



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2015 Assembly Bill 305

**Assembly Substitute
Amendment 1**

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BACKGROUND

Wisconsin statutes prohibit the sale of human organs. A “human organ” is defined as a “human kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin and any other human organ specified by the Department of Health Services by rule.” [s. 146.345 (1) (a), Stats.] Under s. 146.345 (b), Stats., no person may knowingly and for valuable consideration acquire, receive, or transfer any human organ for use in human organ transplantation. The definition of “**valuable consideration**” excludes reasonable payments associated with the following:

- The removal, transportation, implantation, processing, preservation, quality control, or storage of a human organ.
- An expense of travel, housing, or lost wages incurred by a human organ donor in connection with donation of the human organ.

[s. 145.345 (1) (c), Stats.]

Any person who violates Wisconsin’s prohibition on the sale of human organs is guilty of a Class H felony, and is subject to a fine not to exceed \$50,000,¹ imprisonment not to exceed six years, or both. [s. 146.345 (3), Stats.] While the fine is similar to the fine specified under federal law, the maximum term of imprisonment is one year longer than the maximum term of imprisonment under federal law.

¹ The general penalty for a Class H felony is a fine not to exceed \$10,000, imprisonment not to exceed six years, or both. [s. 939.50 (3) (h), Stats.]

2015 ASSEMBLY BILL 305

Assembly Bill 305 (the bill) creates a prohibition on the sale and use of a fetal body part. Under the bill, no person may do either of the following:

- Knowingly and for valuable consideration acquire, receive, or otherwise transfer a fetal body part.
- Knowingly provide, receive, or use, for experimentation, a fetal body part, regardless of whether the provision, receipt, or use is for valuable consideration.

The penalty for violating the prohibitions provided by the bill is the same penalty associated with Wisconsin's prohibition on the sale of human organs. The penalty is a Class H felony, with a fine not to exceed \$50,000, imprisonment not to exceed six years, or both.

The bill defines a "**fetal body part**" to mean "a cell, tissue, organ, or other part of an unborn child who is aborted by an induced abortion." An "unborn child" is defined elsewhere in the statutes to mean "an individual of the human species from fertilization until birth that is gestating inside a woman." [s. 939.75 (1), Stats.] Also, an "induced abortion" under the Wisconsin statutes is defined as "the termination of a uterine pregnancy by a physician of a woman known by the physician to be pregnant, for a purpose other than to produce a live birth or to remove a dead fetus." [s. 69.01 (13m), Stats.] Based upon these definitions, the definition of a fetal body part does not include a cell, tissue, or other part of an unborn child that was derived from either a spontaneous abortion (miscarriage) or a still birth. The bill does not, however, specify whether this definition includes a cell line that is derived from an unborn child that was aborted by an induced abortion (fetal cell line).

ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Substitute Amendment 1 (ASA 1) to the bill makes the following changes to the bill:

- Amends the bill to prohibit any type of use, regardless of whether payments of valuable consideration were made. Specifically, under ASA 1, "no person may knowingly acquire, provide, receive, or use a fetal body part, regardless of whether the acquisition, provision, receipt, or use is for valuable consideration." Under ASA 1, a person who is acting exclusively in furtherance of final disposition (burial, interment, entombment, cremation, or incineration) of a fetal body part is exempt from this prohibition.
- Redefines the term "**fetal body part**" to mean "a cell, tissue, organ, or other part of an unborn child, who is aborted by an induced abortion that occurs after January 1, 2015." This new definition appears to exempt existing fetal cell lines from the prohibition created by ASA 1, as long as the cell lines were derived from an unborn child that was aborted by an induced abortion on or before January 1, 2015.

- Specifies that the use of a fetal body part for diagnostic or remedial tests, procedures, or observations which have the sole purpose of determining the life or health of the unborn child in order to provide that information to the mother or preserving the life or health of the child, unborn child, or the child's mother is not prohibited under ASA 1.
- Creates the requirement that a physician who performs or induces an induced abortion must arrange for the final disposition of fetal body parts resulting from the induced abortion. ASA 1 specifies "**final disposition**" as "burial, interment, entombment, cremation, or incineration."
- Creates an initial applicability provision to provide that ASA 1 first applies to the acquisition, provision, receipt or use of a fetal body part on the effective date of ASA 1.

BILL HISTORY

On September 4, 2015, ASA 1 was introduced by Representatives Jacque and Kleefisch. On September 9, 2015, the Assembly Committee on Criminal Justice and Public Safety voted to recommend adoption of ASA 1 by a vote of Ayes, 6; Noes, 5. The committee then voted to recommend passage of the bill, as amended, by a vote of Ayes, 7; Noes, 4.

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