

1999 DRAFTING REQUEST**Bill**Received: **09/30/98**Received By: **kunkemd**Wanted: **As time permits**

Identical to LRB:

For: **Scott Walker (608) 266-9180**By/Representing: **Himself**This file may be shown to any legislator: **NO**Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Health - abortion
Health - miscellaneous
Occupational Reg. - misc**Extra Copies: **GMM, DAK**

Pre Topic:

No specific pre topic given

Topic:

Exempting certain health care professionals from discipline and liability for refusing to be involved in abortions, sterilizations, euthanasia and certain other procedures.

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>
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/2	kunkemd 02/17/99	jgeller 02/17/99	ismith 02/12/99	_____	lrb_docadmin 02/12/99		State
/3	kunkemd 04/7/99	jgeller 04/7/99	jfrantze 02/17/99	_____	lrb_docadmin 02/17/99		State

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05-06-99

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FE Sent For:							



Scott Walker

Wauwatosa's Representative in the Wisconsin State Assembly

99-0406/2

To: Mark D. Kunkel, Legislative Reference Bureau

From: Rep. Scott Walker

Date: September 23, 1998

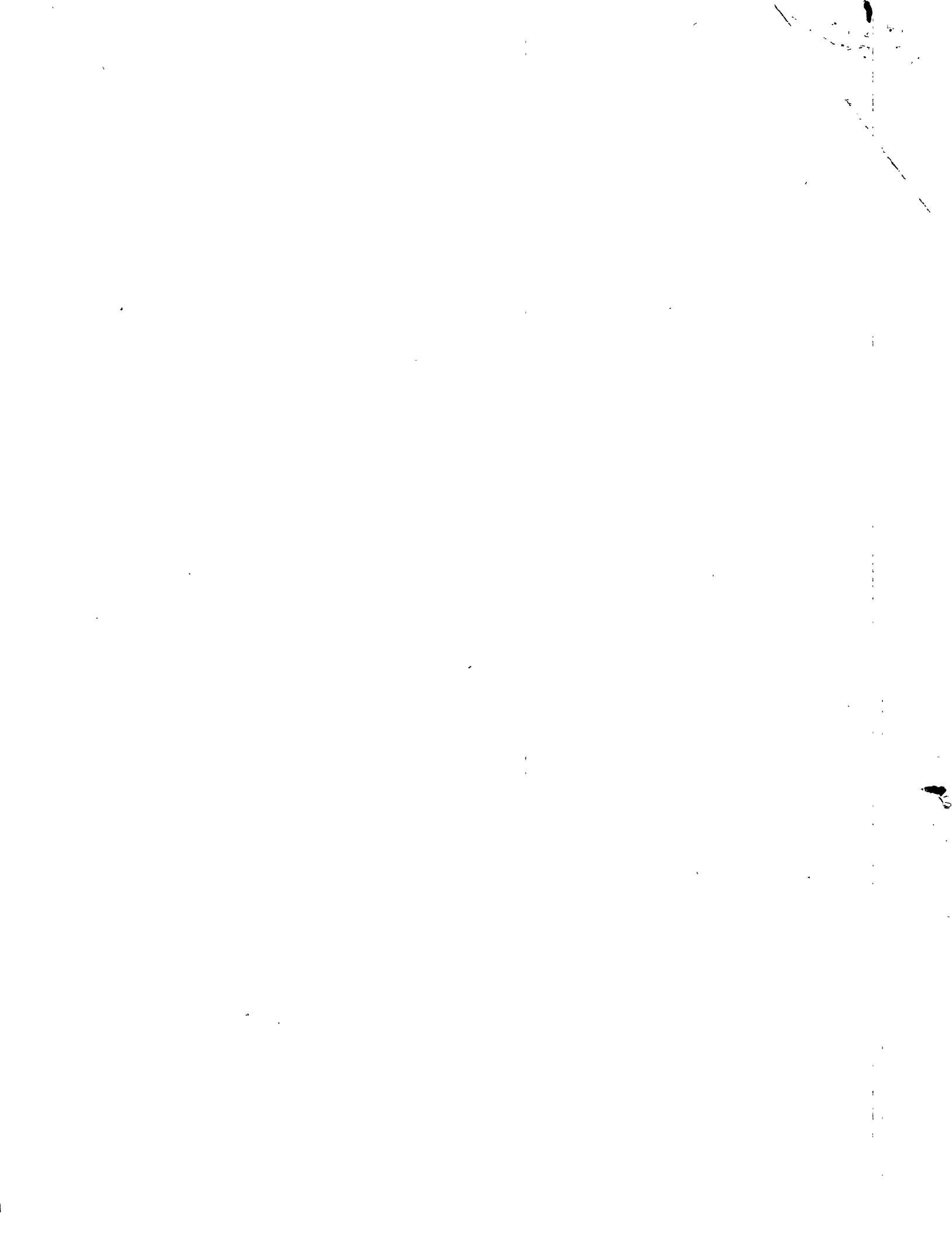
Re: Legislative Drafting Requests for the 1999-2000 Session

Listed below you will find bills which were drafted for me during the past legislative session. I would like to reintroduce this legislation for the upcoming 1999-2000 session. Please refer to the corresponding LRB and bill numbers below. At this time the legislation can be drafted the same as it was last session.

If you have questions or comments, please call me at 6-9181. Thank you for your attention to this matter.

<u>Subject</u>	<u>Topic</u>	<u>LRB No.</u>	<u>Introduced</u>
• Occupational Reg. - misc. Health - miscellaneous Health - abortion	Exempting certain health care professionals from discipline and liability for refusing to be involved in abortions, sterilization, euthanasia and other practices	-3843/3	<u>As</u> AB-953





O-NOTE

K9

LRB-0406/1

1997 ASSEMBLY BILL 953

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NOT
RUN

Due Thurs.
12/10

March 26, 1998 - Introduced by Representatives WALKER, OWENS, GREEN, HANDRICK, RYBA, SPILLNER, ALBERS, STASKUNAS, SERATTI, SYKORA, GUNDERSON, OTTE, LORGE, GROTHMAN, HUTCHISON, NASS, UNDERHEIM, F. LASEE, OTT, HUEBSCH, WIECKERT, DUFF and LAZICH, cosponsored by Senators ROESSLER, FARROW, FITZGERALD, DRZEWIECKI, SCHULTZ and WELCH. Referred to Committee on Health.

Gen Cat.

I may all amended
stats w/stats.

1 **AN ACT to renumber and amend** 111.337 (1), 253.09 (1), 441.06 (6) and 448.03

2 (5) (a); **to amend** 253.09 (title), 253.09 (2), 253.09 (3), 253.09 (4) (a), 253.09 (4)

3 (b) 1., 253.09 (4) (b) 2., 441.06 (title) and 448.03 (5) (title); and **to create** 111.337

4 (1g), 111.337 (1r) (b), 253.09 (1g), 253.09 (1r) (a) 1. to 7., 441.06 (6) (a) to (g),

5 441.06 (7), 448.03 (5) (a) 1. to 7., 448.03 (5) (am) and 450.135 of the statutes;

6 **relating to:** employment discrimination based on creed and exemption from

7 liability and discipline for physicians, nurses, pharmacists, other health care

8 providers and hospital employees who refuse to participate in sterilization,

9 abortion, assisted suicide and other procedures on moral or religious grounds.

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, an employer may not engage in employment discrimination based on creed. "Creed" is defined as a system of religious beliefs, including moral or ethical beliefs about right and wrong, that a person sincerely holds with the strength of traditional religious views. Employment discrimination based on creed is defined to include refusing to reasonably accommodate an employe's or prospective employe's religious observances or practices unless the employer can demonstrate that the accommodation would pose an undue hardship.

This bill expands the definition of employment discrimination based on creed to include discriminating against a health care provider on the basis of his or her written refusal, based on creed, to participate in any of the following activities: 1) sterilization procedures; 2) certain procedures that prevent the implantation of a fertilized human ovum; 3) abortions; 4) experiments or medical procedures that involve the destruction of a human embryo or that involve a human embryo or unborn child but do not relate to the beneficial treatment of the human embryo or unborn child; 5) procedures using fetal tissue or organs; 6) withholding or withdrawing nutrition or hydration under certain circumstances; or 7) acts causing or assisting in the death of an individual, including assisted suicide, euthanasia or mercy killing. There is no exception for an employer to show that the refusal poses an undue hardship.

Under current law, hospitals, certain health care professionals and hospital employes may not, under certain circumstances, be required to participate in procedures involving sterilization or the removal of a human embryo or fetus. Specifically, a hospital may not be required to admit a patient or allow the use of its facilities for such a procedure. In addition, physicians and other hospital employes who object, in writing, to participating in such a procedure on moral or religious grounds may not be disciplined for refusing to participate in the procedure. Also, a hospital, school or employer may not take any disciplinary action regarding employment, staff or student status against a person who refuses to participate in such a procedure if the refusal is based on moral or religious precepts. Finally, under current law, a hospital and the following persons are exempt from liability for damages that result from a refusal to perform such a procedure if the refusal is based on religious or moral precepts: persons employed by or associated with the staff of a hospital, physicians and other health care professionals licensed or certified by the medical examining board in the department of regulation and licensing (DORL) and registered nurses licensed by the board of nursing in DORL.

This bill expands all of the provisions described above regarding hospitals, health care professionals and hospital employes to include a refusal to participate, based on moral or religious grounds, in any of the activities described above with respect to employment discrimination based on creed. Also, the bill provides that pharmacists licensed by the pharmacy examining board in DORL are exempt from liability for damages that result from a refusal to participate in any of the activities if the refusal is based on religious or moral precepts, in addition to physicians and other health care professionals licensed or certified by the medical examining board and registered nurses licensed by the board of nursing. seven

Finally, the bill specifies that the medical examining board, board of nursing, pharmacy examining board or DORL may not take any disciplinary action against any of the following who, in writing, refuse, or state an intention to refuse, to participate in any of the activities if the refusal is based on moral or religious grounds: a physician or other health care professional licensed or certified by the medical examining board, registered nurse licensed by the board of nursing or pharmacist licensed by the pharmacy examining board. Under the bill, the medical examining board may not take disciplinary action against a physician who makes seven

such a refusal even if the physician refuses to transfer a patient who has executed a declaration authorizing the withholding or withdrawal of life-sustaining procedures or feeding tubes, or who has executed a power of attorney for health care instrument consenting to the withholding or withdrawal of feeding tubes, to another physician who will comply with the declaration or instrument. Under current law, under certain circumstances, a physician who refuses to transfer such a patient to another physician is subject to discipline for unprofessional conduct.

For further information see the *state* 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.** 111.337 (1) of the statutes is renumbered 111.337 (1r) (intro.) and
2 amended to read:

3 111.337 (1r) (intro.) Employment discrimination because of creed includes, but
4 is not limited to, refusing any of the following:

5 (a) Refusing to reasonably accommodate an employe's or prospective employe's
6 religious observance or practice unless the employer can demonstrate that the
7 accommodation would pose an undue hardship on the employer's program,
8 enterprise or business.

9 **SECTION 2.** 111.337 (1g) of the statutes is created to read:

10 111.337 (1g) In this section:

11 (a) "Health care provider" means any of the following:

12 1. An individual licensed, registered, permitted or certified by the department
13 of health and family services or the department of regulation and licensing to provide
14 health care services in this state.

15 2. An individual who provides health care services as directed, supervised or
16 inspected by an individual specified in subd. 1.

1 (b) “Participate in” means to perform, assist in, counsel in favor of, make
2 referrals for, prescribe, dispense or administer drugs for, or otherwise promote,
3 encourage or aid.

4 **SECTION 3.** 111.337 (1r) (b) of the statutes is created to read:

5 111.337 (1r) (b) Discriminating against any health care provider by engaging
6 in any of the actions prohibited under s. 111.322 on the basis of the health care
7 provider’s written refusal, or written statement of an intention to refuse, based on
8 his or her creed, to participate in any of the following:

9 1. A sterilization procedure.

10 2. A procedure involving a drug or device that may prevent the implantation
11 of a fertilized human ovum.

12 3. An abortion, as defined in s. 253.10 (2) (a).

13 4. An experiment or medical procedure involving any of the following:

14 a. The destruction of a human embryo.

15 b. A human embryo or unborn child, at any stage of development, including a
16 fertilized human ovum, in which the experiment or procedure is not related to the
17 beneficial treatment of the human embryo or unborn child.

18 5. A procedure that uses fetal tissue or organs, including a transplant
19 procedure.

20 6. The withholding or withdrawal of nutrition or hydration, unless the
21 administration of nutrition or hydration is medically contraindicated.

22 7. An act that causes or assists in causing the death of an individual, such as
23 by assisted suicide, euthanasia or mercy killing.

24 **SECTION 4.** 253.09 (title) of the statutes is amended to read:

1 **253.09** (title) ~~Abortion refused~~ Refusal to participate in certain
2 practices; no liability; no discrimination.

3 **SECTION 5.** 253.09 (1) of the statutes is renumbered 253.09 (1r) (a) (intro.) and
4 amended to read:

5 253.09 (1r) (a) (intro.) No hospital shall be is required to admit any patient or
6 to allow the use of the hospital facilities for the purpose of performing a sterilization
7 procedure or removing a human embryo or fetus. any of the following:

8 **(b)** A physician or any other person who is a member of or associated with the
9 staff of a hospital, or any employe of a hospital in which such a procedure the
10 performance of an activity specified in par. (a) 1. to 7. has been authorized, who shall
11 state in writing his or her objection to the performance of or providing assistance to
12 such a procedure, in writing, refuses, or states an intention to refuse, to participate
13 in the activity on moral or religious grounds shall not be required to participate in
14 such medical procedure, and the activity.

