

2001 ASSEMBLY BILL 168

March 1, 2001 – Introduced by Representatives WALKER, STASKUNAS, ALBERS, COLON, DUFF, J. FITZGERALD, FREESE, GUNDERSON, GUNDRUM, HOVEN, HUEBSCH, JESKEWITZ, JOHNSRUD, KEDZIE, KRAWCZYK, LADWIG, F. LASEE, M. LEHMAN, LEIBHAM, LIPPERT, LOEFFELHOLZ, MCCORMICK, D. MEYER, MONTGOMERY, NASS, OTT, OWENS, PETROWSKI, PETTIS, RHOADES, RYBA, STARZYK, STONE, SUDER, SYKORA, UNDERHEIM, URBAN, VRAKAS, WIECKERT and ZIEGELBAUER, cosponsored by Senators BRESKE, ROESSLER, BAUMGART, COWLES, FARROW, S. FITZGERALD, HARSDORF, LAZICH, SCHULTZ and WELCH. Referred to Committee on Labor and Workforce Development.

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., 253.09 (5), 441.06 (6)
5 (a), 441.06 (6) (b) 1. to 7., 441.06 (7), 441.06 (8), 448.03 (5) (ag), 448.03 (5) (am),
6 448.03 (5) (ao), 448.03 (5) (ar) 1. to 7. and 450.135 of the statutes; **relating to:**
7 employment discrimination based on creed and exemption from liability and
8 discipline for physicians, nurses, pharmacists, other health care providers, and
9 hospital employees who refuse to participate in sterilization, abortion, assisted
10 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

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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. In addition, the bill allows a person who is adversely affected by conduct that violates these provisions to bring a civil action for injunctive relief, damages, and attorneys fees. 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.

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Also, 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. In addition, the bill allows a physician, registered nurse, or pharmacist who is adversely affected by conduct that violates this prohibition to bring a civil action for injunctive relief, damages, and attorneys fees. Finally, 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. However, under the bill, the medical examining board may take disciplinary action against a physician who makes such a refusal if the physician refuses to transfer an incapacitated, terminally ill patient who has executed such a declaration.

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 employee's or prospective
6 employee's religious observance or practice unless the employer can demonstrate
7 that the 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:

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

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

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

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

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

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

17 1. A sterilization procedure.

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

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

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

22 a. The destruction of a human embryo.

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

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

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

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

9 **253.09** (title) ~~Abortion refused~~ **Refusal to participate in certain**
10 **practices; no liability; no discrimination.**

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

13 253.09 **(1r)** (a) (intro.) No hospital ~~shall be~~ is required to admit any patient or
14 to allow the use of the hospital facilities for the purpose of performing ~~a sterilization~~
15 ~~procedure or removing a human embryo or fetus.~~ any of the following:

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

23 **(c)** A physician or any other person who is a member of or associated with the
24 staff of a hospital, or any employee of a hospital, is immune from liability for any
25 damage caused by, and may not be subjected to any disciplinary or recriminatory

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1 ~~action based on, the refusal of any such~~ the person to participate therein shall not
2 ~~form the basis of any claim for damages on account of such refusal or for any~~
3 ~~disciplinary or recriminatory action against such person~~ in an activity specified in
4 par. (a) 1. to 7. on moral or religious grounds.

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

6 253.09 (1g) In this section:

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

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

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

14 253.09 (1r) (a) 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.

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

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

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

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

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

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

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

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

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

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

13 **SECTION 13.** 253.09 (5) of the statutes is created to read:

14 253.09 (5) A person who is adversely affected by, or who reasonably may be
15 expected to be adversely affected by, conduct that is in violation of this section may
16 bring a civil action for injunctive relief, including reinstatement, damages, including
17 damages for emotional or psychological distress, or both injunctive relief and
18 damages. In an action under this subsection, the court shall award reasonable
19 attorney fees, notwithstanding s. 814.04 (1), to a person who obtains injunctive relief,
20 an award of damages, or both.

21 **SECTION 14.** 441.06 (title) of the statutes is amended to read:

22 **441.06** (title) **Licensure; civil liability and disciplinary exemption.**

23 **SECTION 15.** 441.06 (6) of the statutes is renumbered 441.06 (6) (b) (intro.) and
24 amended to read:

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1 441.06 (6) (b) (intro.) ~~No~~ A person licensed as a registered nurse under this
2 section is liable for any civil damages resulting from immune from liability for any
3 damage caused by his or her refusal to perform sterilization procedures or to remove
4 or aid in the removal of a human embryo or fetus from a person, assist in, recommend,
5 counsel in favor of, make referrals for, prescribe, dispense or administer drugs for,
6 or otherwise promote, encourage, or aid any of the following, if the refusal is based
7 on religious or moral precepts.;

8 **SECTION 16.** 441.06 (6) (a) of the statutes is created to read:

9 441.06 (6) (a) In this subsection, “human embryo” includes any organism that
10 is derived by fertilization, parthenogenesis, cloning, or any other means from one or
11 more human gametes or human diploid cells.

