

**2019 DRAFTING REQUEST**

**Bill**

For: **Chris Taylor (608) 266-5342**

Drafter: **tdodge**

By:

Secondary Drafters:

Date: **11/15/2019**

May Contact:

Same as LRB: **-5789**

Submit via email: **YES**  
 Requester's email: **Rep.Taylor@legis.wisconsin.gov**  
 Carbon copy (CC) to: **tamara.dodge@legis.wisconsin.gov**  
**sarah.walkenhorstbarber@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Whole Women's Health Act

**Instructions:**

See attached

**Drafting History:**

| <u>Vers.</u> | <u>Drafted</u>       | <u>Reviewed</u>       | <u>Submitted</u>      | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------------|-----------------------|-----------------------|-----------------|-----------------|
| /?           | tdodge<br>12/2/2019  | aernstr<br>12/3/2019  |                       |                 |                 |
| /P1          | tdodge<br>12/26/2019 | aernstr<br>12/26/2019 | dwalker<br>12/3/2019  |                 |                 |
| /P2          | tdodge<br>1/20/2020  | aernstr<br>1/20/2020  | lparisi<br>12/26/2019 |                 |                 |
| /P3          | tdodge<br>1/30/2020  | aernstr<br>1/30/2020  | wjackson<br>1/20/2020 |                 |                 |
| /P4          |                      |                       | dwalker               |                 |                 |

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Submitted</u>                  | <u>Jacketed</u>      | <u>Required</u> |
|--------------|----------------|-----------------|-----------------------------------|----------------------|-----------------|
| /1           |                |                 | 1/30/2020<br>jmurphy<br>2/27/2020 | lparisi<br>3/13/2020 |                 |

FE Sent For:

<END>

↳ Not Needed

## Dodge, Tamara

---

**From:** Dodge, Tamara  
**Sent:** Monday, November 18, 2019 3:07 PM  
**To:** Taylor, Chris  
**Subject:** RE: redraft of 2017 AB 656/LRB 3349/1

Hi Representative Taylor,

I'll get working on this redraft. My initial instinct is to keep the repeal of the current provisions in the bill to avoid repeated litigation over whether a current statute has a legitimate health benefit. Of course, that is up to you if you want to leave the statutes in place and rely on the bill's language to supersede the statutes. As an alternative, you could add a provision stating something like: Sections 253.10, 253.105, etc. (listing all sections that would have been repealed) may not be enforced, unless a court rules in a declaratory action brought by the attorney general that the section has a legitimate health benefit. This would have the effect of ensuring the default status of each section is unenforceable while leaving the door open for the attorney general to argue that a particular section has a health benefit.

Tami

**Tamara J. Dodge**  
Senior Legislative Attorney  
Wisconsin Legislative Reference Bureau  
P.O. Box 2037  
Madison, WI 53701-2037  
**(608) 504 - 5808**  
tamara.dodge@legis.wisconsin.gov

*Please note my new direct phone number (as of June 13, 2018).*

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**From:** Taylor, Chris <Chris.Taylor@legis.wisconsin.gov>  
**Sent:** Friday, November 15, 2019 2:50 PM  
**To:** Dodge, Tamara <Tamara.Dodge@legis.wisconsin.gov>  
**Subject:** redraft of 2017 AB 656/LRB 3349/1

Hi Tammy, I would so appreciate it if you could redraft the above referenced bill.

I would basically like it to say "Women have a fundamental right to choose to obtain a safe and legal abortion. The state may not prohibit a woman from obtaining an abortion before viability or after viability if her life or health is endangered. A rule or law that would restrict a woman's access to abortion must confer a legitimate health benefit such as expanding a woman's access to health services or according to evidence based research, increasing her safety. I want to get rid of all of the legislative findings. Also keep the injunctive relief or damages part. I'm not sure about repealing all of the provisions. Do you think we have to do that or could we just assume they wouldn't be enforced?"

Thank you, Chris  
**State Representative Chris Taylor**  
**76<sup>th</sup> Assembly District**  
Pronouns: she, her, hers  
PO Box 8953  
Madison, WI 53708  
**(608) 266-5342**  
Twitter.com/christaylorwi  
Facebook.com/representative.taylor







In: 12/2

**2017 ASSEMBLY BILL 656**

San

November 17, 2017 - Introduced by Representatives C. TAYLOR, ANDERSON, BERCEAU, BILLINGS, BROSTOFF, CONSIDINE, CROWLEY, FIELDS, GOYKE, HEBL, HESSELBEIN, KOLSTE, OHNSTAD, POPE, RIEMER, SARGENT, SINICKI, SPREITZER, STUCK, SUBECK, WACHS, ZAMARRIPA and ZEPNICK, cosponsored by Senators ERPENBACH, BEWLEY, JOHNSON, LARSON, MILLER, RINGHAND, RISSER, SHILLING, L. TAYLOR, VINEHOUT and WIRCH. Referred to Committee on Health.

resen

1 AN ACT to repeal 46.245, 69.186 (1) (hf), 69.186 (1) (k), 69.186 (1) (L), 253.095,  
2 253.10, 253.105, 253.107, 441.07 (1g) (f), 457.26 (2) (gm), 632.8985, 940.04 and  
3 940.15 (5); to amend 20.9275 (1) (a), 48.375 (4) (a) 1., 49.45 (49g) (a) 1d., 448.02  
4 (3) (a), 939.75 (2) (b) 1., 968.26 (1b) (a) 2. a., 990.001 (17) (b) and 990.01 (19j) (b);  
5 and to create 253.094 of the statutes; relating to: right to choose an abortion  
6 and elimination of certain abortion-related regulations.

**Analysis by the Legislative Reference Bureau**

The bill specifies that every woman has the fundamental right to choose to obtain a safe and legal abortion. Under the bill, the state may not prohibit a woman from obtaining an abortion before viability or from obtaining an abortion at any time during her pregnancy if the termination is necessary, in the professional judgment of a physician, to protect her life or health. Also under the bill, a law or rule of this state that places a burden on a woman's access to abortion is unenforceable if the law or rule does not confer any legitimate health benefit. The bill describes circumstances that constitute a law or rule placing a burden on access to abortion or conferring a legitimate health benefit. Any person that is or may be aggrieved by the enforcement of a law or rule passed or promulgated after the effective date of the bill that would be unenforceable under the bill may bring an action in state or federal court for injunctive relief or damages against a state or local official who enforces or attempts to enforce such a law or rule.

is endangered

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**ASSEMBLY BILL 656**

all of the following  
Step

repeals abortion-related  
makes various changes to the laws relating to abortion

In addition, the bill makes various changes to the laws relating to abortion, including:

1. The bill eliminates requirements for voluntary and informed consent before the performance of an abortion. Current law requires that a woman upon whom an abortion is to be performed or induced must give voluntary and informed written consent to an abortion. Except in a medical emergency, a woman's consent to an abortion is considered informed only if, before the abortion is performed or induced at a time specified in current law, the physician or an assistant has, in person, orally provided the woman with certain information and given to the woman certain written materials.

2. The bill eliminates the requirement that except in a medical emergency a physician must determine or rely on another determination of the probable postfertilization age of an unborn child before performing an abortion. The bill also eliminates the prohibition on performing or inducing an abortion if the probable postfertilization age of the unborn child is 20 or more weeks.

3. This bill eliminates the prohibition on 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.

4. The bill eliminates the prohibition on coverage of abortions by qualified health plans offered through an exchange in this state.

5. The bill eliminates the prohibition on performing abortions by a physician that does not have admitting privileges in a hospital within 30 miles of the location where the abortion is to be performed. Under a federal appellate court ruling, the requirement to have admitting privileges currently may not be enforced.