15 **(c)** A physician or any other person who is a member of or associated with the
16 staff of a hospital, or any employe of a hospital, is immune from liability for any
17 damage caused by, and may not be subjected to any disciplinary or recriminatory
18 action based on, the refusal of any such the person to participate therein shall not
19 form the basis of any claim for damages on account of such refusal or for any
20 disciplinary or recriminatory action against such person in an activity specified in
21 par. (a) 1. to 7. on moral or religious grounds.

22 **SECTION 6.** 253.09 (1g) of the statutes is created to read:

23 253.09 (1g) In this section, “participate in” means to perform, assist in, counsel
24 in favor of, make referrals for, prescribe, dispense or administer drugs for, or
25 otherwise promote, encourage or aid.

1 **SECTION 7.** 253.09 (1r) (a) 1. to 7. of the statutes are created to read:

2 253.09 (1r) (a) 1. A sterilization procedure.

3 2. A procedure involving a drug or device that may prevent the implantation
4 of a fertilized human ovum.

5 3. An abortion, as defined in s. 253.10 (2) (a).

6 4. An experiment or medical procedure involving any of the following:

7 a. The destruction of a human embryo.

8 b. A human embryo or unborn child, at any stage of development, including a
9 fertilized human ovum, in which the experiment or procedure is not related to the
10 beneficial treatment of the human embryo or unborn child.

11 5. A procedure that uses fetal tissue or organs, including a transplant
12 procedure.

13 6. The withholding or withdrawal of nutrition or hydration, unless the
14 administration of nutrition or hydration is medically contraindicated.

15 7. An act that causes or assists in causing the death of an individual, such as
16 by assisted suicide, euthanasia or mercy killing.

17 **SECTION 8.** 253.09 (2) of the statutes is amended to read:

18 253.09 (2) ~~No A hospital or employe of any a hospital shall be liable for any civil~~
19 ~~damages resulting from~~ is immune from liability for any damage caused by a refusal
20 ~~to perform sterilization procedures or remove a human embryo or fetus from a~~
21 ~~person, if such~~ participate in an activity specified in sub. (1r) (a) 1. to 7., if the refusal
22 is based on religious or moral precepts.

23 **SECTION 9.** 253.09 (3) of the statutes is amended to read:

24 253.09 (3) No hospital, school or employer may discriminate against any
25 person with regard to admission, hiring or firing, tenure, term, condition or privilege

1 of employment, student status or staff status on the ground that the person, in
2 writing, ~~refuses to recommend, aid or perform procedures for sterilization or the~~
3 ~~removal of a human embryo or fetus, or states an intention to refuse, to participate~~
4 ~~in an activity specified in sub. (1r) (a) 1. to 7.,~~ if the refusal is based on religious or
5 moral precepts.

6 **SECTION 10.** 253.09 (4) (a) of the statutes is amended to read:

7 253.09 (4) (a) ~~Such individual to perform or assist in the performance of any~~
8 ~~sterilization procedure or removal of a human embryo or fetus~~ participate in an
9 activity specified in sub. (1r) (a) 1. to 7., if the individual's ~~performance or assistance~~
10 ~~participation~~ in the performance of such a procedure would be activity is contrary to
11 the individual's religious beliefs or moral convictions; or

12 **SECTION 11.** 253.09 (4) (b) 1. of the statutes is amended to read:

13 253.09 (4) (b) 1. Make its facilities available for ~~the performance of any~~
14 ~~sterilization procedure or removal of a human embryo or fetus~~ an individual to
15 participate in an activity specified in sub. (1r) (a) 1. to 7., if the performance of such
16 ~~a procedure in such facilities is prohibited by the entity~~ prohibits the activity from
17 taking place in the facilities on the basis of religious beliefs or moral convictions; or

18 **SECTION 12.** 253.09 (4) (b) 2. of the statutes is amended to read:

19 253.09 (4) (b) 2. Provide any personnel ~~for the performance or assistance in the~~
20 ~~performance of any sterilization procedure or assistance~~ to participate in an activity
21 specified in sub. (1r) (a) 1. to 7., if the ~~performance or assistance in the performance~~
22 ~~of such procedure or the removal of a human embryo or fetus by such personnel would~~
23 ~~be~~ activity is contrary to the religious beliefs or moral convictions of ~~such~~ the
24 personnel.

25 **SECTION 13.** 441.06 (title) of the statutes is amended to read:

1 **441.06 (title) Licensure; civil liability and disciplinary exemption.**

2 **SECTION 14.** 441.06 (6) of the statutes is renumbered 441.06 (6) (intro.) and
3 amended to read:

4 441.06 (6) (intro.) ~~No~~ A person licensed as a registered nurse under this section
5 is ~~liable for any civil damages resulting from~~ immune from liability for any damage
6 caused by his or her refusal to perform sterilization procedures or to remove or aid
7 in the removal of a human embryo or fetus from a person, assist in, counsel in favor
8 of, make referrals for, prescribe, dispense or administer drugs for, or otherwise
9 promote, encourage or aid any of the following, if the refusal is based on religious or
10 moral precepts:

11 **SECTION 15.** 441.06 (6) (a) to (g) of the statutes are created to read:

12 441.06 (6) (a) A sterilization procedure.

13 (b) A procedure involving a drug or device that may prevent the implantation
14 of a fertilized human ovum.

15 (c) An abortion, as defined in s. 253.10 (2) (a).

16 (d) An experiment or medical procedure involving any of the following:

17 1. The destruction of a human embryo.

18 2. A human embryo or unborn child, at any stage of development, including a
19 fertilized human ovum, in which the experiment or procedure is not related to the
20 beneficial treatment of the human embryo or unborn child.

21 (e) A procedure that uses fetal tissue or organs, including a transplant
22 procedure.

23 (f) The withholding or withdrawal of nutrition or hydration, unless the
24 administration of nutrition or hydration is medically contraindicated.

1 (g) An act that causes or assists in causing the death of an individual, such as
2 by assisted suicide, euthanasia or mercy killing.

3 SECTION 16. 441.06 (7) of the statutes is created to read:

4 441.06 (7) A person licensed as a registered nurse under this section who, in
5 writing, refuses, or states an intention to refuse, on moral or religious grounds to
6 engage in a practice of professional nursing that is related to an activity specified in
7 sub. (6) (a) to (g) shall not be required to engage in the practice with respect to the
8 activity and may not be disciplined by the board or the department for refusing or
9 stating an intention to refuse to engage in the practice with respect to the activity.

10 SECTION 17. 448.03 (5) (title) of the statutes is amended to read:

11 448.03 (5) (title) CIVIL LIABILITY AND DISCIPLINARY EXEMPTION; CERTAIN MEDICAL
12 PROCEDURES AND REPORTS.

13 SECTION 18. 448.03 (5) (a) of the statutes is renumbered 448.03 (5) (a) (intro.)
14 and amended to read:

plain → *subchapter* ~~XXXXXXXXXX~~

15 448.03 (5) (a) (intro.) ~~No~~ A person licensed or certified under this ~~person~~ shall
16 be liable for any civil damages resulting from such is immune from liability for any
17 damage caused by the person's refusal to perform sterilization procedures or to
18 remove or aid in the removal of a human embryo or fetus from a person if such, assist
19 in, counsel in favor of, make referrals for, prescribe, dispense or administer drugs for,
20 or otherwise promote, encourage or aid any of the following if the refusal is based on
21 religious or moral precepts:

Proof w/ stats.

22 SECTION 19. 448.03 (5) (a) 1. to 7. of the statutes are created to read:

23 448.03 (5) (a) 1. A sterilization procedure.

24 2. A procedure involving a drug or device that may prevent the implantation
25 of a fertilized human ovum.

- 1 3. An abortion, as defined in s. 253.10 (2) (a).
- 2 4. An experiment or medical procedure involving any of the following:
- 3 a. The destruction of a human embryo.
- 4 b. A human embryo or unborn child, at any stage of development, including a
- 5 fertilized human ovum, in which the experiment or procedure is not related to the
- 6 beneficial treatment of the human embryo or unborn child.
- 7 5. A procedure that uses fetal tissue or organs, including a transplant
- 8 procedure.
- 9 6. The withholding or withdrawal of nutrition or hydration, unless the
- 10 administration of nutrition or hydration is medically contraindicated.
- 11 7. An act that causes or assists in causing the death of an individual, such as
- 12 by assisted suicide, euthanasia or mercy killing.

13 **SECTION 20.** 448.03 (5) (am) of the statutes is created to read:

14 448.03 (5) (am) A person licensed or certified under this ~~chapter~~ ^{subchapter} who, in
 15 writing, refuses, or states an intention to refuse, on moral or religious grounds to
 16 engage in a practice within the scope of his or her license or certification that is
 17 related to an activity specified in par. (a) 1. to 7. shall not be required to engage in
 18 the practice with respect to the activity and, notwithstanding s. 154.07 (1) (a) 3. or
 19 155.50 (1) (b), may not be disciplined by the board or the department for refusing or
 20 stating an intention to refuse to engage in the practice with respect to the activity.

21 **SECTION 21.** 450.135 of the statutes is created to read:

22 **450.135 Pharmacist's refusal to be involved in certain activities. (1)**

23 A person licensed as a pharmacist under this ^{sub}chapter is immune from liability for any
 24 damage caused by his or her refusal to be involved in the performance of, assistance
 25 in, counseling in favor of, making referrals for, prescribing, dispensing or

1 administering drugs for, or otherwise promoting, encouraging or aiding any of the
2 following, if the refusal is based on religious or moral precepts:

3 (a) A sterilization procedure.

4 (b) A procedure involving a drug or device that may prevent the implantation
5 of a fertilized human ovum.

6 (c) An abortion, as defined in s. 253.10 (2) (a).

7 (d) An experiment or medical procedure involving any of the following:

8 1. The destruction of a human embryo.

9 2. A human embryo or unborn child, at any stage of development, including a
10 fertilized human ovum, in which the experiment or procedure is not related to the
11 beneficial treatment of the human embryo or unborn child.

12 (e) A procedure that uses fetal tissue or organs, including a transplant
13 procedure.

14 (f) The withholding or withdrawal of nutrition or hydration, unless the
15 administration of nutrition or hydration is medically contraindicated.

16 (g) An act that causes or assists in causing the death of an individual, such as
17 by assisted suicide, euthanasia or mercy killing.

18 (2) A person licensed as a pharmacist under this chapter who, in writing,
19 refuses, or states an intention to refuse, on moral or religious grounds to engage in
20 a practice of pharmacy that is related to an activity specified in sub. (1) (a) to (g) shall
21 not be required to engage in the practice with respect to the activity and may not be
22 disciplined by the board or department for refusing or stating an intention to refuse
23 to engage in the practice with respect to the activity.

24 **SECTION 22. Initial applicability.**

1 (1) This act first applies to refusals or statements of an intention to refuse that
2 are made on the effective date of this subsection.

3

(END)



D-NOTE

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0406/1dn

MDK: *kg*

Representative Walker:

This bill is identical to 1997 Assembly Bill 953. Please contact me if you have any questions or redraft instructions.

**Mark D. Kunkel
Legislative Attorney
266-0131**

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0406/ldn
MDK:kg:lp

December 9, 1998

Representative Walker:

This bill is identical to 1997 Assembly Bill 953. Please contact me if you have any questions or redraft instructions.

Mark D. Kunkel
Legislative Attorney
266-0131



**Wisconsin
Right to Life, Inc.**

State Affiliate of the National
Right to Life Committee, Inc.
Washington, DC 20004-2293

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FAX COVER SHEET

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Important Notice: The information contained in this transmission is intended for the specific person(s) addressed. If you have received this fax in error, please contact us immediately at the phone number below. *Thank you!*

TO (Name): Mark Kunkel
LOCATION: LRB
AT FAX#: (608) 266-5648 **AT PHONE#:** (608) 266-0131
FROM: Mary Klaver
WRL Fax: 414/778-5785
WRL Phone: 414/778-5780

Date Sent: 1/14/99
Pages: 11 (including this cover sheet)
Time Sent: _____ a.m. / p.m.

MESSAGE: Mark, please call me as soon as you have had a chance to go over these changes.
Mary
P.S. I have to leave about 1:30 pm today.

(8/97)

Dedicated successfully since 1968 to advocating for and protecting precious human life.

Please remember the Wisconsin Right to Life Education Fund 501(c)(3) charity and its lifesaving programs in your estate plan. By doing so, you may be able to achieve significant income, gift or estate tax benefits. Please call our development department today for confidential help in successfully implementing the gift plan most suitable for you.

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such a refusal even if the physician refuses to transfer a patient who has executed a declaration authorizing the withholding or withdrawal of life-sustaining procedures or feeding tubes, or who has executed a power of attorney for health care instrument consenting to the withholding or withdrawal of feeding tubes, to another physician who will comply with the declaration or instrument. Under current law, under certain circumstances, a physician who refuses to transfer such a patient to another physician is subject to discipline for unprofessional conduct.

For further information see the *state* 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.** 111.337 (1) of the statutes is renumbered 111.337 (1r) (intro.) and
2 amended to read:

3 111.337 (1r) (intro.) Employment discrimination because of creed includes, but
4 is not limited to, ~~refusing any of the following:~~

5 (a) Refusing to reasonably accommodate an employe's or prospective employe's
6 religious observance or practice unless the employer can demonstrate that the
7 accommodation would pose an undue hardship on the employer's program,
8 enterprise or business.

9 **SECTION 2.** 111.337 (1g) of the statutes is created to read:

10 111.337 (1g) In this section:

11 (a) "Health care provider" means any of the following:

12 1. An individual licensed, registered, permitted or certified by the department
13 of health and family services or the department of regulation and licensing to provide
14 health care services in this state.

