

2001 DRAFTING REQUEST

Bill

Received: 04/02/2001

Received By: kenneda

Wanted: As time permits

Identical to LRB:

For: Steve Kestell (608) 266-8530

By/Representing: Dave

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: **Health - miscellaneous**
Criminal Law - miscellaneous

Extra Copies: **dak**
rlr

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Prohibit cloning of humans

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kenneda 09/04/2001	wjackson 09/18/2001		_____			S&L
/1	mdsida 12/03/2001	jdye 12/03/2001	jfrantz 09/18/2001	_____	lrb_docadmin 09/18/2001	lrb_docadminS&L 10/02/2001 lrb_docadmin 10/02/2001	
/2	mdsida 12/11/2001	jdye 12/11/2001	pgreensl 12/04/2001	_____	lrb_docadmin 12/04/2001	lrb_docadminS&L 12/04/2001	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/3			pgreensl 12/11/2001	_____	lrb_docadmin 12/11/2001	lrb_docadmin 12/11/2001	

FE Sent For:

At intro.

<END>

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/2		13 12/11 jld	pgreensl 12/04/2001		lrb_docadmin 12/04/2001	lrb_docadmin 12/04/2001	

12/11
PS

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<END>

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For: Steve Kestell (608) 266-8530

By/Representing: Dave

This file may be shown to any legislator: NO

Drafter: kenneda

May Contact:

Addl. Drafters:

Subject: **Health - abortion**
Health - miscellaneous

Extra Copies: **MGD**

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Prohibit cloning of humans and purchase or sale of ova, embryos or fetuses for the purpose of cloning humans; prohibit use of state funds

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kenneda 09/04/2001	wjackson 09/18/2001		<u>12/4</u>			S&L
/1		1/2 12/3 jld	jfrantze 09/18/2001 12/3 p8.	<u>PS/</u> <u>TEJF</u>	lrb_docadmin 09/18/2001	lrb_docadmin 10/02/2001 lrb_docadmin 10/02/2001	

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<END>

2001 DRAFTING REQUEST

Bill

Received: 04/02/2001

Received By: kenneda

Wanted: As time permits

Identical to LRB:

For: Judy Krawczyk (608) 266-0485

By/Representing: Herself

This file may be shown to any legislator: NO

Drafter: kenneda

May Contact:

Addl. Drafters:

Subject: **Health - abortion**
Health - miscellaneous

Extra Copies: **MGD**

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Prohibit cloning of humans and purchase or sale of ova, embryos or fetuses for the purpose of cloning humans; prohibit use of state funds

Instructions:

See Attached

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/?	kenneda 09/04/2001	wjackson 09/18/2001		_____			S&L
/1			jfrantze 09/18/2001	_____	lrb_docadmin 09/18/2001	lrb_docadmin 10/02/2001 lrb_docadmin 10/02/2001	

FE Sent For:

2001 DRAFTING REQUEST

Bill

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Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Judy Krawczyk (608) 266-0485**

By/Representing: **Herself**

This file may be shown to any legislator: **NO**

Drafter: **kenneda**

May Contact:

Addl. Drafters:

Subject: **Health - abortion**
Health - miscellaneous

Extra Copies: **MGD**

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

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<END>

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Wanted: **As time permits**

Identical to LRB:

For: **Judy Krawczyk (608) 266-0485**

By/Representing: **Herself**

This file may be shown to any legislator: **NO**

Drafter: **kenneda**

May Contact:

Addl. Drafters:

Subject: **Health - abortion**
Health - miscellaneous

Extra Copies: **MGD**

Submit via email: **NO**

Pre Topic:

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Topic:

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1?	kenneda	1 WLJ 9/18	6 9/18	6 9/18			

FE Sent For:

<END>

Louisiana Law

- >
- >1299.36.2. Cloning of human beings; purchase or sale of ovum, zygote, embryo, or fetus for the purpose of cloning human beings, prohibited
 - >
 - > A. No person shall clone or attempt to clone a human being.
 - >
 - > B. No person shall purchase or sell an ovum, zygote, embryo, or fetus with the intent to clone a human being.
 - >
 - > C. This Section does not prohibit scientific research or a cell based therapy not specifically prohibited elsewhere by this Part.
 - >
 - > D. Whoever violates this Section shall be fined not more than ten million dollars or imprisoned, with or without hard labor, for not more than ten years, or both.
- >
- >1299.36.3. Administrative penalties
 - > A. For a violation of R.S. 40:1299.36.2, the secretary of the Department of Health and Hospitals may, in accordance with the Administrative Procedure Act, order the levy of an administrative penalty as follows:
 - >
 - > (1) If the person is a corporation, firm, clinic, hospital, laboratory, or research facility, a penalty of not more than ten million dollars or the applicable amount under Subsection B, whichever is greater.
 - >
 - > (2) If the person is an individual, a penalty of not more than five million dollars or the applicable amount under Subsection B, whichever is greater.
 - >
 - > B. If any person derives pecuniary gain from a violation of R.S. 40:1299.36.2, the person shall be assessed a civil penalty of not more than an amount equal to the amount of the gross gain multiplied by two.
 - >
 - > C. The administrative penalties shall be deposited into the state treasury.
- >
- >1299.36.4. Violation constitutes unprofessional conduct; employment restrictions
 - > A. A violation of this Part, relating to human cloning, constitutes unprofessional conduct and shall result in the permanent revocation of each license and permit issued pursuant to R.S. 37:1261 et seq.
 - >
 - > B. A violation of this Part shall provide, in addition to Subsection A of this Section, the basis for disciplinary action deemed appropriate by the Louisiana State Board of Medical Examiners pursuant to R.S. 37:1261 et seq.
 - >
 - > C. Notwithstanding any provision of law to the contrary, a violation of this Part shall be the basis for denying an application for, or an application for the renewal of, any license, permit, or certificate required by this state, or the granting of a conditional license, permit, or certificate required by this state, or any department, office, agencies, or board of the state in order to practice or engage in a trade, occupation, or profession.

Rep.
Krawczyk

- >
- >1299.36.5. Use of state funds prohibited
- > A. Notwithstanding any other provision of law to the contrary, state
- >funds shall not be used to clone in or attempt to clone a human being.
- >
- > B. Subsection A of this Section does not prohibit the use of state
- >funds for scientific research or cell-based therapies not specifically
- >prohibited by this Part.
- >
- > C. A person who violates this Section shall be subject to a fine of ten
- >million dollars which shall be deposited into the state treasury.
- >
- >1299.36.6. Use of health facility or agency for human cloning prohibited;
- >penalties
- > A. A health facility or agency shall not allow any individual to clone
- >or attempt to clone a human being in a facility owned or operated by the
- >health facility or agency.
- >
- > B. Nothing in this Section shall prohibit a health facility or agency
- >from allowing an individual from engaging in scientific research or a
- >cell-based therapy not specifically prohibited by this Part.
- >
- > C. A health facility or agency that violates this Section shall be
- >subject to administrative penalties provided by law for that facility or
- >agency and to a fine of ten million dollars and loss of each license
- >granted by law to the facility or agency.
- >
- > D. A fine collected under this Section shall be deposited into the
- >state treasury.
- >
- > E. This Section does not give a person a private right of action.
- >

