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ABORTION LAWS IN WISCONSIN

Prohibition of Abortions Generally. Wisconsin treated the performance of an abortion as a crime from statehood until 1973, when Section 940.04, Wisconsin Statutes, was made unenforceable under two 1973 decisions by the U.S. Supreme Court – *Roe v. Wade* (410 U.S. 113) and *Doe v. Bolton* (410 U.S. 179) – which legalized certain abortions. In *Roe v. Wade*, the Court stated that an implied right to privacy under the Fourteenth Amendment to the U.S. Constitution encompasses a woman’s decision to terminate her pregnancy. The Court ruled that: 1) in the first trimester of pregnancy, the decision is left to the judgment of the pregnant woman and her physician; 2) in the second trimester, the state may regulate abortion in ways reasonably related to maternal health; and 3) subsequent to viability of the fetus, states may prohibit abortion except when necessary to preserve the mother’s life or health. (Although s. 940.04, previously mentioned, is unenforceable, it has not been repealed.)

Since 1985, under Section 940.15, Wisconsin has prohibited intentional performance of an abortion after the fetus or unborn child has reached viability, unless it is necessary to preserve the mother’s life or health, as determined by her physician. (“Viability” is the stage of fetal development when, in the judgment of the attending physician, the fetus may sustain survival outside the womb, with or without artificial support.) Section 940.13, also enacted in 1985, prohibits prosecuting, imposing a fine on, or imprisoning a mother with respect to any abortion law.

Informed Consent and Waiting Period. In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), the U.S. Supreme Court upheld as constitutional Pennsylvania’s laws requiring informed consent and a 24-hour waiting period before an abortion. The Court affirmed that a woman has a fundamental right to an abortion prior to viability, but it held that states may impose restrictions that do not place an “undue burden” on the exercise of that right. Section 253.10 (1995 Wisconsin Act 309) prohibits performance of an abortion unless the woman has given voluntary and informed written consent. It requires that, except in certain cases of sexual assault, incest, or medical emergency, a physician must give the individual seeking an abortion specific oral information at least 24 hours before the abortion is performed, including the probable gestational age and the probable anatomical and physical characteristics of the unborn child; details of the medical or surgical procedure to be used and the risks associated with it; the availability of ultrasound images of the unborn child or the opportunity to listen to its heart-beat; and the fact that the woman may change her mind at any time before the abortion. The woman must be told, among other things, that: 1) Medical Assistance funds may be available to pay for prenatal care, childbirth, and neonatal care and 2) the father of the child is liable for its financial support after birth. Upon request, a physician or qualified person assisting the physician must provide additional printed information. Act 309 survived a challenge in U.S. District Court for the Western District of Wisconsin on June 16, 1997, but the decision has been appealed.

Funding Prohibitions. Sections 20.927, 59.53 (13) and 66.04 (1m) prohibit the state or local governments from using public funds to pay for abortions, unless the abortion is medically necessary to prevent grave, long-lasting physical health damage to the woman or to save her

life or if the case involves sexual assault or incest. These laws do not apply to contraception, defined as “the prescription of a drug or insertion of a device to prevent implantation of a fertilized ovum.” The U.S. Supreme Court has upheld laws similar to these, in *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989). In addition, since 1976, Congress has prohibited the use of federal Medical Assistance funds to reimburse the cost of abortions, except in the case of rape, incest, or endangerment to the life of the mother.

Section 20.9275 (1997 Wisconsin Act 27) also prohibits specified state and local funding for pregnancy programs, projects or services that: provide abortion services; promote, encourage or counsel in favor of abortion services; or make abortion referrals when not directly and medically necessary to save the life of the mother.

Parental Consent Required for Minors. Section 48.375 (1991 Wisconsin Act 263) prohibits any person from performing an abortion on a minor without consent of the minor’s parent, legal guardian, legal custodian, or an adult family member (grandparent, aunt, uncle, brother or sister) who is at least 25 years of age. A court may waive the consent requirement after finding that the minor is mature and well-informed enough to make the abortion decision on her own or that the performance of the abortion is in the minor’s best interests. Consent or judicial waiver are not required when: a medical emergency exists that complicates the pregnancy; a psychiatrist or psychologist believes the minor is likely to commit suicide rather than seek consent or judicial waiver; the pregnancy is the result of forced sexual assault or intercourse with a caregiver, such as a parent or a guardian; the minor has been abused by the person who must consent to the abortion; or the minor is emancipated.

“Partial-Birth” Abortions Prohibited. Section 940.16 (1997 Wisconsin Act 219) bans the “partial-birth” abortion, a procedure typically performed late in a pregnancy, unless the woman’s life is endangered. A person who performs this type of abortion may be found guilty of a Class A felony punishable by life imprisonment. In addition, unless the pregnancy was the result of a sexual assault or incest, the father of the unborn child or the parent of a pregnant minor may sue for monetary damages if they did not consent to the abortion, even though the mother of the unborn child did (Section 895.038). The ban is currently under review in the federal courts to determine its constitutionality. On May 28, 1999, U.S. District Judge John Shabaz ruled that the ban is constitutional. His decision has been appealed to the U.S. 7th Circuit Court of Appeals. The state has agreed to stay enforcement of the ban while the appeal is pending.

Hospitals and Medical Staff Not Required to Perform Abortions. Section 253.09 (Chapter 159, Laws of 1973) states that hospitals may not be required to perform abortions and they are not liable for civil damages or discrimination complaints for refusal to do so. Physicians and other medical providers who work in a hospital in which abortions are authorized may not be required to participate in abortion procedures if they have stated in writing their objection to the procedure on moral or religious grounds. Medical staff may not be subjected to employment discrimination on the basis of their beliefs regarding abortion.

Criminal Trespass to Abortion Facilities. Section 943.145 (1985 Wisconsin Act 56) makes it a Class B misdemeanor, subject to a fine not to exceed \$1,000 or imprisonment not to exceed 90 days or both, to enter a medical facility without consent under circumstances tending to create or provoke a breach of the peace.

Abortion Reporting. Section 69.186 requires medical facilities to report all induced abortions to the Department of Health and Family Services. According to the department’s Center for Health Statistics, 11,681 abortions were performed in Wisconsin in 1998.