

2003 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB67)

Received: **03/10/2003**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Jean Hundertmark (608) 266-3794**

By/Representing: **Mary Klaver**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Health - miscellaneous
Health - abortion
Occupational Reg. - misc**

Extra Copies: **DAK, PJH**

Submit via email: **YES**

Requester's email: **Rep.Hundertmark@legis.state.wi.us**

Carbon copy (CC:) to: **mklaver@wrtl.org**

Pre Topic:

No specific pre topic given

Topic:

Exempting certain health care professionals from discipline and liability for refusing to be involved in abortions and 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>
/?	mkunkel 03/21/2003	csicilia 03/21/2003		_____			
/1			jfrantze 03/21/2003	_____	lemery 03/21/2003	lemery 03/21/2003	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	mkunkel 04/17/2003	csicilia 04/17/2003	pgreensl 04/17/2003	_____	sbasford 04/17/2003	sbasford 04/17/2003	

FE Sent For:

<END>

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/?	mkunkel 03/21/2003	csicilia 03/21/2003					
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1?	mkunkel	1 cjs 3/21	3/21	3/21			

FE Sent For:

<END>

Kunkel, Mark

From: Mary Klaver [mklaver@wrtl.org]
Sent: Friday, March 14, 2003 2:41 PM
To: Peter Eng
Cc: Mark Kunkel
Subject: Drafting instructions for AB 67 substitute amendment

Importance: High



Conscience clause
subst amt in...

AB 67 — Instructions for Hundertmark Substitute Amendment

A. Exclude contraceptives from the bill. The drafter recommends doing this in the definition of “participate in” throughout the bill. For technical reasons, the phrases “practice” and “engage in” would also be added to this definition and the definition of “participate in” would be placed in additional places in the bill. The amended definition of “participate in” would be as follows:

“Participate in” means to perform; practice; engage in; assist in; recommend; counsel in favor of; make referrals for; prescribe, dispense, or administer drugs or devices, other than contraceptive articles, as defined in s. 450.155 (1) (a), for; or otherwise promote, encourage, or aid. [New language is underlined.]

The definition of “contraceptive article” in s. 450.155 (1) (a) is as follows:

“Contraceptive article” means any drug, medicine, mixture, preparation, instrument, article or device of any nature used or intended or represented to be used to prevent a pregnancy.

B. Add licensed practical nurses to the bill (AA 1 to AB 67).

C. Throughout the bill, add the definition of “in vitro human embryo” from Rep. Freese’s Human Embryo Protection Act from last session (2001 AB 736):

“In vitro human embryo” means a human embryo, whether cryopreserved or not, living outside of a woman’ body.

D. Throughout the bill, amend the 3rd conscience right activity by breaking it down into the following 3 separate activities (numbered 3-5) and renumber the remaining conscience right activities (from numbers 4-6 to 6-8):

3. An experiment or medical procedure that destroys an in vitro human embryo or uses cells or tissue derived from the destruction of an in vitro human embryo.
4. An experiment or medical procedure on an in vitro human embryo in which the experiment or procedure is not related to the beneficial treatment of the human embryo.
5. An experiment or medical procedure on a child developing in a natural or artificial womb, at any stage of development, in which the experiment or procedure is not related to the beneficial treatment of the developing child.

E. Throughout the bill, amend the provisions granting a right to a private cause of action by limiting these provisions to a “person who is not an employee or a prospective employee” (e.g., a student or a staff physician), deleting the phrase “or who reasonably may be expected to be adversely affected by” and deleting the phrase “including damages for emotional or psychological distress”.

Kunkel, Mark

From: Kunkel, Mark
Sent: Monday, March 10, 2003 11:36 AM
To: 'mklaver@wrti.org'
Subject: AB67 question

Contacts: Mary Klaver

Mary:

Given your preference for "involved in" rather than "engaged in" for pharmacists, should page 16 lines 21, 23 and 25 of the bill be revised to talk say "to be involved in" rather than "to engage in"?

On the other hand, it may be okay as is, because this provision talks about engaging in a practice of pharmacy, which is something the board would otherwise regulate.

Mark D. Kunkel
Senior Legislative Attorney
Legislative Reference Bureau
(608) 266-0131

O-NOTE

Today by 4:00pm, if possible

ASA to

2003 ASSEMBLY BILL 67

Stays

50028/1

RM NOT RUN

February 18, 2003 - Introduced by Representatives HUNDERTMARK, STASKUNAS, ALBERS, BIES, J. FITZGERALD, FREESE, GROTHMAN, GUNDERSON, GUNDRUM, HAHN, HINES, HUEBSCH, KERKMAN, KESTELL, KRAWCZYK, KREIBICH, LADWIG, F. LASEE, M. LEHMAN, LEMAHIEU, LOEFFELHOLZ, MCCORMICK, D. MEYER, MONTGOMERY, NASS, OTT, OWENS, PETROWSKI, RHOADES, STONE, SUDER, UNDERHEIM, VAN ROY, VRAKAS, YUKMIR, WEBER, WIECKERT, J. WOOD and ZIEGELBAUER, cosponsored by Senators ROESSLER, REYNOLDS, BRESKE, COWLES, S. FITZGERALD, HARSDFORF, KANAVAS, KEDZIE, A. LASEE, LAZICH, LEIBHAM, SCHULTZ, STEPP and WELCH. Referred to Committee on Labor.

SAV

Regen 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 154.03 (1) (intro.), 155.60 (3), 253.09 (title), 253.09 (2), 253.09
3 (3), 253.09 (4) (a), 253.09 (4) (b) 1., 253.09 (4) (b) 2., 441.06 (title) and 448.03 (5)
4 (title); and to create 111.337 (1g), 111.337 (1r) (b), 253.09 (1g), 253.09 (1r) (a)
5 1. to 6., 253.09 (5), 441.06 (6) (a), 441.06 (6) (b) 1. to 6., 441.06 (7), 441.06 (8),
6 448.03 (5) (ag), 448.03 (5) (am), 448.03 (5) (ao), 448.03 (5) (ar) 1. to 6. and
7 450.135 of the statutes; relating to: employment discrimination based on
8 creed; exemption from liability and discipline for 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; and power of
11 attorney for health care instruments and patient declarations regarding the
12 withholding or withdrawal of life-sustaining procedures or feeding tubes.



Analysis by the Legislative Reference Bureau

This bill makes changes to current law regarding: 1) employment discrimination based on creed; 2) refusals of certain health care providers and

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hospital employees to participate in certain procedures on moral or religious grounds; and 3) duties of physicians regarding power of attorney for health care instruments and patient declarations authorizing the withholding or withdrawal of life-sustaining procedures or feeding tubes.

Employment discrimination based on creed. 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.

This bill expands the definition of employment discrimination based on creed to include discriminating against an employee or prospective employee on the basis of his or her refusal, based on creed, to participate in any of the following activities: 1) sterilization procedures; 2) abortions; 3) 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; 4) procedures using fetal tissue or organs other than fetal tissue or organs from a stillbirth, spontaneous abortion, or miscarriage; 5) withholding or withdrawing nutrition or hydration under certain circumstances; or 6) acts intentionally 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.

Refusals to participate in procedures on moral or religious grounds. 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 (DRL) and registered nurses licensed by the Board of Nursing in DRL.

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 six activities described above with respect to employment discrimination based on creed. In addition, the bill allows a

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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 DRL are exempt from liability for damages that result from a refusal to participate in any of the six 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.

