



**SENATE SUBSTITUTE AMENDMENT 1,
TO 1995 ASSEMBLY BILL 441**

October 12, 1995 - Offered by Senators DRZEWIECKI, BUETTNER, ZIEN, WELCH,
BRESKE, FARROW and PETAK.

1 **AN ACT** *to amend* 48.375 (4) (a) 1. and 448.02 (3) (a); *to repeal and recreate*
2 46.245 and 253.10; and *to create* 69.186 (1) (j), 441.07 (1) (f) and 457.26 (2) (gm)
3 of the statutes; **relating to:** expanding requirements for a woman's informed
4 consent for performance or inducement of an abortion and for consent to a
5 minor's obtaining an abortion and providing a penalty.

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

6 **SECTION 1.** 46.245 of the statutes is repealed and recreated to read:

7 **46.245 Information for certain pregnant women.** A county department
8 under s. 46.215, 46.22 or 46.23 shall do all of the following:

9 **(1)** Upon request, distribute the materials described under s. 253.10 (3) (d), as
10 prepared and distributed by the department. The county department may charge
11 a fee not to exceed the actual cost of preparation and distribution of the materials.
12 A physician who intends to perform or induce an abortion or another qualified
13 physician, as defined in s. 253.10 (2) (g), who reasonably believes that he or she might
14 have a patient for whom the information under s. 253.10 (3) (d) is required to be

1 given, shall request a reasonably adequate number of the materials from the county
2 department under this subsection or from the department under s. 253.10 (3) (d). An
3 individual may request a reasonably adequate number of the materials.

4 **(2)** In any county in which a hospital, clinic or other facility in which abortions
5 are performed is located, prepare the list specified under s. 253.10 (3) (cm) and
6 distribute the list to each of those hospitals, clinics or other facilities.

7 **SECTION 2.** 48.375 (4) (a) 1. of the statutes is amended to read:

8 48.375 **(4)** (a) 1. The person or the person's agent has, either directly or through
9 a referring physician or his or her agent, received and made part of the minor's
10 medical record, under the requirements of s. 253.10, the voluntary and informed
11 written consent of the minor and the voluntary and informed written consent of one
12 of her parents; or of the minor's guardian or legal custodian, if one has been
13 appointed; or of an adult family member of the minor; or of one of the minor's foster
14 parents or treatment foster parents, if the minor has been placed in a foster home
15 or treatment foster home and the minor's parent has signed a waiver granting the
16 department, a county department, the foster parent or the treatment foster parent
17 the authority to consent to medical services or treatment on behalf of the minor.

18 **SECTION 3.** 69.186 (1) (j) of the statutes is created to read:

19 69.186 **(1)** (j) If the patient is a minor, whether consent was provided under s.
20 48.375 (4) (a) 1. for the abortion and, if so, the relationship of the individual providing
21 consent to the minor; or, if consent under s. 48.375 (4) (a) 1. was not provided, on
22 which of the bases under s. 48.375 (4) (a) 2. or (b) 1., 1g., 1m., 2. or 3. the abortion was
23 performed.

24 **SECTION 4.** 253.10 of the statutes is repealed and recreated to read:

1 **253.10 Voluntary and informed consent for abortions. (1) LEGISLATIVE**

2 FINDINGS AND INTENT. (a) The legislature finds that:

3 1. Many women now seek or are encouraged to undergo elective abortions
4 without full knowledge of the medical and psychological risks of abortion,
5 development of the unborn child or of alternatives to abortion. An abortion decision
6 is often made under stressful circumstances.

7 2. The knowledgeable exercise of a woman's decision to have an elective
8 abortion depends on the extent to which the woman receives sufficient information
9 to make a voluntary and informed choice between 2 alternatives of great
10 consequence: carrying a child to birth or undergoing an abortion.

11 3. The U.S. supreme court has stated: "In attempting to ensure that a woman
12 apprehend the full consequences of her decision, the State furthers the legitimate
13 purpose of reducing the risk that a woman may elect an abortion, only to discover
14 later, with devastating psychological consequences, that her decision was not fully
15 informed." *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 112 U.S.
16 2791, 2823 (1992).

