



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-1460/1
TJD:wlj

2021 ASSEMBLY BILL 106

February 18, 2021 - Introduced by Representatives SUBECK, EMERSON, ANDRACA, ANDERSON, BALDEH, BILLINGS, BOWEN, BROSTOFF, CABRERA, CONLEY, CONSIDINE, DRAKE, GOYKE, HEBL, HESSELBEIN, HONG, B. MEYERS, L. MYERS, NEUBAUER, OHNSTAD, ORTIZ-VELEZ, POPE, S. RODRIGUEZ, SHANKLAND, SHELTON, SINICKI, SNODGRASS, SPREITZER, STUBBS and VINING, cosponsored by Senators ROYS, JOHNSON, L. TAYLOR, AGARD, BEWLEY, CARPENTER, ERPENBACH, LARSON, PFAFF, RINGHAND, SMITH and WIRCH. Referred to Committee on Health.

- 1 **AN ACT** *to repeal* 940.04; and *to amend* 939.75 (2) (b) 1. and 968.26 (1b) (a) 2.
2 a. of the statutes; **relating to:** eliminating certain abortion prohibitions.

Analysis by the Legislative Reference Bureau

This bill repeals a statute relating to abortion that has been held unenforceable by a federal court. Under that statute, any person, other than the mother, who intentionally destroys the life of an unborn child is guilty of a Class H felony. "Unborn child" is defined as a human being from the time of conception until born alive. Also, 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 is guilty of a Class E felony. None of these penalties apply to a therapeutic abortion that is performed by a physician; is necessary, or advised by two other physicians as necessary, to save the life of the mother; and, unless an emergency prevents, is performed in a licensed maternity hospital.

The statute was cited in *Roe v. Wade*, 410 U.S. 113 (1973), as similar to a Texas statute that was held to violate the due process clause of the 14th Amendment of the U.S. Constitution. The unenforceability of the statute following the *Roe v. Wade* decision was noted in a subsequent decision by a federal district court, *Larkin v. McCann*, 368 F. Supp. 1352 (E.D. Wis., 1974).

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

ASSEMBLY BILL 106

SECTION 1

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

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

5 **SECTION 2.** 940.04 of the statutes is repealed.

6 **SECTION 3.** 968.26 (1b) (a) 2. a. of the statutes is amended to read:

7 968.26 **(1b)** (a) 2. a. Section ~~940.04~~, 940.11, 940.19 (2), (4), (5), or (6), 940.195
8 (2), (4), (5), or (6), 940.20, 940.201, 940.203, 940.205, 940.207, 940.208, 940.22 (2),
9 940.225 (3), 940.29, 940.302 (2) (c), 940.32, 941.32, 941.38 (2), 942.09 (2), 943.10,
10 943.205, 943.32 (1), 946.43, 946.44, 946.47, 946.48, 948.02 (3), 948.03 (2) (b) or (c),
11 (3), or (4), 948.04, 948.055, 948.095, 948.10 (1) (a), 948.11, 948.13 (2) (a), 948.14,
12 948.20, 948.23 (1), (2), or (3) (c) 2. or 3., or 948.30 (1).

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(END)