Also, the bill specifies that the Medical Examining Board, Board of Nursing, Pharmacy Examining Board, and DRL 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 six 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, a registered nurse licensed by the Board of Nursing, or a 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.

Power of attorney for health care instruments and patient declarations. Under the bill, a physician who receives a power of attorney for health care instrument described above, or who is notified that a patient has executed a declaration described above, must immediately review the instrument or declaration and, if the physician intends to refuse to participate in any of the six activities, must, as soon as possible, inform the patient, orally and in writing, about the refusal and about any concerns that the physician has about the instrument or declaration. Similar requirements apply if a physician receives a statement of incapacity regarding a patient who has executed a power of attorney for health care instrument described above. In such cases, the physician must immediately review the statement and, if the physician intends to refuse to participate in any of the six activities, must, as soon as possible, inform the patient's principal, orally and in writing, about the refusal and about any concerns regarding the statement.

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

INSERT 4-15

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

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

20 111.337 (1r) (b) Discriminating against an employee or prospective employee
21 by engaging in any of the actions prohibited under s. 111.322 on the basis of the

ASSEMBLY BILL 67

1 employee's or prospective employee's refusal, or statement of an intention to refuse,
2 whether or not in writing, based on his or her creed, to participate in any of the
3 following:

INSERT 5-5

4 1. A sterilization procedure.

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

6 3. 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 ~~6~~ 4. 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 ~~7~~ 5. The withholding or withdrawal of nutrition or hydration, if the withholding
15 or withdrawal of nutrition or hydration would result in the patient's death from
16 malnutrition or dehydration, or complications of malnutrition or dehydration, rather
17 than from the underlying terminal illness or injury, unless the administration of
18 nutrition or hydration is medically contraindicated.

19 ~~8~~ 6. An act that intentionally causes or assists in causing the death of an
20 individual, such as by assisted suicide, euthanasia, or mercy killing.

21 SECTION 4. 154.03 (1) (intro.) of the statutes is amended to read:

22 154.03 (1) (intro.) Any person of sound mind and 18 years of age or older may
23 at any time voluntarily execute a declaration, which shall take effect on the date of
24 execution, authorizing the withholding or withdrawal of life-sustaining procedures
25 or of feeding tubes when the person is in a terminal condition or is in a persistent

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1 vegetative state. A declarant may not authorize the withholding or withdrawal of
2 any medication, life-sustaining procedure, or feeding tube if the declarant's
3 attending physician advises that, in his or her professional judgment, the
4 withholding or withdrawal will cause the declarant pain or reduce the declarant's
5 comfort and the pain or discomfort cannot be alleviated through pain relief
6 measures. A declarant may not authorize the withholding or withdrawal of nutrition
7 or hydration that is administered or otherwise received by the declarant through
8 means other than a feeding tube unless the declarant's attending physician advises
9 that, in his or her professional judgment, the administration is medically
10 contraindicated. A declaration must be signed by the declarant in the presence of 2
11 witnesses. If the declarant is physically unable to sign a declaration, the declaration
12 must be signed in the declarant's name by one of the witnesses or some other person
13 at the declarant's express direction and in his or her presence; such a proxy signing
14 shall either take place or be acknowledged by the declarant in the presence of 2
15 witnesses. The declarant is responsible for notifying his or her attending physician
16 of the existence of the declaration. An attending physician who is so notified shall
17 immediately review the declaration and, if the physician intends to invoke his or her
18 rights under s. 253.09, shall, as soon as possible, inform the declarant orally and in
19 writing of that intent and of the physician's concerns, if any, about the declaration.

20 An attending physician who is so notified shall also make the declaration a part of
21 the declarant's medical records. No witness to the execution of the declaration may,
22 at the time of the execution, be any of the following:

23 **SECTION 5.** 155.60 (3) of the statutes is amended to read:

24 155.60 (3) Upon receipt of a power of attorney for health care instrument or a
25 statement of incapacity under s. 155.05 (2), a health care facility or health care

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1 provider shall acknowledge this receipt in writing and, if the principal is a patient
2 of the health care provider, the health care provider shall include the instrument or
3 the statement in the medical record of the principal. In addition, if the health care
4 provider is a physician and the principal is a patient of the physician, the physician
5 shall immediately review the instrument or statement and, if the physician intends
6 to invoke his or her rights under s. 253.09, shall, as soon as possible, inform the
7 principal orally and in writing of that intent and of the physician's concerns, if any,
8 about the instrument or statement.

9 SECTION 6. 253.09 (title) of the statutes is amended to read:

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

12 SECTION 7. 253.09 (1) of the statutes is renumbered 253.09 (1r) (a) (intro.) and
13 amended to read:

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

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

24 (c) A physician or any other person who is a member of or associated with the
25 staff of a hospital, or any employee of a hospital, is immune from liability for any

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1 damage caused by, and may not be subjected to any disciplinary or recriminatory
 2 action based on, the refusal of any such ~~the~~ person to participate therein shall not
 3 form the basis of any claim for damages on account of such refusal or for any
 4 disciplinary or recriminatory action against such person in an activity specified in
 5 par. (a) 1. to ~~8~~ ⁹ on moral or religious grounds. ✓

6 SECTION 8. 253.09 (1g) of the statutes is created to read:

7 253.09 (1g) In this section:

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

INSERT 8-12

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

16 SECTION 9. 253.09 (1r) (a) 1. to ~~8~~ ⁸ of the statutes are created to read:

17 253.09 (1r) (a) 1. A sterilization procedure.

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

19 3. An experiment or medical procedure involving any of the following:
 20 a. The destruction of a human embryo.
 21 b. A human embryo or unborn child, at any stage of development, in which the
 22 experiment or procedure is not related to the beneficial treatment of the human
 23 embryo or unborn child.

INSERT 8-18

ASSEMBLY BILL 67

① 64. 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 75. The withholding or withdrawal of nutrition or hydration, if the withholding
 5 or withdrawal of nutrition or hydration would result in the patient's death from
 6 malnutrition or dehydration, or complications of malnutrition or dehydration, rather
 7 than from the underlying terminal illness or injury, unless the administration of
 8 nutrition or hydration is medically contraindicated.

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

11 SECTION 10. 253.09 (2) of the statutes is amended to read:

12 253.09 (2) ~~No a hospital or employee of any a hospital shall be liable for any~~
 13 ~~civil damages resulting from~~ is immune from liability for any damage caused by a
 14 ~~refusal to perform sterilization procedures or remove a human embryo or fetus from~~
 15 ~~a person, if such~~ participate in an activity specified in sub. (1r) (a) 1. to ~~8.~~⁸, if the ✓
 16 ~~refusal is based on religious or moral precepts.~~

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

18 253.09 (3) No hospital, school, or employer may discriminate against any
 19 person with regard to admission, hiring or firing, tenure, term, condition, or privilege
 20 of employment, student status, or staff status on the ground that the person refuses
 21 ~~to recommend, aid or perform procedures for sterilization or the removal of a human~~
 22 ~~embryo or fetus, or states an intention to refuse, whether or not in writing, to~~
 23 ~~participate in an activity specified in sub. (1r) (a) 1. to ~~8.~~⁸, if the refusal is based on~~ ✓
 24 ~~religious or moral precepts.~~

25 SECTION 12. 253.09 (4) (a) of the statutes is amended to read:

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

6 SECTION 13. 253.09 (4) (b) 1. of the statutes is amended to read:

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

12 SECTION 14. 253.09 (4) (b) 2. of the statutes is amended to read:

13 253.09 (4) (b) 2. Provide any personnel ~~for the performance or assistance in the~~
 14 ~~performance of any sterilization procedure or assistance to participate in an activity~~
 15 specified in sub. (1r) (a) 1. to §, if the performance or assistance in the performance
 16 ~~of such procedure or the removal of a human embryo or fetus by such personnel would~~
 17 be activity is contrary to the religious beliefs or moral convictions of such the
 18 personnel.