17 4. It is essential to the psychological and physical well-being of a woman
18 considering an elective abortion that she receive complete and accurate information
19 on all options available to her in dealing with her pregnancy.

20 5. The vast majority of elective abortions in this state are performed in clinics
21 that are devoted solely to providing abortions and family planning services. Women
22 who seek elective abortions at these facilities normally do not have a prior
23 patient-physician relationship with the physician who is to perform or induce the
24 abortion, normally do not return to the facility for post-operative care and normally
25 do not continue a patient-physician relationship with the physician who performed

1 or induced the abortion. In most instances, the woman's only actual contact with the
2 physician occurs simultaneously with the abortion procedure, with little opportunity
3 to receive personal counseling by the physician concerning her decision. Because of
4 this, certain safeguards are necessary to protect a woman's right to know.

5 6. A reasonable waiting period is critical to ensure that a woman has the fullest
6 opportunity to give her voluntary and informed consent before she elects to undergo
7 an abortion.

8 (b) It is the intent of the legislature in enacting this section to further the
9 important and compelling state interests in all of the following:

10 1. Protecting the life and health of the woman subject to an elective abortion
11 and, to the extent constitutionally permissible, the life of her unborn child.

12 2. Fostering the development of standards of professional conduct in the
13 practice of abortion.

14 3. Ensuring that prior to the performance or inducement of an elective abortion,
15 the woman considering an elective abortion receive personal counseling by the
16 physician and be given a full range of information regarding her pregnancy, her
17 unborn child, the abortion, the medical and psychological risks of abortion and
18 available alternatives to the abortion.

19 4. Ensuring that a woman who decides to have an elective abortion gives her
20 voluntary and informed consent to the abortion procedure.

21 **(2) DEFINITIONS.** In this section:

22 (a) "Abortion" means the use of an instrument, medicine, drug or other
23 substance or device with intent to terminate the pregnancy of a woman known to be
24 pregnant or for whom there is reason to believe that she may be pregnant and with

1 intent other than to increase the probability of a live birth, to preserve the life or
2 health of the infant after live birth or to remove a dead fetus.

3 (b) "Agency" means a private nonprofit organization or a county department
4 under s. 46.215, 46.22 or 46.23.

5 (c) "Disability" means a physical or mental impairment that substantially
6 limits one or more major life activities, a record of having such an impairment or
7 being regarded as having such an impairment. "Disability" includes any physical
8 disability or developmental disability, as defined in s. 51.01 (5) (a).

9 (d) "Medical emergency" means a condition, in a physician's reasonable medical
10 judgment, that so complicates the medical condition of a pregnant woman as to
11 necessitate the immediate abortion of her pregnancy to avert her death or for which
12 a 24-hour delay in performance or inducement of an abortion will create serious risk
13 of substantial and irreversible impairment of one or more of the woman's major
14 bodily functions.

15 (e) "Probable gestational age of the unborn child" means the number of weeks
16 that have elapsed from the probable time of fertilization of a woman's ovum, based
17 on the information provided by the woman as to the time of her last menstrual period,
18 her medical history, a physical examination performed by the physician who is to
19 perform or induce the abortion or by any other qualified physician and any
20 appropriate laboratory tests performed on her.

21 (f) "Qualified person assisting the physician" means a social worker certified
22 under ch. 457, a registered nurse or a physician assistant to whom a physician who
23 is to perform or induce an abortion has delegated the responsibility, as the
24 physician's agent, for providing the information required under sub. (3) (c) 2.

1 (g) "Qualified physician" means a physician who by training or experience is
2 qualified to provide the information required under sub. (3) (c) 1.

3 (h) "Viability" has the meaning given in s. 940.15 (1).

4 **(3) VOLUNTARY AND INFORMED CONSENT.** (a) *Generally.* An abortion may not be
5 performed or induced unless the woman upon whom the abortion is to be performed
6 or induced has and, if the woman is a minor and s. 48.375 (4) (a) 2. does not apply,
7 the individual who also gives consent under s. 48.375 (4) (a) 1. have given voluntary
8 and informed written consent under the requirements of this section.