SOON - Duodit 9/4

1999 - 2000 LEGISLATURE

D-NOTE

3079/1
LRB-~~11/11/11~~
TAY:wlj&lg:jf
DAK:WLj

1999 BILL

and the sale or purchase of an ^{ovum} ovum, embryo, or fetus for the purpose of, cloning a human, prohibiting the use of state funds for cloning,

LPS: Please proof amended stats w/ stats

regenerate

- 1 AN ACT to create 146.347 of the statutes; relating to: banning human cloning
- 2 and providing a ~~penalty~~ penalties or attempting to clone

Analysis by the Legislative Reference Bureau

This bill prohibits any person from cloning a human being or from selling or purchasing an ~~ovum~~ ovum, embryo, or fetus for the purpose of cloning a human being. Cloning a human being is defined in the bill as creating ~~or attempting to create~~ a genetic duplicate of an individual by transferring the nucleus from any cell of that individual into a human ~~egg cell~~ egg cell, the nucleus of which has been removed, and using that human ~~egg cell~~ egg cell to initiate a pregnancy that could result in the birth of a human being.

Under the bill, any individual who clones a human being or who sells or purchases an ovum, ~~embryo~~ embryo or fetus for the purpose of cloning a human being is subject to a forfeiture of not ~~less than \$25,000 nor~~ more than the greater of ~~\$250,000~~ \$5,000,000 or double any monetary gain that the individual derived from the prohibited act. If the person violating the prohibition is not an individual (for example, a clinic or other institution), the penalty is a forfeiture of not ~~less than \$100,000 nor~~ more than the greater of ~~\$1,000,000~~ \$10,000,000 or double any monetary gain that the person derived from the prohibited act.

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:

a violator who is a physician may be charged with unprofessional conduct. ^{\$10,000,000} for a violator that is a hospital, the department of health and family services must suspend or revoke the hospital's certificate of approval.

\$5,000,000

INSERT ANAL

BILL

INSERT 2-1

1 SECTION 1. 146.347 of the statutes is created to read:

(a)

2 146.347 Human cloning prohibited. (1) In this section, "clone a human
3 being" means create ~~or attempt to create~~ a genetic duplicate of an individual by
4 transferring the nucleus from any cell of that individual into a human egg cell from
5 which the nucleus has been removed and using that human egg cell to initiate a
6 pregnancy that could result in the birth of a human being.

ovum

ovum

INSERT 2-6

7 (2) No person may do any of the following:

8 (a) Clone ^{or attempt to clone} a human being.

9 (b) Purchase or sell an ovum, ~~zygote,~~ embryo ^{or fetus} for the purpose of cloning
10 a human being.

or fetal body part

INSERT 2-10

Except as provided in par. (b),
whoever

11 (3) (a) ~~Any individual who~~ violates this section shall be subject to a forfeiture
12 of not less than \$25,000 ~~or~~ more than the greater of the following:

13 1. Two hundred and fifty thousand dollars.

Five million dollars

Sub. (2) may be required to forfeit not

14 2. If the individual derived pecuniary gain from the violation, an amount equal
15 to twice the gross gain.

Whoever is a

and

16 (b) ~~Any~~ person that is not an individual that violates this section shall be
17 subject to a forfeiture of not less than \$100,000 ~~or~~ more than the greater of the

sub(2) may be required to forfeit not

18 following:
19 1. ^{Ten} ~~One~~ million dollars.

20 2. If the person derived pecuniary gain from the violation, an amount equal to
21 twice the gross gain.

22 (4) This section does not apply beginning on the date that is 5 years from the
23 effective date of this subsection [revisor inserts date].

24

(END)

INSERT 2-23

D-NOTE

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3079/?ins
.....

no #

INSERT ANAL

Lastly, under the bill, state funds may not be used for the purpose of cloning or attempting to clone a human being.

INSERT 2-1

1 SECTION ~~1.~~[#] 20.9271[✓] of the statutes is created to read:

2 **20.9271 Subsidy of cloning prohibited.** (1) In this section, "clone a human
3 being" has the meaning given in s. 146.347 (1) (a).[✓]

4 (2) No funds of this state may be authorized for or paid for the purpose of
5 cloning a human being or attempting to clone a human being.

6 (3) Whoever violates sub. (2)[✓] may be fined not more than ~~ten million dollars~~^{\$10,000,000}.

7 SECTION ~~2.~~[#] 50.35[✓] of the statutes is amended to read:

8 **50.35 Application and approval.** Application for approval to maintain a
9 hospital shall be made to the department on forms provided by the department. On
10 receipt of an application, the department shall, except as provided in s. 50.498, issue
11 a certificate of approval if the applicant and hospital facilities meet the requirements
12 established by the department. Except as provided in s. 50.498, this approval shall
13 be in effect until, for just cause and in the manner herein prescribed, it is suspended
14 or revoked. The certificate of approval may be issued only for the premises and
15 persons or governmental unit named in the application and is not transferable or
16 assignable. The department shall withhold, suspend or revoke approval for a failure
17 to comply with s. 165.40 (6) (a) 1. or 2. or 146.347 (2)[✓], but, except as provided in s.
18 50.498, otherwise may not withhold, suspend or revoke approval unless for a
19 substantial failure to comply with ss. 50.32 to 50.39 or the rules and standards
20 adopted by the department after giving a reasonable notice, a fair hearing and a

1 reasonable opportunity to comply. Failure by a hospital to comply with s. 50.36 (3m)
2 shall be considered to be a substantial failure to comply under this section.

History: 1975 c. 413 ss. 4, 18; Stats. 1975 s. 50.35; 1989 a. 37; 1997 a. 93, 237.

INSERT 2-6

3 (b) "Embryo" means a human being from the point of fertilization, including the
4 single-cell state, until approximately the end of the 2nd month.

5 (c) "Physician" has the meaning given in s. 448.01 (5). ✓

INSERT 2-10

6 (3) Violation of sub. (2) by a physician constitutes unprofessional conduct. ✓

INSERT 2-23

7 ~~SECTION 3.~~ 448.015 (4) ✓ of the statutes is amended to read:

8 448.015 (4) "Unprofessional conduct" means those acts or attempted acts of
9 commission or omission defined as unprofessional conduct by the board under the
10 authority delegated to the board by s. 15.08 (5) (b) and any act by a physician in
11 violation of s. 146.347 (2) or ch. 450 or 961 ✓ or by a physician assistant in violation of
12 ch. 450 or 961.

History: 1997 a. 175 ss. 16, 23, 24, 25, 27; 1999 a. 32.