19 SECTION 15. 253.09 (5) of the statutes is created to read:

20 253.09 (5) ~~A~~ ^{INSERT 10-20} ~~person who is adversely affected by~~ ~~of~~ ~~who~~ ~~reasonably may be~~
 21 ~~expected to be adversely affected by~~ ~~conduct that is in violation of this section may~~
 22 bring a civil action for injunctive relief, including reinstatement, or damages,
 23 ~~including damages for emotional or psychological distress,~~ or both injunctive relief
 24 and damages. In an action under this subsection, the court shall award reasonable

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1 attorney fees, notwithstanding s. 814.04 (1), to a person who obtains injunctive relief,
2 an award of damages, or both.

3 SECTION 16. 441.06 (title) of the statutes is amended to read:

4 441.06 (title) **Licensure; civil liability and disciplinary exemption.**

5 SECTION 17. 441.06 (6) of the statutes is renumbered 441.06 (6) (b) (intro.) and
6 amended to read: IN SEPT 11-8

7 441.06 (6) (b) (intro.) No A person licensed as a registered nurse under this
8 section is liable for any civil damages resulting from immune from liability for any
9 damage caused by his or her refusal to perform sterilization procedures or to remove
10 or aid in the removal of a human embryo or fetus from a person ~~assist in, recommend,~~
11 ~~counsel in favor of, make referrals for, prescribe, dispense, or administer drugs for,~~
12 ~~or otherwise promote, encourage, or aid~~ participate in any of the following, if the refusal is based
13 on religious or moral precepts: (9) 1.

14 SECTION 18. 441.06 (6) (a) of the statutes is created to read:

15 441.06 (6) (a) In this subsection, “human embryo” means a human organism
16 that is derived by fertilization, parthenogenesis, cloning, or any other means from
17 one or more human gametes or human diploid cells. “Human embryo” includes a
18 zygote but does not include a human organism at or beyond the stage of development
19 at which the major body structures are present. INSERT 11-19

20 SECTION 19. 441.06 (6) (b) 1. to ⁸2. of the statutes are created to read:

- 21 441.06 (6) (b) 1. A sterilization procedure.
- 22 2. An abortion, as defined in s. 253.10 (2) (a).

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

- 24 a. The destruction of a human embryo.

INSERT 11-22

ASSEMBLY BILL 67

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

4 b 4. A procedure, including a transplant procedure, that uses fetal tissue or
5 organs other than fetal tissue or organs from a stillbirth, spontaneous abortion, or
6 miscarriage.

7 7.5. The withholding or withdrawal of nutrition or hydration, if the withholding
8 or withdrawal of nutrition or hydration would result in the patient's death from
9 malnutrition or dehydration, or complications of malnutrition or dehydration, rather
10 than from the underlying terminal illness or injury, unless the administration of
11 nutrition or hydration is medically contraindicated.

12 8.6. An act that intentionally causes or assists in causing the death of an
13 individual, such as by assisted suicide, euthanasia, or mercy killing.

14 SECTION 20. 441.06 (7) of the statutes is created to read:

INSERT 12-15

15 441.06 (7) A person licensed as a registered nurse under this section who, in
16 writing, refuses, or states an intention to refuse, on moral or religious grounds to
17 ~~engage~~ ^{participate} in a practice of professional nursing that is related to an activity specified in
18 sub. (6) (b) 1. to ~~engage~~ ^{participate} in the practice with respect to the
19 activity and may not be disciplined by the board or the department for refusing or
20 stating an intention to refuse to ~~engage~~ ^{participate} in the practice with respect to the activity.

21 SECTION 21. 441.06 (8) of the statutes is created to read:

22 441.06 (8) A person who is adversely affected by, ~~or who reasonably may be~~
23 ~~expected to be adversely affected by~~ conduct that is in violation of sub. (7) may bring
24 a civil action for injunctive relief, including reinstatement, or damages, ~~including~~
25 ~~damages for emotional or psychological distress~~ or both injunctive relief and

INSERT 12-20

ASSEMBLY BILL 67

1 damages. In an action under this subsection, the court shall award reasonable
2 attorney fees, notwithstanding s. 814.04 (1), to a person who obtains injunctive relief,
3 an award of damages, or both.

4 SECTION 22. 448.03 (5) (title) of the statutes is amended to read:

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

7 SECTION 23. 448.03 (5) (a) of the statutes is renumbered 448.03 (5) ^{gm} (af) (intro.)
8 and amended to read:

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

16 SECTION 24. 448.03 (5) (ag) of the statutes is created to read:

17 448.03 (5) (ag) In this subsection, ^{①④ 1.} "human embryo" means a human organism
18 that is derived by fertilization, parthenogenesis, cloning, or any other means from
19 one or more human gametes or human diploid cells. "Human embryo" includes a
20 zygote but does not include a human organism at or beyond the stage of development
21 at which the major body structures are present.

22 SECTION 25. 448.03 (5) ^{ao} (am) of the statutes is created to read:

23 448.03 (5) ^{ao} (am) A person licensed or certified under this subchapter who, in
24 writing, refuses, or states an intention to refuse, on moral or religious grounds to
25 ^{participate} ~~engage~~ in a practice within the scope of his or her license or certification that is

INSERT 13-21

ASSEMBLY BILL 67

SECTION 25

participate

1

related to an activity specified in par. (a) 1. to ^{am} 8. may not be required to ~~participate~~ in the practice with respect to the activity and, notwithstanding ss. 154.07 (1) (a) 3. and

3

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

4

stating an intention to refuse to ~~engage~~ ^{participate} in the practice with respect to the activity,

5

including refusing or stating an intention to refuse to transfer a patient to another

6

physician who will comply with a declaration, as defined in s. 154.02 (1), instrument

7

for power of attorney for health care, as defined in s. 155.01 (10), or health care

8

decision, as defined in s. 155.01 (5), of a health care agent, as defined in s. 155.01 (4).

9

This paragraph does not apply to the refusal to make a good faith attempt to transfer

10

a declarant with incapacity, as defined in s. 155.01 (8) and with a terminal condition,

11

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

12

as defined in s. 154.02 (1), of the declarant.

13

SECTION 26. 448.03 (5) ^{ar} ~~(a)~~ of the statutes is created to read:

14

448.03 (5) ^{ar} ~~(a)~~ A person who is adversely affected by, ^{or who reasonably may}

15

~~be expected to be adversely affected by,~~ conduct that is in violation of par. (a) ^{ar} may

16

bring a civil action for injunctive relief, including reinstatement, or damages,

17

~~including damages for emotional or psychological distress,~~ or both injunctive relief

18

and damages. In an action under this paragraph, 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 27. 448.03 (5) ^{am} ~~(a)~~ 1. to ⁸ 8. of the statutes are created to read:

22

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

23

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

24

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

25

a. The destruction of a human embryo.

