

2005 ASSEMBLY BILL 207

March 14, 2005 – Introduced by Representatives HUNDERTMARK, STASKUNAS, LEMAHIEU, VUKMIR, NISCHKE, SUDER, GUNDRUM, KLEEFISCH, KESTELL, KERKMAN, UNDERHEIM, NASS, VAN ROY, BALLWEG, KRAWCZYK, HAHN, GOTTLIEB, J. FITZGERALD, KREIBICH, F. LASEE, WIECKERT, LOTHIAN, LOEFFELHOLZ, GUNDERSON, MONTGOMERY, HINES, VOS, FREESE, MOULTON, MCCORMICK, NERISON, BIES, ALBERS, ZIEGELBAUER, PETROWSKI, WOOD, STRACHOTA, OWENS, MURSAU, VRAKAS, HONADEL, OTT and TOWNS, cosponsored by Senators ROESSLER, REYNOLDS, S. FITZGERALD, LAZICH, ZIEN, COWLES, KANAVAS, GROTHMAN, HARSDORF, KAPANKE, LEIBHAM, STEPP, BROWN and KEDZIE. Referred to Committee on Labor.

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), 111.337 (1w), 253.09 (1g), 253.09 (1r) (a) 1. to 8., 253.09 (5),
 5 441.06 (6) (a), 441.06 (6) (b) 1. to 8., 441.06 (7), 441.06 (8), 448.03 (5) (ag), 448.03
 6 (5) (am) 1. to 8., 448.03 (5) (an), 448.03 (5) (ar) and 450.135 of the statutes;
 7 **relating to:** employment discrimination based on creed; and exemption from
 8 liability and discipline for health care professionals and health care facility
 9 employees who refuse to participate in sterilization, abortion, assisted suicide,
 10 and other procedures on moral or religious grounds.

Analysis by the Legislative Reference Bureau

This bill makes changes to current law regarding employment discrimination based on creed; and refusals of certain health care providers and employees of health care facilities to participate in certain procedures on moral or religious grounds.

Employment discrimination based on creed. Under current law, with certain exceptions, an employer may not engage in employment discrimination

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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 destroy an in vitro human embryo, that use cells or tissue derived from the destruction of an in vitro embryo; 4) experiments or medical procedures on in vitro human embryos that do not relate to the beneficial treatment of the in vitro human embryo; 5) experiments or medical procedures that involve a developing child in an artificial womb that do not relate to the beneficial treatment of the developing child; 6) procedures, including transplants, using fetal tissue or organs other than fetal tissue or organs from a stillbirth, spontaneous abortion, or miscarriage; 7) intentionally causing the death of an individual who is not in a terminal condition by withholding or withdrawing nutrition or hydration; or 8) intentionally causing or assisting in the death of an individual by assisted suicide, euthanasia, or mercy killing. Throughout the bill, “participate in” is broadly defined, but does not include prescribing, dispensing, or administering contraceptive articles, as defined in current law. The bill does not allow an employer to avoid liability by showing that the refusal poses an undue hardship. The bill clarifies that the expanded definition of discrimination based on creed is not intended to narrow the scope of rights existing under current law.

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 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,

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based on moral or religious grounds, in any of the eight activities described above with respect to employment discrimination based on creed. Under the bill, provisions that currently apply to hospitals and hospital employees also apply to health care facilities and health care facility employees. The bill defines “health care facility” as a public or private entity that provides health care services, including, but not limited to, hospitals, clinics, nursing homes, and medical schools. 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 attorney fees. The bill prohibits a plaintiff in such an action from recovering noneconomic damages. The bill expressly permits such actions to be brought against the state and any department, agency, authority, or other body in state government. 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 eight activities if the refusal is based on religious or moral precepts. Further, 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.

