



WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM

TO: SENATOR JAMES BAUMGART
FROM: Anne Sappenfield, Senior Staff Attorney
RE: 2001 Senate Bill 389, Relating to Changing the Definition of Abortion
DATE: January 17, 2002

This memorandum describes 2001 Senate Bill 389, relating to changing the definition of "abortion" for informed consent to an abortion and for parental consent to a minor's abortion.

Under current law, the definition of abortion for purposes of requiring informed consent of a woman seeking an abortion is as follows:

"Abortion" means the use of an instrument, medicine, drug or any other substance or device with the intent to terminate the pregnancy of a woman known to be pregnant or for whom there is reason to believe that she may be pregnant and with the intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth or to remove a dead fetus. [s. 253.10 (2) (a), Stats.]

The definition for parental consent for minors seeking an abortion is substantially the same. [See s. 48.375 (2) (a), Stats.]

The bill amends the definition to specify that "abortion" means the use of an instrument, medicine, drug, *including RU-486*, or other substance or device with the intent to terminate a pregnancy.

You have asked whether the bill could be interpreted by a court to narrow the definition of "abortion" based upon cases in which courts have held that anything that is not listed in a statute is excluded. The argument appears to be that if another drug may be used as an abortifacient, a court could conclude that it is not intended to be included in the definition of "abortion" under the bill because it is not specifically referenced. This interpretation of your bill does not appear to be accurate.

Under the maxim of statutory interpretation *expressio unius est exclusio alterius*, where a form of conduct, the manner of its performance and operation, and the persons and things to which it refers

are designated, there is an inference that all omissions should be understood as exclusions. However, when the word "include" is used, it is generally improper to conclude that the entities not specifically enumerated are excluded. [6 Norman J. Singer, *Statutes and Statutory Construction*, s. 47:23 (6th ed. 2000); *State v. Engler*, 80 Wis. 2d 402, 259 N.W.2d 97, 100 (1977).]

The bill does not reflect an intent to create an exhaustive list of every drug that may be used as an abortifacient. The definition is very broad, and the inclusion of the phrase "including RU-486" serves only to provide an example of a particular drug that is considered to be an abortifacient under the definition. Therefore, it would be very unlikely for a court to conclude that abortifacient drugs other than RU-486 are not covered by the definition of "abortion" as amended by the bill.

If you have any questions or would like further information on this topic, please feel free to call me at the Legislative Council Staff offices.

AS:rv;ksm