

State of Wisconsin



2019 Assembly Bill 182

Date of enactment:
Date of publication*:

2019 WISCONSIN ACT

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

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

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

253.10 (3) (c) 2. es. That this state 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.

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

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

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

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

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

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

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

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

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

- (a) Race.
- (b) Color.
- (c) National origin.
- (d) Ancestry.
- (e) Sex.

(4) WOMAN EXEMPT FROM PENALTY. No penalty may be assessed against a woman upon whom an abortion is

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

performed or induced or attempted to be performed or induced in violation of sub. (2) or (3).

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

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

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

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

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

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

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

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

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

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

(6) CONFIDENTIALITY IN COURT PROCEEDINGS. (a) In every proceeding brought under this section, the court, upon motion or sua sponte, shall rule whether the identity of any woman upon whom an abortion was performed or induced or attempted to be performed or induced shall be kept confidential unless the woman waives confidentiality. If the court determines that a woman's identity should be kept confidential, the court shall issue orders

to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. If the court issues an order to keep a woman's identity confidential, the court shall provide written findings explaining why the woman's identity should be kept confidential, why the order is essential to that end, how the order is narrowly tailored to its purpose, and why no reasonable less restrictive alternative exists.

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

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

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

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

448.02 (3) (a) The board shall investigate allegations of unprofessional conduct and negligence in treatment by persons holding a license or certificate granted by the board. An allegation that a physician has violated s. 253.10 (3), ~~253.103~~, 448.30 or 450.13 (2) or has failed to mail or present a medical certification required under s. 69.18 (2) within 21 days after the pronouncement of death of the person who is the subject of the required certificate or that a physician has failed at least 6 times within a 6-month period to mail or present a medical certification required under s. 69.18 (2) within 6 days after the pronouncement of death of the person who is the subject of the required certificate is an allegation of unprofessional conduct. Information contained in reports filed with the board under s. 49.45 (2) (a) 12r., 50.36 (3) (b), 609.17 or 632.715, or under 42 CFR 1001.2005, shall be investigated by the board. Information contained in a report filed with the board under s. 655.045 (1), as created by 1985 Wisconsin Act 29, which is not a finding of negligence or in a report filed with the board under s. 50.36 (3) (c) may, within the discretion of the board, be used as the basis of an investigation of a person named in the report. The board may require a person holding a license or certificate to undergo and may consider the results of one or more physical, mental or professional competency examinations if the board believes that the results of any such examinations may be useful to the board in conducting its investigation.