



1997 ASSEMBLY BILL 767

February 3, 1998 - Introduced by Representatives F. LASEE, WASSERMAN, GOETSCH, ALBERS, TURNER, URBAN and POWERS. Referred to Committee on Health.

1 **AN ACT** *to renumber* 48.981 (2m) (b); *to renumber and amend* 48.981 (2m) (a),
2 48.981 (2m) (c), 48.981 (2m) (d) and 48.981 (2m) (e); *to amend* 48.375 (4) (b) 1g.,
3 48.375 (4) (b) 2., 48.981 (2m) (title) and 253.11 (1); and *to create* 48.981 (2m)
4 (ar), 253.11 (2m) and 253.11 (3m) of the statutes; **relating to:** objection by
5 parents to application of a prophylactic agent to their infant's eyes and granting
6 rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, in order to prevent ophthalmia neonatorum or infant blindness, the physician or nurse-midwife who attends a birth must apply a prophylactic agent to the infant's eyes. If an infant is born without a physician or nurse-midwife in attendance and the infant's eye becomes inflamed, swollen or red or shows unusual discharge within 2 weeks after birth, certain persons must report these facts to the local health officer, who must warn about the danger of ophthalmia neonatorum or infant blindness and employ a physician to examine and treat the case.

This bill establishes an exception to the requirements for applying a prophylactic agent to an infant's eyes. Under the bill, if parents of an infant object orally or in writing to use of the prophylactic agent, the physician or nurse-midwife attending the birth must provide them with a form for their signatures and must provide oral information about the form. Signature of the form immunifies the physician or nurse-midwife and the medical facility, if any, in which the infant is born from liability for damage caused to the infant's eyes as a result of not applying the prophylactic agent, and confers full liability upon the parents for care and treatment of the infant's eyes for the first 14 days after birth. If the parents orally withdraw their objections and destroy the form in the presence of the physician or

nurse-midwife, the prophylactic agent must be applied. The department of health and family services must promulgate rules prescribing the form and its content and must distribute the form to all hospitals, to all physicians having a general practice or specializing in family practice, pediatrics or obstetrics and gynecology and to all nurse-midwives.

Lastly, the bill creates an exception to the reporting requirements of the child abuse and neglect laws so that the physician or nurse-midwife is not required to report as neglect the parents' objection to application of the prophylactic agent.

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.** 48.375 (4) (b) 1g. of the statutes is amended to read:

2 48.375 (4) (b) 1g. The minor provides the person who intends to perform or
3 induce the abortion with a written statement, signed and dated by the minor, in
4 which the minor swears that the pregnancy is the result of a sexual assault in
5 violation of s. 940.225 (1), (2) or (3) in which the minor did not indicate a freely given
6 agreement to have sexual intercourse. The person who intends to perform or induce
7 the abortion shall place the statement in the minor's medical record and report the
8 sexual intercourse as required under s. 48.981 (2) or (2m) ~~(e)~~ (am) 4. Any minor who
9 makes a false statement under this subdivision, which the minor does not believe is
10 true, is subject to a proceeding under s. 938.12 or 938.13 (12), whichever is applicable,
11 based on a violation of s. 946.32 (2).

12 **SECTION 2.** 48.375 (4) (b) 2. of the statutes is amended to read:

13 48.375 (4) (b) 2. The minor provides the person who intends to perform or
14 induce the abortion with a written statement, signed and dated by the minor, that
15 the pregnancy is the result of sexual intercourse with a caregiver specified in s.
16 48.981 (1) (am) 1., 2., 3., 4. or 8. The person who intends to perform or induce the
17 abortion shall place the statement in the minor's medical record. The person who

1 intends to perform or induce the abortion shall report the sexual intercourse as
2 required under s. 48.981 (2m) ~~(d) 1.~~ (am) 3. a.

3 **SECTION 3.** 48.981 (2m) (title) of the statutes is amended to read:

4 48.981 **(2m)** (title) ~~EXCEPTION~~ EXCEPTIONS TO REPORTING REQUIREMENT.

5 **SECTION 4.** 48.981 (2m) (a) of the statutes is renumbered 48.981 (2m) (am) 1.
6 and amended to read:

7 48.981 **(2m)** (am) 1. The purpose of this subsection paragraph is to allow
8 children to obtain confidential health care services.