6. Under current law, any person, other than the mother, who intentionally destroys the life of an unborn child may be fined not more than \$10,000, imprisoned for not more than six years, or both. Any person, other than the mother, who intentionally destroys the life of an unborn quick child or causes the mother's death by an act done with intent to destroy the life of an unborn child may be fined not more than \$50,000, imprisoned for not more than 15 years, or both. None of these penalties apply to a therapeutic abortion that is performed by a physician; that is necessary, or advised by two other physicians as necessary, to save the life of the mother; and that 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. The bill repeals these provisions. The bill also repeals the criminal penalty on a person who is not a physician and who intentionally performs an abortion. The bill, however, does not affect any other criminal prohibition or limitation on abortion in current law, such as the prohibition on performing an abortion after the fetus or unborn child has reached viability, or any other homicide prohibition. The bill also does not affect a separate provision in current law that prohibits prosecution of and imposing or

**ASSEMBLY BILL 656**

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.

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

1            ✕ **SECTION 1.** 20.9275 (1) (a) of the statutes is amended to read:

2            20.9275 (1) (a) "Abortion" has the meaning given in ~~s. 253.10 (2) (a)~~ for "induced  
 3 abortion" under s. 69.01 (13m).  
 4

5            ♀ **SECTION 2.** 46.245 of the statutes is repealed.

6            ✕ **SECTION 3.** 48.375 (4) (a) 1. of the statutes is amended to read:

7            48.375 (4) (a) 1. The person or the person's agent has, either directly or through  
 8 a referring physician or his or her agent, received and made part of the minor's  
 9 medical record, ~~under the requirements of s. 253.10,~~ the voluntary and informed  
 10 written consent of the minor and the voluntary and informed written consent of one  
 11 of her parents; or of the minor's guardian or legal custodian, if one has been  
 12 appointed; or of an adult family member of the minor; or of one of the minor's foster  
 13 parents, if the minor has been placed in a foster home and the minor's parent has  
 14 signed a waiver granting the department, a county department, or the foster parent  
 15 the authority to consent to medical services or treatment on behalf of the minor.

16            ♀ **SECTION 4.** 49.45 (49g) (a) 1d. of the statutes is amended to read:

17            49.45 (**49g**) (a) 1d. "Abortion" has the meaning given in ~~s. 253.10 (2) (a)~~ for  
 18 "induced abortion" under s. 69.01 (13m).  
 19

20            ♀ **SECTION 5.** 69.186 (1) (hf) of the statutes is repealed.

21            ♀ **SECTION 6.** 69.186 (1) (k) of the statutes is repealed.

22            ♀ **SECTION 7.** 69.186 (1) (L) of the statutes is repealed.

23            **SECTION 8.** 253.094 of the statutes is created to read:

Insert  
3-4 →

ASSEMBLY BILL 656

SECTION 8

1           **253.094 Right to abortion.** (1) Every woman has the fundamental right to  
 2 choose to obtain a safe and legal abortion. The state may not prohibit a woman from  
 3 obtaining an abortion before viability. The state may not prohibit a woman from  
 4 obtaining an abortion at any time during her pregnancy if the termination is  
 5 necessary, in the professional judgment of a physician, to protect her life or health.

*her*  
*is*  
*endangered*

6           (2) (a) A law or rule of this state that places a burden on a woman's access to  
 7 abortion, as described in par. (b), is unenforceable if the law or rule does not confer  
 8 any legitimate health benefit, as described in par. (c).

*restricts*  
*Such as by*

9           (b) A law or regulation places a burden on access to abortion if the law or rule  
 10 does any of the following:

- 11           1. Forces abortion providers to close.
- 12           2. Increases the time a woman must wait to have an abortion.
- 13           3. Requires a meaningful increase in the distance a woman must travel to  
 14 access abortion-related care.
- 15           4. Requires medically unnecessary visits to a health care provider before or  
 16 after obtaining an abortion.
- 17           5. Requires a health care provider to perform a medical service that the  
 18 provider would not otherwise perform.
- 19           6. Increases the risk to a woman's health.
- 20           7. Causes a meaningful increase in the cost of an abortion or abortion-related  
 21 procedure.
- 22           8. Has no purpose other than to stigmatize a patient or an abortion provider.
- 23           9. Has no purpose or effect other than to decrease or eliminate access to  
 24 abortion.



## ASSEMBLY BILL 656

1 (c) A law or rule confers a legitimate health benefit if the law or rule does any  
2 of the following:

- 3 1. Expands<sup>e ing</sup> a woman's access to health care services <sup>or by,</sup>  
4 2. According to evidence-based research, increases<sup>e ing</sup> patient safety. <sup>e the woman's</sup>

5 (b) (d) Any person that is or may be aggrieved by the enforcement of a law or rule  
6 passed or promulgated after the effective date of this paragraph .... [LRB inserts  
7 date], that violates this subsection may bring an action in state or federal court for  
8 injunctive relief or damages against a state or local official who enforces or attempts  
9 to enforce such a law or rule.

10 ✂ SECTION 9. 253.095 of the statutes is repealed.

11 ✂ SECTION 10. 253.10 of the statutes is repealed.

12 ✂ SECTION 11. 253.105 of the statutes is repealed.

13 ✂ SECTION 12. 253.107 of the statutes is repealed.

14 ✂ SECTION 13. 441.07 (1g) (f) of the statutes is repealed.

15 ✂ SECTION 14. 448.02 (3) (a) of the statutes as affected by 2013 Wisconsin Act

16 240 is amended to read:

17 448.02 (3) (a) The board shall investigate allegations of unprofessional conduct  
18 and negligence in treatment by persons holding a license or certificate granted by the  
19 board. An allegation that a physician has violated s. 253.10 (3), 448.30 or 450.13 (2)  
20 or has failed to mail or present a medical certification required under s. 69.18 (2)  
21 within 21 days after the pronouncement of death of the person who is the subject of  
22 the required certificate or that a physician has failed at least 6 times within a  
23 6-month period to mail or present a medical certificate required under s. 69.18 (2)  
24 within 6 days after the pronouncement of death of the person who is the subject of  
25 the required certificate is an allegation of unprofessional conduct. Information

**ASSEMBLY BILL 656****SECTION 14**

1 contained in reports filed with the board under s. 49.45 (2) (a) 12r., 50.36 (3) (b),  
2 609.17 or 632.715, or under 42 CFR 1001.2005, shall be investigated by the board.  
3 Information contained in a report filed with the board under s. 655.045 (1), as created  
4 by 1985 Wisconsin Act 29, which is not a finding of negligence or in a report filed with  
5 the board under s. 50.36 (3) (c) may, within the discretion of the board, be used as the  
6 basis of an investigation of a person named in the report. The board may require a  
7 person holding a license or certificate to undergo and may consider the results of one  
8 or more physical, mental or professional competency examinations if the board  
9 believes that the results of any such examinations may be useful to the board in  
10 conducting its investigation.

11 † **SECTION 15.** 457.26 (2) (gm) of the statutes is repealed.

12 † **SECTION 16.** 632.8985 of the statutes is repealed.

13 † **SECTION 17.** 939.75 (2) (b) 1. of the statutes is amended to read:

14 939.75 (2) (b) 1. An act committed during an induced abortion. This  
15 subdivision does not limit the applicability of ss. ~~940.04~~, 940.13, 940.15 and 940.16  
16 to an induced abortion.

17 † **SECTION 18.** 940.04 of the statutes is repealed.

18 † **SECTION 19.** 940.15 (5) of the statutes is repealed.

19 † **SECTION 20.** 968.26 (1b) (a) 2. a. of the statutes is amended to read:

20 968.26 (1b) (a) 2. a. Section ~~940.04~~, 940.11, 940.19 (2), (4), (5), or (6), 940.195  
21 (2), (4), (5), or (6), 940.20, 940.201, 940.203, 940.205, 940.207, 940.208, 940.22 (2),  
22 940.225 (3), 940.29, 940.302 (2) (c), 940.32, 941.32, 941.38 (2), 942.09 (2), 943.10,  
23 943.205, 943.32 (1), 946.43, 946.44, 946.47, 946.48, 948.02 (3), 948.03 (2) (b) or (c),  
24 (3), or (4), 948.04, 948.055, 948.095, 948.10 (1) (a), 948.11, 948.13 (2) (a), 948.14,  
25 948.20, 948.23 (1), (2), or (3) (c) 2. or 3., or 948.30 (1).

**ASSEMBLY BILL 656**

1           **SECTION 21.** 990.001 (17) (b) of the statutes is amended to read:

2           990.001 (17) (b) If a statute or rule refers to a live birth or to the circumstance  
3 in which an individual is born alive, the statute or rule shall be construed so that  
4 whoever undergoes a live birth as the result of an induced abortion, as defined in s.  
5 ~~253.10 (2) (a)~~ 69.01 (13m), has the same legal status and legal rights as a human  
6 being at any point after the human being undergoes a live birth as the result of  
7 natural or induced labor or a cesarean section.

8           ↓ **SECTION 22.** 990.01 (19j) (b) of the statutes is amended to read:

9           990.01 (19j) (b) "Live birth" means the complete expulsion or extraction from  
10 his or her mother, of a human being, at any stage of development, who, after the  
11 expulsion or extraction, breathes or has a beating heart, pulsation of the umbilical  
12 cord, or definite movement of voluntary muscles, regardless of whether the umbilical  
13 cord has been cut, and regardless of whether the expulsion or extraction occurs as  
14 a result of natural or induced labor, a cesarean section, or an induced abortion, as  
15 defined in s. ~~253.10 (2) (a)~~ 69.01 (13m).

16           **SECTION 23. Nonstatutory provisions.**

17           (1) **LEGISLATIVE FINDINGS.** The legislature finds all of the following:

18           (a) Comprehensive reproductive health care, including safe abortions, is a vital  
19 component of a woman's overall health and must be protected.

20           (b) Access to abortion is a core component of women's social and economic  
21 equality.

22           (c) Abortion is one of the safest medical procedures in the United States. Data,  
23 including data from the Centers for Disease Control and Prevention, show that  
24 abortion has over a 99 percent safety record.

25           (d) Any regulation of medical care must have a legitimate purpose.

**ASSEMBLY BILL 656****SECTION 23**

1 (e) The goal of medical regulation should be to improve the quality of care and  
2 increase access to care.

3 (f) More than 40 years ago, the Supreme Court held in *Roe v. Wade*, 410 U.S.  
4 113 (1973), that access to abortion is a constitutional right and that states may not  
5 prohibit abortion prior to viability.

6 (g) The right to abortion prior to viability has been upheld time and again by  
7 the court, including in the 1992 case *Planned Parenthood of Southeastern*  
8 *Pennsylvania v. Casey*, 505 U.S. 833, and most recently in the landmark decision  
9 *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), where the court  
10 reaffirmed once again a woman's constitutional right to access a safe, legal abortion.

11 (h) In *Whole Woman's Health*, the court struck down 2 Texas laws designed to  
12 close abortion providers in the state which the court concluded provided few, if any,  
13 health benefits for women.

14 (i) Justice Ruth Bader Ginsburg concluded in her concurrence in *Whole*  
15 *Woman's Health* that, given the safety of abortion, "it is beyond rational belief that  
16 [Texas] H. B. 2 could genuinely protect the health of women, and certain that the law  
17 'would simply make it more difficult for them to obtain abortions.'"

18 (j) In *Whole Woman's Health*, the court held that the Constitution "requires  
19 courts to consider the burdens a law imposes on abortion access together with the  
20 benefits those laws confer."

21 (k) In *Whole Woman's Health*, the court further held that courts "when  
22 determining the constitutionality of laws regulating abortion procedures," must  
23 place "considerable weight upon evidence...presented."

**ASSEMBLY BILL 656**

1 (L) In *Whole Woman's Health*, Justice Ruth Bader Ginsburg said in her  
2 concurrence that abortion restrictions that "do little or nothing for health, but rather  
3 strew impediments to abortion...cannot survive judicial inspection."

4 (m) According to the American College of Obstetricians and Gynecologists,  
5 American Medical Association, American Academy of Family Physicians, and  
6 American Osteopathic Association, leading public health organizations and amici  
7 curiae for the petitioners in *Whole Women's Health*, "Women's access to high-quality,  
8 evidence-based abortion should not be limited by laws enacted under the guise of  
9 patient safety but that, in fact, harm women's health."

10 (n) The 334 restrictions on abortion providers and their patients adopted  
11 nationally, 7 of which were adopted by the state of Wisconsin, since 2011 that were  
12 enacted based on pretextual reasons are just a systematic attempt to eliminate  
13 access to safe and legal medical care.

14 (o) In accordance with the U.S. Constitution, it is therefore the intent of the  
15 legislature of this state to prevent the enforcement of laws or regulations that burden  
16 abortion access and do not provide legitimate health benefits.

17 (END)

**2019-2020 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4930/P1ins  
TJD:...

*cal*

1           **INSERT 3-4**

2           **SECTION 1.** 40.02 (1d) of the statutes is amended to read:

3           **40.02 (1d)** “Abortion” has the meaning given in ~~s. 253.10 (2) (a)~~ for “induced  
4           abortion” under s. 69.01 (13m).

**History:** 1981 c. 96, 187, 250, 274, 386; 1983 a. 9, 27; 1983 a. 81 s. 11; 1983 a. 83 s. 20; 1983 a. 106, 140; 1983 a. 141 ss. 1 to 3, 20; 1983 a. 191 ss. 1, 6; 1983 a. 192 s. 304; 1983 a. 255 s. 6; 1983 a. 275, 290, 368; 1983 a. 435 s. 7; 1985 a. 29, 225; 1985 a. 332 ss. 52, 251 (1); 1987 a. 27, 62, 83, 107, 309, 340, 356, 363, 372, 399; 1987 a. 403 ss. 43 to 45, 256; 1989 a. 13, 14, 31; 1989 a. 56 s. 259; 1989 a. 166, 182, 189, 218, 230, 240, 323, 327, 336, 355, 357, 359; 1991 a. 32, 39, 113, 152, 229, 269, 315; 1993 a. 16, 263, 383, 490, 491; 1995 a. 27, ss. 1946 to 1953, 9130 (4); 1995 a. 81, 88, 89, 216, 240, 302, 381, 417; 1997 a. 3, 27, 39, 69, 110, 162, 237, 238; 1999 a. 9, 11, 42, 63, 65, 83; 2001 a. 16, 38, 103, 104, 109; 2003 a. 33; 2005 a. 153, 335; 2007 a. 20, 131, 226; 2009 a. 15, 28; 2011 a. 7, 10, 32, 116, 229; 2013 a. 20 ss. 699 to 709c, 2365m, 9448; 2013 a. 168 s. 21; 2013 a. 214; 2015 a. 55, 187; 2017 a. 12, 59, 191; 2017 a. 207 s. 5; 2017 a. 366.