15 2. An individual who provides health care services as directed, supervised or
16 inspected by an individual specified in subd. 1.

(b) "Human embryo" includes a fertilized human ovum and any human embryo created with the assistance of technology such as a cloning procedure using the nucleus of a human cell.

(a)

BILL

(c)

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(b) "Participate in" means to perform, assist in, ^{recommend,} counsel in favor of, make ^{can't start/} referrals for, prescribe, dispense or administer drugs for, or otherwise promote, ^{add to} encourage or aid. ^{list} ^{of} ^{U.S.}

SECTION 3. 111.837 (1r) (b) of the statutes is created to read:

111.337 (1r) (b) Discriminating against any health care provider by engaging in any of the actions prohibited under s. 111.322 on the basis of the health care provider's ~~written~~ ^{whether or not in writing,} refusal, or ~~written~~ ^{statement of an intention to refuse,} statement of an intention to refuse, based on his or her creed, to participate in any of the following:

1. A sterilization procedure.
2. A procedure involving a drug or device that may prevent the implantation of a fertilized human ovum.
3. An abortion, as defined in s. 253.10 (2) (a).
4. An experiment or medical procedure involving any of the following:
 - a. The destruction of a human embryo.
 - b. A human embryo or unborn child, at any stage of development, ~~including a~~ ^{delete through-out} ~~fertilized human ovum,~~ ^{narrowing so that} in which the experiment or procedure is not related to the beneficial treatment of the human embryo or unborn child. ^{from an abortion} ~~including a transplant procedure,~~
5. A procedure that uses fetal tissue or organs, ~~including a transplant procedure,~~ ^{from a dead} unborn child who has been aborted or a ^(live) unborn child who is about to be aborted.
6. The withholding or withdrawal of nutrition or hydration, unless the administration of nutrition or hydration is medically contraindicated.
7. An act that causes or assists in causing the death of an individual, such as by assisted suicide, euthanasia or mercy killing.

SECTION 4. 253.09 (title) of the statutes is amended to read:

not sure whether these words are necessary

miscellaneous stillbirth

otherwise over 61099 as drafted to become refer: to un Fetal tissue

BILL

1 **253.09** (title) ~~Abortion refused~~ Refusal to participate in certain
2 practices; no liability; no discrimination.

3 **SECTION 5.** 253.09 (1) of the statutes is renumbered 253.09 (1r) (a) (intro.) and
4 amended to read:

5 253.09 (1r) (a) (intro.) No hospital ~~shall be~~ is required to admit any patient or
6 to allow the use of the hospital facilities for the purpose of performing ~~a sterilization~~
7 ~~procedure or removing a human embryo or fetus.~~ any of the following:

8 (b) A physician or any other person who is a member of or associated with the
9 staff of a hospital, or any employe of a hospital in which ~~such a procedure~~ the
10 performance of an activity specified in par. (a) 1. to 7. has been authorized, who ~~shall~~
11 ~~state in writing his or her objection to the performance of or providing assistance to~~
12 ~~such a procedure, in writing, refuses, or states an intention to refuse, to participate~~
13 in the activity on moral or religious grounds shall not be required to participate in
14 ~~such medical procedure, and the activity.~~

15 (c) ~~A physician or any other person who is a member of or associated with the~~
16 ~~staff of a hospital, or any employe of a hospital, is immune from liability for any~~
17 ~~damage caused by, and may not be subjected to any disciplinary or recriminatory~~
18 ~~action based on, the refusal of any such~~ the person to participate therein shall not
19 ~~form the basis of any claim for damages on account of such refusal or for any~~
20 ~~disciplinary or recriminatory action against such person in an activity specified in~~
21 par. (a) 1. to 7. on moral or religious grounds.

22 **SECTION 6.** 253.09 (1g) of the statutes is created to read:

23 253.09 (1g) In this section, "participate in" means to perform, assist in, counsel
24 in favor of, make referrals for, prescribe, dispense or administer drugs for, or
25 otherwise promote, encourage or aid.

Recommend,

Add def of "human embryo" from page 3

BILL

1 **SECTION 7.** 253.09 (1r) (a) 1. to 7. of the statutes are created to read:

2 253.09 (1r) (a) 1. A sterilization procedure.

3 2. A procedure involving a drug or device that may prevent the implantation
4 of a fertilized human ovum.

5 3. An abortion, as defined in s. 253.10 (2) (a).

6 4. An experiment or medical procedure involving any of the following:

7 a. The destruction of a human embryo.

8 b. A human embryo or unborn child, at any stage of development, including a
9 fertilized human ovum, in which the experiment or procedure is not related to the
10 beneficial treatment of the human embryo or unborn child.

11 5. A procedure that uses fetal tissue or organs, including a transplant
12 procedure. *Amend, see p. 4*

13 6. The withholding or withdrawal of nutrition or hydration, unless the
14 administration of nutrition or hydration is medically contraindicated.

15 7. An act that causes or assists in causing the death of an individual, such as
16 by assisted suicide, euthanasia or mercy killing.

17 **SECTION 8.** 253.09 (2) of the statutes is amended to read:

18 253.09 (2) ~~No A hospital or employe of any a hospital shall be liable for any civil~~
19 ~~damages resulting from is immune from liability for any damage caused by a refusal~~ ✓
20 ~~to perform sterilization procedures or remove a human embryo or fetus from a~~
21 ~~person, if such participate in an activity specified in sub. (1r) (a) 1. to 7., if the refusal~~
22 is based on religious or moral precepts.

23 **SECTION 9.** 253.09 (3) of the statutes is amended to read:

24 253.09 (3) No hospital, school or employer may discriminate against any
25 person with regard to admission, hiring or firing, tenure, term, condition or privilege

BILL

1 of employment, student status or staff status on the ground that the person, ~~in~~
 2 ~~writing~~ refuses to recommend, aid or perform procedures for sterilization or the
 3 ~~removal of a human embryo or fetus, or states an intention to refuse to participate~~
 4 ~~in an activity specified in sub. (1r) (a) 1. to 7., if the refusal is based on religious or~~
 5 ~~moral precepts.~~

SECTION 10. 253.09 (4) (a) of the statutes is amended to read:

7 253.09 (4) (a) Such individual to ~~perform or assist in the performance of any~~
 8 ~~sterilization procedure or removal of a human embryo or fetus~~ participate in an
 9 activity specified in sub. (1r) (a) 1. to 7., if the individual's performance or assistance
 10 participation in the performance of such a procedure would be activity is contrary to
 11 the individual's religious beliefs or moral convictions; or

SECTION 11. 253.09 (4) (b) 1. of the statutes is amended to read:

13 253.09 (4) (b) 1. Make its facilities available for the ~~performance of any~~
 14 ~~sterilization procedure or removal of a human embryo or fetus~~ an individual to
 15 participate in an activity specified in sub. (1r) (a) 1. to 7., if the performance of such
 16 a procedure in such facilities is prohibited by the entity prohibits the activity from
 17 taking place in the facilities on the basis of religious beliefs or moral convictions; or

SECTION 12. 253.09 (4) (b) 2. of the statutes is amended to read:

19 253.09 (4) (b) 2. Provide any personnel for the ~~performance or assistance in the~~
 20 ~~performance of any sterilization procedure or assistance to participate in an activity~~
 21 specified in sub. (1r) (a) 1. to 7., if the performance or assistance in the performance
 22 of such procedure or the removal of a human embryo or fetus by such personnel would
 23 be activity is contrary to the religious beliefs or moral convictions of such the
 24 personnel.

SECTION 13. 441.06 (title) of the statutes is amended to read:

25

BILL

1 **441.06 (title) Licensure; civil liability and disciplinary exemption.**

2 **SECTION 14.** 441.06 (6) of the statutes is renumbered 441.06 (6) (intro.) and
3 amended to read:

4 **441.06 (6) (intro.)** ~~No~~ A person licensed as a registered nurse under this section
5 is ~~liable for any civil damages resulting from~~ immune from liability for any damage
6 caused by his or her refusal to perform sterilization procedures or to remove or aid
7 in the removal of a human embryo or fetus from a person, assist in, ^{Recommend,} counsel in favor
8 of, make referrals for, prescribe, dispense or administer drugs for, or otherwise
9 promote, encourage or aid any of the following, if the refusal is based on religious or
10 moral precepts: *add def of "human embryo" from page 3*

11 **SECTION 15.** 441.06 (6) (a) to (g) of the statutes are created to read:

12 **441.06 (6) (a)** A sterilization procedure.

13 (b) A procedure involving a drug or device that may prevent the implantation
14 of a fertilized human ovum.

15 (c) An abortion, as defined in s. 253.10 (2) (a).

16 (d) An experiment or medical procedure involving any of the following:

17 1. The destruction of a human embryo.

18 2. A human embryo or unborn child, at any stage of development, including a
19 fertilized human ovum, in which the experiment or procedure is not related to the
20 beneficial treatment of the human embryo or unborn child.

21 (e) A procedure that uses fetal tissue or organs, including a transplant
22 procedure. *Amend, See p. 4*

23 (f) The withholding or withdrawal of nutrition or hydration, unless the
24 administration of nutrition or hydration is medically contraindicated.

BILL

1 (g) An act that causes or assists in causing the death of an individual, such as
2 by assisted suicide, euthanasia or mercy killing.

3 **SECTION 16.** 441.06 (7) of the statutes is created to read:

4 441.06 (7) A person licensed as a registered nurse under this section who, in
5 writing, refuses, or states an intention to refuse, on moral or religious grounds to
6 engage in a practice of professional nursing that is related to an activity specified in
7 sub. (6) (a) to (g) shall not be required to engage in the practice with respect to the
8 activity and may not be disciplined by the board or the department for refusing or
9 stating an intention to refuse to engage in the practice with respect to the activity.

10 **SECTION 17.** 448.03 (5) (title) of the statutes is amended to read:

11 448.03 (5) (title) CIVIL LIABILITY AND DISCIPLINARY EXEMPTION; CERTAIN MEDICAL
12 PROCEDURES AND REPORTS.

13 **SECTION 18.** 448.03 (5) (a) of the statutes is renumbered 448.03 (5) (a) (intro.)
14 and amended to read:

15 448.03 (5) (a) (intro.) ~~No~~ A person licensed or certified under this subchapter
16 ~~shall be liable for any civil damages resulting from such is immune from liability for~~
17 ~~any damage caused by the person's refusal to perform sterilization procedures or to~~ ✓
18 ~~remove or aid in the removal of a human embryo or fetus from a person if such, assist~~
19 ~~in~~ ^{recommend} counsel in favor of, make referrals for, prescribe, dispense or administer drugs for,
20 or otherwise promote, encourage or aid any of the following if the refusal is based on
21 religious or moral precepts: *add def of "human embryo" from page 3*

22 **SECTION 19.** 448.03 (5) (a) 1. to 7. of the statutes are created to read:

23 448.03 (5) (a) 1. A sterilization procedure.

24 2. A procedure involving a drug or device that may prevent the implantation
25 of a fertilized human ovum.

BILL

1 3. An abortion, as defined in s. 253.10 (2) (a).

2 4. An experiment or medical procedure involving any of the following:

3 a. The destruction of a human embryo.

4 b. A human embryo or unborn child, at any stage of development, including a
5 fertilized human ovum, in which the experiment or procedure is not related to the
6 beneficial treatment of the human embryo or unborn child.

7 5. A procedure that uses fetal tissue or organs, including a transplant
8 procedure. *amend, see p. 7*

9 6. The withholding or withdrawal of nutrition or hydration, unless the
10 administration of nutrition or hydration is medically contraindicated.

11 7. An act that causes or assists in causing the death of an individual, such as
12 by assisted suicide, euthanasia or mercy killing.

13 **SECTION 20.** 448.03 (5) (am) of the statutes is created to read:

14 448.03 (5) (am) A person licensed or certified under this subchapter who, in
15 writing, refuses, or states an intention to refuse, on moral or religious grounds to
16 engage in a practice within the scope of his or her license or certification that is
17 related to an activity specified in par. (a) 1. to 7. shall not be required to engage in
18 the practice with respect to the activity and, notwithstanding s. 154.07 (1) (a) 3. or
19 155.50 (1) (b), may not be disciplined by the board or the department for refusing or
20 stating an intention to refuse to engage in the practice with respect to the activity.

21 **SECTION 21.** 450.135 of the statutes is created to read:

22 **450.135 Pharmacist's refusal to be involved in certain activities. (1)**

23 A person licensed as a pharmacist under this chapter is immune from liability for any
24 damage caused by his or her refusal to be involved in the performance of, assistance
25 in, ^{recommendation of,} counseling in favor of, making referrals for, prescribing, dispensing or

*add def of "human embryo"
from page 3*

BILL

1 administering drugs for, or otherwise promoting, encouraging or aiding any of the
2 following, if the refusal is based on religious or moral precepts:

3 (a) A sterilization procedure.

4 (b) A procedure involving a drug or device that may prevent the implantation
5 of a fertilized human ovum.

6 (c) An abortion, as defined in s. 253.10 (2) (a).

7 (d) An experiment or medical procedure involving any of the following:

8 1. The destruction of a human embryo.

9 2. A human embryo or unborn child, at any stage of development, including a
10 fertilized human ovum, in which the experiment or procedure is not related to the
11 beneficial treatment of the human embryo or unborn child.

12 (e) A procedure that uses fetal tissue or organs, including a transplant
13 procedure. *Amend, See p. 4*

14 (f) The withholding or withdrawal of nutrition or hydration, unless the
15 administration of nutrition or hydration is medically contraindicated.