13 ~~SECTION 4.~~ 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, certificate, or limited
16 permit granted by the board. An allegation that a physician has violated s. 146.347
17 (2) ✓, 253.10 (3), 448.30, or 450.13 (2) or has failed to mail or present a medical
18 certification required under s. 69.18 (2) within 21 days after the pronouncement of
19 death of the person who is the subject of the required certificate or that a physician
20 has failed at least 6 times within a 6-month period to mail or present a medical
21 certificate required under s. 69.18 (2) within 6 days after the pronouncement of death
22 of the person who is the subject of the required certificate is an allegation of

1 unprofessional conduct. Information contained in reports filed with the board under
2 s. 49.45 (2) (a) 12r., 50.36 (3) (b), 609.17⁵ or 632.715, or under 42 CFR 1001.2005, shall
3 be investigated by the board. Information contained in a report filed with the board
4 under s. 655.045 (1), as created by 1985 Wisconsin Act 29, which is not a finding of
5 negligence or in a report filed with the board under s. 50.36 (3) (c) may, within the
6 discretion of the board, be used as the basis of an investigation of a person named in
7 the report. The board may require a person holding a license, certificate⁵ or limited
8 permit to undergo and may consider the results of one or more physical, mental⁵ or
9 professional competency examinations if the board believes that the results of any
10 such examinations may be useful to the board in conducting its investigation.

History: 1975 c. 383, 421; 1977 c. 418; 1981 c. 135, 375, 391; 1983 a. 188 s. 10; 1983 a. 189 s. 329 (5); 1983 a. 253, 538; 1985 a. 29; 1985 a. 146 s. 8; 1985 a. 315, 332, 340; 1987 a. 27, 399, 403; 1989 a. 229; 1991 a. 186; 1993 a. 105, 107; 1995 a. 309; 1997 a. 67, 175, 191, 311; 1999 a. 32, 180.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

3079/ldn
LRB-1716/ldn
~~PAY: wls: jg: jf~~

PAK: WJ:

January 18, 1999

Representative ~~Studen~~

Krawczyk

several

1. This draft creates ^{ies} a significant civil penalty (forfeiture). The LRB drafting manual states that:

A forfeiture is a civil monetary penalty. Although both forfeitures and fines are penalties, an offense that is punishable only by a forfeiture is not a crime. See s. 939.12, stats. In an action to impose only a forfeiture, the rules of civil procedure apply. Among other effects, this means that a forfeiture may be imposed with a lower burden of proof (preponderance of the evidence or clear and convincing evidence) than is required for conviction of a crime (beyond a reasonable doubt), and with a verdict agreed to by five-sixths of a jury instead of a unanimous jury, as required for conviction of a crime. See s. 805.09 (2), stats.

However, the U.S. Supreme Court has, on occasion, denominated a penalty criminal, even if labeled civil by the legislature. The Court has a multiprong test to determine whether a penalty is civil or criminal. First, a court must ask whether the legislature "indicated either expressly or impliedly a preference for one label or the other." *Hudson, et al. v. United States*, 66 U.S.L.W. 4024, 4026 (1997), quoting *United States v. Ward*, 448 U.S. 242 at 248.

Even if a court finds that the legislature has indicated an intention to establish a civil penalty, the court might still find that the penalty is so punitive as to transform the civil penalty into a criminal penalty. To determine whether the penalty is purely punitive a court must look at many factors, including:

- a. 1. Whether the penalty involves an affirmative disability or restraint (such as some type of confinement).
- b. 2. Whether the penalty has historically been considered punishment.
- c. 3. Whether the penalty comes into play only if there is a finding of intent. Generally, conviction of a crime requires some finding of intent (although there are some exceptions), whereas civil liability often does not rest on intent.

- d 4. Whether the operation of the penalty will promote the traditional aims of criminal punishment — retribution and deterrence. Generally, civil penalties, while having some deterrent purpose, have a compensatory goal, i.e. compensating the government or some person for a loss resulting from the violation for which the penalty is assessed.
 - e 5. Whether the behavior to which the penalty applies is already a crime.
 - f 6. Whether the penalty appears excessive in relation to the purpose of the penalty.
- See *Hudson* at 4026.

I have delineated these factors only to point out that, although you wish to denominate the penalty in this bill a civil penalty (which is a very important consideration to a court), it is possible that the nature of the penalty (its purpose, its amount, etc.) will prompt a court to view the penalty as criminal, which will therefore afford all of the rights to an accused violator as are afforded to criminal defendants. This isn't a fatal flaw to the bill. I raise the issue only to make you aware that it exists.

In this bill, ~~as under 1997 Assembly Bill 769,~~ I have not made the Department of Health and Family Services (DHFS) the agency responsible for assessing the penalty. It seems that the Department of Justice is probably better equipped to prosecute such a significant civil claim than is DHFS. However, if you would prefer to have DHFS directly assess the forfeiture, I can amend the bill accordingly.

~~Finally, you may wish to include some element of intent with respect to selling an ovum since it is possible that a woman who sells her ovum to a clinic for use in fertility treatment would find herself faced with a \$250,000 forfeiture claim when the clinic instead uses the egg for cloning.~~

If you wish to discuss this bill with me, I would be happy to meet with you.

Tina A. Yacker
 Legislative Attorney
 261-6927

DAK

INSERT D-NOTE

INSERT D-NOTE

¶ 2. Lu s.146.347; I have defined "clone" and
"embryo". Because the definition of "embryo"
sweeps in

sweeps in the term "zygote" (which is defined
(I)

in Merriam Webster's Collegiate Dictionary as
↓

a cell formed by the union of two gametes), I

have not separately prohibited the sale or

purchase of a zygote for the purpose of cloning.

I also added "fetal body part" to the prohibition
on

on purchase or sale for the purpose of cloning,

since a court might view the term "fetus"

as an intact fetus.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3079/1dn
DAK:wlj:jf

September 18, 2001

Representative Krawczyk:

1. This draft creates several significant civil penalties (forfeitures). The LRB drafting manual states that:

A forfeiture is a civil monetary penalty. Although both forfeitures and fines are penalties, an offense that is punishable only by a forfeiture is not a crime. See s. 939.12, stats. In an action to impose only a forfeiture, the rules of civil procedure apply. Among other effects, this means that a forfeiture may be imposed with a lower burden of proof (preponderance of the evidence or clear and convincing evidence) than is required for conviction of a crime (beyond a reasonable doubt), and with a verdict agreed to by five-sixths of a jury instead of a unanimous jury, as required for conviction of a crime. See s. 805.09 (2), stats.

However, the U.S. Supreme Court has, on occasion, denominated a penalty criminal, even if labeled civil by the legislature. The U.S. Supreme Court has a multiprong test to determine whether a penalty is civil or criminal. First, a court must ask whether the legislature "indicated either expressly or impliedly a preference for one label or the other." *Hudson, et al. v. United States*, 66 U.S.L.W. 4024, 4026 (1997), quoting *United States v. Ward*, 448 U.S. 242 at 248.

Even if a court finds that the legislature has indicated an intention to establish a civil penalty, the court might still find that the penalty is so punitive as to transform the civil penalty into a criminal penalty. To determine whether the penalty is purely punitive a court must look at many factors, including:

- a. Whether the penalty involves an affirmative disability or restraint (such as some type of confinement).
- b. Whether the penalty has historically been considered punishment.
- c. Whether the penalty comes into play only if there is a finding of intent. Generally, conviction of a crime requires some finding of intent (although there are some exceptions), whereas civil liability often does not rest on intent.

d. Whether the operation of the penalty will promote the traditional aims of criminal punishment — retribution and deterrence. Generally, civil penalties, while having some deterrent purpose, have a compensatory goal, i.e. compensating the government or some person for a loss resulting from the violation for which the penalty is assessed.

e. Whether the behavior to which the penalty applies is already a crime.

f. Whether the penalty appears excessive in relation to the purpose of the penalty.

See *Hudson* at 4026.

I have delineated these factors only to point out that, although you wish to denominate the penalty in this bill a civil penalty (which is a very important consideration to a court), it is possible that the nature of the penalty (its purpose, its amount, etc.) will prompt a court to view the penalty as criminal, which will therefore afford all of the rights to an accused violator as are afforded to criminal defendants. This isn't a fatal flaw to the bill. I raise the issue only to make you aware that it exists.

In this bill, I have not made the Department of Health and Family Services (DHFS) the agency responsible for assessing the penalty. It seems that the Department of Justice is probably better equipped to prosecute such a significant civil claim than is DHFS. However, if you would prefer to have DHFS directly assess the forfeiture, I can amend the bill accordingly.

2. In s. 146.347, I have defined "clone" and "embryo." Because the definition of "embryo" sweeps in the term "zygote" (which is defined in *Merriam Webster's Collegiate Dictionary* as a cell formed by the union of two gametes), I have not separately prohibited the sale or purchase of a zygote for the purpose of cloning. I also added "fetal body part" to the prohibition on purchase or sale for the purpose of cloning, since a court might view the term "fetus" as an intact fetus.

If you wish to discuss this bill with me, I would be happy to meet with you.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us

Kennedy, Debora

From: Machtan, Ken
Sent: Tuesday, September 25, 2001 10:06 AM
To: Kennedy, Debora
Cc: Kestell, Steve
Subject: LRB 3759/1

We are turning over the drafting of LRB 3079/1 to Rep. Steve Kestell.

Please assist his office as needed with this matter.

Please call me if you have any questions with this request.

Please jacket

01-3079

for Kestell.

(Assembly)

(Krawczyk's office has
given permission.)



2001 BILL

1 **AN ACT** *to amend* 50.35, 448.015 (4) and 448.02 (3) (a); and *to create* 20.9271
2 and 146.347 of the statutes; **relating to:** banning human cloning and the sale
3 or purchase of an ovum, embryo, or fetus for the purpose of cloning a human,
4 prohibiting the use of state funds for cloning, and providing penalties.

Analysis by the Legislative Reference Bureau

This bill prohibits any person from cloning or attempting to clone a human being or from selling or purchasing an ovum, embryo, or fetus for the purpose of cloning a human being. Cloning a human being is defined in the bill as creating a genetic duplicate of an individual by transferring the nucleus from any cell of that individual into a human ovum, the nucleus of which has been removed, and using that human ovum to initiate a pregnancy that could result in the birth of a human being.

Under the bill, any individual who clones or attempts to clone a human being or who sells or purchases an ovum, embryo, or fetus for the purpose of cloning a human being is subject to a forfeiture of not more than the greater of \$5,000,000 or double any monetary gain that the individual derived from the prohibited act; a violator who is a physician may be charged with unprofessional conduct. If the person violating the prohibition is not an individual (for example, a clinic or other institution), the penalty is a forfeiture of not more than the greater of \$10,000,000 or double any monetary gain that the person derived from the prohibited act; for a violator that is a hospital, the department of health and family services must suspend or revoke the hospital's certificate of approval. Lastly, under the bill, state

BILL

state funds may not be used for the purpose of cloning or attempting to clone a human being.

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.** 20.9271 of the statutes is created to read:

2 **20.9271 Subsidy of cloning prohibited.** (1) In this section, “clone a human
3 being” has the meaning given in s. 146.347 (1) (a).

4 (2) No funds of this state may be authorized for or paid for the purpose of
5 cloning a human being or attempting to clone a human being.

6 (3) Whoever violates sub. (2) may be fined not more than \$10,000,000.

7 **SECTION 2.** 50.35 of the statutes is amended to read:

8 **50.35 Application and approval.** Application for approval to maintain a
9 hospital shall be made to the department on forms provided by the department. On
10 receipt of an application, the department shall, except as provided in s. 50.498, issue
11 a certificate of approval if the applicant and hospital facilities meet the requirements
12 established by the department. Except as provided in s. 50.498, this approval shall
13 be in effect until, for just cause and in the manner herein prescribed, it is suspended
14 or revoked. The certificate of approval may be issued only for the premises and
15 persons or governmental unit named in the application and is not transferable or
16 assignable. The department shall withhold, suspend or revoke approval for a failure
17 to comply with s. 165.40 (6) (a) 1. or 2. or 146.347 (2), but, except as provided in s.
18 50.498, otherwise may not withhold, suspend or revoke approval unless for a
19 substantial failure to comply with ss. 50.32 to 50.39 or the rules and standards
20 adopted by the department after giving a reasonable notice, a fair hearing and a

BILL

1 reasonable opportunity to comply. Failure by a hospital to comply with s. 50.36 (3m)
2 shall be considered to be a substantial failure to comply under this section.

3 **SECTION 3.** 146.347 of the statutes is created to read:

4 **146.347 Human cloning prohibited.** (1) In this section:

5 (a) "Clone a human being" means create a genetic duplicate of an individual by
6 transferring the nucleus from any cell of that individual into a human ovum from
7 which the nucleus has been removed and using that human ovum to initiate a
8 pregnancy that could result in the birth of a human being.

9 (b) "Embryo" means a human being from the point of fertilization, including the
10 single-cell state, until approximately the end of the 2nd month.

11 (c) "Physician" has the meaning given in s. 448.01 (5).

12 (2) No person may do any of the following:

13 (a) Clone or attempt to clone a human being.

14 (b) Purchase or sell an ovum, embryo, fetus, or fetal body part for the purpose
15 of cloning a human being.

16 (3) Violation of sub. (2) by a physician constitutes unprofessional conduct.

17 (4) (a) Except as provided in par. (b), whoever violates sub. (2) may be required
18 to forfeit not more than the greater of the following:

19 1. Five million dollars.

20 2. If the individual derived pecuniary gain from the violation, an amount equal
21 to twice the gross gain.

22 (b) Whoever is a person that is not an individual and violates sub. (2) may be
23 required to forfeit not more than the greater of the following:

24 1. Ten million dollars.

BILL

1 2. If the person derived pecuniary gain from the violation, an amount equal to
2 twice the gross gain.

3 **SECTION 4.** 448.015 (4) of the statutes is amended to read:

4 448.015 (4) “Unprofessional conduct” means those acts or attempted acts of
5 commission or omission defined as unprofessional conduct by the board under the
6 authority delegated to the board by s. 15.08 (5) (b) and any act by a physician in
7 violation of s. 146.347 (2) or ch. 450 or 961 or by a physician assistant in violation of
8 ch. 450 or 961.