12 **SECTION 17.** 441.06 (6) (b) 1. to 7. of the statutes are created to read:

13 441.06 (6) (b) 1. A sterilization procedure.

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

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

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

18 a. The destruction of a human embryo.

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

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

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

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

12 **SECTION 19.** 441.06 (8) of the statutes is created to read:

13 441.06 (8) A person who is adversely affected by, or who reasonably may be
14 expected to be adversely affected by, conduct that is in violation of sub. (7) may bring
15 a civil action for injunctive relief, including reinstatement, damages, including
16 damages for emotional or psychological distress, or both injunctive relief and
17 damages. In an action under this subsection, the court shall award reasonable
18 attorney fees, notwithstanding s. 814.04 (1), to a person who obtains injunctive relief,
19 an award of damages, or both.

20 **SECTION 20.** 448.03 (5) (title) of the statutes is amended to read:

21 448.03 (5) (title) CIVIL LIABILITY AND DISCIPLINARY EXEMPTION; CERTAIN MEDICAL
22 PROCEDURES AND REPORTS.

23 **SECTION 21.** 448.03 (5) (a) of the statutes is renumbered 448.03 (5) (ar) (intro.)
24 and amended to read:

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1 448.03 (5) (ar) (intro.) ~~No~~ A person licensed or certified under this subchapter
2 shall be liable for any civil damages resulting from such is immune from liability for
3 any damage caused by the person's refusal to perform sterilization procedures or to
4 remove or aid in the removal of a human embryo or fetus from a person if such, assist
5 in, recommend, counsel in favor of, make referrals for, prescribe, dispense or
6 administer drugs for, or otherwise promote, encourage, or aid any of the following if
7 the refusal is based on religious or moral precepts.:

8 **SECTION 22.** 448.03 (5) (ag) of the statutes is created to read:

9 448.03 (5) (ag) In this subsection, "human embryo" includes any organism that
10 is derived by fertilization, parthenogenesis, cloning, or any other means from one or
11 more human gametes or human diploid cells.

12 **SECTION 23.** 448.03 (5) (am) of the statutes is created to read:

13 448.03 (5) (am) A person licensed or certified under this subchapter who, in
14 writing, refuses, or states an intention to refuse, on moral or religious grounds to
15 engage in a practice within the scope of his or her license or certification that is
16 related to an activity specified in par. (ar) 1. to 7. shall not be required to engage in
17 the practice with respect to the activity and, notwithstanding s. 154.07 (1) (a) 3. or
18 155.50 (1) (b), may not be disciplined by the board or the department for refusing or
19 stating an intention to refuse to engage in the practice with respect to the activity,
20 including refusing or stating an intention to refuse to transfer a patient to another
21 physician who will comply with a declaration, as defined in s. 154.02 (1), instrument
22 for power of attorney for health care, as defined in s. 155.01 (10), or health care
23 decision, as defined in s. 155.01 (5), of a health care agent, as defined in s. 155.01 (4).
24 This paragraph does not apply to the refusal to make a good faith attempt to transfer
25 a declarant with incapacity, as defined in s. 155.01 (8) and with a terminal condition,

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1 as defined in s. 154.01 (8), to another physician who will comply with the declaration
2 of the declarant.

3 **SECTION 24.** 448.03 (5) (ao) of the statutes is created to read:

4 448.03 (5) (ao) A person who is adversely affected by, or who reasonably may
5 be expected to be adversely affected by, conduct that is in violation of par. (am) may
6 bring a civil action for injunctive relief, including reinstatement, damages, including
7 damages for emotional or psychological distress, or both injunctive relief and
8 damages. In an action under this paragraph, the court shall award reasonable
9 attorney fees, notwithstanding s. 814.04 (1), to a person who obtains injunctive relief,
10 an award of damages, or both.

11 **SECTION 25.** 448.03 (5) (ar) 1. to 7. of the statutes are created to read:

12 448.03 (5) (ar) 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.

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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 26.** 450.135 of the statutes is created to read:

4 **450.135 Pharmacist’s refusal to be involved in certain activities. (1)**

5 In this section, “human embryo” includes any organism that is derived by
6 fertilization, parthenogenesis, cloning, or any other means from one or more human
7 gametes or human diploid cells.

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

14 (a) A sterilization procedure.

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

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

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

19 1. The destruction of a human embryo.

20 2. 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 (e) 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.

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

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

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

11 (b) A person who is adversely affected by, or who reasonably may be expected
12 to be adversely affected by, conduct that is in violation of par. (a) may bring a civil
13 action for injunctive relief, including reinstatement, damages, including damages
14 for emotional or psychological distress, or both injunctive relief and damages. In an
15 action under this paragraph, the court shall award reasonable attorney fees,
16 notwithstanding s. 814.04 (1), to a person who obtains injunctive relief, an award of
17 damages, or both.

SECTION 27. Initial applicability.

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

21 (END)