WPO - move this to proper order

INSERT 14-23

ASSEMBLY BILL 67

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

4 6 A. A procedure, including a transplant procedure, that uses fetal tissue or
5 organs other than fetal tissue or organs from a stillbirth, spontaneous abortion, or
6 miscarriage.

7 7 B. The withholding or withdrawal of nutrition or hydration, if the withholding
8 or withdrawal of nutrition or hydration would result in the patient's death from
9 malnutrition or dehydration, or complications of malnutrition or dehydration, rather
10 than from the underlying terminal illness or injury, unless the administration of
11 nutrition or hydration is medically contraindicated.

12 8 C. An act that intentionally causes or assists in causing the death of an
13 individual, such as by assisted suicide, euthanasia, or mercy killing.

14 SECTION 28. 450.135 of the statutes is created to read:

15 450.135 Pharmacist's refusal to ~~be involved~~ ^(a) in certain activities. (1) ^(BF)

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

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~~ ^{participate} 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,~~

INSERT 15-20

ASSEMBLY BILL 67

participate in

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

3 (a) A sterilization procedure.

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

INSERT
16-4

5 (c) An experiment or medical procedure involving any of the following:

6 1. The destruction of a human embryo.

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

10 *f* (d) A procedure, including a transplant procedure, that uses fetal tissue or
11 organs other than fetal tissue or organs from a stillbirth, spontaneous abortion, or
12 miscarriage.

13 *g* (e) The withholding or withdrawal of nutrition or hydration, if the withholding
14 or withdrawal of nutrition or hydration would result in the patient's death from
15 malnutrition or dehydration, or complications of malnutrition or dehydration, rather
16 than from the underlying terminal illness or injury, unless the administration of
17 nutrition or hydration is medically contraindicated.

18 *h* (f) An act that intentionally causes or assists in causing the death of an
19 individual, such as by assisted suicide, euthanasia, or mercy killing.

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

ASSEMBLY BILL 67

INSEAT 17-1

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

SECTION 29. Initial applicability.

8
9 (1) The treatment of sections 111.337 (1), (1g), and (1r) (b), 253.09 (title), (1),
(1g), (1r) (a) 1. to ~~b.~~⁸, (2), (3), (4) (a) and (b) 1. and 2., and (5), 441.06 (title), (7), and
(10) (8), 448.03 (5) (title), (a), (ag), (am), (ao), and (ar) ~~1. to b.~~⁸, and 450.135 of the statutes,
(11) the renumbering and amendment of section 441.06 (6) of the statutes, and the
12 creation of section 441.06 (6) (a) and (b) 1. to ~~b.~~⁸ of the statutes first apply to refusals
(13) or statements of an intention to refuse that are made on the effective date of this
14 subsection.
15

16 (2) The treatment of section 154.03 (1) of the statutes first applies to
17 notifications made on the effective date of this subsection.

18 (3) The treatment of section 155.60 (3) of the statutes first applies to power of
19 attorney for health care instruments and statements of incapacity received on the
20 effective date of this subsection.

21 (END)

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INSERT 4-15:

(b) "In vitro human embryo" means a human embryo, whether ^{cryo}~~cyro~~preserved or not, living outside of a woman's body.

(c) "Participate in" means to perform; practice; engage in; assist in; recommend; counsel in favor of; make referrals for; prescribe, dispense, or administer drugs or devices, other than contraceptive articles, as defined in s. 450.155 (1) (a), for; or otherwise promote, encourage, or aid.

INSERT 5-5:

3. An experiment or medical procedure that destroys an in vitro human embryo or uses cells or tissue derived from the destruction of an in vitro human embryo.

4. An experiment or medical procedure on an in vitro human embryo in which ~~the experiment or medical procedure~~ is not related to the beneficial treatment of the in vitro human embryo. that

5. An experiment or medical procedure on a developing child in a natural or artificial womb, at any stage of development, ~~in which the experiment or medical procedure~~ is not related to the beneficial treatment of the developing child. that

INSERT 8-12:

(b) "In vitro human embryo" means a human embryo, whether ^{cryo}~~cyro~~preserved or not, living outside of a woman's body.

(c) "Participate in" means to perform; practice; engage in; assist in; recommend; counsel in favor of; make referrals for; prescribe, dispense, or administer drugs or devices, other than contraceptive articles, as defined in s. 450.155 (1) (a), for; or otherwise promote, encourage, or aid.

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INSERT 8-18:

3. An experiment or medical procedure that destroys an in vitro human embryo or uses cells or tissue derived from the destruction of an in vitro human embryo.

4. An experiment or medical procedure on an in vitro human embryo in which that the experiment or medical procedure is not related to the beneficial treatment of the in vitro human embryo.

5. An experiment or medical procedure on a developing child in a natural or artificial womb, at any stage of development, in which the experiment or medical procedure that is not related to the beneficial treatment of the developing child.

INSERT 10-20:

not

Except for claims that are subject to ~~§~~ s. 111.321 or 111.322, a

INSERT 11-8:

not

or as a practical nurse under s. 441.10

INSERT 11-19:

2. "In vitro human embryo" means a human embryo, whether ^{cryo} ~~cyro~~ preserved or not, living outside of a woman's body.

3. "Participate in" means to perform; practice; engage in; assist in; recommend; counsel in favor of; make referrals for; prescribe, dispense, or administer drugs or devices, other than contraceptive articles, as defined in s. 450.155[✓] (1) (a), for; or otherwise promote, encourage, or aid.

INSERT 11-22:

3. An experiment or medical procedure that destroys an in vitro human embryo or uses cells or tissue derived from the destruction of an in vitro human embryo.

1 4. An experiment or medical procedure on an in vitro human embryo ~~in which~~
2 ~~the experiment or medical procedure~~ is not related to the beneficial treatment of the
3 in vitro human embryo. *that*

4 5. An experiment or medical procedure on a developing child in a natural or
5 artificial womb, at any stage of development, ~~in which the experiment or medical~~
6 ~~procedure~~ is not related to the beneficial treatment of the developing child.

7 *that* **INSERT 12-15:**

8 *no 8* or as a practical nurse under s. 441.10

9 **INSERT 12-22:**

10 *no 9* Except for claims that are subject to ~~§~~ [✓]s. 111.321 or 111.322, a [✓]

11 **INSERT 13-21:**

12 2. "In vitro human embryo" means a human embryo, whether ^{cryo}~~cyro~~ preserved
13 or not, living outside of a woman's body. ✓

14 3. "Participate in" means to perform; practice; engage in; assist in; recommend;
15 counsel in favor of; make referrals for; prescribe, dispense, or administer drugs or
16 devices, other than contraceptive articles, as defined in s. 450.155 (1) (a), for; or
17 otherwise promote, encourage, or aid.

18 **INSERT 14-14:**

19 *no 9* Except for claims that are subject to ~~§~~ [✓]s. 111.321 or 111.322, a

20 **INSERT 14-23:**

21 3. An experiment or medical procedure that destroys an in vitro human embryo
22 or uses cells or tissue derived from the destruction of an in vitro human embryo.

23 4. An experiment or medical procedure on an in vitro human embryo ~~in which~~
24 ~~the experiment or medical procedure~~ is not related to the beneficial treatment of the
25 in vitro human embryo. *that*

1 5. An experiment or medical procedure on a developing child in a natural or
2 artificial womb, at any stage of development, ~~in which the experiment or medical~~
3 ~~procedure~~ is not related to the beneficial treatment of the developing child.

That

INSERT 15-20:

5 (b) "In vitro human embryo" means a human embryo, whether ~~cryo~~^{cryo} preserved
6 or not, living outside of a woman's body.

7 (c) "Participate in" means to perform; practice; engage in; assist in; recommend;
8 counsel in favor of; make referrals for; prescribe, dispense, or administer drugs or
9 devices, other than contraceptive articles, as defined in s. 450.155 (1) (a), for; or
10 otherwise promote, encourage, or aid.

INSERT 16-4:

11 (c) An experiment or medical procedure that destroys an in vitro human
12 embryo or uses cells or tissue derived from the destruction of an in vitro human
13 embryo.
14 embryo.

15 (d) An experiment or medical procedure on an in vitro human embryo ~~in which~~
16 ~~the experiment or medical procedure~~ is not related to the beneficial treatment of the
17 in vitro human embryo.

That

18 (e) An experiment or medical procedure on a developing child in a natural or
19 artificial womb, at any stage of development, ~~in which the experiment or medical~~
20 ~~procedure~~ is not related to the beneficial treatment of the developing child.

That

INSERT 17-1:

22 ~~not~~ Except for claims that are subject to ss. 111.321 or 111.322, a

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0028/1dn
MDK:.....

Representative Hundertmark:

This substitute amendment is identical to AB 67, except for the following:

1. The private causes of action created in proposed ss. 253.09 (5), 441.06 (8), 448.03 (5) (ao), and 450.135 (3) (b) are revised so that they do not apply to claims that are subject to employment discrimination based on creed. This result is achieved by referring to claims that are subject to ~~ss. 111.32a~~ or 111.322. In addition, this version deletes from those provisions the phrases "or who reasonably may be expected to be adversely affected by" and "including damages for emotional or psychological distress".

2. The ^{and} definition of "participate in" has been changed per your instructions. Also, "participate in" is used in ss. 441.06 (6) (b) (intro.) and (7), 448.03 (5) (am) and (ar) (intro.), 450.135 (2) and (3) (a). (intro.)

3. Licensed practical nurses are added to the provisions relating to nurses. ao

4. Per your instructions, a definition of "in vitro human embryo" is created.

5. The 3 activities regarding experiments or medical procedures are revised per your instructions.

6. The order of the provisions in ch. 448 is slightly modified to be consistent with the order of the provisions in chs. 441 and 450.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0028/1dn
MDK:cjs:jf

March 21, 2003

Representative Hundertmark:

This substitute amendment is identical to AB 67, except for the following:

1. The private causes of action created in proposed ss. 253.09 (5), 441.06 (8), 448.03 (5) (ao), and 450.135 (3) (b) are revised so that they do not apply to claims that are subject to employment discrimination based on creed. This result is achieved by referring to claims that are subject to s. 111.321 or 111.322. In addition, this version deletes from those provisions the phrases "or who reasonably may be expected to be adversely affected by" and "including damages for emotional or psychological distress".
2. The definition of "participate in" has been changed per your instructions. Also, "participate in" is used in ss. 441.06 (6) (b) (intro.) and (7), 448.03 (5) (am) (intro.) and (ao) (intro.), and 450.135 (2) and (3) (a).
3. Licensed practical nurses are added to the provisions relating to nurses.
4. Per your instructions, a definition of "in vitro human embryo" is created.
5. The 3 activities regarding experiments or medical procedures are revised per your instructions.
6. The order of the provisions in ch. 448 is slightly modified to be consistent with the order of the provisions in chs. 441 and 450.

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

Kunkel, Mark

From: Conlin, Robert
Sent: Wednesday, April 16, 2003 4:40 PM
To: Kunkel, Mark
Cc: Eng, Peter
Subject: AB 67

Mark:

Rep. Hundertmark's office asked me to forward to you the following instructions regarding AB 67, the conscience clause bill.

They would like another sub based on LRBs0028/1 -- which I assume will be a /2 -- with only the following changes:

1. Section 450.135 (3) (b), (and wherever else in LRBs0028/1 under which the private cause of action is created) as created by the substitute amendment, would be redrafted to read as follows:

(b) 1. In this paragraph, "damages" does not include "noneconomic damages" as defined in s. 893.55 (4) (a).

2. Except for claims that are subject to s. 111.321 or 111.322, a person who is adversely affected by conduct that is in violation of par. (a) may bring a civil action for equitable relief, including reinstatement, or damages, or both. In an action under this paragraph, the court shall award reasonable attorney fees, notwithstanding s. 814.04 (1), to a person who obtains equitable relief, an award of damages, or both.

2. Create a statute of limitations for the above-noted causes of action. Such actions would need to be commenced within 1 year of the adverse conduct complained of. (The purpose of this is to require that these actions be filed within a time period roughly equivalent to an action under the WFEA, ie, 300 days.)

I know that you and I have talked generally about the above changes so I suspect you understand the intent. In particular, the phrase "including reinstatement", though possibly redundant, should be kept in the draft as it is felt that this remedy would be one of the primary ones for "nonemployees" filing the private cause of action. If you have questions on any of the other specifics, please let me know. I suspect that Rep. Hundertmark would like this as quickly as you can get it out. At one time there was talk of a vote on this bill in committee next week, but I don't know if that is still the plan.

Since I am sending a copy of this to Rep. Hundertmark's office, Peter will know that if he has the jacket for the /1, he should return it to you in order to get a /2.

Thanks, Mark.

Bob Conlin

Senior Staff Attorney
Wisconsin Legislative Council Staff
(608) 266-2298

Today
by
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D-NOTE

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**ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2003 ASSEMBLY BILL 67**

SA ✓

Regen 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** 154.03 (1) (intro.), 155.60 (3), 253.09 (title), 253.09 (2), 253.09
3 (3), 253.09 (4) (a), 253.09 (4) (b) 1., 253.09 (4) (b) 2., 441.06 (title) and 448.03 (5)
4 (title); and **to create** 111.337 (1g), 111.337 (1r) (b), 253.09 (1g), 253.09 (1r) (a)
5 1. to 6., 253.09 (5), 441.06 (6) (a), 441.06 (6) (b) 1. to 8., 441.06 (7), 441.06 (8),
6 448.03 (5) (ag), 448.03 (5) (am) 1. to 8., 448.03 (5) (ao), 448.03 (5) (ar) and
7 450.135 of the statutes; **relating to:** employment discrimination based on
8 creed; exemption from liability and discipline for 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; and power of
11 attorney for health care instruments and patient declarations regarding the
12 withholding or withdrawal of life-sustaining procedures or feeding tubes.

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

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

18 (c) "Participate in" means to perform; practice; engage in; assist in; recommend;
19 counsel in favor of; make referrals for; prescribe, dispense, or administer drugs or
20 devices, other than contraceptive articles, as defined in s. 450.155 (1) (a), for; or
21 otherwise promote, encourage, or aid.

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

23 111.337 (1r) (b) Discriminating against an employee or prospective employee
24 by engaging in any of the actions prohibited under s. 111.322 on the basis of the
25 employee's or prospective employee's refusal, or statement of an intention to refuse,

1 whether or not in writing, based on his or her creed, to participate in any of the
2 following:

3 1. A sterilization procedure.

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

5 3. An experiment or medical procedure that destroys an in vitro human embryo
6 or uses cells or tissue derived from the destruction of an in vitro human embryo.

7 4. An experiment or medical procedure on an in vitro human embryo that is not
8 related to the beneficial treatment of the in vitro human embryo.

9 5. An experiment or medical procedure on a developing child in a natural or
10 artificial womb, at any stage of development, that is not related to the beneficial
11 treatment of the developing child.

12 6. 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 7. The withholding or withdrawal of nutrition or hydration, if the withholding
16 or withdrawal of nutrition or hydration would result in the patient's death from
17 malnutrition or dehydration, or complications of malnutrition or dehydration, rather
18 than from the underlying terminal illness or injury, unless the administration of
19 nutrition or hydration is medically contraindicated.

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

22 **SECTION 4.** 154.03 (1) (intro.) of the statutes is amended to read:

23 154.03 (1) (intro.) Any person of sound mind and 18 years of age or older may
24 at any time voluntarily execute a declaration, which shall take effect on the date of
25 execution, authorizing the withholding or withdrawal of life-sustaining procedures

1 or of feeding tubes when the person is in a terminal condition or is in a persistent
2 vegetative state. A declarant may not authorize the withholding or withdrawal of
3 any medication, life-sustaining procedure, or feeding tube if the declarant's
4 attending physician advises that, in his or her professional judgment, the
5 withholding or withdrawal will cause the declarant pain or reduce the declarant's
6 comfort and the pain or discomfort cannot be alleviated through pain relief
7 measures. A declarant may not authorize the withholding or withdrawal of nutrition
8 or hydration that is administered or otherwise received by the declarant through
9 means other than a feeding tube unless the declarant's attending physician advises
10 that, in his or her professional judgment, the administration is medically
11 contraindicated. A declaration must be signed by the declarant in the presence of 2
12 witnesses. If the declarant is physically unable to sign a declaration, the declaration
13 must be signed in the declarant's name by one of the witnesses or some other person
14 at the declarant's express direction and in his or her presence; such a proxy signing
15 shall either take place or be acknowledged by the declarant in the presence of 2
16 witnesses. The declarant is responsible for notifying his or her attending physician
17 of the existence of the declaration. An attending physician who is so notified shall
18 immediately review the declaration and, if the physician intends to invoke his or her
19 rights under s. 253.09, shall, as soon as possible, inform the declarant orally and in
20 writing of that intent and of the physician's concerns, if any, about the declaration.
21 An attending physician who is so notified shall also make the declaration a part of
22 the declarant's medical records. No witness to the execution of the declaration may,
23 at the time of the execution, be any of the following:

24 **SECTION 5.** 155.60 (3) of the statutes is amended to read:

1 155.60 (3) Upon receipt of a power of attorney for health care instrument or a
2 statement of incapacity under s. 155.05 (2), a health care facility or health care
3 provider shall acknowledge this receipt in writing and, if the principal is a patient
4 of the health care provider, the health care provider shall include the instrument or
5 the statement in the medical record of the principal. In addition, if the health care
6 provider is a physician and the principal is a patient of the physician, the physician
7 shall immediately review the instrument or statement and, if the physician intends
8 to invoke his or her rights under s. 253.09, shall, as soon as possible, inform the
9 principal orally and in writing of that intent and of the physician's concerns, if any,
10 about the instrument or statement.

11 SECTION 6. 253.09 (title) of the statutes is amended to read:

12 **253.09 (title) ~~Abortion refused~~ Refusal to participate in certain**
13 **practices; no liability; no discrimination.**

14 SECTION 7. 253.09 (1) of the statutes is renumbered 253.09 (1r) (a) (intro.) and
15 amended to read:

16 253.09 (1r) (a) (intro.) No hospital ~~shall be~~ is required to admit any patient or
17 to allow the use of the hospital facilities for the purpose of performing ~~a sterilization~~
18 ~~procedure or removing a human embryo or fetus.~~ any of the following:

19 (b) A physician or any other person who is a member of or associated with the
20 staff of a hospital, or any employee of a hospital in which such a procedure the
21 performance of an activity specified in par. (a) 1. to 8. has been authorized, who shall
22 state in writing his or her objection to the performance of or providing assistance to
23 such a procedure, in writing, refuses, or states an intention to refuse, to participate
24 in the activity on moral or religious grounds shall ~~may~~ not be required to participate
25 in such medical procedure, and the activity.

1 (c) A physician or any other person who is a member of or associated with the
2 staff of a hospital, or any employee of a hospital, is immune from liability for any
3 damage caused by, and may not be subjected to any disciplinary or recriminatory
4 action based on, the refusal of any such the person to participate therein shall not
5 form the basis of any claim for damages on account of such refusal or for any
6 disciplinary or recriminatory action against such person in an activity specified in
7 par. (a) 1. to 8. on moral or religious grounds.

8 **SECTION 8.** 253.09 (1g) of the statutes is created to read:

9 253.09 (1g) In this section:

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

15 (b) “In vitro human embryo” means a human embryo, whether cryopreserved
16 or not, living outside of a woman’s body.

17 (c) “Participate in” means to perform; practice; engage in; assist in; recommend;
18 counsel in favor of; make referrals for; prescribe, dispense, or administer drugs or
19 devices, other than contraceptive articles, as defined in s. 450.155 (1) (a), for; or
20 otherwise promote, encourage, or aid.

21 **SECTION 9.** 253.09 (1r) (a) 1. to 8. of the statutes are created to read:

22 253.09 (1r) (a) 1. A sterilization procedure.

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

24 3. An experiment or medical procedure that destroys an in vitro human embryo
25 or uses cells or tissue derived from the destruction of an in vitro human embryo.

1 4. An experiment or medical procedure on an in vitro human embryo that is not
2 related to the beneficial treatment of the in vitro human embryo.

3 5. An experiment or medical procedure on a developing child in a natural or
4 artificial womb, at any stage of development, that is not related to the beneficial
5 treatment of the developing child.

6 6. 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 7. The withholding or withdrawal of nutrition or hydration, if the withholding
10 or withdrawal of nutrition or hydration would result in the patient's death from
11 malnutrition or dehydration, or complications of malnutrition or dehydration, rather
12 than from the underlying terminal illness or injury, unless the administration of
13 nutrition or hydration is medically contraindicated.

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

16 **SECTION 10.** 253.09 (2) of the statutes is amended to read:

17 253.09 (2) ~~No A hospital or employee of any a hospital shall be liable for any~~
18 ~~civil damages resulting from~~ is immune from liability for any damage caused by a
19 ~~refusal to perform sterilization procedures or remove a human embryo or fetus from~~
20 ~~a person, if such~~ participate in an activity specified in sub. (1r) (a) 1. to 8., if the
21 ~~refusal is based on religious or moral precepts.~~

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

23 253.09 (3) No hospital, school, or employer may discriminate against any
24 person with regard to admission, hiring or firing, tenure, term, condition, or privilege
25 of employment, student status, or staff status on the ground that the person refuses

1 ~~to recommend, aid or perform procedures for sterilization or the removal of a human~~
2 ~~embryo or fetus, or states an intention to refuse, whether or not in writing, to~~
3 ~~participate in an activity specified in sub. (1r) (a) 1. to 8., if the refusal is based on~~
4 religious or moral precepts.