9 **SECTION 5.** 448.02 (3) (a) of the statutes is amended to read:

10 448.02 (3) (a) The board shall investigate allegations of unprofessional conduct
11 and negligence in treatment by persons holding a license, certificate, or limited
12 permit granted by the board. An allegation that a physician has violated s. 146.347
13 (2), 253.10 (3), 448.30, or 450.13 (2) or has failed to mail or present a medical
14 certification required under s. 69.18 (2) within 21 days after the pronouncement of
15 death of the person who is the subject of the required certificate or that a physician
16 has failed at least 6 times within a 6-month period to mail or present a medical
17 certificate required under s. 69.18 (2) within 6 days after the pronouncement of death
18 of the person who is the subject of the required certificate is an allegation of
19 unprofessional conduct. Information contained in reports filed with the board under
20 s. 49.45 (2) (a) 12r., 50.36 (3) (b), 609.17, or 632.715, or under 42 CFR 1001.2005, shall
21 be investigated by the board. Information contained in a report filed with the board
22 under s. 655.045 (1), as created by 1985 Wisconsin Act 29, which is not a finding of
23 negligence or in a report filed with the board under s. 50.36 (3) (c) may, within the
24 discretion of the board, be used as the basis of an investigation of a person named in
25 the report. The board may require a person holding a license, certificate, or limited

BILL

1 permit to undergo and may consider the results of one or more physical, mental, or
2 professional competency examinations if the board believes that the results of any
3 such examinations may be useful to the board in conducting its investigation.

4

(END)

10-10-11

Debra - Steve wanted

me to send you over

this language regarding
Banning

the Human Cloning issue.

What he would like to

do is re-draft our LCB

3079/1 to look like this.

If you have any questions,

please call. Thank you,

From Dave:

This totally
replaces

01-3079/1

DAK

Dave

Rep. Kestell's
office

17 W

266-8530

HUMAN CLONING PROHIBITION

146.347 Human cloning prohibited. (1) In this section:

✓(a) "Asexual reproduction" means reproduction not initiated by the union of oocyte and sperm. *→ make sure it is not (at all) [unclear]*

✓(b) "Human cloning" means asexual reproduction, accomplished by introducing nuclear material from one or more human somatic cells into a fertilized or unfertilized oocyte whose nuclear material has been removed or inactivated so as to produce a living organism at any stage of development who is genetically virtually identical to an existing or previously existing human organism. *include pathogens*

✓(c) "Somatic cell" means a diploid cell (having a complete set of chromosomes) obtained or derived from a living or deceased human body at any stage of development.

(2) No person or entity, public or private, may knowingly do any of the following:

✓(a) Perform or attempt to perform human cloning.

(b) Participate in an attempt to perform human cloning. *[unclear]*

✓(c) Ship, receive or import for any purpose an embryo produced by human cloning or any product derived from such embryo. *[unclear]*

✓(3) PENALTIES. (a) CRIMINAL PENALTY. Any person or entity who violates this section shall be fined under this section or imprisoned not more than 10 years, or both.

✓(b) CIVIL PENALTY. Any person or entity that violates any provision of this section shall be subject to, in the case of a violation that involves the derivation of a pecuniary gain, a civil penalty of not less than \$1,000,000 and not more than an amount equal to the amount of the gross gain multiplied by 2, if that amount is greater than \$1,000,000.

✓(4) SCIENTIFIC RESEARCH. Nothing in this section restricts areas of scientific research not specifically prohibited by this section, including research in the use of nuclear transfer or other cloning techniques to produce molecules, DNA, cells other than human embryos, tissues, organs, plants, or animals other than humans.

Dsida, Michael

From: Dsida, Michael
Sent: Monday, October 22, 2001 10:15 AM
To: Matzen, David
Subject: Cloning bill

1. The language that your office provided to Debora Kennedy refers to a person being fined "under this section," but it does not specify how that fine is to be determined. The language also proposes setting a civil penalty applicable to cases involving a pecuniary gain. Do you intend to have the civil penalty be the fine? If so, is there a fine for cases in which there has been no pecuniary gain? If there is, what is the maximum fine? Is there also a minimum? (Many controlled substance offenses and a limited number of other crimes require a mandatory minimum fine. Those crimes, however, are the exception. Most offenses do not carry a mandatory minimum fine. The court has discretion to assess or not to assess one.)
2. You should be aware that a mandatory \$1 million penalty (regardless of how it is characterized) may be viewed as violating the 8th Amendment's prohibition against excessive fines. See U.S. v. Bajakajian, 524 U.S. 321, <<http://supct.law.cornell.edu/supct/html/96-1487.ZS.html>> (1998); see also State v. Boyd, 2000 WI App. 208, <<http://www.wisbar.org/wisctapp2/3q00/99-2633.htm>>. Bajakajian involved a civil forfeiture, and most of the cases relying upon it have addressed the constitutionality of forfeitures and other non-traditional assessments. But it has also been applied to conventional fines in a small number of criminal cases. See, e.g., Minnesota v. Rewitzer, 617 N.W. 2d 407, <<http://www.lawlibrary.state.mn.us/archive/supct/0009/c499807.htm>> (2000); Tennessee v. Taylor, 2001 Tenn. Crim. App. Lexis 311, <<http://www.tsc.state.tn.us/PDF/tcca/012/TaylorAlvinRay.pdf>> (2001). Moreover, in each reported case that I have found in which Bajakajian has been applied to a criminal fine, the court has found the fine to be unconstitutional.
3. You may be interested in knowing the fines that other states have set for violations of their bans on cloning. According to the National Conference of State Legislatures, as of May 14, five states prohibit human cloning. Virginia's penalty is \$50,000 per incident. Michigan and Louisiana appear to require a \$10,000,000 civil penalty (although Louisiana's penalties apply only to a "health facility or agency," not to an individual). California's and Rhode Island's penalties fall in between.

Mike Dsida
Legislative Reference Bureau
608/266-9867

use fed structure
- Let him know what fine is
use Freeze def's, ~~but make~~
cover parthenogenesis

Dsida, Michael

From: Kestell, Steve
Sent: Wednesday, November 28, 2001 4:45 PM
To: Dsida, Michael
Subject: RE: Follow-up to earlier e-mail

Mike,

At this point it seems best that we provide a separate prohibition for parthogenesis and without the reference to human embryo. I think it is the best way to avoid getting caught by changing scientific definitions.

Steve Kestell

-----Original Message-----

From: Dsida, Michael
Sent: Wednesday, November 28, 2001 4:18 PM
To: Kestell, Steve
Subject: Follow-up to earlier e-mail

The definition of "human embryo" in Rep. Freese's bill refers to a "human organism derived by ... parthenogenesis." But based on the information that I have now found out about parthenogenesis -- particularly, the challenge of producing a placenta through parthenogenesis -- I would not recommend using that definition -- or at least not in the way that Rep. Freese's bill does. A court might construe that definition to exclude the cells produced by parthenogenesis. Since the cells lack the ability to develop a placenta, the court might view them as human tissue, but not as a human organism.

Do you have any objection to having a parthenogenesis prohibition that does not contain any reference to "human embryo"?