16 (g) An act that causes or assists in causing the death of an individual, such as
17 by assisted suicide, euthanasia or mercy killing.

18 (2) A person licensed as a pharmacist under this chapter who, in writing,
19 refuses, or states an intention to refuse, on moral or religious grounds to engage in
20 a practice of pharmacy that is related to an activity specified in sub. (1) (a) to (g) shall
21 not be required to engage in the practice with respect to the activity and may not be
22 disciplined by the board or department for refusing or stating an intention to refuse
23 to engage in the practice with respect to the activity.

24 **SECTION 22. Initial applicability.**

BILL

1 (1) This act first applies to refusals or statements of an intention to refuse that
2 are made on the effective date of this subsection.

3 (END)



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION (608) 266-3561
LEGAL FAX (608) 264-8522

REFERENCE SECTION (608) 266-0341
REFERENCE FAX (608) 266-5648

FAX TRANSMITTAL COVER SHEET

Date: 2/5/99

Time: 3:10pm

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Please deliver this FAX to: Mary Klaver

Telephone Number: _____

FAX Number: 414/778-5785

MESSAGE:

Mary:

Please review the changes on lines 18 & 19 (attached). Are they okay? Call me on Monday to discuss.

- Marti Tunkel
608/266-0131

Sent by: _____
Name: MOIT Date: _____ Time: _____

If there are any problems with this FAX, please call (608) 266-3561.

BILL

recommend ↗

1

(b) "Participate in" means to perform, assist in, counsel in favor of, make referrals for, prescribe, dispense or administer drugs for, or otherwise promote, encourage or aid.

4

SECTION 3. 111.337 (1r) (b) of the statutes is created to read:

5

111.337 (1r) (b) Discriminating against any health care provider by engaging

6

in any of the actions prohibited under s. 111.322 on the basis of the health care

7

provider's ~~written~~ refusal, or ~~written~~ statement of an intention to refuse, based on

whether or not in writing ↘

8

his or her creed, to participate in any of the following:

9

1. A sterilization procedure.

10

2. A procedure involving a drug or device that may prevent the implantation of a fertilized human ovum.

12

3. An abortion, as defined in s. 253.10 (2) (a).

13

4. An experiment or medical procedure involving any of the following:

14

a. The destruction of a human embryo.

15

b. A human embryo or unborn child, at any stage of development, ~~including a~~

16

~~fertilized human ovum~~ in which the experiment or procedure is not related to the

17

beneficial treatment of the human embryo or unborn child.

18

5. A procedure that uses fetal tissue or organs, ~~including a transplant~~

including a transplant procedure ↗

19

~~procedure~~ other than fetal tissue or organs from a spontaneous abortion or ~~stillbirth~~

20

6. The withholding or withdrawal of nutrition or hydration, unless the

21

administration of nutrition or hydration is medically contraindicated.

22

7. An act that causes or assists in causing the death of an individual, such as

23

by assisted suicide, euthanasia or mercy killing.

24

SECTION 4. 253.09 (title) of the statutes is amended to read:

stillbirth ↗
miscarriage



STEPHEN R. MILLER
CHIEF

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
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LEGAL SECTION: (608) 266-3561
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REFERENCE SECTION: (608) 266-0341
REFERENCE FAX: (608) 266-5648

February 8, 1999

MEMORANDUM

To: Mary Klaver

From: Mark Kunkel

Subject: Defintions

There are no definitions of "stillbirth" or "miscarriage" in the statutes. Note that the department of health and family services defines "stillbirth" as "a fetus born dead, irrespective of the duration of pregnancy, with death indicated by the fact that after expulsion or extraction from the woman, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles." Section HSS 135.02 (21), Wis. adm. code. Also, Merriam Webster's on-line dictionary defines "miscarriage" as a "spontaneous expulsion of a human fetus before it is viable and especially between the 12th and 28th weeks of gestation" and "stillbirth" as "the birth of a dead fetus".

D - NOTE
1999 BILL

2

RM NOT
RUN

Gen. Cat.

1 **AN ACT to renumber and amend** 111.337 (1), 253.09 (1), 441.06 (6) and 448.03
2 (5) (a); **to amend** 253.09 (title), 253.09 (2), 253.09 (3), 253.09 (4) (a), 253.09 (4)
3 (b) 1., 253.09 (4) (b) 2., 441.06 (title) and 448.03 (5) (title); and **to create** 111.337
4 (1g), 111.337 (1r) (b), 253.09 (1g), 253.09 (1r) (a) 1. to 7., 441.06 (6) (a) to (g),
5 441.06 (7), 448.03 (5) (a) 1. to 7., 448.03 (5) (am) and 450.135 of the statutes;
6 **relating to:** employment discrimination based on creed and exemption from
7 liability and discipline for physicians, nurses, pharmacists, other health care
8 providers and hospital employees who refuse to participate in sterilization,
9 abortion, assisted suicide and other procedures on moral or religious grounds.

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, an employer may not engage in employment discrimination based on creed. "Creed" is defined as a system of religious beliefs, including moral or ethical beliefs about right and wrong, that a person sincerely holds with the strength of traditional religious views. Employment discrimination based on creed is defined to include refusing to reasonably accommodate an employee's or prospective employee's religious observances or practices unless the employer can demonstrate that the accommodation would pose an undue hardship.

BILL

INSERT 2A

✓ ~~written~~ This bill expands the definition of employment discrimination based on creed to include discriminating against a health care provider on the basis of his or her refusal, based on creed, to participate in any of the following activities: 1) sterilization procedures; 2) certain procedures that prevent the implantation of a fertilized human ovum; 3) abortions; 4) experiments or medical procedures that involve the destruction of a human embryo or that involve a human embryo or unborn child but do not relate to the beneficial treatment of the human embryo or unborn child; 5) procedures using fetal tissue or organs; 6) withholding or withdrawing nutrition or hydration under certain circumstances; or 7) acts causing or assisting in the death of an individual, including assisted suicide, euthanasia or mercy killing. There is no exception for an employer to show that the refusal poses an undue hardship.

Under current law, hospitals, certain health care professionals and hospital employes may not, under certain circumstances, be required to participate in procedures involving sterilization or the removal of a human embryo or fetus. Specifically, a hospital may not be required to admit a patient or allow the use of its facilities for such a procedure. In addition, physicians and other hospital employes who object, in writing, to participating in such a procedure on moral or religious grounds may not be disciplined for refusing to participate in the procedure. Also, a hospital, school or employer may not take any disciplinary action regarding employment, staff or student status against a person who refuses to participate in such a procedure if the refusal is based on moral or religious precepts. Finally, under current law, a hospital and the following persons are exempt from liability for damages that result from a refusal to perform such a procedure if the refusal is based on religious or moral precepts: persons employed by or associated with the staff of a hospital, physicians and other health care professionals licensed or certified by the medical examining board in the department of regulation and licensing (DORL) and registered nurses licensed by the board of nursing in DORL.

This bill expands all of the provisions described above regarding hospitals, health care professionals and hospital employes to include a refusal to participate, based on moral or religious grounds, in any of the seven activities described above with respect to employment discrimination based on creed. Also, the bill provides that pharmacists licensed by the pharmacy examining board in DORL are exempt from liability for damages that result from a refusal to participate in any of the seven activities if the refusal is based on religious or moral precepts, in addition to physicians and other health care professionals licensed or certified by the medical examining board and registered nurses licensed by the board of nursing.

Finally, the bill specifies that the medical examining board, board of nursing, pharmacy examining board or DORL may not take any disciplinary action against any of the following who, in writing, refuse, or state an intention to refuse, to participate in any of the seven activities if the refusal is based on moral or religious grounds: a physician or other health care professional licensed or certified by the medical examining board, registered nurse licensed by the board of nursing or pharmacist licensed by the pharmacy examining board. Under the bill, the medical examining board may not take disciplinary action against a physician who makes

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such a refusal even if the physician refuses to transfer a patient who has executed a declaration authorizing the withholding or withdrawal of life-sustaining procedures or feeding tubes, or who has executed a power of attorney for health care instrument consenting to the withholding or withdrawal of feeding tubes, to another physician who will comply with the declaration or instrument. Under current law, under certain circumstances, a physician who refuses to transfer such a patient to another physician is subject to discipline for unprofessional conduct.

For further information see the *state* 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.** 111.337 (1) of the statutes is renumbered 111.337 (1r) (intro.) and
2 amended to read:

3 111.337 (1r) (intro.) Employment discrimination because of creed includes, but
4 is not limited to, refusing any of the following:

5 (a) Refusing to reasonably accommodate an employe's or prospective employe's
6 religious observance or practice unless the employer can demonstrate that the
7 accommodation would pose an undue hardship on the employer's program,
8 enterprise or business.

9 **SECTION 2.** 111.337 (1g) of the statutes is created to read:

10 111.337 (1g) In this section:

11 (a) "Health care provider" means any of the following:

12 1. An individual licensed, registered, permitted or certified by the department
13 of health and family services or the department of regulation and licensing to provide
14 health care services in this state.

15 2. An individual who provides health care services as directed, supervised or
16 inspected by an individual specified in subd. 1.

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INSERT 4-1

recommends

1 "Participate in" means to perform, assist in, counsel in favor of, make
2 referrals for, prescribe, dispense or administer drugs for, or otherwise promote,
3 encourage or aid.

4 SECTION 3. 111.337 (1r) (b) of the statutes is created to read:

5 111.337 (1r) (b) Discriminating against any health care provider by engaging
6 in any of the actions prohibited under s. 111.322 on the basis of the health care
7 provider's ~~written~~ refusal, or ~~written~~ statement of an intention to refuse, based on
8 his or her creed, to participate in any of the following:

whether or not in writing

9 1. A sterilization procedure.

10 2. A procedure involving a drug or device that may prevent the implantation
11 of a fertilized human ovum.

12 3. An abortion, as defined in s. 253.10 (2) (a).

INSERT 4-18

13 4. An experiment or medical procedure involving any of the following:

14 a. The destruction of a human embryo.

15 b. A human embryo or unborn child, at any stage of development, including a
16 fertilized human ovum, in which the experiment or procedure is not related to the
17 beneficial treatment of the human embryo or unborn child.

18 ~~A procedure that uses fetal tissue or organs, including a transplant~~
19 ~~procedure.~~

20 6. The withholding or withdrawal of nutrition or hydration, unless the
21 administration of nutrition or hydration is medically contraindicated.

22 7. An act that causes or assists in causing the death of an individual, such as
23 by assisted suicide, euthanasia or mercy killing.

24 SECTION 4. 253.09 (title) of the statutes is amended to read:

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1 **253.09** (title) ~~Abortion refused~~ Refusal to participate in certain
2 practices; no liability; no discrimination.

3 **SECTION 5.** 253.09 (1) of the statutes is renumbered 253.09 (1r) (a) (intro.) and
4 amended to read:

5 253.09 (1r) (a) (intro.) No hospital shall be is required to admit any patient or
6 to allow the use of the hospital facilities for the purpose of performing a sterilization
7 procedure or removing a human embryo or fetus. any of the following:

8 (b) A physician or any other person who is a member of or associated with the
9 staff of a hospital, or any employe of a hospital in which such a procedure the
10 performance of an activity specified in par. (a) 1. to 7. has been authorized, who shall
11 state in writing his or her objection to the performance of or providing assistance to
12 such a procedure, in writing, refuses, or states an intention to refuse, to participate
13 in the activity on moral or religious grounds shall not be required to participate in
14 such medical procedure, and the activity.

15 (c) A physician or any other person who is a member of or associated with the
16 staff of a hospital, or any employe of a hospital, is immune from liability for any
17 damage caused by, and may not be subjected to any disciplinary or recriminatory
18 action based on, the refusal of any such the person to participate therein shall not
19 form the basis of any claim for damages on account of such refusal or for any
20 disciplinary or recriminatory action against such person in an activity specified in
21 par. (a) 1. to 7. on moral or religious grounds.

22 **SECTION 6.** 253.09 (1g) of the statutes is created to read:

23 253.09 (1g) In this section ^(b) "participate in" means to perform, assist in, counsel
24 in favor of, make referrals for, prescribe, dispense or administer drugs for, or
25 otherwise promote, encourage or aid.

recommmend ↗

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INSERT 5-23 ✓

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1 **SECTION 7.** 253.09 (1r) (a) 1. to 7. of the statutes are created to read:

2 253.09 (1r) (a) 1. A sterilization procedure.

3 2. A procedure involving a drug or device that may prevent the implantation
4 of a fertilized human ovum.

5 3. An abortion, as defined in s. 253.10 (2) (a).

6 4. An experiment or medical procedure involving any of the following:

7 a. The destruction of a human embryo.

8 b. A human embryo or unborn child, at any stage of development, ~~including a~~
9 ~~fertilized human ovum~~ in which the experiment or procedure is not related to the
10 beneficial treatment of the human embryo or unborn child.

11 ~~5. A procedure that uses fetal tissue or organs, including a transplant~~
12 ~~procedure.~~ **INSERT 6-11**

13 6. The withholding or withdrawal of nutrition or hydration, unless the
14 administration of nutrition or hydration is medically contraindicated.

15 7. An act that causes or assists in causing the death of an individual, such as
16 by assisted suicide, euthanasia or mercy killing.

17 **SECTION 8.** 253.09 (2) of the statutes is amended to read:

18 253.09 (2) ~~No~~ A hospital or employe of any a hospital shall be liable for any civil
19 damages resulting from is immune from liability for any damage caused by a refusal
20 to perform sterilization procedures or remove a human embryo or fetus from a
21 person, if such participate in an activity specified in sub. (1r) (a) 1. to 7., if the refusal
22 is based on religious or moral precepts.

23 **SECTION 9.** 253.09 (3) of the statutes is amended to read:

24 253.09 (3) No hospital, school or employer may discriminate against any
25 person with regard to admission, hiring or firing, tenure, term, condition or privilege

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of employment, student status or staff status on the ground that the person ~~writing~~ refuses to recommend, aid or perform procedures for sterilization or the removal of a human embryo or fetus, or states an intention to refuse to participate in an activity specified in sub. (1r) (a) 1. to 7., if the refusal is based on religious or moral precepts.

whether or not in writing,

SECTION 10. 253.09 (4) (a) of the statutes is amended to read:

253.09 (4) (a) Such individual to ~~perform or assist in the performance of any sterilization procedure or removal of a human embryo or fetus~~ participate in an activity specified in sub. (1r) (a) 1. to 7., if the individual's performance or assistance participation in the performance of such a procedure would be activity is contrary to the individual's religious beliefs or moral convictions; or

SECTION 11. 253.09 (4) (b) 1. of the statutes is amended to read:

253.09 (4) (b) 1. Make its facilities available for ~~the performance of any sterilization procedure or removal of a human embryo or fetus~~ an individual to participate in an activity specified in sub. (1r) (a) 1. to 7., if the performance of such a procedure in such facilities is prohibited by the entity prohibits the activity from taking place in the facilities on the basis of religious beliefs or moral convictions; or

SECTION 12. 253.09 (4) (b) 2. of the statutes is amended to read:

253.09 (4) (b) 2. Provide any personnel for ~~the performance or assistance in the performance of any sterilization procedure or assistance~~ to participate in an activity specified in sub. (1r) (a) 1. to 7., if the performance or assistance in the performance of such procedure or the removal of a human embryo or fetus by such personnel would be activity is contrary to the religious beliefs or moral convictions of such the personnel.

SECTION 13. 441.06 (title) of the statutes is amended to read:

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INSERT 8-10

1 441.06 (title) **Licensure; civil liability and disciplinary exemption.** (b)

2 SECTION 14. 441.06 (6) of the statutes is renumbered 441.06 (6) (intro.) and
3 amended to read:

4 441.06 (6) (intro.) ~~No~~ ^(b) A person licensed as a registered nurse under this section
5 is liable for any civil damages resulting from immune from liability for any damage
6 caused by his or her refusal to perform sterilization procedures or to remove or aid
7 in the removal of a human embryo or fetus from a person, assist in, ^{recommend,} counsel in favor
8 of, make referrals for, prescribe, dispense or administer drugs for, or otherwise
9 promote, encourage or aid any of the following, if the refusal is based on religious or
10 moral precepts:

(b) 1. to 7.

11 SECTION 15. 441.06 (6) ~~(a) to (g)~~ of the statutes are created to read:

12 441.06 (6) ^{(b) 1.} A sterilization procedure.

13 ^{(b) 2.} A procedure involving a drug or device that may prevent the implantation
14 of a fertilized human ovum.

15 ^{(b) 3.} An abortion, as defined in s. 253.10 (2) (a).

16 ^{(b) 4.} An experiment or medical procedure involving any of the following:

17 ^{a.} The destruction of a human embryo.

18 ^{b.} A human embryo or unborn child, at any stage of development, ~~including a~~
19 ~~fertilized human ovum~~ in which the experiment or procedure is not related to the
20 beneficial treatment of the human embryo or unborn child.

21 ~~(e) A procedure that uses fetal tissue or organs, including a transplant~~
22 ~~procedure~~

INSERT 8-21

23 ^{(b) 6.} The withholding or withdrawal of nutrition or hydration, unless the
24 administration of nutrition or hydration is medically contraindicated.

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~~(6)~~ An act that causes or assists in causing the death of an individual, such as by assisted suicide, euthanasia or mercy killing.

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SECTION 16. 441.06 (7) of the statutes is created to read:

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441.06 (7) A person licensed as a registered nurse under this section who, in writing, refuses, or states an intention to refuse, on moral or religious grounds to engage in a practice of professional nursing that is related to an activity specified in

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sub. (6) ~~and (7)~~ ^{(6) 1. to 7.} shall not be required to engage in the practice with respect to the activity and may not be disciplined by the board or the department for refusing or stating an intention to refuse to engage in the practice with respect to the activity.

10

SECTION 17. 448.03 (5) (title) of the statutes is amended to read:

11

448.03 (5) (title) CIVIL LIABILITY AND DISCIPLINARY EXEMPTION; CERTAIN MEDICAL PROCEDURES AND REPORTS.

13

SECTION 18. 448.03 (5) (a) of the statutes is renumbered 448.03 (5) ~~(a)~~ ^{ar} (intro.) and amended to read:

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448.03 (5) ~~(a)~~ ^{ar} (intro.) ~~No~~ A person licensed or certified under this subchapter shall be liable for any civil damages resulting from such is immune from liability for any damage caused by the person's refusal to perform sterilization procedures or to remove or aid in the removal of a human embryo or fetus from a person if such, assist in, ^{recommends} counsel in favor of, make referrals for, prescribe, dispense or administer drugs for, or otherwise promote, encourage or aid any of the following if the refusal is based on religious or moral precepts:

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SECTION 19. 448.03 (5) ~~(a)~~ ^{ar} 1. to 7. of the statutes are created to read:

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448.03 (5) ~~(a)~~ ^{ar} 1. A sterilization procedure.

24

2. A procedure involving a drug or device that may prevent the implantation of a fertilized human ovum.

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INSERT 9-21

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- 1 3. An abortion, as defined in s. 253.10 (2) (a).
- 2 4. An experiment or medical procedure involving any of the following:
- 3 a. The destruction of a human embryo.
- 4 b. A human embryo or unborn child, at any stage of development, including a
- 5 ~~fertilized human ovum,~~ in which the experiment or procedure is not related to the
- 6 beneficial treatment of the human embryo or unborn child.
- 7 ~~5. A procedure that uses fetal tissue or organs, including a transplant~~
- 8 ~~procedure~~
- 9 6. The withholding or withdrawal of nutrition or hydration, unless the
- 10 administration of nutrition or hydration is medically contraindicated.
- 11 7. An act that causes or assists in causing the death of an individual, such as
- 12 by assisted suicide, euthanasia or mercy killing.

SECTION 20. 448.03 (5) (am) of the statutes is created to read:

14 448.03 (5) (am) A person licensed or certified under this subchapter who, in

15 writing, refuses, or states an intention to refuse, on moral or religious grounds to

16 engage in a practice within the scope of his or her license or certification that is

17 related to an activity specified in par. (1) 1. to 7. shall not be required to engage in

18 the practice with respect to the activity and, notwithstanding s. 154.07 (1) (a) 3. or

19 155.50 (1) (b), may not be disciplined by the board or the department for refusing or

20 stating an intention to refuse to engage in the practice with respect to the activity.

SECTION 21. 450.135 of the statutes is created to read:

450.135 Pharmacist's refusal to be involved in certain activities.

23 A person licensed as a pharmacist under this chapter is immune from liability for any

24 damage caused by his or her refusal to be involved in the performance of, assistance

25 in, counseling in favor of, making referrals for, prescribing, dispensing or

recommendation of,

INSEAT 10-7 ✓

INSEAT 10-22 ✓

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1 administering drugs for, or otherwise promoting, encouraging or aiding any of the
2 following, if the refusal is based on religious or moral precepts:

3 (a) A sterilization procedure.

4 (b) A procedure involving a drug or device that may prevent the implantation
5 of a fertilized human ovum.

6 (c) An abortion, as defined in s. 253.10 (2) (a).

7 (d) An experiment or medical procedure involving any of the following:

8 1. The destruction of a human embryo.

9 2. A human embryo or unborn child, at any stage of development, including a
10 fertilized human ovum, in which the experiment or procedure is not related to the
11 beneficial treatment of the human embryo or unborn child.

12 (e) A procedure that uses fetal tissue or organs, including a transplant
13 procedure

INSEAT 11-12 ✓

14 (f) The withholding or withdrawal of nutrition or hydration, unless the
15 administration of nutrition or hydration is medically contraindicated.

16 (g) An act that causes or assists in causing the death of an individual, such as
17 by assisted suicide, euthanasia or mercy killing.

18 (h) 3 A person licensed as a pharmacist under this chapter who, in writing,
19 refuses, or states an intention to refuse, on moral or religious grounds to engage in
20 a practice of pharmacy that is related to an activity specified in sub. (i) (a) to (g) shall
21 not be required to engage in the practice with respect to the activity and may not be
22 disciplined by the board or department for refusing or stating an intention to refuse
23 to engage in the practice with respect to the activity.

24 **SECTION 22. Initial applicability.**

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other than fetal tissue or organs from a stillbirth, spontaneous abortion or miscarriage

INSERT 4-1: ✓

(b) "Human embryo" includes a fertilized human ovum and a human embryo created with the assistance of technology such as a cloning procedure using the nucleus of a human cell.

INSERT 4-18: ✓

5. A procedure, including a transplant procedure, that uses fetal tissue or organs other than fetal tissue or organs from a stillbirth, spontaneous abortion or miscarriage.

INSERT 5-23: ✓

(a) "Human embryo" has the meaning given in s. 111.337 (1g) (b). ✓

INSERT 6-11: ✓

5. A procedure, including a transplant procedure, that uses fetal tissue or organs other than fetal tissue or organs from a stillbirth, spontaneous abortion or miscarriage.

INSERT 8-10: ✓

SECTION 1. 441.06 (6) (a) of the statutes is created to read:

441.06 (6) (a) In this subsection, "human embryo" has the meaning given in s. 111.337 (1g) (b). ✓

INSERT 8-21: ✓

1 5. A procedure, including a transplant procedure, that uses fetal tissue or
2 organs other than fetal tissue or organs from a stillbirth, spontaneous abortion or
3 miscarriage.

4 **INSERT 9-21:** ✓

5 **SECTION 2.** 448.03 (5) (ag) of the statutes is created to read:

6 448.03 (5) (ag) In this subsection, "human embryo" has the meaning given in
7 s. 111.337 (1g) (b). ✓

8 **INSERT 10-7:** ✓

9 5. A procedure, including a transplant procedure, that uses fetal tissue or
10 organs other than fetal tissue or organs from a stillbirth, spontaneous abortion or
11 miscarriage.

12 **INSERT 10-22:** ✓

13 (1) In this section, "human embryo" has the meaning given in s. 111.337 (1g)
14 (b). ✓

15 **INSERT 11-22:** ✓


16 (e) A procedure, including a transplant procedure, that uses fetal tissue or
17 organs other than fetal tissue or organs from a stillbirth, spontaneous abortion or
18 miscarriage.

NOA

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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0406/2dn

MDK: 

Representative Walker:

This version makes changes based on my discussions with Mary Klaver. If you have any questions or redraft instructions, please contact me.

**Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us**

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0406/2dn
MDK:kmg:ijs

February 12, 1999

Representative Walker:

This version makes changes based on my discussions with Mary Klaver. If you have any questions or redraft instructions, please contact me.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

NOTE

kg:ijs

(3)

1999 BILL

SOON

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Regen

1 AN ACT *to renumber and amend* 111.337 (1), 253.09 (1), 441.06 (6) and 448.03
2 (5) (a); *to amend* 253.09 (title), 253.09 (2), 253.09 (3), 253.09 (4) (a), 253.09 (4)
3 (b) 1., 253.09 (4) (b) 2., 441.06 (title) and 448.03 (5) (title); and *to create* 111.337
4 (1g), 111.337 (1r) (b), 253.09 (1g), 253.09 (1r) (a) 1. to 7., 441.06 (6) (a), 441.06
5 (6) (b) 1. to 7., 441.06 (7), 448.03 (5) (ag), 448.03 (5) (am), 448.03 (5) (ar) 1. to 7.
6 and 450.135 of the statutes; **relating to:** employment discrimination based on
7 creed and exemption from liability and discipline for physicians, nurses,
8 pharmacists, other health care providers and hospital employes who refuse to
9 participate in sterilization, abortion, assisted suicide and other procedures on
10 moral or religious grounds.

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, an employer may not engage in employment discrimination based on creed. "Creed" is defined as a system of religious beliefs, including moral or ethical beliefs about right and wrong, that a person sincerely holds with the strength of traditional religious views. Employment discrimination based on creed is defined to include refusing to reasonably

BILL

accommodate an employe's or prospective employe's religious observances or practices unless the employer can demonstrate that the accommodation would pose an undue hardship.

This bill expands the definition of employment discrimination based on creed to include discriminating against a health care provider on the basis of his or her refusal, based on creed, to participate in any of the following activities: 1) sterilization procedures; 2) certain procedures that prevent the implantation of a fertilized human ovum; 3) abortions; 4) experiments or medical procedures that involve the destruction of a human embryo or that involve a human embryo or unborn child but do not relate to the beneficial treatment of the human embryo or unborn child; 5) procedures using fetal tissue or organs other than fetal tissue or organs from a stillbirth, spontaneous abortion or miscarriage; 6) withholding or withdrawing nutrition or hydration under certain circumstances; or 7) acts causing or assisting in the death of an individual, including assisted suicide, euthanasia or mercy killing. There is no exception for an employer to show that the refusal poses an undue hardship.

Under current law, hospitals, certain health care professionals and hospital employes may not, under certain circumstances, be required to participate in procedures involving sterilization or the removal of a human embryo or fetus. Specifically, a hospital may not be required to admit a patient or allow the use of its facilities for such a procedure. In addition, physicians and other hospital employes who object, in writing, to participating in such a procedure on moral or religious grounds may not be disciplined for refusing to participate in the procedure. Also, a hospital, school or employer may not take any disciplinary action regarding employment, staff or student status against a person who refuses to participate in such a procedure if the refusal is based on moral or religious precepts. Finally, under current law, a hospital and the following persons are exempt from liability for damages that result from a refusal to perform such a procedure if the refusal is based on religious or moral precepts: persons employed by or associated with the staff of a hospital, physicians and other health care professionals licensed or certified by the medical examining board in the department of regulation and licensing (DORL) and registered nurses licensed by the board of nursing in DORL.

This bill expands all of the provisions described above regarding hospitals, health care professionals and hospital employes to include a refusal to participate, based on moral or religious grounds, in any of the seven activities described above with respect to employment discrimination based on creed. Also, the bill provides that pharmacists licensed by the pharmacy examining board in DORL are exempt from liability for damages that result from a refusal to participate in any of the seven activities if the refusal is based on religious or moral precepts, ~~in addition to~~ physicians and other health care professionals licensed or certified by the medical examining board and registered nurses licensed by the board of nursing.

Finally, the bill specifies that the medical examining board, board of nursing, pharmacy examining board or DORL may not take any disciplinary action against any of the following who, in writing, refuse, or state an intention to refuse, to participate in any of the seven activities if the refusal is based on moral or religious

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~~consistent with the precept~~
consistent with the precept

Insert A.2

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grounds: a physician or other health care professional licensed or certified by the medical examining board, registered nurse licensed by the board of nursing or pharmacist licensed by the pharmacy examining board. Under the bill, the medical examining board may not take disciplinary action against a physician who makes such a refusal even if the physician refuses to transfer a patient who has executed a declaration authorizing the withholding or withdrawal of life-sustaining procedures or feeding tubes, or who has executed a power of attorney for health care instrument consenting to the withholding or withdrawal of feeding tubes, to another physician who will comply with the declaration or instrument. Under current law, under certain circumstances, a physician who refuses to transfer such a patient to another physician is subject to discipline for unprofessional conduct.

For further information see the *state* 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.** 111.337 (1) of the statutes is renumbered 111.337 (1r) (intro.) and
2 amended to read:

3 111.337 (1r) (intro.) Employment discrimination because of creed includes, but
4 is not limited to, refusing any of the following:

5 (a) Refusing to reasonably accommodate an employe's or prospective employe's
6 religious observance or practice unless the employer can demonstrate that the
7 accommodation would pose an undue hardship on the employer's program,
8 enterprise or business.

9 **SECTION 2.** 111.337 (1g) of the statutes is created to read:

10 111.337 (1g) In this section:

11 (a) "Health care provider" means any of the following:

12 1. An individual licensed, registered, permitted or certified by the department
13 of health and family services or the department of regulation and licensing to provide
14 health care services in this state.

BILL

1 2. An individual who provides health care services as directed, supervised or
2 inspected by an individual specified in subd. 1.

3 (b) “Human embryo” includes a fertilized human ovum and a human embryo
4 created with the assistance of technology such as a cloning procedure using the
5 nucleus of a human cell.

6 (c) “Participate in” means to perform, assist in, recommend, counsel in favor
7 of, make referrals for, prescribe, dispense or administer drugs for, or otherwise
8 promote, encourage or aid.

9 **SECTION 3.** 111.337 (1r) (b) of the statutes is created to read:

10 111.337 (1r) (b) Discriminating against any health care provider by engaging
11 in any of the actions prohibited under s. 111.322 on the basis of the health care
12 provider’s refusal, or statement of an intention to refuse, whether or not in writing,
13 based on his or her creed, to participate in any of the following:

14 1. A sterilization procedure.

15 2. A procedure involving a drug or device that may prevent the implantation
16 of a fertilized human ovum.

17 3. An abortion, as defined in s. 253.10 (2) (a).

18 4. An experiment or medical procedure involving any of the following:

19 a. The destruction of a human embryo.

20 b. A human embryo or unborn child, at any stage of development, in which the
21 experiment or procedure is not related to the beneficial treatment of the human
22 embryo or unborn child.

23 5. A procedure, including a transplant procedure, that uses fetal tissue or
24 organs other than fetal tissue or organs from a stillbirth, spontaneous abortion or
25 miscarriage.

BILL

1 6. The withholding or withdrawal of nutrition or hydration, unless the
2 administration of nutrition or hydration is medically contraindicated.

3 7. An act that causes or assists in causing the death of an individual, such as
4 by assisted suicide, euthanasia or mercy killing.

5 **SECTION 4.** 253.09 (title) of the statutes is amended to read:

6 **253.09** (title) ~~Abortion refused~~ **Refusal to participate in certain**
7 **practices; no liability; no discrimination.**

8 **SECTION 5.** 253.09 (1) of the statutes is renumbered 253.09 (1r) (a) (intro.) and
9 amended to read:

10 253.09 (1r) (a) (intro.) No hospital ~~shall be~~ is required to admit any patient or
11 to allow the use of the hospital facilities for the purpose of performing a ~~sterilization~~
12 ~~procedure or removing a human embryo or fetus.~~ any of the following:

13 (b) A physician or any other person who is a member of or associated with the
14 staff of a hospital, or any employe of a hospital in which ~~such a procedure~~ the
15 performance of an activity specified in par. (a) 1. to 7. has been authorized, who ~~shall~~
16 ~~state in writing his or her objection to the performance of or providing assistance to~~
17 ~~such a procedure,~~ in writing, refuses, or states an intention to refuse, to participate
18 in the activity on moral or religious grounds shall not be required to participate in
19 ~~such medical procedure, and~~ the activity.

20 (c) A physician or any other person who is a member of or associated with the
21 staff of a hospital, or any employe of a hospital, is immune from liability for any
22 damage caused by, and may not be subjected to any disciplinary or recriminatory
23 action based on, the refusal of any ~~such~~ the person to participate therein shall not
24 ~~form the basis of any claim for damages on account of such refusal or for any~~

BILL

1 ~~disciplinary or recriminatory action against such person in an activity specified in~~
2 ~~par. (a) 1. to 7. on moral or religious grounds.~~

3 SECTION 6. 253.09 (1g) of the statutes is created to read:

4 253.09 (1g) In this section:

5 (a) "Human embryo" ~~has the meaning given in s. 111.837 (1g) (b).~~ INSERT 6-5 ✓

6 (b) "Participate in" means to perform, assist in, recommend, counsel in favor
7 of, make referrals for, prescribe, dispense or administer drugs for, or otherwise
8 promote, encourage or aid.

9 SECTION 7. 253.09 (1r) (a) 1. to 7. of the statutes are created to read:

10 253.09 (1r) (a) 1. A sterilization procedure.

11 2. A procedure involving a drug or device that may prevent the implantation
12 of a fertilized human ovum.

13 3. An abortion, as defined in s. 253.10 (2) (a).

14 4. An experiment or medical procedure involving any of the following:

15 a. The destruction of a human embryo.

16 b. A human embryo or unborn child, at any stage of development, in which the
17 experiment or procedure is not related to the beneficial treatment of the human
18 embryo or unborn child.

19 5. A procedure, including a transplant procedure, that uses fetal tissue or
20 organs other than fetal tissue or organs from a stillbirth, spontaneous abortion or
21 miscarriage.

22 6. The withholding or withdrawal of nutrition or hydration, unless the
23 administration of nutrition or hydration is medically contraindicated.

24 7. An act that causes or assists in causing the death of an individual, such as
25 by assisted suicide, euthanasia or mercy killing.

BILL

1 **SECTION 8.** 253.09 (2) of the statutes is amended to read:

2 253.09 (2) ~~No A hospital or employe of any a hospital shall be liable for any civil~~
3 ~~damages resulting from~~ is immune from liability for any damage caused by a refusal
4 ~~to perform sterilization procedures or remove a human embryo or fetus from a~~
5 ~~person, if such~~ participate in an activity specified in sub. (1r) (a) 1. to 7., if the refusal
6 is based on religious or moral precepts.

7 **SECTION 9.** 253.09 (3) of the statutes is amended to read:

8 253.09 (3) No hospital, school or employer may discriminate against any
9 person with regard to admission, hiring or firing, tenure, term, condition or privilege
10 of employment, student status or staff status on the ground that the person refuses
11 ~~to recommend, aid or perform procedures for sterilization or the removal of a human~~
12 ~~embryo or fetus, or states an intention to refuse, whether or not in writing, to~~
13 participate in an activity specified in sub. (1r) (a) 1. to 7., if the refusal is based on
14 religious or moral precepts.

15 **SECTION 10.** 253.09 (4) (a) of the statutes is amended to read:

16 253.09 (4) (a) Such individual ~~to perform or assist in the performance of any~~
17 ~~sterilization procedure or removal of a human embryo or fetus~~ participate in an
18 activity specified in sub. (1r) (a) 1. to 7., if the individual's performance or assistance
19 participation in the performance of such a procedure would be activity is contrary to
20 the individual's religious beliefs or moral convictions; or

21 **SECTION 11.** 253.09 (4) (b) 1. of the statutes is amended to read:

22 253.09 (4) (b) 1. Make its facilities available for ~~the performance of any~~
23 ~~sterilization procedure or removal of a human embryo or fetus~~ an individual to
24 participate in an activity specified in sub. (1r) (a) 1. to 7., if the performance of such

BILL

1 a procedure in such facilities is prohibited by the entity prohibits the activity from
2 taking place in the facilities on the basis of religious beliefs or moral convictions; or

3 SECTION 12. 253.09 (4) (b) 2. of the statutes is amended to read:

4 253.09 (4) (b) 2. Provide any personnel for the performance or assistance in the
5 performance of any sterilization procedure or assistance to participate in an activity
6 specified in sub. (1r) (a) 1. to 7., if the performance or assistance in the performance
7 of such procedure or the removal of a human embryo or fetus by such personnel would
8 be activity is contrary to the religious beliefs or moral convictions of such the
9 personnel.

10 SECTION 13. 441.06 (title) of the statutes is amended to read:

11 441.06 (title) **Licensure; civil liability and disciplinary exemption.**

12 SECTION 14. 441.06 (6) of the statutes is renumbered 441.06 (6) (b) (intro.) and
13 amended to read:

14 441.06 (6) (b) (intro.) No A person licensed as a registered nurse under this
15 section is liable for any civil damages resulting from immune from liability for any
16 damage caused by his or her refusal to perform sterilization procedures or to remove
17 or aid in the removal of a human embryo or fetus from a person, assist in, recommend,
18 counsel in favor of, make referrals for, prescribe, dispense or administer drugs for,
19 or otherwise promote, encourage or aid any of the following, if the refusal is based
20 on religious or moral precepts.:

21 SECTION 15. 441.06 (6) (a) of the statutes is created to read:

22 441.06 (6) (a) In this subsection, "human embryo" ~~has the meaning given in s.~~
23 ~~441.397 (1g) (b).~~

24 SECTION 16. 441.06 (6) (b) 1. to 7. of the statutes are created to read:

25 441.06 (6) (b) 1. A sterilization procedure.

✓ INSERT 8-22

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1 2. A procedure involving a drug or device that may prevent the implantation
2 of a fertilized human ovum.

3 3. An abortion, as defined in s. 253.10 (2) (a).

4 4. An experiment or medical procedure involving any of the following:

5 a. The destruction of a human embryo.

6 b. A human embryo or unborn child, at any stage of development, in which the
7 experiment or procedure is not related to the beneficial treatment of the human
8 embryo or unborn child.

9 5. A procedure, including a transplant procedure, that uses fetal tissue or
10 organs other than fetal tissue or organs from a stillbirth, spontaneous abortion or
11 miscarriage.

12 6. The withholding or withdrawal of nutrition or hydration, unless the
13 administration of nutrition or hydration is medically contraindicated.

14 7. An act that causes or assists in causing the death of an individual, such as
15 by assisted suicide, euthanasia or mercy killing.

16 **SECTION 17.** 441.06 (7) of the statutes is created to read:

17 441.06 (7) A person licensed as a registered nurse under this section who, in
18 writing, refuses, or states an intention to refuse, on moral or religious grounds to
19 engage in a practice of professional nursing that is related to an activity specified in
20 sub. (6) (b) 1. to 7. shall not be required to engage in the practice with respect to the
21 activity and may not be disciplined by the board or the department for refusing or
22 stating an intention to refuse to engage in the practice with respect to the activity.

23 **SECTION 18.** 448.03 (5) (title) of the statutes is amended to read:

24 448.03 (5) (title) CIVIL LIABILITY AND DISCIPLINARY EXEMPTION; CERTAIN MEDICAL
25 PROCEDURES AND REPORTS.

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1 **SECTION 19.** 448.03 (5) (a) of the statutes is renumbered 448.03 (5) (ar) (intro.)
2 and amended to read:

3 448.03 (5) (ar) (intro.) ~~No~~ A person licensed or certified under this subchapter
4 ~~shall be liable for any civil damages resulting from such~~ is immune from liability for
5 any damage caused by the person's refusal to perform sterilization procedures or to
6 remove or aid in the removal of a human embryo or fetus from a person if such, assist
7 in, recommend, counsel in favor of, make referrals for, prescribe, dispense or
8 administer drugs for, or otherwise promote, encourage or aid any of the following if
9 the refusal is based on religious or moral precepts:

10 **SECTION 20.** 448.03 (5) (ag) of the statutes is created to read:

11 448.03 (5) (ag) In this subsection, "human embryo" has the meaning given in
12 ~~s. 111.337 (1g) (b)~~

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13 **SECTION 21.** 448.03 (5) (am) of the statutes is created to read:

14 448.03 (5) (am) A person licensed or certified under this subchapter who, in
15 writing, refuses, or states an intention to refuse, on moral or religious grounds to
16 engage in a practice within the scope of his or her license or certification that is
17 related to an activity specified in par. (ar) 1. to 7. shall not be required to engage in
18 the practice with respect to the activity and, notwithstanding s. 154.07 (1) (a) 3. or
19 155.50 (1) (b), may not be disciplined by the board or the department for refusing or
20 stating an intention to refuse to engage in the practice with respect to the activity.

