

2005 ASSEMBLY BILL 795

October 31, 2005 – Introduced by Representatives BERCEAU, SINICKI, POCAN, GRIGSBY, BENEDICT, POPE-ROBERTS, BLACK, RICHARDS, BOYLE, PARISI, SHERIDAN, SEIDEL and TRAVIS, cosponsored by Senators TAYLOR, ROBSON, MILLER, RISSER and ERPENBACH. Referred to Committee on Health.

1 **AN ACT** *to repeal* 118.019 (2m); *to renumber* 50.38 (1); *to amend* 50.38 (2) and
2 118.019 (3); *to repeal and recreate* 118.019 (2); and *to create* 50.375, 50.38
3 (1) (b), 118.019 (6) and 450.09 (2m) of the statutes; **relating to:** school district
4 human growth and development programs; requiring a hospital to provide to
5 a sexual assault victim, with consent, information and emergency
6 contraception; requiring a pharmacist to dispense contraception; providing
7 notice of abstinence only education; and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Health and Family Services (DHFS) issues certificates of approval to hospitals that meet DHFS requirements and otherwise regulates approved hospitals.

This bill requires a hospital to do all of the following if it provides emergency services to a victim, as defined in the bill, of sexual assault and has obtained the victim's consent: 1) provide her with medically and factually accurate and unbiased written and oral information about emergency contraception and its use and efficacy; 2) orally inform her of her option to receive emergency contraception; and 3) provide emergency contraception to her immediately if she requests it. "Emergency contraception" is defined in the bill to be a drug, medicine, oral hormonal compound, mixture, preparation, instrument, article, or device that is approved by the federal

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Food and Drug Administration (FDA) and that prevents a pregnancy after sexual intercourse. The definition of “emergency contraception” specifically excludes a drug, medicine, oral hormonal compound, mixture, preparation, instrument, article, or device of any nature that is prescribed to terminate the pregnancy of a woman. No hospital must provide emergency contraception to a victim who is pregnant, as indicated by a test for pregnancy.

The bill also requires a hospital that provides emergency care to ensure that each hospital employee who provides care to a victim of sexual assault has available medically and factually accurate and unbiased information about emergency contraception. DHFS must respond to complaints about violations of these requirements and must periodically review procedures of hospitals to determine whether they are in compliance. Violators of the requirements are subject to forfeitures.

Under current law a school board may provide an instructional program in human growth and development in grades kindergarten to 12 that may include instruction in the following areas: 1) self-esteem, responsible decision making, and personal responsibility; 2) interpersonal relationships; 3) discouragement of adolescent sexual activity; 4) family life and skills required of a parent; and 5) human sexuality, reproduction, family planning, human immunodeficiency virus and acquired immunodeficiency syndrome, prenatal development, childbirth, adoption, available prenatal and postnatal support, and male and female responsibility. If a school board offers instruction in any of these areas, it must also provide instruction in marriage and parental responsibility.

This bill provides that a school board may offer an instructional program in human growth and development that is scientifically based and that does all of the following: 1) encourages pupils to communicate with parents or guardians about human sexuality; 2) provides information about sexual anatomy and physiology; 3) teaches self-esteem, responsible decision making and personal responsibility related to relationships and sexual behavior; 4) teaches pupils to recognize unwanted physical and verbal sexual advances, not to make unwanted physical and verbal sexual advances, and to reject unwanted sexual advances; 5) teaches pupils about sexual stereotypes and protective behavior; 6) teaches pupils about counseling and medical and legal resources available to survivors of sexual assault; and 7) commencing in the seventh grade, teaches pupils about marriage, parental responsibility, prenatal development, childbirth adoption, the benefits of abstinence, and pregnancy and sexually transmitted disease prevention. Finally, the bill requires each school board that elects not to offer human growth and development instruction to notify each pupil’s parent or guardian of this fact.

This bill requires each school board that receives federal funding to provide a program of abstinence only education (the teaching of abstaining from sexual activity outside marriage) or that elects to provide such a program to notify each pupil’s parent or guardian of these facts. The notice must also state that abstinence only education does not teach pupils how to prevent pregnancy or sexually transmitted diseases, other than by remaining abstinent, and that a pupil, at the

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request of his or her parent or guardian, may be excused from abstinence only education and may not be subject to discipline or academic penalty as a result.

Under current law, pharmacists licensed in the state are held to certain practice standards, and any pharmacist who fails to meet the practice standards may be required to forfeit not less than \$25 nor more than \$50 for each offense, and may be subject to disciplinary action. Disciplinary action may include a reprimand, denial, limitation, suspension or revocation of the pharmacist's license, and a forfeiture of not more than \$1,000 for each offense.

This bill requires all pharmacists licensed in the state to administer, distribute, and dispense all contraceptives that are approved by the FDA, unless the contraceptive is contraindicated for a particular patient.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 50.375 of the statutes is created to read:

2 **50.375 Emergency contraception for sexual assault victims. (1)** In this
3 section:

4 (a) “Emergency contraception” means a drug, medicine, oral hormonal
5 compound, mixture, preparation, instrument, article, or device that is approved by
6 the federal food and drug administration and that prevents a pregnancy after sexual
7 intercourse. “Emergency contraception” does not include a drug, medicine, oral
8 hormonal compound, mixture, preparation, instrument, article, or device of any
9 nature that is prescribed to terminate the pregnancy of a female.