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

6 253.09 (4) (a) Such individual ~~to perform or assist in the performance of any~~
7 ~~sterilization procedure or removal of a human embryo or fetus~~ participate in an
8 activity specified in sub. (1r) (a) 1. to 8., if the individual's performance or assistance
9 participation in the performance of such a procedure would be activity is contrary to
10 the individual's religious beliefs or moral convictions; or

11 **SECTION 13.** 253.09 (4) (b) 1. of the statutes is amended to read:

12 253.09 (4) (b) 1. Make its facilities available for ~~the performance of any~~
13 ~~sterilization procedure or removal of a human embryo or fetus~~ an individual to
14 participate in an activity specified in sub. (1r) (a) 1. to 8., if the performance of such
15 a procedure in such facilities is prohibited by the entity prohibits the activity from
16 taking place in the facilities on the basis of religious beliefs or moral convictions; or

17 **SECTION 14.** 253.09 (4) (b) 2. of the statutes is amended to read:

18 253.09 (4) (b) 2. Provide any personnel ~~for the performance or assistance in the~~
19 ~~performance of any sterilization procedure or assistance to participate in an activity~~
20 specified in sub. (1r) (a) 1. to 8., if the performance or assistance in the performance
21 of such procedure or the removal of a human embryo or fetus by such personnel would
22 be activity is contrary to the religious beliefs or moral convictions of such the
23 personnel.

24 **SECTION 15.** 253.09 (5) of the statutes is created to read:

- 9 -

INSEPT 9-1

9 (b)

1 253.09 (5) Except for claims that are subject to s. 111.321 or 111.322, a person
 2 who is adversely affected by conduct that is in violation of this section may bring a
 3 civil action for ~~injunctive~~ ^{equitable} relief, including reinstatement, or damages, or both
 4 ~~injunctive~~ ^{equitable} relief and damages. In an action under this ~~subsection~~ ^{paragraph}, the court shall
 5 award reasonable attorney fees, notwithstanding s. 814.04 (1), to a person who
 6 obtains ~~injunctive~~ ^{equitable} relief, ~~and awards~~ damages, or both. INSEPT 9-6

SECTION 16. 441.06 (title) of the statutes is amended to read:

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

SECTION 17. 441.06 (6) of the statutes is renumbered 441.06 (6) (b) (intro.) and amended to read:

441.06 (6) (b) (intro.) No A person licensed as a registered nurse under this section or as a practical nurse under s. 441.10 is liable for any civil damages resulting from immune from liability for any damage caused by his or her refusal to perform sterilization procedures or to remove or aid in the removal of a human embryo or fetus from a person participate in any of the following, if the refusal is based on religious or moral precepts:

SECTION 18. 441.06 (6) (a) of the statutes is created to read:

441.06 (6) (a) In this subsection:

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

2. "In vitro human embryo" means a human embryo, whether cryopreserved or not, living outside of a woman's body.

1 3. “Participate in” means to perform; practice; engage in; assist in; recommend;
2 counsel in favor of; make referrals for; prescribe, dispense, or administer drugs or
3 devices, other than contraceptive articles, as defined in s. 450.155 (1) (a), for; or
4 otherwise promote, encourage, or aid.

5 **SECTION 19.** 441.06 (6) (b) 1. to 8. of the statutes are created to read:

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

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

8 3. An experiment or medical procedure that destroys an in vitro human embryo
9 or uses cells or tissue derived from the destruction of an in vitro human embryo.

10 4. An experiment or medical procedure on an in vitro human embryo that is not
11 related to the beneficial treatment of the in vitro human embryo.

12 5. An experiment or medical procedure on a developing child in a natural or
13 artificial womb, at any stage of development, that is not related to the beneficial
14 treatment of the developing child.

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

18 7. The withholding or withdrawal of nutrition or hydration, if the withholding
19 or withdrawal of nutrition or hydration would result in the patient’s death from
20 malnutrition or dehydration, or complications of malnutrition or dehydration, rather
21 than from the underlying terminal illness or injury, unless the administration of
22 nutrition or hydration is medically contraindicated.

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

25 **SECTION 20.** 441.06 (7) of the statutes is created to read:

1 441.06 (7) A person licensed as a registered nurse under this section or as a
2 practical nurse under s. 441.10 who, in writing, refuses, or states an intention to
3 refuse, on moral or religious grounds to participate in a practice of practical or
4 professional nursing that is related to an activity specified in sub. (6) (b) 1. to 8. may
5 not be required to participate in the practice with respect to the activity and may not
6 be disciplined by the board or the department for refusing or stating an intention to
7 refuse to participate in the practice with respect to the activity.

8 SECTION 21. 441.06 (8) of the statutes is created to read:

9 441.06 (8) ^{INSERT 11-9} ~~Except for claims that are subject to s. 111.321 or 111.322, a person~~ (9) (6)
10 who is adversely affected by conduct that is in violation of sub. (7) may bring a civil
11 action for ~~injunctive~~ ^{equitable} relief, including reinstatement, or damages, or both ~~injunctive~~ ^{injunctive}

12 ~~relief and damages~~ ^{relief and damages} In an action under this ~~subsection~~ ^{paragraph}, the court shall award
13 reasonable attorney fees, notwithstanding s. 814.04 (1), to a person who obtains
14 ~~injunctive~~ ^{equitable} relief, ~~or award~~ ^{or award} of damages, or both. ^{INSERT 11-14}

15 SECTION 22. 448.03 (5) (title) of the statutes is amended to read:

16 448.03 (5) (title) CIVIL LIABILITY AND DISCIPLINARY EXEMPTION; CERTAIN MEDICAL
17 PROCEDURES AND REPORTS.

18 SECTION 23. 448.03 (5) (a) of the statutes is renumbered 448.03 (5) (am) (intro.)
19 and amended to read:

20 448.03 (5) (am) (intro.) ~~No~~ A person licensed or certified under this subchapter
21 ~~shall be liable for any civil damages resulting from such is immune from liability for~~
22 any damage caused by the person's refusal to perform sterilization procedures or to
23 remove or aid in the removal of a human embryo or fetus from a person if such
24 participate in any of the following if the refusal is based on religious or moral
25 precepts:

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

2 448.03 (5) (ag) In this subsection:

3 1. “Human embryo” means a human organism that is derived by fertilization,
4 parthenogenesis, cloning, or any other means from one or more human gametes or
5 human diploid cells. “Human embryo” includes a zygote but does not include a
6 human organism at or beyond the stage of development at which the major body
7 structures are present.

8 2. “In vitro human embryo” means a human embryo, whether cryopreserved
9 or not, living outside of a woman’s body.

10 3. “Participate in” means to perform; practice; engage in; assist in; recommend;
11 counsel in favor of; make referrals for; prescribe, dispense, or administer drugs or
12 devices, other than contraceptive articles, as defined in s. 450.155 (1) (a), for; or
13 otherwise promote, encourage, or aid.

14 **SECTION 25.** 448.03 (5) (am) 1. to 8. of the statutes are created to read:

15 448.03 (5) (am) 1. A sterilization procedure.

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

17 3. An experiment or medical procedure that destroys an in vitro human embryo
18 or uses cells or tissue derived from the destruction of an in vitro human embryo.

19 4. An experiment or medical procedure on an in vitro human embryo that is not
20 related to the beneficial treatment of the in vitro human embryo.

21 5. An experiment or medical procedure on a developing child in a natural or
22 artificial womb, at any stage of development, that is not related to the beneficial
23 treatment of the developing child.