5           **END INSERT 3-4**



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-4930/P1<sup>e P2</sup>  
TJD:ahc

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

sa ✓

1 AN ACT *to repeal* 46.245, 69.186 (1) (hf), 69.186 (1) (k), 69.186 (1) (L), 253.095,  
2 253.10, 253.105, 253.107, 441.07 (1g) (f), 457.26 (2) (gm), 632.8985, 940.04 and  
3 940.15 (5); *to amend* 40.02 (1d), 20.9275 (1) (a), 48.375 (4) (a) 1., 49.45 (49g) (a)  
4 1d., 448.02 (3) (a), 939.75 (2) (b) 1., 968.26 (1b) (a) 2. a., 990.001 (17) (b) and  
5 990.01 (19j) (b); and *to create* 253.094 of the statutes; **relating to:** right to  
6 choose an abortion and elimination of certain abortion-related regulations.

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***Analysis by the Legislative Reference Bureau***

\* The bill specifies that every woman has the fundamental right to choose to obtain a safe and legal abortion. Under the bill, the state may not prohibit a woman from obtaining an abortion before viability or from obtaining an abortion at any time during her pregnancy if her life or health is endangered. Also under the bill, a law or rule of this state that restricts a woman's access to abortion is unenforceable if the law or rule does not confer any legitimate health benefit. Any person that is or may be aggrieved by the enforcement of a law or rule passed or promulgated after the effective date of the bill that would be unenforceable under the bill may bring an action in state or federal court for injunctive relief or damages against a state or local official who enforces or attempts to enforce such a law or rule.

In addition, the bill repeals various abortion-related laws, including all of the following:

1. The bill eliminates requirements for voluntary and informed consent before the performance of an abortion. Current law requires that a woman upon whom an

abortion is to be performed or induced must give voluntary and informed written consent to an abortion. Except in a medical emergency, a woman's consent to an abortion is considered informed only if, before the abortion is performed or induced at a time specified in current law, the physician or an assistant has, in person, orally provided the woman with certain information and given to the woman certain written materials.

2. The bill eliminates the requirement that except in a medical emergency a physician must determine or rely on another determination of the probable postfertilization age of an unborn child before performing an abortion. The bill also eliminates the prohibition on performing or inducing an abortion if the probable postfertilization age of the unborn child is 20 or more weeks.

3. This bill eliminates the prohibition on 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.

4. The bill eliminates the prohibition on coverage of abortions by qualified health plans offered through an exchange in this state.

5. The bill eliminates the prohibition on performing abortions by a physician that does not have admitting privileges in a hospital within 30 miles of the location where the abortion is to be performed. Under a federal appellate court ruling, the requirement to have admitting privileges currently may not be enforced.

6. Under current law, any person, other than the mother, who intentionally destroys the life of an unborn child may be fined not more than \$10,000, imprisoned for not more than six years, or both. Any person, other than the mother, who intentionally destroys the life of an unborn quick child or causes the mother's death by an act done with intent to destroy the life of an unborn child may be fined not more than \$50,000, imprisoned for not more than 15 years, or both. None of these penalties apply to a therapeutic abortion that is performed by a physician; that is necessary, or advised by two other physicians as necessary, to save the life of the mother; and that 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. The bill repeals these provisions. The bill also repeals the criminal penalty on a person who is not a physician and who intentionally performs an abortion. The bill, however, does not affect any other criminal prohibition or limitation on abortion in current law, such as the prohibition on performing an abortion after the fetus or unborn child has reached viability, or any other homicide prohibition. The bill also does not affect a separate provision in current law that 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.

---

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

1           **SECTION 1.** 20.9275 (1) (a) of the statutes is amended to read:

2           20.9275 (1) (a) “Abortion” has the meaning given in ~~s. 253.10 (2) (a)~~ for “induced  
3 abortion” under s. 69.01 (13m).

4           **SECTION 2.** 40.02 (1d) of the statutes is amended to read:

5           40.02 (1d) “Abortion” has the meaning given in ~~s. 253.10 (2) (a)~~ for “induced  
6 abortion” under s. 69.01 (13m).

7           **SECTION 3.** 46.245 of the statutes is repealed.

8           **SECTION 4.** 48.375 (4) (a) 1. of the statutes is amended to read:

9           48.375 (4) (a) 1. The person or the person’s agent has, either directly or through  
10 a referring physician or his or her agent, received and made part of the minor’s  
11 medical record, ~~under the requirements of s. 253.10,~~ the voluntary and informed  
12 written consent of the minor and the voluntary and informed written consent of one  
13 of her parents; or of the minor’s guardian or legal custodian, if one has been  
14 appointed; or of an adult family member of the minor; or of one of the minor’s foster  
15 parents, if the minor has been placed in a foster home and the minor’s parent has  
16 signed a waiver granting the department, a county department, or the foster parent  
17 the authority to consent to medical services or treatment on behalf of the minor.

18           **SECTION 5.** 49.45 (49g) (a) 1d. of the statutes is amended to read:

19           49.45 (49g) (a) 1d. “Abortion” has the meaning given in ~~s. 253.10 (2) (a)~~ for  
20 “induced abortion” under s. 69.01 (13m).

21           **SECTION 6.** 69.186 (1) (hf) of the statutes is repealed.

1           **SECTION 7.** 69.186 (1) (k) of the statutes is repealed.

2           **SECTION 8.** 69.186 (1) (L) of the statutes is repealed.

3           **SECTION 9.** 253.094 of the statutes is created to read:

4           **253.094 Right to abortion. (1)** Every woman has the fundamental right to  
5 choose to obtain a safe and legal abortion. The state may not prohibit a woman from  
6 obtaining an abortion before viability. The state may not prohibit a woman from  
7 obtaining an abortion at any time during her pregnancy if her life or health is  
8 endangered.

9           **(2) (a)** A law or rule of this state that restricts a woman's access to abortion is  
10 unenforceable if the law or rule does not confer any legitimate health benefit, such  
11 as by expanding a woman's access to health care services or by, according to  
12 evidence-based research, increasing the woman's safety.

13           **(b)** Any person that is or may be aggrieved by the enforcement of a law or rule  
14 passed or promulgated after the effective date of this paragraph .... [LRB inserts  
15 date], that violates this subsection may bring an action in state or federal court for  
16 injunctive relief or damages against a state or local official who enforces or attempts  
17 to enforce such a law or rule.

18           **SECTION 10.** 253.095 of the statutes is repealed.

19           **SECTION 11.** 253.10 of the statutes is repealed.

20           **SECTION 12.** 253.105 of the statutes is repealed.

21           **SECTION 13.** 253.107 of the statutes is repealed.

22           **SECTION 14.** 441.07 (1g) (f) of the statutes is repealed.

23           **SECTION 15.** 448.02 (3) (a) of the statutes is amended to read:

24           **448.02 (3) (a)** The board shall investigate allegations of unprofessional conduct  
25 and negligence in treatment by persons holding a license or certificate granted by the

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

18 **SECTION 16.** 457.26 (2) (gm) of the statutes is repealed.

19 **SECTION 17.** 632.8985 of the statutes is repealed.

20 **SECTION 18.** 939.75 (2) (b) 1. of the statutes is amended to read:

21 939.75 (2) (b) 1. An act committed during an induced abortion. This  
22 subdivision does not limit the applicability of ss. 940.04, 940.13, 940.15 and 940.16  
23 to an induced abortion.

24 **SECTION 19.** 940.04 of the statutes is repealed.

25 **SECTION 20.** 940.15 (5) of the statutes is repealed.