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

[Handwritten signature]

2001 BILL

SOON

Regen

1 AN ACT to create 146.347 and 940.17 of the statutes; relating to: intentionally

2 causing the death of an in vitro human embryo, nontherapeutic research

3 involving an in vitro human embryo, the use of cells or tissue derived from an

4 in vitro human embryo, the purchase or sale of in vitro human embryos,

5 requesting the joint legislative council to conduct a study on how to reduce the

6 number of in vitro human embryos created by assisted reproductive services

7 clinics and how to facilitate the adoption of unused in vitro human embryos, and

8 human cloning and providing penalties.

and parthenogenesis ✓

Analysis by the Legislative Reference Bureau

~~Prohibitions relating to in vitro human embryos~~

~~Through a number of separate provisions, current law prohibits causing the death of an unborn child, other than through a legally authorized induced abortion. The penalties applicable to these prohibitions vary. For example, a person who intentionally causes the death of an unborn child may be sentenced to life imprisonment, while a person who causes the death of an unborn child by the negligent operation or handling of a vehicle may be fined not more than \$10,000 or imprisoned for not more than five years or both. Current law also prohibits a person from intentionally performing an abortion after the fetus or unborn child reaches~~

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viability, as determined by the reasonable medical judgment of the woman's attending physician. A person who violates this prohibition may be fined not more than \$10,000 or imprisoned for not more than five years or both.

Under this bill, no person may do any of the following: 1) intentionally cause the death of an in vitro human embryo; 2) intentionally subject an in vitro human embryo to a substantial risk of injury or death for the purpose of "nontherapeutic human embryo research," which is defined as research involving an in vitro human embryo that is not intended to help protect or preserve the life or protect, preserve, or promote the health of the in vitro human embryo; 3) create an in vitro human embryo outside of a woman's body for the purpose of nontherapeutic human embryo research; 4) use, transfer, or acquire any living cell or tissue that the actor knows was obtained through conduct that is described in the preceding three prohibitions; 5) with the knowledge that any person will intentionally cause the death of the in vitro human embryo, transfer an in vitro human embryo to another person; 6) with the knowledge that the in vitro human embryo will intentionally be subjected to a substantial risk of injury or death for the purpose of nontherapeutic human embryo research, transfer an in vitro human embryo to another person; or 7) purchasing or selling an in vitro human embryo. The bill defines "in vitro human embryo" as a human embryo living outside of a woman's body, regardless of how the embryo is derived and regardless of whether the embryo has undergone cryopreservation (freezing), which is a process regularly used by clinics that provide assisted reproductive services (clinics) to preserve embryos for implantation at a later date in a woman's uterus. A person who violates one of the prohibitions contained in the bill relating to in vitro human embryos may be fined not more than \$10,000 or imprisoned for not more than five years or both.

The prohibitions described in the preceding paragraph apply regardless of whether there is any contract currently in effect relating to the conduct involved. In addition, the fourth prohibition applies even if the conduct from which the cells or tissues were derived has already occurred or occurs outside of the state. On the other hand, the bill excepts the following conduct from all of the prohibitions described in the preceding paragraph, other than the prohibition on purchasing or selling an in vitro human embryo: 1) cryopreserving an in vitro human embryo, if the actor uses all available means to protect and preserve the life and protect, preserve, and promote the health of the embryo (the "cryopreservation exception"); 2) thawing an in vitro human embryo, if the thawing is done to facilitate a live birth and if the actor uses all available means to protect and preserve the life and protect, preserve, and promote the health of the embryo (the "thawing exception"); 3) implanting or attempting to implant an in vitro human embryo in a woman's uterus, if the embryo was created by fertilization and if the implantation or attempted implantation is done for the purpose of facilitating a live birth (the "implantation exception"); and 4) transferring or acquiring an in vitro human embryo, if the actor intends that the embryo be cryopreserved, thawed, or implanted consistent with the cryopreservation, thawing, or implantation exceptions. The prohibitions listed in the preceding paragraph — again, excluding the prohibition on purchasing or selling

BILL

a human embryo — also do not apply to the donor of any sperm cell or egg cell from which an in vitro human embryo is derived.

Human cloning

This bill ~~also~~ prohibits human cloning; attempting to perform human cloning; ~~or~~ transferring or acquiring a human embryo produced by human cloning or ~~any~~ product derived from such an embryo. The bill defines "human cloning" as introducing nuclear material from one or more human somatic cells (a human cell with a complete set of chromosomes) into an egg cell, the nuclear material of which has been removed or inactivated, so as to produce a living organism, including a human embryo, having genetic material that is virtually identical to the genetic material of an existing or previously existing human organism. ~~A~~ person who violates one of the prohibitions ^{relating to} against human cloning, shall be fined not more than \$100,000 and may be imprisoned for not more than ten years. ~~A~~ person who violates one of the ~~cloning~~ prohibitions is also subject to a civil monetary penalty (a forfeiture) of \$1,000,000 if the person derives a pecuniary gain from the violation, unless the person's gross pecuniary gain exceeds \$500,000. In that case, the amount of the forfeiture must be between \$1,000,000 and twice the amount of the person's gross pecuniary gain.

Legislative council study relating to in vitro human embryos

The bill requires the joint legislative council to study the issues relating to the adoption of in vitro human embryos and the regulation of clinics and to prepare proposed legislation with a view toward accomplishing all of the following: 1) reducing the number of in vitro human embryos created by clinics to a reasonable number needed for reproductive purposes; 2) facilitating the adoption and implantation of unused in vitro human embryos created by clinics; 3) providing a procedure by which those unused in vitro human embryos may be relinquished by their genetic parents for adoption and implantation; and 4) requiring that persons receiving assisted reproductive services at clinics be informed of the option of relinquishing their unused in vitro human embryos for adoption and implantation. The joint legislative council shall include in its study a study of current law relating to the adoption of children and other current law that might be relevant to the adoption of in vitro human embryos with a view toward modeling the proposed legislation relating to the adoption of in vitro human embryos after that current law. The joint legislative council must report its findings, conclusions, and recommendations to the legislature by January 1, 2003.

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. 146.347 of the statutes is created to read:

2 146.347 Human cloning. (1) In this section:

③ → Asexual reproduction ← ③

no and transferring or acquiring any cell, tissue, or product derived from human cloning or

and parthenogenesis or

Analysis INS A
Analysis INS B

BILL

SECTION 1

1 (a) "Asexual reproduction" means reproduction not initiated by the union of an
2 oocyte and a sperm.

3 (b) "Enucleated oocyte" means a fertilized or unfertilized oocyte, the nuclear
4 material of which has been removed or inactivated.

5 (c) "Human cloning" means asexual reproduction accomplished by introducing
6 nuclear material from one or more human somatic cells into an enucleated oocyte so
7 as to produce a living organism having genetic material that is virtually identical to
8 the genetic material of an existing or previously existing human organism.

INS from
6/17/9

~~(d) "Human embryo" has the meaning given in s. 940.17(2)(a)~~

10 (e) "Living organism" includes a human embryo.

INS
4/9

11 (f) "Somatic cell" means a cell that has a complete set of chromosomes and that
12 is obtained or derived from a living or dead human organism at any stage of
13 development.

14 (2) (a) No person may knowingly do any of the following: ^{human} or ^{parthenogenesis}

15 (a) ① Perform or attempt to perform human cloning.