9 **SECTION 5.** 48.981 (2m) (ar) of the statutes is created to read:

10 48.981 **(2m)** (ar) A health care provider who is immunified under s. 253.11 (2m)
11 (a) 2. from liability for damages caused to an infant's eyes as a result of not applying
12 a prophylactic agent to the eyes is not required to report as neglect the objection of
13 parents to applying the prophylactic agent under s. 253.11 (2m).

14 **SECTION 6.** 48.981 (2m) (b) of the statutes is renumbered 48.981 (2m) (ag).

15 **SECTION 7.** 48.981 (2m) (c) of the statutes is renumbered 48.981 (2m) (am) 2.,
16 and 48.981 (2m) (am) 2. (intro.), as renumbered, is amended to read:

17 48.981 **(2m)** (am) 2. (intro.) Except as provided under ~~pars. (d) and (e)~~ subds.
18 3. and 4., the following persons are not required to report as suspected or threatened
19 abuse, as defined in s. 48.02 (1) (b), sexual intercourse or sexual contact involving a
20 child:

21 **SECTION 8.** 48.981 (2m) (d) of the statutes is renumbered 48.981 (2m) (am) 3.,
22 and 48.981 (2m) (am) 3. (intro.), as renumbered is amended to read:

23 48.981 **(2m)** (am) 3. (intro.) Any person described under ~~par. (e) 1. or 4.~~ subd.
24 2. a. or d. shall report as required under sub. (2) if he or she has reason to suspect any
25 of the following:

1 **SECTION 9.** 48.981 (2m) (e) of the statutes is renumbered 48.981 (2m) (am) 4.
2 and amended to read:

3 48.981 **(2m)** (am) 4. In addition to the reporting requirements under ~~par. (d)~~
4 subd. 3., a person described under ~~par. (e) 1. or 4. subd. 2. a. or d.~~ shall report as
5 required under sub. (2) if he or she has any reasonable doubt as to the voluntariness
6 of the child's participation in the sexual contact or sexual intercourse.

7 **SECTION 10.** 253.11 (1) of the statutes is amended to read:

8 253.11 **(1)** ~~For~~ Except as provided in sub. (2m), for the prevention of ophthalmia
9 neonatorum or infant blindness the attending physician or ~~midwife~~ nurse-midwife
10 shall use a prophylactic agent approved by the department.

11 **SECTION 11.** 253.11 (2m) of the statutes is created to read:

12 253.11 **(2m)** (a) If both parents of an infant object orally or in writing to
13 application of the prophylactic agent under sub. (1) to the infant's eyes, all of the
14 following apply:

15 1. The physician or nurse-midwife shall provide the parents with a form for
16 their signatures, prescribed by the department, under which the physician or
17 nurse-midwife and the medical facility, if any, in which the infant is born are
18 immune from liability for damage caused to the infant's eyes as a result of not
19 applying the prophylactic agent under sub. (1) and the parents assume full liability
20 for care and treatment of the infant's eyes for the first 14 days after the infant's birth.
21 The physician or nurse-midwife shall provide to the parents oral information about
22 the form.

23 2. If the parents provide the physician or nurse-midwife with a signed form
24 that is specified under subd. 1., the physician or nurse-midwife and the medical
25 facility, if any, in which the infant is born are immune from liability for damage

1 caused to the infant's eyes as a result of not applying the prophylactic agent. The
2 physician or nurse-midwife shall apply the prophylactic agent if the parents orally
3 withdraw their objections and, in the presence of the physician or nurse-midwife,
4 destroy the signed form.

5 (b) If one of the infant's parents is unavailable or unable to object to application
6 of the prophylactic agent under sub. (1) to the infant's eyes, the conditions under par.
7 (a) 1. and 2. shall apply if the other parent objects. The objecting parent shall assume
8 liability on behalf of both parents.

9 **SECTION 12.** 253.11 (3m) of the statutes is created to read:

10 253.11 **(3m)** The department shall promulgate rules that prescribe the form
11 and contents of the form for immunity from liability for a physician or nurse-midwife
12 and assumption of liability for parents, as specified in sub. (2m). The department
13 shall prepare and distribute the form to all hospitals, to all physicians having a
14 general practice or specializing in family practice, pediatrics or obstetrics and
15 gynecology and to all nurse-midwives.

16 **SECTION 13. Effective date.**

17 (1) This act takes effect on the first day of the 10th month beginning after
18 publication.

19

(END)