LRB - 4930

per Rep Taylor

- Elim repeal of 20 week
- Switch order of p 4 - lines 5&6 - may prohibit after viability



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-4930/P2  
TJD:ahc

ep3

Due <sup>1/20</sup> Tues 1/21 (H)

In: 1/20

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

sa ✓

repeal

1 AN ACT *to repeal* 46.245, 69.186 (1) (hf), 69.186 (1) (k), 69.186 (1) (L), 253.095,  
 2 253.10, 253.105, 253.107, 441.07 (1g) (f), 457.26 (2) (gm), 632.8985, 940.04 and  
 3 940.15 (5); *to amend* 20.9275 (1) (a), 40.02 (1d), 48.375 (4) (a) 1., 49.45 (49g) (a)  
 4 1d., 448.02 (3) (a), 939.75 (2) (b) 1., 968.26 (1b) (a) 2. a., 990.001 (17) (b) and  
 5 990.01 (19j) (b); and *to create* 253.094 of the statutes; **relating to:** right to  
 6 choose an abortion and elimination of certain abortion-related regulations.

**Analysis by the Legislative Reference Bureau**

unless

after ✓ The bill specifies that every woman has the fundamental right to choose to  
 obtain a safe and legal abortion. Under the bill, the state may not prohibit a woman  
 from obtaining an abortion before viability or from, if her life or health is endangered,  
 obtaining an abortion at any time during her pregnancy. Also under the bill, a law  
 or rule of this state that restricts a woman's access to abortion is unenforceable if the  
 law or rule does not confer any legitimate health benefit. Any person that is or may  
 be aggrieved by the enforcement of a law or rule passed or promulgated after the  
 effective date of the bill that would be unenforceable under the bill may bring an  
 action in state or federal court for injunctive relief or damages against a state or local  
 official who enforces or attempts to enforce such a law or rule.

In addition, the bill repeals various abortion-related laws, including all of the following:

1. The bill eliminates requirements for voluntary and informed consent before the performance of an abortion. Current law requires that a woman upon whom an

abortion is to be performed or induced must give voluntary and informed written consent to an abortion. Except in a medical emergency, a woman's consent to an abortion is considered informed only if, before the abortion is performed or induced at a time specified in current law, the physician or an assistant has, in person, orally provided the woman with certain information and given to the woman certain written materials.

2. The bill eliminates the requirement that except in a medical emergency a physician must determine or rely on another determination of the probable postfertilization age of an unborn child before performing an abortion. The bill also eliminates the prohibition on performing or inducing an abortion if the probable postfertilization age of the unborn child is 20 or more weeks.

3. This bill eliminates the prohibition on 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.

4. The bill eliminates the prohibition on coverage of abortions by qualified health plans offered through an exchange in this state.

5. The bill eliminates the prohibition on performing abortions by a physician that does not have admitting privileges in a hospital within 30 miles of the location where the abortion is to be performed. Under a federal appellate court ruling, the requirement to have admitting privileges currently may not be enforced.

6. Under current law, any person, other than the mother, who intentionally destroys the life of an unborn child may be fined not more than \$10,000, imprisoned for not more than six years, or both. Any person, other than the mother, who intentionally destroys the life of an unborn quick child or causes the mother's death by an act done with intent to destroy the life of an unborn child may be fined not more than \$50,000, imprisoned for not more than 15 years, or both. None of these penalties apply to a therapeutic abortion that is performed by a physician; that is necessary, or advised by two other physicians as necessary, to save the life of the mother; and that 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. The bill repeals these provisions. The bill also repeals the criminal penalty on a person who is not a physician and who intentionally performs an abortion. The bill, however, does not affect any other criminal prohibition or limitation on abortion in current law, such as the prohibition on performing an abortion after the fetus or unborn child has reached viability, or any other homicide prohibition. The bill also does not affect a separate provision in current law that 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.

---

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

1           **SECTION 1.** 20.9275 (1) (a) of the statutes is amended to read:

2           20.9275 (1) (a) "Abortion" has the meaning given in ~~s. 253.10 (2) (a)~~ for "induced  
3 abortion" under s. 69.01 (13m).

4           **SECTION 2.** 40.02 (1d) of the statutes is amended to read:

5           40.02 (1d) "Abortion" has the meaning given in ~~s. 253.10 (2) (a)~~ for "induced  
6 abortion" under s. 69.01 (13m).

7           **SECTION 3.** 46.245 of the statutes is repealed.

8           **SECTION 4.** 48.375 (4) (a) 1. of the statutes is amended to read:

9           48.375 (4) (a) 1. The person or the person's agent has, either directly or through  
10 a referring physician or his or her agent, received and made part of the minor's  
11 medical record, ~~under the requirements of s. 253.10,~~ the voluntary and informed  
12 written consent of the minor and the voluntary and informed written consent of one  
13 of her parents; or of the minor's guardian or legal custodian, if one has been  
14 appointed; or of an adult family member of the minor; or of one of the minor's foster  
15 parents, if the minor has been placed in a foster home and the minor's parent has  
16 signed a waiver granting the department, a county department, or the foster parent  
17 the authority to consent to medical services or treatment on behalf of the minor.

18           **SECTION 5.** 49.45 (49g) (a) 1d. of the statutes is amended to read:

19           49.45 (49g) (a) 1d. "Abortion" has the meaning given in ~~s. 253.10 (2) (a)~~ for  
20 "induced abortion" under s. 69.01 (13m).

21           **SECTION 6.** 69.186 (1) (hf) of the statutes is repealed.

↳ Insert 3-21



1 SECTION 7. 69.186 (1) (k) of the statutes is repealed.

2 SECTION 8. 69.186 (1) (L) of the statutes is repealed.

3 SECTION 9. 253.094 of the statutes is created to read:

4 **253.094 Right to abortion.** (1) Every woman has the fundamental right to  
5 choose to obtain a safe and legal abortion. <sup>except that</sup> The state may ~~not~~ prohibit a woman from  
6 obtaining an abortion ~~before~~ <sup>after</sup> viability. The state may not prohibit a woman from  
7 obtaining an abortion at any time during her pregnancy if her life or health is  
8 endangered.

9 (2) (a) A law or rule of this state that restricts a woman's access to abortion is  
10 unenforceable if the law or rule does not confer any legitimate health benefit, such  
11 as by expanding a woman's access to health care services or by, according to  
12 evidence-based research, increasing the woman's safety.

13 (b) Any person that is or may be aggrieved by the enforcement of a law or rule  
14 passed or promulgated after the effective date of this paragraph .... [LRB inserts  
15 date], that violates this subsection may bring an action in state or federal court for  
16 injunctive relief or damages against a state or local official who enforces or attempts  
17 to enforce such a law or rule.

18 SECTION 10. 253.095 of the statutes is repealed.

19 SECTION 11. 253.10 of the statutes is repealed.

20 SECTION 12. 253.105 of the statutes is repealed.

21 <sup>Insert</sup> SECTION 13. 253.107 of the statutes is repealed.  
22 <sup>4-21</sup>

23 SECTION 14. 441.07 (1g) (f) of the statutes is repealed.

24 SECTION 15. 448.02 (3) (a) of the statutes is amended to read:

25 448.02 (3) (a) The board shall investigate allegations of unprofessional conduct  
and negligence in treatment by persons holding a license or certificate granted by the

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

18 **SECTION 16.** 457.26 (2) (gm) of the statutes is repealed.

19 **SECTION 17.** 632.8985 of the statutes is repealed.

20 **SECTION 18.** 939.75 (2) (b) 1. of the statutes is amended to read:

21 939.75 (2) (b) 1. An act committed during an induced abortion. This  
22 subdivision does not limit the applicability of ss. ~~940.04~~, 940.13, 940.15 and 940.16  
23 to an induced abortion.

24 **SECTION 19.** 940.04 of the statutes is repealed.