21 **SECTION 22.** 448.03 (5) (ar) 1. to 7. of the statutes are created to read:

- 22 448.03 (5) (ar) 1. A sterilization procedure.
23 2. A procedure involving a drug or device that may prevent the implantation
24 of a fertilized human ovum.
25 3. An abortion, as defined in s. 253.10 (2) (a).

BILL

4. An experiment or medical procedure involving any of the following:

a. The destruction of a human embryo.

b. A human embryo or unborn child, at any stage of development, in which the experiment or procedure is not related to the beneficial treatment of the human embryo or unborn child.

5. A procedure, including a transplant procedure, that uses fetal tissue or organs other than fetal tissue or organs from a stillbirth, spontaneous abortion or miscarriage.

6. The withholding or withdrawal of nutrition or hydration, unless the administration of nutrition or hydration is medically contraindicated.

7. An act that causes or assists in causing the death of an individual, such as by assisted suicide, euthanasia or mercy killing.

SECTION 23. 450.135 of the statutes is created to read:

450.135 Pharmacist's refusal to be involved in certain activities. (1)

In this section, "human embryo" ~~has the meaning given in s. 111.837 (1g) (b).~~

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(2) A person licensed as a pharmacist under this chapter is immune from liability for any damage caused by his or her refusal to be involved in the performance of, assistance in, recommendation of, counseling in favor of, making referrals for, prescribing, dispensing or administering drugs for, or otherwise promoting, encouraging or aiding any of the following, if the refusal is based on religious or moral precepts:

(a) A sterilization procedure.

(b) A procedure involving a drug or device that may prevent the implantation of a fertilized human ovum.

(c) An abortion, as defined in s. 253.10 (2) (a).

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1 (d) An experiment or medical procedure involving any of the following:

2 1. The destruction of a human embryo.

3 2. A human embryo or unborn child, at any stage of development, in which the
4 experiment or procedure is not related to the beneficial treatment of the human
5 embryo or unborn child.

6 (e) A procedure, including a transplant procedure, that uses fetal tissue or
7 organs other than fetal tissue or organs from a stillbirth, spontaneous abortion or
8 miscarriage.

9 (f) The withholding or withdrawal of nutrition or hydration, unless the
10 administration of nutrition or hydration is medically contraindicated.

11 (g) An act that causes or assists in causing the death of an individual, such as
12 by assisted suicide, euthanasia or mercy killing.

13 (3) A person licensed as a pharmacist under this chapter who, in writing,
14 refuses, or states an intention to refuse, on moral or religious grounds to engage in
15 a practice of pharmacy that is related to an activity specified in sub. (2) (a) to (g) shall
16 not be required to engage in the practice with respect to the activity and may not be
17 disciplined by the board or department for refusing or stating an intention to refuse
18 to engage in the practice with respect to the activity.

19 **SECTION 24. Initial applicability.**

20 (1) This act first applies to refusals or statements of an intention to refuse that
21 are made on the effective date of this subsection.

22 (END)

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In addition

INSERT A.1:

~~Also~~, the bill changes the exemptions from liability under current law for

INSERT A.2:

~~so~~ so that they are consistent with the exemption under the bill for pharmacists.

INSERT 6-5:

~~so~~ includes a fertilized human ovum and a human embryo created with the assistance of technology such as a cloning procedure using the nucleus of a human cell.

INSERT 8-22:

~~so~~ includes a fertilized human ovum and a human embryo created with the assistance of technology such as a cloning procedure using the nucleus of a human cell.

INSERT 10-11:

~~so~~ includes a fertilized human ovum and a human embryo created with the assistance of technology such as a cloning procedure using the nucleus of a human cell.

INSERT 11-15:

~~so~~ includes a fertilized human ovum and a human embryo created with the assistance of technology such as a cloning procedure using the nucleus of a human cell.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0406/3dn

MDK:.....

JK

Representative Walker:

This version makes minor changes that were discussed with Mary Klaver.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0406/3dn
MDK;jlg;jf

February 17, 1999

Representative Walker:

This version makes minor changes that were discussed with Mary Klaver.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
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Wisconsin Right to Life, Inc.

*State Affiliate of the National
Right to Life Committee, Inc.
Washington, DC 20004-2293*

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SENT VIA FAX (608-264-8522)

April 7, 1999

To: Mark Kunkel

From: Mary Klaver

Re: Conscience Clause Legislation -- Redraft

We have discovered an error in the definition of "human embryo" that is used in the conscience clause legislation for Representative Scott Walker (LRB-0406/3) and Senator Roger Breske (LRB-2202/2). The current definition refers to how the embryo is created rather than the resulting organism.

The best definition is the one currently used in the federal ban on funding of human embryo research (copy attached). Please substitute the following definition of "human embryo" throughout both drafts:

"Human embryo" includes any organism that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells.

Please let me know how soon you can make this change. The authors wish to start the introduction process as soon as the redrafts are completed. If you have any questions, please do not hesitate to contact me at 414-778-5780.

cc: Representative Scott Walker (FAX: 608-282-3614)
 Senator Roger Breske (FAX: 608-267-0309)

Dedicated successfully since 1968 to advocating for and protecting precious human life.

Please remember the Wisconsin Right to Life Education Fund 501(c)(3) charity and its lifesaving programs in your estate plan. By doing so, you may be able to achieve significant income, gift or estate tax benefits. Please call our development department today for confidential help in successfully implementing the gift plan most suitable for you.

**FY98 Labor-HHS-Education Appropriations
Ban on Federal Funding of Human Embryo Research
(Dickey/Wicker Amendment)**

- (a) None of the funds made available in this Act may be used for (1) the creation of a human embryo or embryos for research purposes; or (2) research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death greater than that allowed for research on fetuses in utero under 45 CFR 46.208(a)(2) and section 498(b) of the Public Health Service Act (42 U.S.C. 289g(b)).
- (b) For purposes of this section, the term "human embryo or embryos" includes any organism, not protected as a human subject under 45 CFR 46 as of the date of the enactment of this Act, that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells.

Tomorrow
by
4:00 PM

1999 - 2000 LEGISLATURE

D-NOTE

1999 BILL

LRB-0406/3
MDK:kg&jlg:jf

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Reger

1 AN ACT *to renumber and amend* 111.337 (1), 253.09 (1), 441.06 (6) and 448.03
2 (5) (a); *to amend* 253.09 (title), 253.09 (2), 253.09 (3), 253.09 (4) (a), 253.09 (4)
3 (b) 1., 253.09 (4) (b) 2., 441.06 (title) and 448.03 (5) (title); and *to create* 111.337
4 (1g), 111.337 (1r) (b), 253.09 (1g), 253.09 (1r) (a) 1. to 7., 441.06 (6) (a), 441.06
5 (6) (b) 1. to 7., 441.06 (7), 448.03 (5) (ag), 448.03 (5) (am), 448.03 (5) (ar) 1. to 7.
6 and 450.135 of the statutes; **relating to:** employment discrimination based on
7 creed and exemption from liability and discipline for physicians, nurses,
8 pharmacists, other health care providers and hospital employees who refuse to
9 participate in sterilization, abortion, assisted suicide and other procedures on
10 moral or religious grounds.

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, an employer may not engage in employment discrimination based on creed. "Creed" is defined as a system of religious beliefs, including moral or ethical beliefs about right and wrong, that a person sincerely holds with the strength of traditional religious views. Employment discrimination based on creed is defined to include refusing to reasonably

BILL

accommodate an employee's or prospective employee's religious observances or practices unless the employer can demonstrate that the accommodation would pose an undue hardship.

This bill expands the definition of employment discrimination based on creed to include discriminating against a health care provider on the basis of his or her refusal, based on creed, to participate in any of the following activities: 1) sterilization procedures; 2) certain procedures that prevent the implantation of a fertilized human ovum; 3) abortions; 4) experiments or medical procedures that involve the destruction of a human embryo or that involve a human embryo or unborn child but do not relate to the beneficial treatment of the human embryo or unborn child; 5) procedures using fetal tissue or organs other than fetal tissue or organs from a stillbirth, spontaneous abortion or miscarriage; 6) withholding or withdrawing nutrition or hydration under certain circumstances; or 7) acts causing or assisting in the death of an individual, including assisted suicide, euthanasia or mercy killing. There is no exception for an employer to show that the refusal poses an undue hardship.

Under current law, hospitals, certain health care professionals and hospital employees may not, under certain circumstances, be required to participate in procedures involving sterilization or the removal of a human embryo or fetus. Specifically, a hospital may not be required to admit a patient or allow the use of its facilities for such a procedure. In addition, physicians and other hospital employees who object, in writing, to participating in such a procedure on moral or religious grounds may not be disciplined for refusing to participate in the procedure. Also, a hospital, school or employer may not take any disciplinary action regarding employment, staff or student status against a person who refuses to participate in such a procedure if the refusal is based on moral or religious precepts. Finally, under current law, a hospital and the following persons are exempt from liability for damages that result from a refusal to perform such a procedure if the refusal is based on religious or moral precepts: persons employed by or associated with the staff of a hospital, physicians and other health care professionals licensed or certified by the medical examining board in the department of regulation and licensing (DORL) and registered nurses licensed by the board of nursing in DORL.

This bill expands all of the provisions described above regarding hospitals, health care professionals and hospital employees to include a refusal to participate, based on moral or religious grounds, in any of the seven activities described above with respect to employment discrimination based on creed. Also, the bill provides that pharmacists licensed by the pharmacy examining board in DORL are exempt from liability for damages that result from a refusal to participate in any of the seven activities if the refusal is based on religious or moral precepts. In addition, the bill changes the exemptions from liability under current law for physicians and other health care professionals licensed or certified by the medical examining board and registered nurses licensed by the board of nursing so that they are consistent with the exemption under the bill for pharmacists.

Finally, the bill specifies that the medical examining board, board of nursing, pharmacy examining board or DORL may not take any disciplinary action against

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any of the following who, in writing, refuse, or state an intention to refuse, to participate in any of the seven activities if the refusal is based on moral or religious grounds: a physician or other health care professional licensed or certified by the medical examining board, registered nurse licensed by the board of nursing or pharmacist licensed by the pharmacy examining board. Under the bill, the medical examining board may not take disciplinary action against a physician who makes such a refusal even if the physician refuses to transfer a patient who has executed a declaration authorizing the withholding or withdrawal of life-sustaining procedures or feeding tubes, or who has executed a power of attorney for health care instrument consenting to the withholding or withdrawal of feeding tubes, to another physician who will comply with the declaration or instrument. Under current law, under certain circumstances, a physician who refuses to transfer such a patient to another physician is subject to discipline for unprofessional conduct.

For further information see the *state* 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.** 111.337 (1) of the statutes is renumbered 111.337 (1r) (intro.) and
2 amended to read:

3 111.337 (1r) (intro.) Employment discrimination because of creed includes, but
4 is not limited to, ~~refusing~~ any of the following:

5 (a) Refusing to reasonably accommodate an employe's or prospective employe's
6 religious observance or practice unless the employer can demonstrate that the
7 accommodation would pose an undue hardship on the employer's program,
8 enterprise or business.

9 **SECTION 2.** 111.337 (1g) of the statutes is created to read:

10 111.337 (1g) In this section:

11 (a) "Health care provider" means any of the following:

12 1. An individual licensed, registered, permitted or certified by the department
13 of health and family services or the department of regulation and licensing to provide
14 health care services in this state.

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1 2. An individual who provides health care services as directed, supervised or
2 inspected by an individual specified in subd. 1.

3 (b) "Human embryo" includes a fertilized human ovum and a human embryo
4 created with the assistance of technology such as a cloning procedure using the
5 nucleus of a human cell.

6 (c) "Participate in" means to perform, assist in, recommend, counsel in favor
7 of, make referrals for, prescribe, dispense or administer drugs for, or otherwise
8 promote, encourage or aid.

9 SECTION 3. 111.337 (1r) (b) of the statutes is created to read:

10 111.337 (1r) (b) Discriminating against any health care provider by engaging
11 in any of the actions prohibited under s. 111.322 on the basis of the health care
12 provider's refusal, or statement of an intention to refuse, whether or not in writing,
13 based on his or her creed, to participate in any of the following:

14 1. A sterilization procedure.

15 2. A procedure involving a drug or device that may prevent the implantation
16 of a fertilized human ovum.

17 3. An abortion, as defined in s. 253.10 (2) (a).

18 4. An experiment or medical procedure involving any of the following:

19 a. The destruction of a human embryo.

20 b. A human embryo or unborn child, at any stage of development, in which the
21 experiment or procedure is not related to the beneficial treatment of the human
22 embryo or unborn child.

23 5. A procedure, including a transplant procedure, that uses fetal tissue or
24 organs other than fetal tissue or organs from a stillbirth, spontaneous abortion or
25 miscarriage.

BILL

1 6. The withholding or withdrawal of nutrition or hydration, unless the
2 administration of nutrition or hydration is medically contraindicated.

3 7. An act that causes or assists in causing the death of an individual, such as
4 by assisted suicide, euthanasia or mercy killing.