1 6. 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 7. The withholding or withdrawal of nutrition or hydration, if the withholding
5 or withdrawal of nutrition or hydration would result in the patient's death from
6 malnutrition or dehydration, or complications of malnutrition or dehydration, rather
7 than from the underlying terminal illness or injury, unless the administration of
8 nutrition or hydration is medically contraindicated.

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

11 **SECTION 26.** 448.03 (5) (ao) of the statutes is created to read:

12 448.03 (5) (ao) A person licensed or certified under this subchapter who, in
13 writing, refuses, or states an intention to refuse, on moral or religious grounds to
14 participate in a practice within the scope of his or her license or certification that is
15 related to an activity specified in par. (am) 1. to 8. may not be required to participate
16 in the practice with respect to the activity and, notwithstanding ss. 154.07 (1) (a) 3.
17 and 155.50 (1) (b), may not be disciplined by the board or the department for refusing
18 or stating an intention to refuse to participate in the practice with respect to the
19 activity, including refusing or stating an intention to refuse to transfer a patient to
20 another physician who will comply with a declaration, as defined in s. 154.02 (1),
21 instrument for power of attorney for health care, as defined in s. 155.01 (10), or
22 health care decision, as defined in s. 155.01 (5), of a health care agent, as defined in
23 s. 155.01 (4). This paragraph does not apply to the refusal to make a good faith
24 attempt to transfer a declarant with incapacity, as defined in s. 155.01 (8) and with

equitable

INSEAT 14-4

1 a terminal condition, as defined in s. 154.01 (8) to another physician who will comply
2 with the declaration, as defined in s. 154.02 (1), of the declarant.

3 SECTION 27. 448.03 (5) (ar) of the statutes is created to read:

4 448.03 (5) (ar) ^{(a) 2.} Except for claims that are subject to s. 111.321 or 111.322, a
5 person who is adversely affected by conduct that is in violation of par. (ao) may bring
6 a civil action for ~~injunctive~~ relief, including reinstatement, or damages, or both
7 ~~injunctive relief and damages~~. In an action under this ^{subdivision} paragraph, the court shall
8 award reasonable attorney fees, notwithstanding s. 814.04 (1), to a person who
9 obtains ~~injunctive~~ relief, ~~an award~~ of damages, or both. INSEAT 14-9

10 SECTION 28. 450.135 of the statutes is created to read:

11 **450.135 Pharmacist's refusal to participate in certain activities.** (1) In

12 this section:

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

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

20 (c) "Participate in" means to perform; practice; engage in; assist in; recommend;
21 counsel in favor of; make referrals for; prescribe, dispense, or administer drugs or
22 devices, other than contraceptive articles, as defined in s. 450.155 (1) (a), for; or
23 otherwise promote, encourage, or aid.

1 (2) A person licensed as a pharmacist under this chapter is immune from
2 liability for any damage caused by his or her refusal to participate in any of the
3 following, if the refusal is based on religious or moral precepts:

4 (a) A sterilization procedure.

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

6 (c) An experiment or medical procedure that destroys an in vitro human
7 embryo or uses cells or tissue derived from the destruction of an in vitro human
8 embryo.

9 (d) An experiment or medical procedure on an in vitro human embryo that is
10 not related to the beneficial treatment of the in vitro human embryo.

11 (e) An experiment or medical procedure on a developing child in a natural or
12 artificial womb, at any stage of development, that is not related to the beneficial
13 treatment of the developing child.

14 (f) A procedure, including a transplant procedure, that uses fetal tissue or
15 organs other than fetal tissue or organs from a stillbirth, spontaneous abortion, or
16 miscarriage.

17 (g) The withholding or withdrawal of nutrition or hydration, if the withholding
18 or withdrawal of nutrition or hydration would result in the patient's death from
19 malnutrition or dehydration, or complications of malnutrition or dehydration, rather
20 than from the underlying terminal illness or injury, unless the administration of
21 nutrition or hydration is medically contraindicated.

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

24 (3) (a) A person licensed as a pharmacist under this chapter who, in writing,
25 refuses, or states an intention to refuse, on moral or religious grounds to participate

INSERT 16-5

legitimate

1 in a practice of pharmacy that is related to an activity specified in sub. (2) (a) to (h)
2 may not be required to participate in the practice with respect to the activity and may
3 not be disciplined by the board or department for refusing or stating an intention to
4 refuse to participate in the practice with respect to the activity.

5 (b) Except for claims that are subject to s. 111.321 or 111.322, a person who is
6 adversely affected by conduct that is in violation of par. (a) may bring a civil action
7 for ~~injunctive~~ relief, including reinstatement, or damages, or both ~~injunctive~~ relief
8 ~~and damages~~. In an action under this ~~paragraph~~^{subdivision}, 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. INSERT 16-10

11 SECTION 29. Initial applicability.

12 (1) The treatment of sections 111.337 (1), (1g), and (1r) (b), 253.09 (title), (1),
13 (1g), (1r) (a) 1. to 8., (2), (3), (4) (a) and (b) 1. and 2., and (5), 441.06 (title), (7), and
14 (8), 448.03 (5) (title), (a), (ag), (am) 1. to 8., (ao), and (ar), and 450.135 of the statutes,
15 the renumbering and amendment of section 441.06 (6) of the statutes, and the
16 creation of section 441.06 (6) (a) and (b) 1. to 8. of the statutes first apply to refusals
17 or statements of an intention to refuse that are made on the effective date of this
18 subsection.

19 (2) The treatment of section 154.03 (1) of the statutes first applies to
20 notifications made on the effective date of this subsection.

21 (3) The treatment of section 155.60 (3) of the statutes first applies to power of
22 attorney for health care instruments and statements of incapacity received on the
23 effective date of this subsection.

1 **INSERT 9-1:**

2 *no 91* (a) In this subsection, "damages" do not include noneconomic damages, as
3 defined in s. 893.55 (4) (a).

4 **INSERT 9-6:**

5 An action under this paragraph shall be commenced within one year after the cause
6 of action accrues or be barred.

7 **INSERT 11-9:**

8 *no 11* (a) In this subsection, "damages" do not include noneconomic damages, as
9 defined in s. 893.55 (4) (a).

10 **INSERT 11-14:**

11 An action under this paragraph shall be commenced within one year after the cause
12 of action accrues or be barred.

13 **INSERT 14-4:**

14 *no 14* 1. In this paragraph, "damages" do not include noneconomic damages, as
15 defined in s. 893.55 (4) (a).

16 **INSERT 14-9:**

17 An action under this subdivision shall be commenced within one year after the cause
18 of action accrues or be barred.

19 **INSERT 16-5:**

20 *no 16* 1. In this paragraph, "damages" do not include noneconomic damages, as
21 defined in s. 893.55 (4) (a).

22 **INSERT 16-10:**

- 1 An action under this subdivision shall be commenced within one year after the cause
- 2 of action accrues or be barred.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0028/2dn
MDK:.....

Representative Hundertmark:

This version is identical to the previous version, except that a one-year statute of limitations is created in proposed ss. 253.09 (5) (b), 441.06 (8) (b), 448.05 (ar) 2., and 450.135 (3) (b) 2. In addition, for purposes of those provisions, "damages" do not include "noneconomic damages". Also, the references to "injunctive" relief are changed to "equitable" relief.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0028/2dn
MDK:cjs:pg

April 17, 2003

Representative Hundertmark:

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