10 (b) “Sexual assault” means a violation of s. 940.225 (1), (2), or (3).

11 (c) “Victim” means a female who alleges or for whom it is alleged that she
12 suffered sexual assault and who, as a result of the sexual assault, presents as a
13 patient at a hospital that provides emergency services.

14 **(2)** A hospital that provides emergency services to a victim shall, after
15 obtaining the consent of the victim, do all of the following:

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1 (a) Provide to the victim medically and factually accurate and unbiased written
2 and oral information about emergency contraception and its use and efficacy.

3 (b) Orally inform the victim of her option to receive emergency contraception
4 at the hospital.

5 (c) Except as specified in sub. (4), provide emergency contraception, in
6 accordance with instructions approved by the federal food and drug administration,
7 immediately at the hospital to the victim if she requests it.

8 **(3)** A hospital that provides emergency care shall ensure that each hospital
9 employee who provides care to a victim has available medically and factually
10 accurate and unbiased information about emergency contraception.

11 **(4)** No hospital may be required to provide emergency contraception to a victim
12 who is pregnant, as indicated by a test for pregnancy.

13 **(5)** The department shall respond to any complaint received by the department
14 concerning noncompliance by a hospital with the requirements of subs. (2) and (3)
15 and shall periodically review hospital procedures to determine whether a hospital
16 is in compliance with the requirements.

17 **SECTION 2.** 50.38 (1) of the statutes is renumbered 50.38 (1) (a).

18 **SECTION 3.** 50.38 (1) (b) of the statutes is created to read:

19 50.38 **(1)** (b) Whoever violates a requirement under s. 50.375 (2) or (3) may be
20 required to forfeit not less than \$2,500 nor more than \$5,000 for each violation.

21 **SECTION 4.** 50.38 (2) of the statutes is amended to read:

22 50.38 **(2)** The department may directly assess forfeitures provided for under
23 sub. (1) (a) or (b). If the department determines that a forfeiture should be assessed
24 for a particular violation, the department shall send a notice of assessment to the
25 hospital. The notice shall specify the amount of the forfeiture assessed, the violation

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1 and the statute or rule alleged to have been violated, and shall inform the hospital
2 of the right to a hearing under sub. (3).

3 **SECTION 5.** 118.019 (2) of the statutes is repealed and recreated to read:

4 118.019 (2) SUBJECTS. A school board may provide an instructional program in
5 human growth and development in grades kindergarten to 12. If provided, the
6 program shall offer scientifically based information and instruction appropriate to
7 each grade level and the age and level of maturity of the pupils. If offered, the
8 program shall include instruction in all of the following areas:

9 (a) Self-esteem, responsible decision making and personal responsibility
10 related to relationships and sexual behavior.

11 (b) Communication with parents or guardians about human sexuality.

12 (c) Sexual anatomy and physiology, and the stages, patterns, and
13 responsibilities associated with growth and development.

14 (d) Recognition of unwanted physical and verbal sexual advances and the
15 rejection of unwanted sexual advances.

16 (e) Sexual stereotypes and protective behavior.

17 (f) Information about counseling and medical and legal resources available to
18 survivors of sexual assault.

19 (g) Beginning in grade 7, marriage and parental responsibilities; prenatal
20 development; childbirth; adoption; the social, psychological, and health benefits of
21 abstaining from sexual activity, including the prevention of pregnancy and sexually
22 transmitted diseases; and how sexually transmitted diseases are transmitted and
23 the effectiveness and safety of all federal food and drug administration methods of
24 reducing the risk of unintended pregnancy and contracting sexually transmitted
25 diseases.

ASSEMBLY BILL 795**SECTION 6**

1 **SECTION 6.** 118.019 (2m) of the statutes is repealed.

2 **SECTION 7.** 118.019 (3) of the statutes is amended to read:

3 118.019 **(3)** (title) DISTRIBUTION OF CURRICULUM TO PARENTS; NOTICE. Each school
4 board that provides an instructional program in human growth and development
5 shall annually provide the parents of each pupil enrolled in the school district with
6 an outline of the human growth and development curriculum used in the pupil's
7 grade level and information regarding how the parent may inspect the complete
8 curriculum and instructional materials. The school board shall make the complete
9 human growth and development curriculum and all instructional materials
10 available upon request for inspection at any time, including prior to their use in the
11 classroom. If a school board elects not to provide an instructional program in human
12 growth and development, by September 30 of each school year, it shall send a notice
13 to the parent or guardian of each pupil that includes a statement that the school
14 board is permitted to provide instruction in human growth and development in
15 kindergarten to grade 12, the required subjects of the instruction under sub. (2), and
16 a statement that the school board is not providing human growth and development
17 instruction to its pupils.

18 **SECTION 8.** 118.019 (6) of the statutes is created to read:

19 118.019 **(6)** NOTICE ABOUT ABSTINENCE ONLY EDUCATION. (a) In this subsection,
20 “abstinence only education” has the meaning given for “abstinence education” in 42
21 USC 710 (b) (2).

22 (b) Each school board that receives federal funding to provide a program of
23 abstinence only education or that elects to provide such a program, shall, at the
24 beginning of each school year, send a written notice to each pupil's parent or guardian
25 that contains all of the following statements:

