



2019 SENATE BILL 173

April 22, 2019 - Introduced by Senators TESTIN, CRAIG, BERNIER, DARLING, KAPENGA, KOOYENGA, MARKLEIN, NASS, OLSEN, STROEBEL and WANGGAARD, cosponsored by Representatives DITTRICH, JAGLER, BALLWEG, DUCHOW, EDMING, FELZKOWSKI, GUNDRUM, HORLACHER, HUTTON, JAMES, KATSMA, KRUG, KUGLITSCH, KULP, KURTZ, LOUDENBECK, MURPHY, OTT, QUINN, RAMTHUN, RODRIGUEZ, ROHRKASTE, SANFELIPPO, SCHRAA, SNYDER, SORTWELL, SPIROS, THIESFELDT, TITTL, TUSLER, VOS and SKOWRONSKI. Referred to Committee on Health and Human Services.

1 **AN ACT** *to amend* 448.02 (3) (a); and *to create* 253.10 (3) (c) 2. es. and 253.103
2 of the statutes; **relating to:** sex-selective, disability-selective, and other
3 selective abortions and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill prohibits a person from performing or inducing or attempting to perform or induce an abortion on a woman if the person knows the woman is seeking an abortion solely because of the race, color, national origin, ancestry, or sex of the unborn child or solely because the unborn child has been diagnosed with or has a potential diagnosis of Down syndrome or another congenital disability. A congenital disability is defined in the bill as any congenital disease, defect, or disorder, except a life-limiting fetal anomaly, which is a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth and does not include any condition that can be treated. The bill allows a claim for damages for a violation of this bill to be brought by a woman on whom an abortion is performed, induced, or attempted; the father of the aborted unborn child or unborn child that is attempted to be aborted, unless the pregnancy is the result of a sexual assault or incest; and, if the woman is a minor at the time or dies as a result of the abortion or attempted abortion, a parent or guardian of the woman on whom an abortion was performed, induced, or attempted. A district attorney or the attorney general may bring an action to enjoin a person who performs, induces, or attempts an abortion in violation of the prohibitions in the bill, and the bill specifies penalties for each violation of an injunction. An allegation that a physician violates the prohibitions

SENATE BILL 173

in the bill is an allegation of unprofessional conduct that must be investigated by the Medical Examining Board.

Under current law, a woman upon whom an abortion is to be performed or induced must give voluntary and informed written consent to an abortion. Except in a medical emergency, a woman's consent to an abortion is considered informed only if, at least 24 hours before the abortion is performed or induced, the physician or an assistant has, in person, orally provided the woman with certain information and given to the woman certain written materials. If the pregnancy is the result of sexual assault or incest, the 24-hour period, but not the provision of information, may be waived or reduced under certain circumstances. In addition to the current requirement to inform the woman, orally and in writing, of certain information specified under current law, the bill requires the physician or assistant to inform the woman that Wisconsin does not allow an abortion of an unborn child solely because of the unborn child's race, color, national origin, ancestry, sex, or diagnosis or potential diagnosis of Down syndrome or another congenital disability.

Current law prohibits any person from performing or inducing an abortion if the probable postfertilization age of the unborn child is 20 or more weeks, unless the woman is undergoing a medical emergency. Current law also prohibits a person from performing an abortion after the unborn child reaches viability, unless the abortion is necessary to preserve the life or health of the woman.

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

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

2 253.10 (3) (c) 2. es. That this state does not allow an abortion of an unborn child
3 solely because of the unborn child's race, color, national origin, ancestry, sex, or
4 diagnosis or potential diagnosis of Down syndrome or another congenital disability.

5 **SECTION 2.** 253.103 of the statutes is created to read:

6 **253.103 Selective abortions. (1) DEFINITIONS.** In this section:

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

8 (b) "Congenital disability" means any congenital disease, defect, or disorder,
9 except a life-limiting fetal anomaly, including, but not limited to, any of the
10 following:

11 1. A physical disability.

SENATE BILL 173

1 2. A mental or intellectual disability.

2 3. A physical disfigurement.

3 4. Scoliosis.

4 5. Dwarfism.

5 6. Albinism.

6 7. Meromelia, amelia, or other birth defect marked by the absence or partial
7 absence of limbs.

8 8. A physical or mental disease.

9 (c) “Down syndrome” means a chromosomal disorder associated with an extra
10 chromosome 21 or an effective trisomy for chromosome 21.

11 (d) “Life-limiting fetal anomaly” means a profound and irremediable
12 congenital or chromosomal anomaly that is incompatible with sustaining life after
13 birth. “Life-limiting fetal anomaly” does not include any condition that can be
14 treated.

15 **(2) DISABILITY-SELECTIVE ABORTION PROHIBITED.** No person may perform or
16 induce or attempt to perform or induce an abortion upon a woman if the person knows
17 that the woman is seeking the abortion solely because the unborn child has been
18 diagnosed with or has a potential diagnosis of Down syndrome or another congenital
19 disability.