9 (b) *Voluntary consent.* Consent under this section to an abortion is voluntary
10 only if the consent is given freely and without coercion by any person.

11 (c) *Informed consent.* Except if a medical emergency exists, a woman's consent
12 to an abortion is informed only if all of the following first take place:

13 1. At least 24 hours before the abortion is to be performed or induced, the
14 physician who is to perform or induce the abortion or any other qualified physician
15 has, in person, orally informed the woman of all of the following:

16 a. Whether or not, according to the reasonable medical judgment of the
17 physician, the woman is pregnant.

18 b. The probable gestational age of the unborn child at the time that the
19 information is provided. The physician or other qualified physician shall also
20 provide this information to the woman in writing at this time.

21 c. The particular medical risks, if any, associated with the woman's pregnancy.

22 d. The probable anatomical and physiological characteristics of the woman's
23 unborn child at the time the information is given.

24 e. The details of the medical or surgical method that would be used in
25 performing or inducing the abortion.

1 f. The medical risks associated with the particular abortion procedure that
2 would be used, including the risks of infection, psychological trauma, hemorrhage,
3 endometritis, perforated uterus, incomplete abortion, failed abortion, danger to
4 subsequent pregnancies and infertility.

5 g. That fetal ultrasound imaging and auscultation of fetal heart tone services
6 are available that enable a pregnant woman to view the image or hear the heartbeat
7 of her unborn child. In so informing the woman and describing these services, the
8 physician shall advise the woman as to how she may obtain these services if she
9 desires to do so.

10 h. The recommended general medical instructions for the woman to follow after
11 an abortion to enhance her safe recovery and the name and telephone number of a
12 physician to call if complications arise after the abortion.

13 i. If, in the reasonable medical judgment of the physician, the woman's unborn
14 child has reached viability, that the physician who is to perform or induce the
15 abortion is required to take all steps necessary under s. 940.15 to preserve and
16 maintain the life and health of the child.

17 j. Any other information that a reasonable patient would consider material and
18 relevant to a decision of whether or not to carry a child to birth or to undergo an
19 abortion.

20 k. That the woman may withdraw her consent to have an abortion at any time
21 before the abortion is performed or induced.

22 L. That the woman is not required to pay any amount for performance or
23 inducement of the abortion until at least 24 hours have elapsed after the
24 requirements of this paragraph are met.

1 2. At least 24 hours before the abortion is to be performed or induced, the
2 physician who is to perform or induce the abortion, a qualified person assisting the
3 physician or another qualified physician has, in person, orally informed the woman
4 of all of the following:

5 a. That benefits under the medical assistance program may be available for
6 prenatal care, childbirth and neonatal care.

7 b. That the father of the unborn child is liable for assistance in the support of
8 the woman's child, if born, even if the father has offered to pay for the abortion.

9 c. That the woman has a legal right to continue her pregnancy and to keep the
10 child; to place the child in a foster home or treatment foster home for 6 months or to
11 petition a court for placement of the child in a foster home, treatment foster home
12 or group home or with a relative; or to place the child for adoption under a process
13 that involves court approval both of the voluntary termination of parental rights and
14 of the adoption.

15 d. That the woman has the right to receive and review the printed materials
16 described in par. (d). The physician or qualified person assisting the physician shall
17 physically give the materials to the woman and shall, in person, orally inform her
18 that the materials are free of charge, have been provided by the state and describe
19 the unborn child and list agencies that offer alternatives to abortion and shall
20 provide her with the current updated copies of the printed materials free of charge.

21 e. If the woman has received a diagnosis of disability for her unborn child, that
22 the printed materials described in par. (d) contain information on community-based
23 services and financial assistance programs for children with disabilities and their
24 families, information on support groups for people with disabilities and parents of
25 children with disabilities and information on adoption of children with special needs.