25 **SECTION 20.** 940.15 (5) of the statutes is repealed.



**2019-2020 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4930/P3ins  
TJD:...

5q✓

1           INSERT 3-21

2           ✕ **SECTION 1.** 69.186 (1) (hf) of the statutes is amended to read:

3           69.186 (1) (hf) The probable postfertilization age of the unborn child, as defined  
4           in s. 253.107 (1) (c), ~~and whether an ultrasound was used to assist in making the~~  
5           ~~determination of postfertilization age of the unborn child,~~ or, if the probable  
6           postfertilization age of the unborn child was not determined, the nature of the  
7           medical emergency, as defined in s. ~~253.10 (2) (d)~~ 253.107 (1) (b).

**History:** 1985 a. 315; 1995 a. 309; 1997 a. 27; 2015 a. 56.

8           ✕ **SECTION 2.** 69.186 (1) (k) of the statutes is amended to read:

9           69.186 (1) (k) If the unborn child is considered to be capable of experiencing  
10          pain under s. 253.107 (3) (a), the nature of the medical emergency, as defined in s.  
11          ~~253.10 (2) (d)~~ 253.107 (1) (b), that the pregnant woman had.

**History:** 1985 a. 315; 1995 a. 309; 1997 a. 27; 2015 a. 56.

12          END INSERT 3-21

13          INSERT 4-21

**Cross-reference:** See also s. Ins 6.13, Wis. adm. code.

14          **SECTION 3.** 253.107 (1) (a) of the statutes is amended to read:

15          253.107 (1) (a) "Abortion" has the meaning given for "induced abortion" in s.  
16          ~~253.10 (2) (a)~~ 69.01 (13m).

**History:** 2015 a. 56.

17          **SECTION 4.** 253.107 (1) (b) of the statutes is amended to read:

18          253.107 (1) (b) "Medical emergency" has the meaning given in s. ~~253.10 (2) (d)~~  
19          means a condition, in a physician's reasonable medical judgment, that so complicates  
20          the medical condition of a pregnant woman as to necessitate the immediate abortion  
21          of her pregnancy to avert her death or for which a 24-hour delay in performance or

- 1 inducement of an abortion will create serious risk of substantial and irreversible
- 2 impairment of one or more of the woman's major bodily functions.

History: 2015 a. 56.

- 3 ← End Insert 4-21



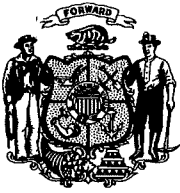
1/29/20

Telephone conference w/ Rep. Taylor

253.094

1) Add "Except as provided in sub. (1)" to (2)(a)

2) Require LRB to do X-refs changing  
abortion (253.10) to induced abortion (69.01)



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-4930/P3

TJD:ahc

Depy

Due Today if possible

In: 1/30

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

sa

regiment

1 **AN ACT to repeal** 46.245, 253.095, 253.10, 253.105, 441.07 (1g) (f), 457.26 (2)  
 2 (gm), 632.8985, 940.04 and 940.15 (5); **to amend** 20.9275 (1) (a), 40.02 (1d),  
 3 48.375 (4) (a) 1., 49.45 (49g) (a) 1d., 69.186 (1) (hf), 69.186 (1) (k), 253.107 (1)  
 4 (a), 253.107 (1) (b), 448.02 (3) (a), 939.75 (2) (b) 1., 968.26 (1b) (a) 2. a., 990.001  
 5 (17) (b) and 990.01 (19j) (b); and **to create** 253.094 of the statutes; **relating to:**  
 6 right to choose an abortion and elimination of certain abortion-related  
 7 regulations.

***Analysis by the Legislative Reference Bureau***

The bill specifies that every woman has the fundamental right to choose to obtain a safe and legal abortion. Under the bill, the state may prohibit a woman from obtaining an abortion after viability unless her life or health is endangered. Also under the bill, a law or rule of this state that restricts a woman's access to abortion is unenforceable if the law or rule does not confer any legitimate health benefit. Any person that is or may be aggrieved by the enforcement of a law or rule passed or promulgated after the effective date of the bill that would be unenforceable under the bill may bring an action in state or federal court for injunctive relief or damages against a state or local official who enforces or attempts to enforce such a law or rule.

In addition, the bill repeals various abortion-related laws, including all of the following:

1. The bill eliminates requirements for voluntary and informed consent before the performance of an abortion. Current law requires that a woman upon whom an abortion is to be performed or induced must give voluntary and informed written consent to an abortion. Except in a medical emergency, a woman's consent to an abortion is considered informed only if, before the abortion is performed or induced at a time specified in current law, the physician or an assistant has, in person, orally provided the woman with certain information and given to the woman certain written materials.

2. This bill eliminates the prohibition on 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.

3. The bill eliminates the prohibition on coverage of abortions by qualified health plans offered through an exchange in this state.

4. The bill eliminates the prohibition on performing abortions by a physician that does not have admitting privileges in a hospital within 30 miles of the location where the abortion is to be performed. Under a federal appellate court ruling, the requirement to have admitting privileges currently may not be enforced.

5. Under current law, any person, other than the mother, who intentionally destroys the life of an unborn child may be fined not more than \$10,000, imprisoned for not more than six years, or both. Any person, other than the mother, who intentionally destroys the life of an unborn quick child or causes the mother's death by an act done with intent to destroy the life of an unborn child may be fined not more than \$50,000, imprisoned for not more than 15 years, or both. None of these penalties apply to a therapeutic abortion that is performed by a physician; that is necessary, or advised by two other physicians as necessary, to save the life of the mother; and that 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. The bill repeals these provisions. The bill also repeals the criminal penalty on a person who is not a physician and who intentionally performs an abortion. The bill, however, does not affect any other criminal prohibition or limitation on abortion in current law, such as the prohibition on performing an abortion after the fetus or unborn child has reached viability, or any other homicide prohibition. The bill also does not affect a separate provision in current law that 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.

---

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

1 SECTION 1. 20.9275 (1) (a) of the statutes is amended to read:



1           20.9275 (1) (a) "Abortion" has the meaning given in ~~s. 253.10 (2) (a)~~ for "induced  
2 abortion" under s. 69.01 (13m).

3           **SECTION 2.** 40.02 (1d) of the statutes is amended to read:

4           40.02 (1d) "Abortion" has the meaning given in ~~s. 253.10 (2) (a)~~ for "induced  
5 abortion" under s. 69.01 (13m).

6           **SECTION 3.** 46.245 of the statutes is repealed.

7           **SECTION 4.** 48.375 (4) (a) 1. of the statutes is amended to read:

8           48.375 (4) (a) 1. The person or the person's agent has, either directly or through  
9 a referring physician or his or her agent, received and made part of the minor's  
10 medical record, ~~under the requirements of s. 253.10,~~ the voluntary and informed  
11 written consent of the minor and the voluntary and informed written consent of one  
12 of her parents; or of the minor's guardian or legal custodian, if one has been  
13 appointed; or of an adult family member of the minor; or of one of the minor's foster  
14 parents, if the minor has been placed in a foster home and the minor's parent has  
15 signed a waiver granting the department, a county department, or the foster parent  
16 the authority to consent to medical services or treatment on behalf of the minor.

17           **SECTION 5.** 49.45 (49g) (a) 1d. of the statutes is amended to read:

18           49.45 (49g) (a) 1d. "Abortion" has the meaning given in ~~s. 253.10 (2) (a)~~ for  
19 "induced abortion" under s. 69.01 (13m).