The bill prohibits disciplinary action by the Medical Examining Board, Board of Nursing, Pharmacy Examining Board, or DRL against any of the following who, in writing, refuse, or indicate an intention to refuse to participate in any of the eight 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. With regard to discipline against physicians, the bill leaves intact current law providing that it is unprofessional conduct if a physician refuses to comply with a declaration to physician instrument, power of attorney for health care instrument, or decision of a health care agent, but fails to make a good faith effort to transfer the patient to another physician who will comply. In addition, the bill allows a physician, registered nurse, or pharmacist who is adversely affected by conduct that violates the prohibition on discipline to bring a civil action for injunctive relief, damages, and attorneys’ fees.

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:

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

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

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

8 111.337 **(1g)** In this section:

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

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

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

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

21 111.337 **(1r)** (b) Discriminating against an employee or prospective employee
22 by engaging in any of the actions prohibited under s. 111.322 on the basis of the
23 employee's or prospective employee's refusal, or statement of an intention to refuse,
24 whether or not in writing, based on his or her creed, to participate in any of the
25 following:

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- 1 1. A sterilization procedure.
- 2 2. An abortion, as defined in s. 253.10 (2) (a).
- 3 3. An experiment or medical procedure that destroys an in vitro human embryo
- 4 or uses cells or tissue derived from the destruction of an in vitro human embryo.
- 5 4. An experiment or medical procedure on an in vitro human embryo that is not
- 6 related to the beneficial treatment of the in vitro human embryo.
- 7 5. An experiment or medical procedure on a developing child in an artificial
- 8 womb, at any stage of development, that is not related to the beneficial treatment of
- 9 the developing child.
- 10 6. 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 7. Intentionally causing the death of an individual who is not in a terminal
- 14 condition, as defined in s. 154.01 (8), by withholding or withdrawing nutrition or
- 15 hydration.
- 16 8. An act that intentionally causes or assists in causing the death of an
- 17 individual by assisted suicide, euthanasia, or mercy killing.

18 **SECTION 4.** 111.337 (1w) of the statutes is created to read:

19 111.337 (1w) Nothing in sub. (1r) (b) shall be construed to limit the right of an

20 employee or prospective employee to seek redress under sub. (1r) (a) or s. 111.337 (1),

21 2003 stats., for acts of employment discrimination against him or her based on creed.

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

23 **253.09** (title) **Abortion refused Refusal to participate in certain**

24 **practices; no liability; no discrimination.**

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1 **SECTION 6.** 253.09 (1) of the statutes is renumbered 253.09 (1r) (a) (intro.) and
2 amended to read:

3 253.09 **(1r)** (a) (intro.) No ~~hospital shall be~~ health care facility is required to
4 admit any patient or to allow the use of the ~~hospital facilities~~ health care facility for
5 the purpose of performing ~~a sterilization procedure or removing a human embryo~~
6 ~~or fetus.~~ any of the following:

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

15 (c) A physician or any other person who is a member of or associated with the
16 staff of a health care facility, or any employee of a health care facility, is immune from
17 liability for any damage caused by, and may not be subjected to any disciplinary or
18 recriminatory action based on, the refusal of any such the person to participate
19 therein shall not form the basis of any claim for damages on account of such refusal
20 or for any disciplinary or recriminatory action against such person in an activity
21 specified in par. (a) 1. to 8. on moral or religious grounds.

22 **SECTION 7.** 253.09 (1g) of the statutes is created to read:

23 253.09 **(1g)** In this section:

24 (a) “Health care facility” means any public or private organization, corporation,
25 authority, partnership, sole proprietorship, association, agency, network, joint

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1 venture, or other entity that is involved in providing health care services, including
2 a hospital, clinic, medical center, ambulatory surgical center, private physician's
3 office, pharmacy, nursing home, university hospital, medical school, nursing school,
4 medical training facility, inpatient health care facility, as defined in s. 252.14 (1) (d),
5 or other place where health care services are provided.

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

11 (c) "In vitro human embryo" means a human embryo, whether cryopreserved
12 or not, living outside of a woman's body.

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

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

18 253.09 (1r) (a) 1. A sterilization procedure.

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

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

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

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

4 6. 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. Intentionally causing the death of an individual who is not in a terminal
8 condition, as defined in s. 154.01 (8), by withholding or withdrawing nutrition or
9 hydration.

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

12 **SECTION 9.** 253.09 (2) of the statutes is amended to read:

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

18 **SECTION 10.** 253.09 (3) of the statutes is amended to read:

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

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

2 253.09 **(4)** (a) Such individual to ~~perform or assist in the performance of any~~
3 ~~sterilization procedure or removal of a human embryo or fetus~~ participate in an
4 activity specified in sub. (1r) (a) 1. to 8., if the individual's performance or assistance
5 participation in the performance of such a procedure would be activity is contrary to
6 the individual's religious beliefs or moral convictions; or

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

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

13 **SECTION 13.** 253.09 (4) (b) 2. of the statutes is amended to read:

14 253.09 **(4)** (b) 2. Provide any personnel for the performance or assistance in the
15 performance of any sterilization procedure or assistance to participate in an activity
16 specified in sub. (1r) (a) 1. to 8., if the performance or assistance in the performance
17 of such procedure or the removal of a human embryo or fetus by such personnel would
18 be activity is contrary to the religious beliefs or moral convictions of such the
19 personnel.

20 **SECTION 14.** 253.09 (5) of the statutes is created to read:

21 253.09 **(5)** (a) In this subsection, “damages” do not include noneconomic
22 damages, as defined in s. 893.55 (4) (a).

23 (b) Except for claims that are subject to s. 111.321 or 111.322, a person who is
24 adversely affected by conduct that is in violation of this section may bring a civil
25 action for equitable relief, including reinstatement, or damages, or both. An action

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1 under this paragraph may be commenced against the state and any office,
2 department, independent agency, authority, institution, association, society, or other
3 body in state government created or authorized to be created by the constitution or
4 any law, including the legislature and the courts. In an action under this paragraph,
5 the court shall award reasonable attorney fees, notwithstanding s. 814.04 (1), to a
6 person who obtains equitable relief, damages, or both. An action under this
7 paragraph shall be commenced within one year after the cause of action accrues or
8 be barred.

9 **SECTION 15.** 441.06 (title) of the statutes is amended to read:

10 **441.06 (title) Licensure; civil liability and disciplinary exemption.**

11 **SECTION 16.** 441.06 (6) of the statutes is renumbered 441.06 (6) (b) (intro.) and
12 amended to read:

13 441.06 (6) (b) (intro.) ~~No~~ A person licensed as a registered nurse under this
14 section ~~or as a practical nurse under s. 441.10 is liable for any civil damages resulting~~
15 ~~from~~ immune from liability for any damage caused by his or her refusal to perform
16 ~~sterilization procedures or to remove or aid in the removal of a human embryo or~~
17 ~~fetus from a person participate in any of the following~~, if the refusal is based on
18 religious or moral precepts.;

19 **SECTION 17.** 441.06 (6) (a) of the statutes is created to read:

20 441.06 (6) (a) In this subsection:

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

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

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

7 **SECTION 18.** 441.06 (6) (b) 1. to 8. of the statutes are created to read:

8 441.06 **(6)** (b) 1. A sterilization procedure.

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

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

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

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

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

20 7. Intentionally causing the death of an individual who is not in a terminal
21 condition, as defined in s. 154.01 (8), by withholding or withdrawing nutrition or
22 hydration.

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

25 **SECTION 19.** 441.06 (7) of the statutes is created to read:

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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 20.** 441.06 (8) of the statutes is created to read:

9 441.06 (8) (a) In this subsection, “damages” do not include noneconomic
10 damages, as defined in s. 893.55 (4) (a).

