



2005 SENATE BILL 138

March 23, 2005 - Introduced by Senators GROTHMAN, LEIBHAM, COWLES, S. FITZGERALD, ZIEN, REYNOLDS, BROWN, A. LASEE, LAZICH, KANAVAS, KEDZIE, KAPANKE, STEPP and ROESSLER, cosponsored by Representatives NISCHKE, LEMAHIEU, GUNDRUM, KERKMAN, KESTELL, KREIBICH, BALLWEG, LOEFFELHOLZ, DAVIS, KRAWCZYK, AINSWORTH, VAN ROY, HINES, JESKEWITZ, GOTTLIEB, BIES, M. WILLIAMS, STRACHOTA, HONADEL, OWENS, J. FITZGERALD, NASS, GUNDERSON, VRAKAS, MONTGOMERY, KLEEFISCH, HAHN, TOWNS, UNDERHEIM, WIECKERT, ALBERS, OTT, PETROWSKI, WOOD, McCORMICK, PRIDEMORE and HUNDERTMARK. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

- 1 **AN ACT** *to amend* 253.10 (3) (d) 2. and 253.10 (4); and *to create* 253.10 (1) (a)
2 4m. and 253.10 (3) (c) 1. dm. of the statutes; **relating to:** voluntary and
3 informed consent for abortions.

Analysis by the Legislative Reference Bureau

Under current law, except in the case of a medical emergency, no abortion may be performed or induced unless the woman seeking the abortion first gives voluntary, written consent after numerous requirements are fulfilled. One of the requirements is that, at least 24 hours before the abortion is to be performed, the physician who is to perform the abortion, another physician, or an assistant orally informs the woman of her right to receive and review certain written materials. The physician or assistant must physically give the woman the materials and inform her that they are free of charge, have been provided by the state, describe the unborn child, and list agencies that offer alternatives to abortion. The Department of Health and Family Services (DHFS) must print the materials and distribute them to county departments; physicians who intend to perform or induce abortions must request copies of the materials from DHFS or a county department.

This bill requires that a physician who is to perform an abortion or another physician orally inform a woman who is seeking an abortion that, if the probable gestational age of the woman's unborn child is 20 weeks or more, all of the following apply:

1. The unborn child has the physical structures necessary to experience pain.

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2. There is evidence that by 20 weeks' gestation unborn children seek to evade certain stimuli in a manner that in an infant or an adult would be interpreted to be a response to pain.

3. There is evidence that the abortion methods most commonly used when an unborn child is at 20 weeks' gestation or older cause substantial pain to the unborn child.

The bill further requires that the materials that DHFS is required to print and distribute and that physicians are required to provide to women seeking abortions contain several statements, as specified in the bill, concerning pain experienced by unborn children of 20 weeks' or more gestation who are aborted and concerning methods of certain abortions.

Lastly, the bill requires that DHFS revise the current materials that are required to be provided to women seeking abortions so as to include the required statements, publish and distribute the materials, and notify physicians of the availability of the revised materials. Physicians who intend to perform abortions and county departments must replace any current materials with the materials revised as specified in the bill.

For further information see the *state and local* 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.** 253.10 (1) (a) 4m. of the statutes is created to read:

2 253.10 (1) (a) 4m. By 20 weeks' gestation, an unborn child has the physical
3 structures necessary to experience pain. There is substantial evidence that by 20
4 weeks' gestation unborn children seek to evade certain stimuli in a manner that in
5 an infant or an adult would be interpreted to be a response to pain. Anesthesia is
6 routinely administered to unborn children who are 20 weeks' gestational age or older
7 who undergo prenatal surgery. There is evidence that the abortion methods most
8 commonly used when an unborn child is at 20 weeks' gestation or older, whether by
9 dismemberment, poisoning, penetrating the skull, or crushing the skull, cause
10 substantial pain to the unborn child. For example, the dilation and evacuation
11 method of abortion is commonly performed in the 2nd trimester of pregnancy. In a
12 dilation and evacuation abortion, the unborn child's body parts are grasped at

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1 random with a long-toothed clamp. The fetal body parts are then torn off the body
2 and pulled out of the vaginal canal. The remaining body parts are grasped and pulled
3 out until only the head remains. The head is then grasped and crushed in order to
4 remove it from the vaginal canal. Another example is the partial-birth abortion
5 method, or dilation and extraction, which is usually performed in the 2nd trimester
6 of pregnancy. In a partial-birth abortion, the person performing the abortion
7 delivers the unborn child's body until only the head remains inside the womb. The
8 person then punctures the back of the unborn child's skull with a sharp instrument
9 and sucks out the unborn child's brains before completing the delivery of the dead
10 infant.

