

State of Wisconsin



2021 Senate Bill 16

Date of enactment:
Date of publication*:

2021 WISCONSIN ACT

AN ACT to create 253.109 and 940.01 (1) (c) of the statutes; relating to: requirements for children born alive following abortion or attempted abortion and providing a penalty.

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

SECTION 1. 253.109 of the statutes is created to read:

253.109 Requirements relating to a child born alive after abortion. (1) DEFINITIONS. In this section:

(a) "Abortion" has the meaning given in s. 253.10 (2) (a).

(b) "Born alive" means undergoes a live birth, as defined in s. 990.01 (19j).

(c) "Health care provider" has the meaning given in s. 146.81 (1).

(2) REQUIREMENTS OF HEALTH CARE PROVIDERS. Any health care provider present at the time an abortion or attempted abortion results in a child born alive shall do all of the following:

(a) Exercise the same degree of professional skill, care, and diligence to preserve the life and health of the child as a reasonably diligent and conscientious health care provider would render to any other child born alive at the same gestational age.

(b) Observing the exercise of skill, care, and diligence required under par. (a), ensure that the child born alive is immediately transported and admitted to a hospital.

(3) REPORTING OF VIOLATIONS. A health care provider or an employee of a hospital, physician's office, or clinic

where abortions are performed or induced who has knowledge of a failure to comply with a requirement under sub. (2) shall immediately report the failure to an appropriate law enforcement agency.

(4) CRIMINAL PENALTY; NO PENALTY FOR MOTHER. (a) Any person who violates sub. (2) is guilty of a Class H felony.

(b) The mother of a child born alive under circumstances described in sub. (2) may not be prosecuted for a violation of this section, an attempt to violate this section, or a conspiracy to violate this section.

(5) CIVIL REMEDIES; INJUNCTIONS. (a) A woman upon whom an abortion was performed, induced, or attempted may bring a claim for damages, including damages for personal injury and emotional and psychological distress, against a person who violates or attempts to violate sub. (2). A woman who brings a claim under this paragraph may be awarded objectively verifiable monetary damages for all injuries and damages equal to 3 times the cost of the abortion or attempted abortion.

(b) A woman who has been awarded damages under par. (a) shall, in addition to any damages awarded under par. (a), be entitled to punitive damages for a violation that satisfies a standard under s. 895.043 (3).

(c) 1. Notwithstanding s. 814.04 (1), a woman who recovers damages under par. (a) or (b) may also recover

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

reasonable attorney fees incurred in connection with the action.

2. If a defendant prevails in an action under par. (a) and the court finds the action was frivolous or brought in bad faith, notwithstanding s. 814.04 (1), the defendant may recover reasonable attorney fees incurred in connection with defending the action.

(d) A contract is not a defense to an action under this subsection.

(e) Nothing in this subsection limits the common law rights of a person that are not in conflict with sub. (2).

(f) A prosecuting attorney with appropriate jurisdiction or the department of justice may bring an action for injunctive relief against a person who has intentionally or recklessly violated this section.

(6) ENFORCEMENT AUTHORITY. The department of justice or the district attorney may investigate any allegation of or institute, manage, control, and direct, in the proper county, any prosecution for a violation of this section. For this purpose, the department of justice shall have and exercise all powers conferred upon district attorneys in such cases.

(7) CONFIDENTIALITY IN COURT PROCEEDINGS. (a) In every proceeding brought under this section, the court, upon motion or sua sponte, shall rule whether the identity of any woman upon whom an abortion was performed or induced or attempted to be performed or induced shall be kept confidential unless the woman waives confidentiality. If the court determines that a woman's identity should be kept confidential, the court shall issue orders to the parties, witnesses, and counsel and shall direct the

sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. If the court issues an order to keep a woman's identity confidential, the court shall provide written findings explaining why the woman's identity should be kept confidential, why the order is essential to that end, how the order is narrowly tailored to its purpose, and why no reasonable less restrictive alternative exists.

(b) Any person, except for a public official, who brings an action under this section shall do so under a pseudonym unless the person obtains the written consent of the woman upon whom an abortion was performed or induced, or attempted to be performed or induced, in violation of this section.

(c) This section may not be construed to allow the identity of a plaintiff or a witness to be concealed from the defendant.

(8) CONSTRUCTION. Nothing in this section may be construed as creating or recognizing a right to abortion or as making lawful an abortion that is otherwise unlawful.

SECTION 2. 940.01 (1) (c) of the statutes is created to read:

940.01 (1) (c) Except as provided in sub. (2), whoever causes the death of a child born alive under circumstances described in s. 253.109 (2) with intent to kill that child is guilty of a Class A felony. The mother of a child born alive under circumstances described in s. 253.109 (2) may not be prosecuted for a violation of this paragraph, an attempt to violate this paragraph, or a conspiracy to violate this paragraph.
