any penalty
2 if the pregnant woman declines to view the displayed ultrasound images or to
3 visualize any fetal heartbeat.

4 (c) The requirement under par. (a) does not apply if the physician, in a writing
5 that is placed in the woman's medical record, certifies that the pregnant woman is
6 undergoing a medical emergency and certifies the medical condition that constitutes
7 the medical emergency.

8 (d) A physician other than a physician at the facility where the abortion is to
9 be performed or induced may do or arrange for the performance of the activities
10 necessary to satisfy the requirements of this subsection. A physician at a location
11 other than the facility where the abortion is to be performed or induced who does or
12 arranges for the performance of the activities under par. (a) shall certify on a form
13 described under sub. (3) (em) 3. that the requirements of this subsection are satisfied
14 and shall provide the date on which the requirements are satisfied.

15 (e) No person who has been convicted of a crime under ss. 940.22, 940.225,
16 948.02, 948.025, or 948.05 to 948.14 may perform any ultrasound that is required
17 under this subsection.

18 **SECTION 9.** 253.10 (3m) (a) (intro.) of the statutes is amended to read:

19 253.10 (3m) (a) (intro.) A woman seeking an abortion may waive the 24-hour
20 period required under sub. (3) (c) 1. (intro.) and L. and 2. (intro.) and may waive all
21 of the requirements under sub. (3g) if all of the following are first done:

22 **SECTION 10.** 253.10 (5) of the statutes is amended to read:

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

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

3 **SECTION 11.** 253.10 (6) (am) of the statutes is created to read:

4 253.10 (6) (am) Any of the following individuals may bring a claim for damages,
5 including damages for personal injury and emotional and psychological distress,
6 against a person who attempts to perform or performs an abortion in violation of sub.
7 (3g):

8 1. A woman on whom an abortion is performed or attempted.

9 2. The father of the aborted unborn child or the unborn child that is attempted
10 to be aborted.

11 3. Any grandparent of the aborted unborn child or the unborn child that is
12 attempted to be aborted.

13 **SECTION 12.** 253.10 (6) (b) of the statutes is amended to read:

14 253.10 (6) (b) A person who has been awarded damages under par. (a) or (am)
15 shall, in addition to any damages awarded under par. (a) or (am), be entitled to not
16 less than \$1,000 nor more than \$10,000 in punitive damages for a violation that
17 satisfies a standard under s. 895.043 (3).

18 **SECTION 13.** 253.10 (6) (dm) of the statutes is created to read:

19 253.10 (6) (dm) A district attorney or the attorney general may institute an
20 action for injunctive relief against any person who performs or attempts to perform
21 an abortion in violation of sub. (3g).

22 (END)