11 (b) Except for claims that are subject to s. 111.321 or 111.322, a person who is
12 adversely affected by conduct that is in violation of sub. (7) may bring a civil action
13 for equitable relief, including reinstatement, or damages, or both. An action under
14 this paragraph may be commenced against the state and any office, department,
15 independent agency, authority, institution, association, society, or other body in state
16 government created or authorized to be created by the constitution or any law,
17 including the legislature and the courts. In an action under this paragraph, the court
18 shall award reasonable attorney fees, notwithstanding s. 814.04 (1), to a person who
19 obtains equitable relief, damages, or both. An action under this paragraph shall be
20 commenced within one year after the cause of action accrues or be barred.

21 **SECTION 21.** 448.03 (5) (title) of the statutes is amended to read:

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

24 **SECTION 22.** 448.03 (5) (a) of the statutes is renumbered 448.03 (5) (am) (intro.)
25 and amended to read:

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1 448.03 (5) (am) (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~~
5 ~~participate in any of the following if the~~ refusal is based on religious or moral
6 precepts.;

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

8 448.03 (5) (ag) In this subsection:

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

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

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

20 **SECTION 24.** 448.03 (5) (am) 1. to 8. of the statutes are created to read:

21 448.03 (5) (am) 1. A sterilization procedure.

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

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

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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 an artificial
4 womb, at any stage of development, that is not related to the beneficial treatment of
5 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. Intentionally causing the death of an individual who is not in a terminal
10 condition, as defined in s. 154.01 (8), by withholding or withdrawing nutrition or
11 hydration.

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

14 **SECTION 25.** 448.03 (5) (an) of the statutes is created to read:

15 448.03 (5) (an) A person licensed or certified under this subchapter who, in
16 writing, refuses, or states an intention to refuse, on moral or religious grounds to
17 participate in a practice within the scope of his or her license or certification that is
18 related to an activity specified in par. (am) 1. to 8. may not be required to participate
19 in the practice with respect to the activity and, subject to ss. 154.07 (1) (a) 3. and
20 155.50 (1) (b), may not be disciplined by the board or the department for refusing or
21 stating an intention to refuse to participate in the practice with respect to the
22 activity.

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

24 448.03 (5) (ar) 1. In this paragraph, “damages” do not include noneconomic
25 damages, as defined in s. 893.55 (4) (a).

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1 2. Except for claims that are subject to s. 111.321 or 111.322, a person who is
2 adversely affected by conduct that is in violation of par. (an) may bring a civil action
3 for equitable relief, including reinstatement, or damages, or both. An action under
4 this subdivision may be commenced against the state and any office, department,
5 independent agency, authority, institution, association, society, or other body in state
6 government created or authorized to be created by the constitution or any law,
7 including the legislature and the courts. In an action under this subdivision, the
8 court shall award reasonable attorney fees, notwithstanding s. 814.04 (1), to a person
9 who obtains equitable relief, damages, or both. An action under this subdivision
10 shall be commenced within one year after the cause of action accrues or be barred.

11 **SECTION 27.** 450.135 of the statutes is created to read:

12 **450.135 Pharmacist’s refusal to participate in certain activities. (1)** In
13 this section:

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

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

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

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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 an artificial
12 womb, at any stage of development, that is not related to the beneficial treatment of
13 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) Intentionally causing the death of an individual who is not in a terminal
18 condition, as defined in s. 154.01 (8), by withholding or withdrawing nutrition or
19 hydration.

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

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

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1 not be disciplined by the board or department for refusing or stating an intention to
2 refuse to participate in the practice with respect to the activity.

3 (b) 1. In this paragraph, “damages” do not include noneconomic damages, as
4 defined in s. 893.55 (4) (a).

5 2. 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 equitable relief, including reinstatement, or damages, or both. An action under
8 this subdivision may be commenced against the state and any office, department,
9 independent agency, authority, institution, association, society, or other body in state
10 government created or authorized to be created by the constitution or any law,
11 including the legislature and the courts. In an action under this subdivision, the
12 court shall award reasonable attorney fees, notwithstanding s. 814.04 (1), to a person
13 who obtains equitable relief, damages, or both. An action under this subdivision
14 shall be commenced within one year after the cause of action accrues or be barred.

15 **SECTION 28. Initial applicability.**

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

23 (END)