5 **SECTION 4.** 253.09 (title) of the statutes is amended to read:

6 **253.09** (title) ~~Abortion refused~~ **Refusal to participate in certain**
7 **practices; no liability; no discrimination.**

8 **SECTION 5.** 253.09 (1) of the statutes is renumbered 253.09 (1r) (a) (intro.) and
9 amended to read:

10 253.09 (1r) (a) (intro.) No hospital ~~shall be~~ is required to admit any patient or
11 to allow the use of the hospital facilities for the purpose of performing a ~~sterilization~~
12 ~~procedure or removing a human embryo or fetus.~~ any of the following:

13 (b) A physician or any other person who is a member of or associated with the
14 staff of a hospital, or any employe of a hospital in which such a procedure ~~the~~
15 performance of an activity specified in par. (a) 1. to 7. has been authorized, who shall
16 state in writing his or her objection to the performance of or providing assistance to
17 such a procedure, in writing, refuses, or states an intention to refuse, to participate
18 in the activity on moral or religious grounds shall not be required to participate in
19 such medical procedure, and ~~the activity.~~

20 (c) A physician or any other person who is a member of or associated with the
21 staff of a hospital, or any employe of a hospital, is immune from liability for any
22 damage caused by, and may not be subjected to any disciplinary or recriminatory
23 action based on, the refusal of any such ~~the~~ person to participate therein shall not
24 form the basis of any claim for damages on account of such refusal or for any

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1 ~~disciplinary or recriminatory action against such person in an activity specified in~~
2 ~~par. (a) 1. to 7. on moral or religious grounds.~~

3 **SECTION 6.** 253.09 (1g) of the statutes is created to read:

4 253.09 (1g) In this section:

5 (a) "Human embryo" includes a fertilized human ovum and a human embryo
6 created with the assistance of technology such as a cloning procedure using the
7 nucleus of a human cell.

8 (b) "Participate in" means to perform, assist in, recommend, counsel in favor
9 of, make referrals for, prescribe, dispense or administer drugs for, or otherwise
10 promote, encourage or aid.

11 **SECTION 7.** 253.09 (1r) (a) 1. to 7. of the statutes are created to read:

12 253.09 (1r) (a) 1. A sterilization procedure.

13 2. A procedure involving a drug or device that may prevent the implantation
14 of a fertilized human ovum.

15 3. An abortion, as defined in s. 253.10 (2) (a).

16 4. An experiment or medical procedure involving any of the following:

17 a. The destruction of a human embryo.

18 b. A human embryo or unborn child, at any stage of development, in which the
19 experiment or procedure is not related to the beneficial treatment of the human
20 embryo or unborn child.

21 5. A procedure, including a transplant procedure, that uses fetal tissue or
22 organs other than fetal tissue or organs from a stillbirth, spontaneous abortion or
23 miscarriage.

24 6. The withholding or withdrawal of nutrition or hydration, unless the
25 administration of nutrition or hydration is medically contraindicated.

BILL

1 7. An act that causes or assists in causing the death of an individual, such as
2 by assisted suicide, euthanasia or mercy killing.

3 **SECTION 8.** 253.09 (2) of the statutes is amended to read:

4 253.09 (2) ~~No A hospital or employe of any a hospital shall be liable for any civil~~
5 ~~damages resulting from~~ is immune from liability for any damage caused by a refusal
6 to perform sterilization procedures or remove a human embryo or fetus from a
7 person, if such participate in an activity specified in sub. (1r) (a) 1. to 7., if the refusal
8 is based on religious or moral precepts.

9 **SECTION 9.** 253.09 (3) of the statutes is amended to read:

10 253.09 (3) ~~No hospital, school or employer may discriminate against any~~
11 ~~person with regard to admission, hiring or firing, tenure, term, condition or privilege~~
12 ~~of employment, student status or staff status on the ground that the person refuses~~
13 ~~to recommend, aid or perform procedures for sterilization or the removal of a human~~
14 ~~embryo or fetus, or states an intention to refuse, whether or not in writing, to~~
15 participate in an activity specified in sub. (1r) (a) 1. to 7., if the refusal is based on
16 religious or moral precepts.

17 **SECTION 10.** 253.09 (4) (a) of the statutes is amended to read:

18 253.09 (4) (a) ~~Such individual to perform or assist in the performance of any~~
19 ~~sterilization procedure or removal of a human embryo or fetus~~ participate in an
20 activity specified in sub. (1r) (a) 1. to 7., if the individual's performance or assistance
21 participation in the performance of such a procedure would be activity is contrary to
22 the individual's religious beliefs or moral convictions; or

23 **SECTION 11.** 253.09 (4) (b) 1. of the statutes is amended to read:

24 253.09 (4) (b) 1. ~~Make its facilities available for the performance of any~~
25 ~~sterilization procedure or removal of a human embryo or fetus~~ an individual to

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1 participate in an activity specified in sub. (1r) (a) 1. to 7., if the performance of such
2 a procedure in such facilities is prohibited by the entity prohibits the activity from
3 taking place in the facilities on the basis of religious beliefs or moral convictions; or

4 **SECTION 12.** 253.09 (4) (b) 2. of the statutes is amended to read:

5 253.09 (4) (b) 2. Provide any personnel for the performance or assistance in the
6 performance of any sterilization procedure or assistance to participate in an activity
7 specified in sub. (1r) (a) 1. to 7., if the performance or assistance in the performance
8 of such procedure or the removal of a human embryo or fetus by such personnel would
9 be activity is contrary to the religious beliefs or moral convictions of such the
10 personnel.

11 **SECTION 13.** 441.06 (title) of the statutes is amended to read:

12 **441.06 (title) Licensure; civil liability and disciplinary exemption.**

13 **SECTION 14.** 441.06 (6) of the statutes is renumbered 441.06 (6) (b) (intro.) and
14 amended to read:

15 441.06 (6) (b) (intro.) ~~No~~ A person licensed as a registered nurse under this
16 section is ~~liable for any civil damages resulting from~~ immune from liability for any
17 damage caused by his or her refusal to perform sterilization procedures or to remove
18 or aid in the removal of a human embryo or fetus from a person, assist in, recommend,
19 counsel in favor of, make referrals for, prescribe, dispense or administer drugs for,
20 or otherwise promote, encourage or aid any of the following, if the refusal is based
21 on religious or moral precepts:

22 **SECTION 15.** 441.06 (6) (a) of the statutes is created to read:

23 441.06 (6) (a) In this subsection, "human embryo" includes a fertilized human
24 ovum and a human embryo created with the assistance of technology such as a
25 cloning procedure using the nucleus of a human cell.

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1 **SECTION 16.** 441.06 (6) (b) 1. to 7. of the statutes are created to read:

2 441.06 (6) (b) 1. A sterilization procedure.

3 2. A procedure involving a drug or device that may prevent the implantation
4 of a fertilized human ovum.

5 3. An abortion, as defined in s. 253.10 (2) (a).

6 4. An experiment or medical procedure involving any of the following:

7 a. The destruction of a human embryo.

8 b. A human embryo or unborn child, at any stage of development, in which the
9 experiment or procedure is not related to the beneficial treatment of the human
10 embryo or unborn child.

11 5. A procedure, including a transplant procedure, that uses fetal tissue or
12 organs other than fetal tissue or organs from a stillbirth, spontaneous abortion or
13 miscarriage.

14 6. The withholding or withdrawal of nutrition or hydration, unless the
15 administration of nutrition or hydration is medically contraindicated.

16 7. An act that causes or assists in causing the death of an individual, such as
17 by assisted suicide, euthanasia or mercy killing.

18 **SECTION 17.** 441.06 (7) of the statutes is created to read:

19 441.06 (7) A person licensed as a registered nurse under this section who, in
20 writing, refuses, or states an intention to refuse, on moral or religious grounds to
21 engage in a practice of professional nursing that is related to an activity specified in
22 sub. (6) (b) 1. to 7. shall not be required to engage in the practice with respect to the
23 activity and may not be disciplined by the board or the department for refusing or
24 stating an intention to refuse to engage in the practice with respect to the activity.

25 **SECTION 18.** 448.03 (5) (title) of the statutes is amended to read:

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1 448.03 (5) (title) CIVIL LIABILITY AND DISCIPLINARY EXEMPTION; CERTAIN MEDICAL
2 PROCEDURES AND REPORTS.

3 **SECTION 19.** 448.03 (5) (a) of the statutes is renumbered 448.03 (5) (ar) (intro.)
4 and amended to read:

5 448.03 (5) (ar) (intro.) ~~No~~ A person licensed or certified under this subchapter
6 shall be liable for any civil damages resulting from such is immune from liability for
7 any damage caused by the person's refusal to perform sterilization procedures or to
8 remove or aid in the removal of a human embryo or fetus from a person if such, assist
9 in, recommend, counsel in favor of, make referrals for, prescribe, dispense or
10 administer drugs for, or otherwise promote, encourage or aid any of the following if
11 the refusal is based on religious or moral precepts:

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12 **SECTION 20.** 448.03 (5) (ag) of the statutes is created to read:

13 448.03 (5) (ag) In this subsection, "human embryo" includes a fertilized human
14 ovum and a human embryo created with the assistance of technology such as
15 cloning procedure using the nucleus of a human cell

16 **SECTION 21.** 448.03 (5) (am) of the statutes is created to read:

17 448.03 (5) (am) A person licensed or certified under this subchapter who, in
18 writing, refuses, or states an intention to refuse, on moral or religious grounds to
19 engage in a practice within the scope of his or her license or certification that is
20 related to an activity specified in par. (ar) 1. to 7. shall not be required to engage in
21 the practice with respect to the activity and, notwithstanding s. 154.07 (1) (a) 3. or
22 155.50 (1) (b), may not be disciplined by the board or the department for refusing or
23 stating an intention to refuse to engage in the practice with respect to the activity.

24 **SECTION 22.** 448.03 (5) (ar) 1. to 7. of the statutes are created to read:

25 448.03 (5) (ar) 1. A sterilization procedure.

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1 2. A procedure involving a drug or device that may prevent the implantation
2 of a fertilized human ovum.

3 3. An abortion, as defined in s. 253.10 (2) (a).

4 4. An experiment or medical procedure involving any of the following:

5 a. The destruction of a human embryo.

6 b. A human embryo or unborn child, at any stage of development, in which the
7 experiment or procedure is not related to the beneficial treatment of the human
8 embryo or unborn child.

9 5. A procedure, including a transplant procedure, that uses fetal tissue or
10 organs other than fetal tissue or organs from a stillbirth, spontaneous abortion or
11 miscarriage.

12 6. The withholding or withdrawal of nutrition or hydration, unless the
13 administration of nutrition or hydration is medically contraindicated.

14 7. An act that causes or assists in causing the death of an individual, such as
15 by assisted suicide, euthanasia or mercy killing.

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16 **SECTION 23.** 450.135 of the statutes is created to read:

17 **450.135 Pharmacist’s refusal to be involved in certain activities. (1)**

18 In this section, “human embryo” includes a fertilized human ovum and a human
19 embryo created with the assistance of technology such as a cloning procedure using
20 the nucleus of a human cell.

21 **(2)** A person licensed as a pharmacist under this chapter is immune from
22 liability for any damage caused by his or her refusal to be involved in the performance
23 of, assistance in, recommendation of, counseling in favor of, making referrals for,
24 prescribing, dispensing or administering drugs for, or otherwise promoting,

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1 encouraging or aiding any of the following, if the refusal is based on religious or moral
2 precepts:

3 (a) A sterilization procedure.

4 (b) A procedure involving a drug or device that may prevent the implantation
5 of a fertilized human ovum.

6 (c) An abortion, as defined in s. 253.10 (2) (a).

7 (d) An experiment or medical procedure involving any of the following:

8 1. The destruction of a human embryo.

9 2. A human embryo or unborn child, at any stage of development, in which the
10 experiment or procedure is not related to the beneficial treatment of the human
11 embryo or unborn child.

12 (e) A procedure, including a transplant procedure, that uses fetal tissue or
13 organs other than fetal tissue or organs from a stillbirth, spontaneous abortion or
14 miscarriage.

15 (f) The withholding or withdrawal of nutrition or hydration, unless the
16 administration of nutrition or hydration is medically contraindicated.

17 (g) An act that causes or assists in causing the death of an individual, such as
18 by assisted suicide, euthanasia or mercy killing.

19 (3) A person licensed as a pharmacist under this chapter who, in writing,
20 refuses, or states an intention to refuse, on moral or religious grounds to engage in
21 a practice of pharmacy that is related to an activity specified in sub. (2) (a) to (g) shall
22 not be required to engage in the practice with respect to the activity and may not be
23 disciplined by the board or department for refusing or stating an intention to refuse
24 to engage in the practice with respect to the activity.

25 **SECTION 24. Initial applicability.**

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INSERT 4-2:

(b) "Human embryo" includes any organism that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells.

INSERT 6-4:

(a) "Human embryo" includes any organism that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells.

INSERT 8-23:

~~2A~~ includes any organism that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells.

INSERT 10-13:

~~2A~~ includes any organism that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells.

INSERT 11-18:

~~2A~~ includes any organism that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0406/4dn

MDK:.....

1
JL

Representative Walker:

This bill is identical to LRB-0406/3, except for the definition of "human embryo".

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0406/4dn
MDK;jlg:jf

April 7, 1999

Representative Walker:

This bill is identical to LRB-0406/3, except for the definition of "human embryo".

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 4/7/99

To: Representative Walker

Relating to LRB drafting number: LRB-0406

Topic

Exempting certain health care professionals from discipline and liability for refusing to be involved in abortions, sterilizations, euthanasia and certain other procedures.

Subject(s)

Health - abortion, Health - miscellaneous, Occupational Reg. - misc

1. **JACKET** the draft for introduction _____

in the **Senate** ____ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Mark D. Kunkel, Legislative Attorney
Telephone: (608) 266-0131