16 (b) ② Transfer or acquire for any purpose a human embryo produced by human
17 cloning or any product derived from ^{human cloning or} ~~such an embryo~~
_{cell, tissue, or}

18 (b) If a person violates par. (a) by creating, attempting to create, transferring,
19 or acquiring more than one human embryo, the creation, attempted creation,
20 transfer, or acquisition of each individual human embryo constitutes a separate
21 violation.

22 (3) Any person who violates sub. (2) ^(a) shall be fined ~~not more than \$10,000 and~~ ^{under par. (b)} _{or}
23 ~~may be~~ imprisoned for not more than 10 years ^{or both}

24 (4) (a) Except as provided in par. (b), any person who violates sub. (2) and who
25 derives a pecuniary gain from the violation shall be required to forfeit \$1,000,000.

INS 4/18

BILL

1 (b) Any person who violates sub. (2) and who derives a pecuniary gain of more
2 than \$500,000 from the violation shall be required to forfeit not less than \$1,000,000
3 nor more than an amount equal to twice the gross amount of the person's pecuniary
4 gain.

5 ~~SECTION 2. 940.17 of the statutes is created to read:~~

6 **940.17 In vitro human embryos.** (1) (a) *Legislative findings.* The
7 legislature finds that:

8 1. There are no laws in this state specifically regulating the procedures used
9 at a clinic that provides assisted reproductive services for infertile couples, other
10 couples, or individuals using the clinic's services.

11 2. The procedures used at an assisted reproductive services clinic in this state
12 are governed by a private contract between the clinic and the couple or individual
13 using the clinic's services.

14 3. It is quite common for an assisted reproductive services clinic to create more
15 human embryos than the number needed to reasonably meet the reproductive
16 purposes of the couples or individuals using its services.

17 4. The private contract usually contains a provision regarding the disposition
18 of human embryos not used by the couple or individual. Often this provision permits
19 the couple or individual to choose to have the unused human embryos destroyed or
20 donated for research.

21 5. It is also possible for the couple or individual to choose to have the unused
22 human embryos donated to another couple or individual for implantation into the
23 woman's uterus for the purpose of having a child. This option is often part of the
24 private contract.

BILL

1 6. The donation of unused human embryos for adoption by another couple or
2 individual is a positive, life-affirming alternative to having the embryos destroyed
3 or donated for research.

4 7. A substantial number of citizens have objections to the destruction of any
5 human embryo or the use of any human embryo for nontherapeutic research that
6 subjects the embryo to a substantial risk of injury or death.

7 (b) *Policy declaration.* It is declared to be the public policy of this state that a
8 human embryo living outside a woman's body should be protected from intentional
9 destruction or research that causes the embryo's death or unnecessarily subjects the
10 embryo to a substantial risk of harm. The legislature reaffirms the positive value
11 of human life at all stages of development and promotes the adoption of unused
12 human embryos. A human embryo is a human being at an early stage of
13 development, not an item of property.

14 (c) *Construction of act.* The following statutory provisions shall be broadly
15 construed to effect the objectives set forth in this section.

16 *INSERT* (2) In this section:

17 (a) "Human embryo" means a human organism derived by fertilization,
18 parthenogenesis, cloning, or any other means from one or more human gametes or
19 human diploid cells. "Human embryo" includes a zygote but does not include a
20 human organism at or beyond the stage of development at which the major body
21 structures are present.

22 (b) "In vitro human embryo" means a human embryo, whether cryopreserved
23 or not, living outside of a woman's body.

Move
to MA
P. 4, line 8

BILL

1 (c) "Nontherapeutic human embryo research" means research involving an in
2 vitro human embryo that is not intended to help protect or preserve the life or protect,
3 preserve, or promote the health of the in vitro human embryo.

4 (d) "Research" means a systematic investigation, including research
5 development, testing, and evaluation, designed to develop or contribute to
6 generalizable knowledge.

7 (3) Whoever intentionally causes the death of an in vitro human embryo is
8 guilty of a Class E felony.

9 (4) Whoever, with the knowledge that any person will intentionally cause the
10 death of the in vitro human embryo, transfers an in vitro human embryo to any
11 person is guilty of a Class E felony.

12 (5) Whoever intentionally subjects an in vitro human embryo to a substantial
13 risk of injury or death for the purpose of nontherapeutic human embryo research is
14 guilty of a Class E felony.

15 (6) Whoever, with the knowledge that the in vitro human embryo will
16 intentionally be subjected to a substantial risk of injury or death for the purpose of
17 nontherapeutic human embryo research, transfers an in vitro human embryo to
18 another person is guilty of a Class E felony.

19 (7) Whoever creates an in vitro human embryo outside of a woman's body,
20 including through the removal of one or more cells from an existing in vitro human
21 embryo, for the purpose of undertaking nontherapeutic human embryo research is
22 guilty of a Class E felony.

23 (8) Whoever uses, transfers, or acquires any living cell or tissue that the actor
24 knows was obtained through conduct that is described under sub. (3), (5), or (7) is
25 guilty of a Class E felony. This subsection does not apply to a person who transfers

BILL**SECTION 2**

1 or acquires an in vitro human embryo for the purpose of having it implanted in a
2 woman's uterus.

3 (9) Subsections (3) to (8) do not apply to any of the following:

4 (a) Cryopreserving an in vitro human embryo if the actor uses all available
5 means to protect and preserve the life and protect, preserve, and promote the health
6 of the embryo.

7 (b) Thawing an in vitro human embryo if the thawing is done for the purpose
8 of facilitating the implantation of the embryo in a woman's uterus consistent with
9 the criteria listed in par. (c) and if the actor uses all available means to protect and
10 preserve the life and protect, preserve, and promote the health of the embryo.

11 (c) Implanting or attempting to implant an in vitro human embryo in a woman's
12 uterus if the embryo was created by fertilization, if the implantation or attempted
13 implantation is done for the purpose of human reproduction, and if the woman
14 intends to carry any resultant pregnancy to term.

15 (d) The transfer or acquisition of an in vitro human embryo if the actor intends
16 that the embryo be cryopreserved consistent with the criteria listed in par. (a),
17 thawed consistent with the criteria listed in par. (b), or implanted in a woman's
18 uterus consistent with the criteria listed in par. (c).

19 (e) The donor of any gamete from which an in vitro human embryo is derived.

20 (10) Whoever purchases or sells an in vitro human embryo is guilty of a Class
21 E felony.

SECTION 3. Nonstatutory provisions.

22 (1) STUDY OF ADOPTION OF EMBRYOS AND REGULATION OF ASSISTED REPRODUCTIVE
23 SERVICES CLINICS.
24

25 (a) In this subsection:

BILL

1 1. "Clinic" means a clinic that provides assisted reproductive services.

2 2. "In vitro human embryo" has the meaning given in section 940.17 (2) (b) of
3 the statutes.

4 (b) The joint legislative council shall study the issues relating to the adoption
5 of in vitro human embryos and the regulation of clinics and shall prepare proposed
6 legislation with a view toward accomplishing all of the following:

7 1. Reducing the number of in vitro human embryos created by clinics to a
8 reasonable number needed for reproductive purposes.

9 2. Facilitating the adoption and implantation of unused in vitro human
10 embryos created by clinics.

