



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-0381/1
SWB:cjs

2023 SENATE BILL 298

May 18, 2023 - Introduced by Senators ROYS, AGARD, CARPENTER, HESSELBEIN, L. JOHNSON, LARSON, PFAFF, SMITH, SPREITZER, TAYLOR and WIRCH, cosponsored by Representatives SUBECK, EMERSON, C. ANDERSON, J. ANDERSON, ANDRACA, BALDEH, BARE, BILLINGS, CABRERA, CLANCY, CONLEY, CONSIDINE, DOYLE, DRAKE, GOYKE, HAYWOOD, HONG, JACOBSON, JOERS, MADISON, MCGUIRE, MOORE OMOKUNDE, MYERS, NEUBAUER, OHNSTAD, ORTIZ-VELEZ, PALMERI, RATCLIFF, RIEMER, SHANKLAND, SHELTON, SINICKI, SNODGRASS, STUBBS and VINING. Referred to Committee on Licensing, Constitution and Federalism.

AUTHORS SUBJECT TO CHANGE

- 1 **AN ACT** *to repeal* 940.04; and *to amend* 939.75 (2) (b) 1. and 968.26 (1b) (a) 2.
2 a. of the statutes; **relating to:** eliminating certain abortion prohibitions.

Analysis by the Legislative Reference Bureau

This bill repeals a statute that provides that any person, other than the mother, who intentionally destroys the life of an unborn child is guilty of a Class H felony. "Unborn child" is defined in the statute as a human being from the time of conception until born alive. The statute also provides that any person, other than the mother, who intentionally destroys the life of an unborn quick child or causes the mother's death by an act done with intent to destroy the life of an unborn child is guilty of a Class E felony. None of these penalties apply to a therapeutic abortion that is performed by a physician; is necessary, or advised by two other physicians as necessary, to save the life of the mother; and, unless an emergency prevents, is performed in a licensed maternity hospital.

This statute was previously held to be unenforceable. It was cited in *Roe v. Wade*, 410 U.S. 113 (1973), as similar to a Texas statute that was held to violate the due process clause of the 14th Amendment of the U.S. Constitution. The unenforceability of the statute following the *Roe v. Wade* decision was noted in a subsequent decision by a federal district court, *Larkin v. McCann*, 368 F. Supp. 1352 (E.D. Wis. 1974). In June 2022, the United States Supreme Court overturned the *Roe v. Wade* decision in *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

