



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-2072/1
TJD:all

2017 SENATE BILL 422

October 2, 2017 - Introduced by Senators DARLING, WANGGAARD and OLSEN, cosponsored by Representatives DUCHOW, LOUDENBECK, BALLWEG, BORN, E. BROOKS, FELZKOWSKI, KERKMAN, KRUG, NYGREN, OTT, ROHRKASTE, SPIROS, STEINEKE and VOS. Referred to Committee on Judiciary and Public Safety.

- 1 **AN ACT** *to create* 146.343 (1) (e) and 146.346 of the statutes; **relating to:** sale
2 of and research on fetal body parts, final disposition of fetal body parts, cord
3 blood banks, and providing a criminal penalty.

Analysis by the Legislative Reference Bureau

Generally, this bill bans the sale of fetal body parts, regulates certain research on fetal body parts, and requires the final disposition of fetal body parts. This bill also requires the Department of Health Services to request information from umbilical cord blood banks on creating a public cord blood collection operation. Under the bill, fetal body parts are cells, tissue, organs, or other parts of an unborn child that are obtained after and as the result of an elective abortion, except for cultured cells and except for cells, tissue, or organs from an aborted fetus if the abortion occurred before the effective date of the bill.

Current law prohibits a person from knowingly and for valuable consideration acquiring, receiving, or otherwise transferring a human organ. Current federal law prohibits a person from knowingly acquiring, receiving, or otherwise transferring, in interstate commerce, any fetal tissue for valuable consideration. The bill prohibits any person from knowingly and for valuable consideration acquiring, receiving, or otherwise transferring a fetal body part and from knowingly using, for research, a fetal body part that is provided or received for valuable consideration. The bill prohibits knowingly acquiring or receiving any fetal body part for research from a for-profit entity, an abortion clinic, or an entity that has as its primary function obtaining fetal tissue for sale. The bill prohibits the altering of the timing, method,

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or procedures used to terminate a woman's pregnancy solely for the purpose of obtaining a fetal body part for research. The bill also prohibits a woman's attending physician who obtains a fetal body part from being involved in performing research on the fetal body part.

A person who uses or receives a fetal body part for research is required by the bill to obtain written documentation that the entity that provided the fetal body part did not obtain the fetal body part for valuable consideration and to maintain that written documentation for seven years. Before using a fetal body part in research, an institutional review board must review the documentation from the entity that provided the fetal body part to determine that informed consent was obtained in accordance with federal law and that other requirements specified in the bill are met. The bill also exempts from criminal or civil liability or charges of unprofessional conduct a person who conscientiously objects to participation in research utilizing a fetal body part that violates that person's moral or religious beliefs.

The bill requires that a physician who performs or induces an abortion in this state arrange for the final disposition of the fetal body parts. Final disposition, under the bill, means the disposition of fetal body parts by burial, interment, entombment, cremation, or incineration.

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

1 **SECTION 1.** 146.343 (1) (e) of the statutes is created to read:

2 146.343 (1) (e) "Principal prenatal health care provider" means a nurse,
3 nurse-midwife, or physician who is the primary prenatal health care provider.

4 **SECTION 2.** 146.346 of the statutes is created to read:

5 **146.346 Fetal body parts; research. (1) DEFINITIONS.** In this section:

6 (a) "Fetal body part" means a cell, tissue, organ, or other part of an unborn
7 child, as defined in s. 939.75 (1), that is obtained after and as a result of an elective
8 abortion, as defined in s. 253.10 (2) (a). "Fetal body part" does not include any of the
9 following:

10 1. Cultured cells.

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1 2. Cells, tissue, or organs from an aborted fetus if the abortion, as defined in
2 s. 253.10 (2) (a), occurred before the effective date of this subdivision [LRB inserts
3 date].

4 (b) “Final disposition” means the disposition of fetal body parts by burial,
5 interment, entombment, cremation, or incineration.

6 (c) “Research” means a systematic investigation, including research,
7 development, testing, and evaluation, designed to develop or contribute to
8 generalizable knowledge.

9 (d) “Valuable consideration” has the meaning given in 42 USC 289g-2 (e) (3)
10 as amended to January 1, 2017.

11 **(2) PROHIBITIONS; RESEARCH REQUIREMENTS.** (a) No person may knowingly and
12 for valuable consideration acquire, receive, or otherwise transfer a fetal body part.

13 (b) No person may knowingly use, for research, a fetal body part that is
14 provided or received for valuable consideration.

15 (c) No person may knowingly acquire or receive any fetal body part for research
16 from a for-profit entity, an abortion clinic, or an entity that has as its primary
17 function obtaining fetal tissue for sale.

