



2013 ASSEMBLY BILL 217

May 23, 2013 - Introduced by Representatives KESTELL, JACQUE, BALLWEG, BERNIER, BORN, BROOKS, CRAIG, ENDSLEY, KAUFERT, KLEEFISCH, LEMAHIEU, MARKLEIN, NASS, A. OTT, PRIDEMORE, SANFELIPPO, SEVERSON, THIESFELDT, TITTL, KOOYENGA, TRANEL, T. LARSON and RIPP, cosponsored by Senators LEIBHAM, LAZICH, GROTHMAN, FARROW, SCHULTZ and KEDZIE. Referred to Committee on Health.

- 1 **AN ACT to create** 253.103 and 895.039 of the statutes; **relating to:** civil liability
2 for performing a sex-selective abortion, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill creates a prohibition against knowingly performing a sex-selective abortion. Under the bill, a sex-selective abortion is an abortion performed, requested, or sought solely because of the sex of the unborn child.

Under the bill, the mother, father, or grandparent of an unborn child that is aborted in a sex-selective abortion may sue the person who performed the abortion for compensatory civil damages, including for emotional and psychological harm. Under the bill, if a court awards compensatory damages, the person who performed the abortion is also required to pay exemplary damages of \$10,000 and the plaintiffs' attorney fees.

Under the bill, the mother, father, or grandparent of an unborn child that is aborted in a sex-selective abortion may also seek injunction relief, wherein the court may enjoin the person who performed the abortion from performing another sex-selective abortion. If the person violates the terms of the injunction, the bill requires the court to hold the person in civil contempt of the order and requires the person to pay a civil penalty of \$10,000 for a first violation, \$50,000 for a second violation, and \$100,000 for a third and for each subsequent violation.

The bill requires that a civil action seeking redress for a sex-selective abortion be held privately, and that the names of all of the plaintiffs in the action be kept confidential, unless the plaintiffs request that the proceedings be held in open court.

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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.** 253.103 of the statutes is created to read:

2 **253.103 Sex-selective abortion prohibited. (1)** In this section:

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

4 (b) “Child” means a human being from the time of fertilization until it is
5 completely delivered from a pregnant woman.

6 (c) “Sex-selective abortion” means an abortion of a child that is performed,
7 requested, or sought solely on account of the sex of the child.

8 **(2)** No person may perform an abortion knowing that it is a sex-selective
9 abortion. Any person who violates this section may be subject to civil liability and
10 civil penalties under s. 895.039.

11 **SECTION 2.** 895.039 of the statutes is created to read:

12 **895.039 Sex-selective abortions; liability. (1)** In this section:

13 (a) “Child” has the meaning given in s. 253.103 (1) (b).

14 (b) “Sex-selective abortion” is an abortion performed in violation of s. 253.103.

15 **(2)** Either parent or a grandparent of a child aborted by a sex-selective abortion
16 has a claim for appropriate relief against the person who performed the sex-selective
17 abortion. This subsection applies even if the person or if the mother of the child
18 consented to the performance of the sex-selective abortion.

19 **(3)** Relief available under sub. (2) may include:

20 (a) Compensatory and exemplary damages. A court may award compensatory
21 damages for harm caused by the performance of the sex-selective abortion, including

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1 damages for personal injury and emotional and psychological distress, and if
2 compensatory damages are awarded, shall award exemplary damages of not less
3 than \$10,000.

4 (b) Injunctive relief. A court may issue an order enjoining a person from
5 performing an abortion contrary to s. 253.103. If the person violates the terms of the
6 injunction, the court shall adjudge the person in civil contempt of the order and shall
7 impose a civil penalty against the person for contempt in an amount of \$10,000 for
8 a first violation, \$50,000 for a 2nd violation, and \$100,000 for a 3rd and for each
9 subsequent violation and may grant any other relief the court determines is just and
10 proper in the circumstances. For the purpose of this paragraph, each time a person
11 performs a sex-selective abortion after being enjoined from doing so, he or she
12 commits a violation of the terms of the injunction.

13 (c) Attorney fees. Notwithstanding s. 814.04 (1), the court shall award a
14 prevailing plaintiff reasonable attorney fees.

15 (4) The identity of any person bringing an action under this section shall be
16 kept confidential and may not be disclosed, except to the court, the parties, their
17 counsel, witnesses, and other persons approved by the court. All papers filed in and
18 all records of a court relating to an action under this section shall identify the woman
19 on whom the sex-selective abortion that is the subject of the action was performed
20 as "Jane Doe" and shall identify the grandparents and the father of the child by
21 initials only. All hearings relating to an action under this section shall be held in
22 chambers unless all plaintiffs in an action request a hearing in open court. If a public
23 hearing is not held, only the parties, their counsel, witnesses, and other persons

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SECTION 2

1 requested by the court, or requested by a party and approved by the court, may be
2 present.

3 (END)