11 **SECTION 2.** 253.10 (3) (c) 1. dm. of the statutes is created to read:

12 253.10 (3) (c) 1. dm. If the probable gestational age of the woman's unborn child
13 is 20 weeks or more, that the woman's unborn child has the physical structures
14 necessary to experience pain; that there is evidence that by 20 weeks' gestation
15 unborn children seek to evade certain stimuli in a manner that in an infant or an
16 adult would be interpreted to be a response to pain; and that there is evidence that
17 the abortion methods most commonly used when an unborn child is at 20 weeks'
18 gestation or older, whether by dismemberment, poisoning, penetrating the skull, or
19 crushing the skull, cause substantial pain to the unborn child.

20 **SECTION 3.** 253.10 (3) (d) 2. of the statutes is amended to read:

21 253.10 (3) (d) 2. Materials, including photographs, pictures or drawings, that
22 are designed to inform the woman of the probable anatomical and physiological
23 characteristics of the unborn child at 2-week gestational increments for the first 16
24 weeks of her pregnancy and at 4-week gestational increments from the 17th week
25 of the pregnancy to full term, including any relevant information regarding the time

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1 at which the unborn child could possibly be viable. The pictures or drawings must
2 contain the dimensions of the unborn child and must be realistic and appropriate for
3 the stage of pregnancy depicted. The materials shall be objective, nonjudgmental
4 and designed to convey only accurate scientific information about the unborn child
5 at the various gestational ages, including appearance, mobility, brain and heart
6 activity and function, tactile sensitivity, the physical structures necessary to
7 experience pain, and the presence of internal organs and external members. The
8 materials shall also contain objective, accurate information describing the methods
9 of abortion procedures commonly employed, the medical and psychological risks
10 commonly associated with each such procedure, including the risks of infection,
11 psychological trauma, hemorrhage, endometritis, perforated uterus, incomplete
12 abortion, failed abortion, danger to subsequent pregnancies and infertility, and the
13 medical risks commonly associated with carrying a child to birth. The materials
14 shall contain the following statement: "By 20 weeks' gestation, an unborn child has
15 the physical structures necessary to experience pain. There is substantial evidence
16 that by 20 weeks' gestation unborn children seek to evade certain stimuli in a
17 manner that in an infant or an adult would be interpreted to be a response to pain.
18 Anesthesia is routinely administered to unborn children who are 20 weeks'
19 gestational age or older who undergo prenatal surgery. There is evidence that the
20 abortion methods most commonly used when an unborn child is at 20 weeks'
21 gestation or older, whether by dismemberment, poisoning, penetrating the skull, or
22 crushing the skull, cause substantial pain to the unborn child. For example, the
23 dilation and evacuation method of abortion is commonly performed in the 2nd
24 trimester of pregnancy. In a dilation and evacuation abortion, the unborn child's
25 body parts are grasped at random with a long-toothed clamp. The fetal body parts

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1 are then torn off the body and pulled out of the vaginal canal. The remaining body
2 parts are grasped and pulled out until only the head remains. The head is then
3 grasped and crushed in order to remove it from the vaginal canal. Another example
4 is the partial-birth abortion method, or dilation and extraction, which is usually
5 performed in the 2nd trimester of pregnancy. In a partial-birth abortion, the
6 physician performing the abortion delivers the unborn child's body until only the
7 head remains inside the womb. The physician then punctures the back of the unborn
8 child's skull with a sharp instrument and sucks out the unborn child's brains before
9 completing the delivery of the dead infant."

10 **SECTION 4.** 253.10 (4) of the statutes is amended to read:

11 253.10 (4) HOTLINE AND INTERNET ACCESS. The department may maintain a
12 toll-free telephone number that is available 24 hours each day or maintain access
13 to an Internet Web page on the department's Web site, or both, to provide the
14 materials specified in sub. (3) (d) 1.

15 **SECTION 5. Nonstatutory provisions.**

16 (1) REVISION, PUBLICATION, AND DISTRIBUTION OF PRINTED INFORMATION. By the
17 date that is 60 days after publication of this act, the department of health and family
18 services shall revise the materials specified under section 253.10 (3) (d) of the
19 statutes in accordance with section 253.10 (3) (d) 2. of the statutes, as affected by this
20 act, publish the revised materials, and distribute the revised materials to county
21 departments, as required under section 253.10 (3) (d) (intro.) of the statutes.

22 (2) NOTIFICATION TO PHYSICIANS. By the date that is 60 days after publication
23 of this act, the department of health and family services shall notify physicians
24 specified under section 253.10 (3) (e) of the statutes of the availability of the revised
25 materials specified in subsection (1).