20 **(3) SELECTIVE ABORTION PROHIBITED.** No person may perform or induce or
21 attempt to perform or induce an abortion upon a woman if the person knows the
22 woman is seeking an abortion solely because of any of the following characteristics
23 of the unborn child:

24 (a) Race.

25 (b) Color.

SENATE BILL 173

1 (c) National origin.

2 (d) Ancestry.

3 (e) Sex.

4 **(4) WOMAN EXEMPT FROM PENALTY.** No penalty may be assessed against a woman
5 upon whom an abortion is performed or induced or attempted to be performed or
6 induced in violation of sub. (2) or (3).

7 **(5) CIVIL REMEDIES; INJUNCTION.** (a) Any of the following individuals may bring
8 a claim for damages, including damages for personal injury and emotional and
9 psychological distress, for a violation of sub. (2) or (3):

10 1. A woman on whom an abortion was performed or induced or attempted to
11 be performed or induced.

12 2. The father of the aborted unborn child or the unborn child that is attempted
13 to be aborted, unless the pregnancy is the result of sexual assault or incest.

14 3. If the woman on whom an abortion was performed or induced or attempted
15 to be performed or induced is a minor at the time of the abortion or attempt or dies
16 as a result of the abortion or attempt, a parent or guardian of the woman on whom
17 an abortion was performed or induced or attempted to be performed or induced.

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

21 (c) Notwithstanding s. 814.04 (1), a person who recovers damages under par.
22 (a) or (b) may also recover reasonable attorney fees incurred in connection with the
23 action.

SENATE BILL 173

1 (d) 1. A district attorney or the attorney general may institute an action for
2 injunctive relief against any person who performs or attempts to perform an abortion
3 in violation of sub. (2) or (3).

4 2. A violation of the terms of an injunction issued as a result of an action under
5 subd. 1. constitutes contempt of the order. The court, after a finding of contempt,
6 shall impose a forfeiture in an amount of \$10,000 for the first violation, \$50,000 for
7 a 2nd violation, and \$100,000 for each subsequent violation. The court may grant
8 any other relief it determines is just and proper in the circumstances. For purposes
9 of this subdivision, each abortion performed that violates the terms of the injunction
10 is considered a separate violation.

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

12 (f) Nothing in this subsection limits the common law rights of a person that are
13 not in conflict with sub. (2) or (3).

14 **(6) CONFIDENTIALITY IN COURT PROCEEDINGS.** (a) In every proceeding brought
15 under this section, the court, upon motion or sua sponte, shall rule whether the
16 identity of any woman upon whom an abortion was performed or induced or
17 attempted to be performed or induced shall be kept confidential unless the woman
18 waives confidentiality. If the court determines that a woman's identity should be
19 kept confidential, the court shall issue orders to the parties, witnesses, and counsel
20 and shall direct the sealing of the record and exclusion of individuals from
21 courtrooms or hearing rooms to the extent necessary to safeguard the woman's
22 identity from public disclosure. If the court issues an order to keep a woman's
23 identity confidential, the court shall provide written findings explaining why the
24 woman's identity should be kept confidential, why the order is essential to that end,

SENATE BILL 173**SECTION 2**

1 how the order is narrowly tailored to its purpose, and why no reasonable less
2 restrictive alternative exists.

3 (b) Any person, except for a public official, who brings an action under this
4 section shall do so under a pseudonym unless the person obtains the written consent
5 of the woman upon whom an abortion was performed or induced, or attempted to be
6 performed or induced, in violation of sub. (2) or (3).

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

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

12 **SECTION 3.** 448.02 (3) (a) of the statutes is amended to read:

13 448.02 (3) (a) The board shall investigate allegations of unprofessional conduct
14 and negligence in treatment by persons holding a license or certificate granted by the
15 board. An allegation that a physician has violated s. 253.10 (3), 253.103, 448.30 or
16 450.13 (2) or has failed to mail or present a medical certification required under s.
17 69.18 (2) within 21 days after the pronouncement of death of the person who is the
18 subject of the required certificate or that a physician has failed at least 6 times within
19 a 6-month period to mail or present a medical certificate required under s. 69.18 (2)
20 within 6 days after the pronouncement of death of the person who is the subject of
21 the required certificate is an allegation of unprofessional conduct. Information
22 contained in reports filed with the board under s. 49.45 (2) (a) 12r., 50.36 (3) (b),
23 609.17 or 632.715, or under 42 CFR 1001.2005, shall be investigated by the board.
24 Information contained in a report filed with the board under s. 655.045 (1), as created
25 by 1985 Wisconsin Act 29, which is not a finding of negligence or in a report filed with

SENATE BILL 173

1 the board under s. 50.36 (3) (c) may, within the discretion of the board, be used as the
2 basis of an investigation of a person named in the report. The board may require a
3 person holding a license or certificate to undergo and may consider the results of one
4 or more physical, mental or professional competency examinations if the board
5 believes that the results of any such examinations may be useful to the board in
6 conducting its investigation.

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(END)