



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2015 Wisconsin Act 56
[2015 Senate Bill 179]

Prohibition on Certain Abortions

2015 Wisconsin Act 56 generally prohibits an abortion of an unborn child when 20 or more weeks have elapsed from the probable time of the fertilization of the ovum. The Act includes an exception in the case of a medical emergency.

Prohibition on Certain Abortions; Determination of Postfertilization Age

The Act provides that generally no person may perform or induce, or attempt to perform or induce, an abortion when the unborn child is “considered capable of experiencing pain.” An unborn child is considered to be capable of experiencing pain for purposes of the Act if the “probable postfertilization age” of the unborn child is 20 or more weeks. The probable postfertilization age of the unborn child is defined as the number of weeks that have elapsed from the probable time of fertilization of the ovum.

In addition, under the Act, generally no physician may perform or induce an abortion, or attempt to perform or induce an abortion, unless he or she has first made a determination of the probable postfertilization age of the unborn child or relied upon such a determination by another physician.

Exception for Medical Emergency; Method of Abortion

The Act provides that neither of the requirements described above apply in the case of a “medical emergency.” A medical emergency is defined as:

...a condition, in a physician’s reasonable medical judgment, that so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a 24-hour delay in performance or inducement of

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

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

If an abortion is performed under the medical emergency exception, a physician must terminate the pregnancy in the manner that, in reasonable medical judgment, provides the best opportunity for the unborn child to survive, unless the termination of the pregnancy in that manner poses a greater risk either of the death of the pregnant woman or the substantial and irreversible physical impairment of a major bodily function of the woman than other available methods.

Criminal Penalties

Any person who violates the prohibition against performing, inducing, or attempting to perform or induce an abortion when the unborn child is considered capable of experiencing pain is guilty of a Class I felony and subject to a fine not to exceed \$10,000, imprisonment not to exceed three years and six months, or both. This penalty does not apply to violations of the restriction on the manner in which a pregnancy may be terminated in the case of a medical emergency. Also, no penalty may be assessed against a woman upon whom an abortion is performed or induced or attempted to be performed or induced.

Civil Claims

The Act provides that a woman may bring a civil claim for damages against any person who performs or attempts to perform an abortion on her in violation of the Act. The Act also gives the father of the unborn child standing to bring a civil claim for damages against a person who violates the Act, except that no such claim is allowed when the pregnancy is the result of sexual assault or incest. Also, a prosecuting attorney may bring an action for injunctive relief for intentional or reckless violations of the Act. The provisions regarding civil damages and injunctions apply to violations of the prohibition on abortions and the restrictions on the manner in which a pregnancy may be terminated in the case of a medical emergency.

Reporting Requirement Regarding Method of Abortion

Under current law, each hospital, clinic, or other facility in which an induced abortion is performed must file an annual report containing specified information about induced abortions performed in the calendar year. The report must be filed with the Department of Health Services (DHS). DHS must collect the reported information in a manner that ensures anonymity of the patient, the health care provider and the facility, and must publish annual demographic summaries of the reported information.

The Act requires the report to DHS to contain, for each abortion performed, the probable postfertilization age of the unborn child. If the unborn child is considered capable of experiencing pain, as determined under the Act, the report must state whether the method of abortion used was one that, in reasonable medical judgment, provided the best opportunity for the unborn child to survive. If such a method was not used, the report must include the basis of the determination that termination of the pregnancy in that manner posed a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the woman than other available methods.

Nonstatutory Legislative Findings

The Act contains numerous nonstatutory legislative findings regarding the ability of an unborn child to feel pain during gestational development.

Effective date: February 1, 2016

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August 3, 2015

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