18 (d) No person may alter the timing, method, or procedures used to terminate
19 a woman’s pregnancy solely for the purpose of obtaining a fetal body part for
20 research.

21 (e) A woman’s attending physician who obtains a fetal body part may not be
22 involved in performing research on the fetal body part.

23 (f) Any person who uses or receives any fetal body part for research shall obtain
24 written documentation from the entity that provided the fetal body part that certifies
25 that the entity did not obtain the fetal body part for valuable consideration. The

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1 person who uses or receives the fetal body part for research shall maintain that
2 written documentation from the entity for at least 7 years.

3 (g) Before the use of any fetal body part for research, an institutional review
4 board shall review the written documentation from the entity that provided the fetal
5 body part to determine that informed consent for research using the fetal body part
6 was obtained in accordance with 45 CFR 46.116 and, if applicable, 42 USC 289g-1
7 and that all of the following requirements are met:

8 1. The consent of the woman for the abortion, as defined in s. 253.10 (2) (a), is
9 obtained before requesting or obtaining her consent for donation of the fetal body
10 part for research in accordance with 45 CFR 46.116 and, if applicable, 42 USC
11 289g-1.

12 2. The woman donating the fetal body part is informed, in accordance with 45
13 CFR 46.116 and, if applicable, 42 USC 289g-1, of any known medical risks to her or
14 any risks to her privacy that might be associated with the donation of a fetal body
15 part and of any similar risks that are associated with her medical care.

16 (h) This subsection does not apply to use of a fetal body part for diagnostic or
17 remedial tests, procedures, or observations that have the sole purpose of determining
18 the life or health of the unborn child in order to provide that information to the
19 mother or preserving the life or health of the child, unborn child, or the child's
20 mother. Notwithstanding pars. (a) to (c), a person is not guilty of violating this
21 section if the person is developing pharmaceutical products or paying or receiving a
22 payment for an existing pharmaceutical product. Nothing in this section may be
23 construed as restricting access to health care, to prescription drugs or devices, or to
24 other pharmaceutical products.

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1 **(3) FINAL DISPOSITION.** (a) Notwithstanding sub. (2) (a) to (c), a physician who
2 performs or induces an abortion, as defined in s. 253.10 (2) (a), in this state shall
3 arrange for the final disposition of fetal body parts resulting from the abortion.

4 (b) Notwithstanding sub. (2) (a) to (c), a person is not guilty of violating this
5 section if the person is acting exclusively in furtherance of final disposition of a fetal
6 body part.

7 **(4) CONSCIENCE.** No person may be held criminally or civilly liable or charged
8 with unprofessional conduct for conscientiously objecting to participation in
9 research utilizing a fetal body part that violates a person's moral or religious belief.

10 **(5) PENALTY.** Any person who violates this section is subject to a fine not to
11 exceed \$50,000 or imprisonment not to exceed 9 months, or both.

12 **SECTION 3. Nonstatutory provisions.**

13 **(1) INFORMATION ON ESTABLISHING PUBLIC CORD BLOOD COLLECTION OPERATION.**

14 (a) Before January 1, 2018, the department of health services shall request
15 information from at least one umbilical cord blood bank regarding the establishment
16 of a public cord blood collection operation within the state to collect, transport,
17 process, and store cord blood from residents of the state for therapeutic and research
18 purposes. The department of health services shall include in the request for
19 information questions eliciting the umbilical cord blood bank's ability to do all of the
20 following:

21 1. Establish and operate one or more collection sites within the state to collect
22 a specified target number of cord blood units.

23 2. Implement collection procedures designed to collect cord blood units that
24 reflect the state's racial and ethnic diversity.

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1 3. Establish public cord blood collection operations no later than 6 months after
2 executing a contract with the department of health services unless the umbilical cord
3 blood bank is unable to negotiate any necessary contracts related to the collection
4 sites within that time.

5 4. Participate in the National Cord Blood Coordinating Center or a similar
6 national cord blood inventory that lists cord blood units in a manner that assures
7 maximum opportunity for use.

8 5. Establish and operate a program that provides cord blood units for research
9 and agree to provide cord blood units that are unsuitable for therapeutic use to
10 researchers located within the state at no cost to the researcher.

11 6. Maintain national accreditation with an accrediting organization that is
12 recognized by the federal health resources and services administration.

13 (b) Before April 1, 2018, the department of health services shall submit a
14 summary of the responses to the request for information under paragraph (a) and
15 any recommendations developed from the responses to the governor and to the
16 appropriate standing committees of the legislature under section 13.172 (3) of the
17 statutes.

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(END)