20           **SECTION 6.** 69.186 (1) (hf) of the statutes is amended to read:

21           69.186 (1) (hf) The probable postfertilization age of the unborn child, as defined  
22 in s. 253.107 (1) (c), ~~and whether an ultrasound was used to assist in making the~~  
23 ~~determination of postfertilization age of the unborn child,~~ or, if the probable  
24 postfertilization age of the unborn child was not determined, the nature of the  
25 medical emergency, as defined in s. ~~253.10 (2) (d)~~ 253.107 (1) (b).

1 SECTION 7. 69.186 (1) (k) of the statutes is amended to read:

2 69.186 (1) (k) If the unborn child is considered to be capable of experiencing  
3 pain under s. 253.107 (3) (a), the nature of the medical emergency, as defined in s.  
4 253.10 (2) (d) ~~253.107 (1) (b)~~, that the pregnant woman had.

5 SECTION 8. 253.094 of the statutes is created to read:

6 **253.094 Right to abortion.** (1) Every woman has the fundamental right to  
7 choose to obtain a safe and legal abortion, except that the state may prohibit a woman  
8 from obtaining an abortion after viability. The state may not prohibit a woman from  
9 obtaining an abortion at any time during her pregnancy if her life or health is  
10 endangered.

11 (2) (a) <sup>Except as provided in sub. (1); a</sup> A law or rule of this state that restricts a woman's access to abortion is  
12 unenforceable if the law or rule does not confer any legitimate health benefit, such  
13 as by expanding a woman's access to health care services or by, according to  
14 evidence-based research, increasing the woman's safety.

15 (b) Any person that is or may be aggrieved by the enforcement of a law or rule  
16 passed or promulgated after the effective date of this paragraph .... [LRB inserts  
17 date], that violates this subsection may bring an action in state or federal court for  
18 injunctive relief or damages against a state or local official who enforces or attempts  
19 to enforce such a law or rule.

20 SECTION 9. 253.095 of the statutes is repealed.

21 SECTION 10. 253.10 of the statutes is repealed.

22 SECTION 11. 253.105 of the statutes is repealed.

23 SECTION 12. 253.107 (1) (a) of the statutes is amended to read:

24 253.107 (1) (a) "Abortion" has the meaning given for "induced abortion" in s.  
25 ~~253.10 (2) (a) 69.01 (13m)~~.

1           **SECTION 13.** 253.107 (1) (b) of the statutes is amended to read:

2           253.107 (1) (b) “Medical emergency” ~~has the meaning given in s. 253.10 (2) (d)~~  
3           means a condition, in a physician’s reasonable medical judgment, that so complicates  
4           the medical condition of a pregnant woman as to necessitate the immediate abortion  
5           of her pregnancy to avert her death or for which a 24-hour delay in performance or  
6           inducement of an abortion will create serious risk of substantial and irreversible  
7           impairment of one or more of the woman’s major bodily functions.

8           **SECTION 14.** 441.07 (1g) (f) of the statutes is repealed.

9           **SECTION 15.** 448.02 (3) (a) of the statutes is amended to read:

10          448.02 (3) (a) The board shall investigate allegations of unprofessional conduct  
11          and negligence in treatment by persons holding a license or certificate granted by the  
12          board. An allegation that a physician has violated s. ~~253.10 (3)~~, 448.30 or 450.13 (2)  
13          or has failed to mail or present a medical certification required under s. 69.18 (2)  
14          within 21 days after the pronouncement of death of the person who is the subject of  
15          the required certificate or that a physician has failed at least 6 times within a  
16          6-month period to mail or present a medical certificate required under s. 69.18 (2)  
17          within 6 days after the pronouncement of death of the person who is the subject of  
18          the required certificate is an allegation of unprofessional conduct. Information  
19          contained in reports filed with the board under s. 49.45 (2) (a) 12r., 50.36 (3) (b),  
20          609.17 or 632.715, or under 42 CFR 1001.2005, shall be investigated by the board.  
21          Information contained in a report filed with the board under s. 655.045 (1), as created  
22          by 1985 Wisconsin Act 29, which is not a finding of negligence or in a report filed with  
23          the board under s. 50.36 (3) (c) may, within the discretion of the board, be used as the  
24          basis of an investigation of a person named in the report. The board may require a  
25          person holding a license or certificate to undergo and may consider the results of one

1 or more physical, mental or professional competency examinations if the board  
2 believes that the results of any such examinations may be useful to the board in  
3 conducting its investigation.

4 **SECTION 16.** 457.26 (2) (gm) of the statutes is repealed.

5 **SECTION 17.** 632.8985 of the statutes is repealed.

6 **SECTION 18.** 939.75 (2) (b) 1. of the statutes is amended to read:

7 939.75 (2) (b) 1. An act committed during an induced abortion. This  
8 subdivision does not limit the applicability of ss. ~~940.04~~, 940.13, 940.15 and 940.16  
9 to an induced abortion.

10 **SECTION 19.** 940.04 of the statutes is repealed.

11 **SECTION 20.** 940.15 (5) of the statutes is repealed.

12 **SECTION 21.** 968.26 (1b) (a) 2. a. of the statutes is amended to read:

13 968.26 (1b) (a) 2. a. Section ~~940.04~~, 940.11, 940.19 (2), (4), (5), or (6), 940.195  
14 (2), (4), (5), or (6), 940.20, 940.201, 940.203, 940.205, 940.207, 940.208, 940.22 (2),  
15 940.225 (3), 940.29, 940.302 (2) (c), 940.32, 941.32, 941.38 (2), 942.09 (2), 943.10,  
16 943.205, 943.32 (1), 946.43, 946.44, 946.47, 946.48, 948.02 (3), 948.03 (2) (b) or (c),  
17 (3), or (4), 948.04, 948.055, 948.095, 948.10 (1) (a), 948.11, 948.13 (2) (a), 948.14,  
18 948.20, 948.23 (1), (2), or (3) (c) 2. or 3., or 948.30 (1).

19 **SECTION 22.** 990.001 (17) (b) of the statutes is amended to read:

20 990.001 (17) (b) If a statute or rule refers to a live birth or to the circumstance  
21 in which an individual is born alive, the statute or rule shall be construed so that  
22 whoever undergoes a live birth as the result of an induced abortion, as defined in s.  
23 ~~253.10 (2) (a)~~ 69.01 (13m), has the same legal status and legal rights as a human  
24 being at any point after the human being undergoes a live birth as the result of  
25 natural or induced labor or a cesarean section.



2019-2020 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4930/P4ins  
TJD:...

1           INSERT 7-9

2           **SECTION 1. Nonstatutory provisions.**

3           (1) REFERENCE CHANGES. Wherever a reference to s. 253.10 (2) (a) appears in the  
4 statutes, the legislative reference bureau shall substitute a reference to s. 69.01  
5 (13m), as it defines the term "induced abortion."

6           END INSERT 7-9

## Dodge, Tamara

---

**From:** Agni, Chet  
**Sent:** Thursday, February 27, 2020 3:51 PM  
**To:** Dodge, Tamara  
**Subject:** Final Draft Request  
**Attachments:** 19-4930\_P4.pdf

Hi Tami,

Can you send us a /1 of LRB-4930/P4?

Thanks!

### **Chet Agni**

Pronouns: he, him, his

Office of Representative Chris Taylor

PO Box 8953

Madison, WI 53708

(608) 266-5342

[Twitter.com/christaylorwi](https://twitter.com/christaylorwi)

[Facebook.com/representative.taylor](https://facebook.com/representative.taylor)





**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1     **AN ACT** *to repeal* 46.245, 253.095, 253.10, 253.105, 441.07 (1g) (f), 457.26 (2)  
2             (gm), 632.8985, 940.04 and 940.15 (5); *to amend* 48.375 (4) (a) 1., 69.186 (1)  
3             (hf), 69.186 (1) (k), 253.107 (1) (b), 448.02 (3) (a), 939.75 (2) (b) 1. and 968.26 (1b)  
4             (a) 2. a.; and *to create* 253.094 of the statutes; **relating to:** right to choose an  
5             abortion and elimination of certain abortion-related regulations.