1 f. If the woman asserts that her pregnancy is the result of sexual assault or
2 incest, that the printed materials described in par. (d) contain information on
3 counseling services and support groups for victims of sexual assault and incest and
4 legal protections available to the woman and her child if she wishes to oppose
5 establishment of paternity or to terminate the father's parental rights.

6 g. The availability of public and private agencies and services to provide the
7 woman with birth control information, including natural family planning
8 information.

9 3. The information that is required under subsds. 1. and 2. is provided to the
10 woman in an individual setting that protects her privacy, maintains the
11 confidentiality of her decision and ensures that the information she receives focuses
12 on her individual circumstances. This subdivision may not be construed to prevent
13 the woman from having a family member, or any other person of her choice, present
14 during her private counseling.

15 4. Whoever provides the information that is required under subd. 1. or 2., or
16 both, provides adequate opportunity for the woman to ask questions, including
17 questions concerning the pregnancy, her unborn child, abortion, foster care and
18 adoption, and provides the information that is requested or indicates to the woman
19 where she can obtain the information.

20 5. The woman certifies in writing on a form that the department shall provide,
21 prior to performance or inducement of the abortion, that the information that is
22 required under subsds. 1. and 2. has been provided to her in the manner specified in
23 subd. 3., that she has been offered the information described in par. (d) and that all
24 of her questions, as specified under subd. 4., have been answered in a satisfactory
25 manner. The physician who is to perform or induce the abortion or the qualified

1 person assisting the physician shall write on the certification form the name of the
2 physician who is to perform or induce the abortion. The woman shall indicate on the
3 certification form who provided the information to her and when it was provided.

4 6. Prior to the performance or the inducement of the abortion, the physician
5 who is to perform or induce the abortion or the qualified person assisting the
6 physician receives the written certification that is required under subd. 5. The
7 physician or qualified person assisting the physician shall place the certification in
8 the woman's medical record and shall provide the woman with a copy of the
9 certification.

10 7. If the woman considering an abortion is a minor, unless s. 48.375 (4) (a) 2.
11 applies, the requirements to provide information to the woman under subds. 1. to 6.
12 apply to also require provision of the information to the individual whose consent is
13 also required under s. 48.375 (4) (a) 1. If the woman considering an abortion has been
14 adjudicated incompetent under ch. 880, the requirements to provide information to
15 the woman under subds. 1. to 6. apply to also require provision of the information to
16 the person appointed as the woman's guardian.

17 (cm) *List upon request.* Upon request of the woman receiving information
18 under par. (c), the physician who is to perform or induce the abortion, a qualified
19 person assisting the physician or another qualified physician shall provide the
20 woman with the list distributed under s. 46.245 (2) by a county department. The list
21 shall specify public and private agencies and services that are available to provide
22 the woman with birth control information, including natural family planning
23 information.

24 (d) *Printed information.* By the date that is 60 days after the effective date of
25 this paragraph [revisor inserts date], the department shall cause to be published

1 in English, Spanish, and other languages spoken by a significant number of state
2 residents, as determined by the department, materials that are in an easily
3 comprehensible format and are printed in type of not less than 12-point size. The
4 department shall distribute a reasonably adequate number of the materials to
5 county departments as specified under s. 46.245 (1) and upon request, annually
6 review the materials for accuracy and exercise reasonable diligence in providing
7 materials that are accurate and current. The department may charge a fee not to
8 exceed the actual cost of the preparation and distribution of the materials. The
9 materials shall be all of the following:

10 1. Geographically indexed materials that are designed to inform a woman
11 about public and private agencies, including adoption agencies, and services that are
12 available to provide ultrasound imaging services, to assist her if she has received a
13 diagnosis that her unborn child has a disability or if her pregnancy is the result of
14 sexual assault or incest and to assist her through pregnancy, upon childbirth and
15 while the child is dependent. The materials shall include a comprehensive list of the
16 agencies available, a description of the services that they offer and a description of
17 the manner in which they may be contacted, including telephone numbers and
18 addresses, or, at the option of the department, the materials shall include a toll-free,
19 24-hour telephone number that may be called to obtain an oral listing of available
20 agencies and services in the locality of the caller and a description of the services that
21 the agencies offer and the manner in which they may be contacted. The materials
22 shall provide information on the availability of governmentally funded programs
23 that serve pregnant women and children. Services identified for the woman shall
24 include aid to families with dependent children under s. 49.19, medical assistance
25 for pregnant women and children under s. 49.47 (4) (am), the job opportunities and

