



State of Wisconsin
2021 - 2022 LEGISLATURE

LRBa0735/1
TJD:emw

**SENATE AMENDMENT 2,
TO SENATE BILL 259**

August 3, 2021 - Offered by Senator JACQUE.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 9: after “board,” insert “prohibiting certain selective abortions,”.

3 **2.** Page 4, line 20: after that line insert:

4 **“SECTION 11g.** 253.10 (3) (c) 2. es. of the statutes is created to read:

5 253.10 (3) (c) 2. es. That this state does not allow an abortion of an unborn child
6 solely because of the unborn child’s race, color, national origin, ancestry, sex, or
7 diagnosis or potential diagnosis of Down syndrome or another congenital disability.

8 **SECTION 11m.** 253.103 of the statutes is created to read:

9 **253.103 Selective abortions.** (1) DEFINITIONS. In this section:

10 (a) “Abortion” has the meaning given in s. 253.10 (2) (a).

11 (b) “Congenital disability” means any congenital disease, defect, or disorder,
12 except a life-limiting fetal anomaly, including, but not limited to, any of the
13 following:

- 1 1. A physical disability.
- 2 2. A mental or intellectual disability.
- 3 3. A physical disfigurement.
- 4 4. Scoliosis.
- 5 5. Dwarfism.
- 6 6. Albinism.
- 7 7. Meromelia, amelia, or other birth defect marked by the absence or partial
- 8 absence of limbs.
- 9 8. A physical or mental disease.

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

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

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

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

- 25 (a) Race.

1 (b) Color.

2 (c) National origin.

3 (d) Ancestry.

4 (e) Sex.

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

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

11 1. A woman on whom an abortion is performed or induced or attempted to be
12 performed or induced.

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

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

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 punitive damages for a
21 violation that satisfies a standard under s. 895.043 (3).

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

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,

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 subsection may not be construed to allow the identity of a plaintiff or
8 a 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 **3.** Page 5, line 3: after that line insert:

13 “**SECTION 14m.** 448.02 (3) (a) of the statutes is amended to read:

14 448.02 **(3)** (a) The board shall investigate allegations of unprofessional conduct
15 and negligence in treatment by persons holding a license or certificate granted by the
16 board. An allegation that a physician has violated s. 253.10 (3), 253.103, 448.30 or
17 450.13 (2) or has failed to mail or present a medical certification required under s.
18 69.18 (2) within 21 days after the pronouncement of death of the person who is the
19 subject of the required certificate or that a physician has failed at least 6 times within
20 a 6-month period to mail or present a medical certificate required under s. 69.18 (2)
21 within 6 days after the pronouncement of death of the person who is the subject of
22 the required certificate is an allegation of unprofessional conduct. Information
23 contained in reports filed with the board under s. 49.45 (2) (a) 12r., 50.36 (3) (b),
24 609.17 or 632.715, or under 42 CFR 1001.2005, shall be investigated by the board.

1 Information contained in a report filed with the board under s. 655.045 (1), as created
2 by 1985 Wisconsin Act 29, which is not a finding of negligence or in a report filed with
3 the board under s. 50.36 (3) (c) may, within the discretion of the board, be used as the
4 basis of an investigation of a person named in the report. The board may require a
5 person holding a license or certificate to undergo and may consider the results of one
6 or more physical, mental or professional competency examinations if the board
7 believes that the results of any such examinations may be useful to the board in
8 conducting its investigation.”.

9 **4.** Page 16, line 6: after that line insert:

10 “(2m) The treatment of ss. 253.10 (3) (c) 2. es., 253.103, and 448.02 (3) (a) takes
11 effect on the day after publication.”.

12 (END)