---

***Analysis by the Legislative Reference Bureau***

The bill specifies that every woman has the fundamental right to choose to obtain a safe and legal abortion. Under the bill, the state may prohibit a woman from obtaining an abortion after viability unless her life or health is endangered. Also under the bill, a law or rule of this state that restricts a woman's access to abortion is unenforceable if the law or rule does not confer any legitimate health benefit. Any person that is or may be aggrieved by the enforcement of a law or rule passed or promulgated after the effective date of the bill that would be unenforceable under the bill may bring an action in state or federal court for injunctive relief or damages against a state or local official who enforces or attempts to enforce such a law or rule.

In addition, the bill repeals various abortion-related laws, including all of the following:

1. The bill eliminates requirements for voluntary and informed consent before the performance of an abortion. Current law requires that a woman upon whom an abortion is to be performed or induced must give voluntary and informed written consent to an abortion. Except in a medical emergency, a woman's consent to an



abortion is considered informed only if, before the abortion is performed or induced at a time specified in current law, the physician or an assistant has, in person, orally provided the woman with certain information and given to the woman certain written materials.

2. This bill eliminates the prohibition on 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.

3. The bill eliminates the prohibition on coverage of abortions by qualified health plans offered through an exchange in this state.

4. The bill eliminates the prohibition on performing abortions by a physician that does not have admitting privileges in a hospital within 30 miles of the location where the abortion is to be performed. Under a federal appellate court ruling, the requirement to have admitting privileges currently may not be enforced.

5. Under current law, any person, other than the mother, who intentionally destroys the life of an unborn child may be fined not more than \$10,000, imprisoned for not more than six years, or both. Any person, other than the mother, who intentionally destroys the life of an unborn quick child or causes the mother's death by an act done with intent to destroy the life of an unborn child may be fined not more than \$50,000, imprisoned for not more than 15 years, or both. None of these penalties apply to a therapeutic abortion that is performed by a physician; that is necessary, or advised by two other physicians as necessary, to save the life of the mother; and that 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. The bill repeals these provisions. The bill also repeals the criminal penalty on a person who is not a physician and who intentionally performs an abortion. The bill, however, does not affect any other criminal prohibition or limitation on abortion in current law, such as the prohibition on performing an abortion after the fetus or unborn child has reached viability, or any other homicide prohibition. The bill also does not affect a separate provision in current law that 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.

---

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

1           **SECTION 1.** 46.245 of the statutes is repealed.

2           **SECTION 2.** 48.375 (4) (a) 1. of the statutes is amended to read:

1           48.375 (4) (a) 1. The person or the person's agent has, either directly or through  
2 a referring physician or his or her agent, received and made part of the minor's  
3 medical record, ~~under the requirements of s. 253.10,~~ the voluntary and informed  
4 written consent of the minor and the voluntary and informed written consent of one  
5 of her parents; or of the minor's guardian or legal custodian, if one has been  
6 appointed; or of an adult family member of the minor; or of one of the minor's foster  
7 parents, if the minor has been placed in a foster home and the minor's parent has  
8 signed a waiver granting the department, a county department, or the foster parent  
9 the authority to consent to medical services or treatment on behalf of the minor.

10           **SECTION 3.** 69.186 (1) (hf) of the statutes is amended to read:

11           69.186 (1) (hf) The probable postfertilization age of the unborn child, as defined  
12 in s. 253.107 (1) (c), ~~and whether an ultrasound was used to assist in making the~~  
13 ~~determination of postfertilization age of the unborn child,~~ or, if the probable  
14 postfertilization age of the unborn child was not determined, the nature of the  
15 medical emergency, as defined in s. ~~253.10 (2) (d)~~ 253.107 (1) (b).

16           **SECTION 4.** 69.186 (1) (k) of the statutes is amended to read:

17           69.186 (1) (k) If the unborn child is considered to be capable of experiencing  
18 pain under s. 253.107 (3) (a), the nature of the medical emergency, as defined in s.  
19 ~~253.10 (2) (d)~~ 253.107 (1) (b), that the pregnant woman had.

20           **SECTION 5.** 253.094 of the statutes is created to read:

21           **253.094 Right to abortion.** (1) Every woman has the fundamental right to  
22 choose to obtain a safe and legal abortion, except that the state may prohibit a woman  
23 from obtaining an abortion after viability. The state may not prohibit a woman from  
24 obtaining an abortion at any time during her pregnancy if her life or health is  
25 endangered.

1           **(2)** (a) Except as provided in sub. (1), a law or rule of this state that restricts  
2 a woman's access to abortion is unenforceable if the law or rule does not confer any  
3 legitimate health benefit, such as by expanding a woman's access to health care  
4 services or by, according to evidence-based research, increasing the woman's safety.

5           (b) Any person that is or may be aggrieved by the enforcement of a law or rule  
6 passed or promulgated after the effective date of this paragraph .... [LRB inserts  
7 date], that violates this subsection may bring an action in state or federal court for  
8 injunctive relief or damages against a state or local official who enforces or attempts  
9 to enforce such a law or rule.

10           **SECTION 6.** 253.095 of the statutes is repealed.

11           **SECTION 7.** 253.10 of the statutes is repealed.

12           **SECTION 8.** 253.105 of the statutes is repealed.

13           **SECTION 9.** 253.107 (1) (b) of the statutes is amended to read:

14           253.107 (1) (b) "Medical emergency" has the meaning given in s. ~~253.10 (2) (d)~~  
15 means a condition, in a physician's reasonable medical judgment, that so complicates  
16 the medical condition of a pregnant woman as to necessitate the immediate abortion  
17 of her pregnancy to avert her death or for which a 24-hour delay in performance or  
18 inducement of an abortion will create serious risk of substantial and irreversible  
19 impairment of one or more of the woman's major bodily functions.

20           **SECTION 10.** 441.07 (1g) (f) of the statutes is repealed.

21           **SECTION 11.** 448.02 (3) (a) of the statutes is amended to read:

22           448.02 **(3)** (a) The board shall investigate allegations of unprofessional conduct  
23 and negligence in treatment by persons holding a license or certificate granted by the  
24 board. An allegation that a physician has violated s. ~~253.10 (3)~~, 448.30 or 450.13 (2)  
25 or has failed to mail or present a medical certification required under s. 69.18 (2)

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

16 **SECTION 12.** 457.26 (2) (gm) of the statutes is repealed.

17 **SECTION 13.** 632.8985 of the statutes is repealed.

18 **SECTION 14.** 939.75 (2) (b) 1. of the statutes is amended to read:

19 939.75 (2) (b) 1. An act committed during an induced abortion. This  
20 subdivision does not limit the applicability of ss. ~~940.04~~, 940.13, 940.15 and 940.16  
21 to an induced abortion.

22 **SECTION 15.** 940.04 of the statutes is repealed.

23 **SECTION 16.** 940.15 (5) of the statutes is repealed.

24 **SECTION 17.** 968.26 (1b) (a) 2. a. of the statutes is amended to read:



**Parisi, Lori**

---

**From:** Agni, Chet  
**Sent:** Friday, March 13, 2020 10:43 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -4930/1

Good morning,

Please Jacket LRB -4930/1 for the ASSEMBLY.

Thanks!

**Chet Agni**

Pronouns: he, him, his

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