1 basic skills program under s. 49.193, the availability of family or medical leave under
2 s. 103.10, child care services, child support laws and programs and the credit for
3 expenses for household and dependent care and services necessary for gainful
4 employment under section 21 of the internal revenue code. The materials shall state
5 that it is unlawful to perform an abortion for which consent has been coerced, that
6 any physician who performs or induces an abortion without obtaining the woman's
7 voluntary and informed consent is liable to her for damages in a civil action and is
8 subject to a civil penalty, that the father of a child is liable for assistance in the
9 support of the child, even in instances in which the father has offered to pay for an
10 abortion, and that adoptive parents may pay the costs of prenatal care, childbirth
11 and neonatal care. The materials shall include information, for a woman whose
12 pregnancy is the result of sexual assault or incest, on legal protections available to
13 the woman and her child if she wishes to oppose establishment of paternity or to
14 terminate the father's parental rights. The materials shall state that fetal
15 ultrasound imaging and auscultation of fetal heart tone services are obtainable by
16 pregnant women who wish to use them and shall describe the services.

17 2. Materials, including photographs, pictures or drawings, that are designed
18 to inform the woman of the probable anatomical and physiological characteristics of
19 the unborn child at 2-week gestational increments for the first 16 weeks of her
20 pregnancy and at 4-week gestational increments from the 17th week of the
21 pregnancy to full term, including any relevant information regarding the time at
22 which the unborn child could possibly be viable. The pictures or drawings must
23 contain the dimensions of the unborn child and must be realistic and appropriate for
24 the stage of pregnancy depicted. The materials shall be objective, nonjudgmental
25 and designed to convey only accurate scientific information about the unborn child

1 at the various gestational ages, including appearance, mobility, brain and heart
2 activity and function, tactile sensitivity and the presence of internal organs and
3 external members. The materials shall also contain objective, accurate information
4 describing the methods of abortion procedures commonly employed, the medical and
5 psychological risks commonly associated with each such procedure, including the
6 risks of infection, psychological trauma, hemorrhage, endometritis, perforated
7 uterus, incomplete abortion, failed abortion, danger to subsequent pregnancies and
8 infertility, and the medical risks commonly associated with carrying a child to birth.

9 3. A certification form for use under par. (c) 5. that lists, in a check-off format,
10 all of the information required to be provided under that subdivision.

11 (e) *Requirement to obtain materials.* A physician who intends to perform or
12 induce an abortion or another qualified physician, who reasonably believes that he
13 or she might have a patient for whom the information under par. (d) is required to
14 be given, shall request a reasonably adequate number of the materials that are
15 described under par. (d) from the department under par. (d) or from a county
16 department as specified under s. 46.245 (1).

17 (f) *Medical emergency.* If a medical emergency exists, the physician who is to
18 perform or induce the abortion necessitated by the medical emergency shall inform
19 the woman, prior to the abortion if possible, of the medical indications supporting the
20 physician's reasonable medical judgment that an immediate abortion is necessary
21 to avert her death or that a 24-hour delay in performance or inducement of an
22 abortion will create a serious risk of substantial and irreversible impairment of one
23 or more of the woman's major bodily functions. If possible, the physician shall obtain
24 the woman's written consent prior to the abortion. The physician shall certify these

1 medical indications in writing and place the certification in the woman's medical
2 record.

3 (g) *Presumptions.* Satisfaction of the conditions required under par. (c) creates
4 a rebuttable presumption that the woman's consent and, if the woman is a minor and
5 if s. 48.375 (4) (a) 2. does not apply, the consent of the individual who also gives
6 consent under s. 48.375 (4) (a) 1. to an abortion is informed. The presumption of
7 informed consent may be overcome by a preponderance of evidence that establishes
8 that the consent was obtained through fraud, negligence, deception,
9 misrepresentation or omission of a material fact. There is no presumption that
10 consent to an abortion is voluntary.