11 3. Providing a procedure by which those unused in vitro human embryos may
12 be relinquished by their genetic parents for adoption and implantation.

13 4. Requiring that persons receiving assisted reproductive services at clinics be
14 informed of the option of relinquishing their unused in vitro human embryos for
15 adoption and implantation.

16 (c) The joint legislative council shall include in the study a study of current law
17 relating to the adoption of children and other current law that might be relevant to
18 the adoption of in vitro human embryos with a view toward modeling the proposed
19 legislation relating to the adoption of in vitro human embryos after that current law.

20 (d) The joint legislative council shall report its findings, conclusions, and
21 recommendations to the legislature in the manner provided under section 13.172 (2)
22 of the statutes by January 1, 2003.

SECTION 4. Initial applicability.

23
24 (1) The treatment of section 940.17 (3) to (7) and (10) of the statutes first applies
25 to offenses committed on the effective date of this subsection.

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3079/2ins
MGD:.....

1 **analysis INSERT A**

2 ~~20~~ The bill defines "human parthenogenesis" as the process of manipulating the
3 genetic material of a human egg cell, without introducing into it the genetic material
4 from any other cell, in a way that causes the egg cell to have a complete set of
5 chromosomes.

6 **analysis INSERT B**

7 ~~20~~ and may be fined up to: 1) \$500,000 or, if the person derives a pecuniary gain
8 from the violation, an amount equal to twice the gross amount of the person's
9 pecuniary gain, whichever is greater, if a corporation, partnership, association,
10 government or government agency, or any other entity is being prosecuted; or 2)
11 \$250,000 or, if the person derives a pecuniary gain from the violation, an amount
12 equal to twice the gross amount of the person's pecuniary gain, whichever is greater,
13 if an individual is being prosecuted.

14 **INSERT 4/9**

15 (e) "Human parthenogenesis" means the process of manipulating the genetic
16 material of a human oocyte, without introducing into the oocyte the genetic material
17 from any other cell, in a way that causes the oocyte to become a diploid cell.

18 **INSERT 4/23**

19 (b) 1. The maximum fine for a person other than an individual who violates
20 subd. 2 is \$500,000 or, if the person derives a pecuniary gain from the violation, an
21 amount equal to twice the gross amount of the person's pecuniary gain, whichever
22 is greater.

↓

1 2. The maximum fine for an individual who violates sub. (2) is \$250,000 or, if
2 the individual derives a pecuniary gain from the violation, an amount equal to twice
3 the gross amount of the individual's pecuniary gain, whichever is greater.



2001 ASSEMBLY BILL

retrieve from hold

502

Regen

1 AN ACT to create 146.347 of the statutes; relating to: human cloning and
2 parthenogenesis and providing penalties.

Analysis by the Legislative Reference Bureau

This bill prohibits human cloning and parthenogenesis; attempting to perform human cloning or parthenogenesis; transferring or acquiring a human embryo produced by human cloning or parthenogenesis; and transferring or acquiring any cell, tissue, or product derived from human cloning or parthenogenesis. The bill defines "human cloning" as introducing nuclear material from one or more human somatic cells (a human cell with a complete set of chromosomes) into an egg cell, the nuclear material of which has been removed or inactivated, so as to produce a living organism, including a human embryo, having genetic material that is virtually identical to the genetic material of an existing or previously existing human organism. The bill defines "human parthenogenesis" as the process of manipulating the genetic material of a human egg cell, without introducing into it the genetic material from any other cell, in a way that causes the egg cell to have a complete set of chromosomes.

A person who violates one of the prohibitions relating to human cloning or parthenogenesis may be imprisoned for not more than ten years and may be fined up to: 1) \$500,000 or, if the person derives a pecuniary gain from the violation, an amount equal to twice the gross amount of the person's pecuniary gain, whichever is greater, if a corporation, partnership, association, government or government agency, or any other entity is being prosecuted; or 2) \$250,000 or, if the person derives a pecuniary gain from the violation, an amount equal to twice the gross amount of

became a human embryo ✓

ASSEMBLY BILL

the person's pecuniary gain, whichever is greater, if an individual is being prosecuted. A person who violates one of the prohibitions is also subject to a civil monetary penalty (a forfeiture) of \$1,000,000 if the person derives a pecuniary gain from the violation, unless the person's gross pecuniary gain exceeds \$500,000. In that case, the amount of the forfeiture must be between \$1,000,000 and twice the amount of the person's gross pecuniary gain.

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. 146.347^X of the statutes is created to read:

2 **146.347 Asexual human reproduction.** (1) In this section:

3 (a) "Asexual reproduction" means reproduction not initiated by the union of an
4 oocyte and a sperm.

5 (b) "Enucleated oocyte" means a fertilized or unfertilized oocyte, the nuclear
6 material of which has been removed or inactivated.

7 (c) "Human cloning" means asexual reproduction accomplished by introducing
8 nuclear material from one or more human somatic cells into an enucleated oocyte so
9 as to produce a living organism having genetic material that is virtually identical to
10 the genetic material of an existing or previously existing human organism.

11 (d) "Human embryo" means a human organism derived by fertilization,
12 parthenogenesis, cloning, or any other means from one or more human gametes or
13 human diploid cells. "Human embryo" includes a zygote but does not include a
14 human organism at or beyond the stage of development at which the major body
15 structures are present.

16 (e) "Human parthenogenesis" means the process of manipulating the genetic
17 material of a human oocyte, without introducing into the oocyte the genetic material
18 from any other cell, in a way that causes the oocyte to become a (diploid cell).

human embryo ✓

ASSEMBLY BILL

1 (f) "Living organism" includes a human embryo.

2 (g) "Somatic cell" means a cell that has a complete set of chromosomes and that
3 is obtained or derived from a living or dead human organism at any stage of
4 development.

5 (2) No person may knowingly do any of the following:

6 (a) Perform or attempt to perform human cloning or human parthenogenesis.

7 (b) Transfer or acquire for any purpose a human embryo produced by human
8 cloning or human parthenogenesis or any cell, tissue, or product derived from human
9 cloning or human parthenogenesis.

10 (3) (a) Any person who violates sub. (2) may be fined under par. (b) or
11 imprisoned for not more than 10 years or both.

12 (b) 1. The maximum fine for a person other than an individual who violates
13 subd. 2. is \$500,000 or, if the person derives a pecuniary gain from the violation, an
14 amount equal to twice the gross amount of the person's pecuniary gain, whichever
15 is greater.

16 2. The maximum fine for an individual who violates sub. (2) is \$250,000 or, if
17 the individual derives a pecuniary gain from the violation, an amount equal to twice
18 the gross amount of the individual's pecuniary gain, whichever is greater.

19 (4) (a) Except as provided in par. (b), any person who violates sub. (2) and who
20 derives a pecuniary gain from the violation shall be required to forfeit \$1,000,000.

21 (b) Any person who violates sub. (2) and who derives a pecuniary gain of more
22 than \$500,000 from the violation shall be required to forfeit not less than \$1,000,000
23 nor more than an amount equal to twice the gross amount of the person's pecuniary
24 gain.

25

(END)