11 (4) **HOTLINE.** The department may maintain a toll-free telephone number that
12 is available 24 hours each day, to provide the materials specified in sub. (3) (d) 1.

13 (5) **PENALTY.** Any person who violates sub. (3) shall be required to forfeit not
14 less than \$5,000 nor more than \$10,000.

15 (6) **CIVIL REMEDIES.** (a) A person who violates sub. (3) is liable to the woman
16 on or for whom the abortion was performed or induced for damages arising out of the
17 performance or inducement of the abortion, including damages for personal injury
18 and emotional and psychological distress.

19 (b) A person who has been awarded damages under par. (a) shall, in addition
20 to any damages awarded under par. (a), be entitled to not less than \$5,000 nor more
21 than \$10,000 in punitive damages for a violation that satisfies a standard under s.
22 895.85 (3).

23 (c) A conviction under sub. (5) is not a condition precedent to bringing an action,
24 obtaining a judgment or collecting the judgment under this subsection.

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

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

5 (f) Nothing in this subsection limits the common law rights of a person that are
6 not in conflict with sub. (3).

7 **(7) AFFIRMATIVE DEFENSE.** No person is liable under sub. (5) or (6) or under s.
8 441.07 (1) (f) or 457.26 (2) (gm) for failure under sub. (3) (c) 2. d. to provide the printed
9 materials described in sub. (3) (d) to a woman or for failure under sub. (3) (c) 2. d.,
10 e. or f. to describe the contents of the printed materials if the person has made a
11 reasonably diligent effort to obtain the printed materials under sub. (3) (e) and s.
12 46.245 (1) and the department and the county department under s. 46.215, 46.22 or
13 46.23 have not made the printed materials available at the time that the person is
14 required to give them to the woman.

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

18 **SECTION 5.** 441.07 (1) (f) of the statutes is created to read:

19 441.07 **(1)** (f) A violation of the requirements of s. 253.10 (3) (c) 2., 3., 4., 5., 6.
20 or 7.

21 **SECTION 6.** 448.02 (3) (a) of the statutes is amended to read:

22 448.02 **(3)** (a) The board shall investigate allegations of unprofessional conduct
23 and negligence in treatment by persons holding a license, certificate or limited
24 permit granted by the board. An allegation that a physician has violated s. 253.10
25 (3), 448.30 or 450.13 (2) or has failed to mail or present a medical certification

1 required under s. 69.18 (2) within 21 days after the pronouncement of death of the
2 person who is the subject of the required certificate or that a physician has failed at
3 least 6 times within a 6-month period to mail or present a medical certificate
4 required under s. 69.18 (2) within 6 days after the pronouncement of death of the
5 person who is the subject of the required certificate is an allegation of unprofessional
6 conduct. Information contained in reports filed with the board under s. 49.45 (2) (a)
7 12r., 50.36 (3) (b), 609.17 or 632.715 or under 42 CFR 1001.109 (e) and 42 CFR
8 1001.124 (a) (3) and (b) shall be investigated by the board. Information contained
9 in a report filed with the board under s. 655.045 (1), as created by 1985 Wisconsin
10 Act 29, which is not a finding of negligence or in a report filed with the board under
11 s. 50.36 (3) (c) may, within the discretion of the board, be used as the basis of an
12 investigation of the persons named in the reports. The board may require a person
13 holding a license, certificate or limited permit to undergo and may consider the
14 results of one or more physical, mental or professional competency examinations if
15 the board believes that the results of any such examinations may be useful to the
16 board in conducting its investigation.

17 **SECTION 7.** 457.26 (2) (gm) of the statutes is created to read:

18 457.26 (2) (gm) Violated the requirements of s. 253.10 (3) (c) 2., 3., 4., 5., 6. or
19 7.

20 (END)