

**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2003 ASSEMBLY BILL 67**

PWF

ln: 12/8/04  
B-note  
needed end of  
the day 12/13/04

2005 Bill

requ

AN ACT *to renumber and amend* 111.337 (1), 253.09 (1), 441.06 (6) and 448.03 (5) (a); *to amend* 253.09 (title), 253.09 (2), 253.09 (3), 253.09 (4) (a), 253.09 (4) (b) 1., 253.09 (4) (b) 2., 441.06 (title) and 448.03 (5) (title); and *to create* 111.337 (1g), 111.337 (1r) (b), 154.12, 155.75, 253.09 (1g), 253.09 (1r) (a) 1. to 8., 253.09 (5), 441.06 (6) (a), 441.06 (6) (b) 1. to 8., 441.06 (7), 441.06 (8), 448.03 (5) (ag), 448.03 (5) (am) 1. to 8., 448.03 (5) (an) and (aq), 448.03 (5) (ar) and 450.135 of the statutes; **relating to:** employment discrimination based on creed; exemption from liability and discipline for health care providers and hospital employees who refuse to participate in sterilization, abortion, assisted suicide, and other procedures on moral or religious grounds; and power of attorney for health care instruments and patient declarations regarding the withholding or withdrawal of feeding tubes.

professionals and health care facility

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

INS A

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

18          (d) "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 an artificial  
10 womb, at any stage of development, that is not related to the beneficial treatment of  
11 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 from a patient who  
16 is not in a terminal condition, as defined in s. 154.01 (8), if the withholding or  
17 withdrawal of nutrition or hydration would result in the patient's death from  
18 malnutrition or dehydration, or complications of malnutrition or dehydration, rather  
19 than from an underlying illness or injury, unless the administration of nutrition or  
20 hydration is medically contraindicated.

21 8. An act that intentionally causes or assists in causing the death of an  
22 individual by assisted suicide, euthanasia, or mercy killing. # (2) ← (B)

23 SECTION 4m. 154.12 of the statutes is created to read:

24 **154.12 Conscience rights notification.** A physician who receives a  
25 declaration from his or her patient who is a declarant, or, if the patient is

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*health care facility*

*at that care health care*

1 incompetent, from a legal representative of the patient, shall immediately review the  
 2 declaration and, if the physician intends to invoke his or her rights under s. 253.09  
 3 or 448.03 (5), shall, as soon as possible, inform the patient or the legal representative  
 4 orally and in writing of that intent and of the physician's concerns, if any, about the  
 5 declaration. A hospital that receives a declaration from a patient in its facility who  
 6 is a declarant, or, if the patient is incompetent, from a legal representative of the  
 7 patient, shall immediately review the declaration and, if the hospital intends to  
 8 invoke its rights under s. 253.09, shall, as soon as possible, inform the patient or the  
 9 legal representative orally and in writing of that intent and of the hospital's  
 10 concerns, if any, about the declaration.

SECTION 4m. 155.75 of the statutes is created to read:

11 **155.75 Conscience rights notification.** A physician who receives a power  
 12 of attorney for health care instrument from his or her patient who is a principal, or,  
 13 if the patient has incapacity, from the patient's health care agent, shall immediately  
 14 review the instrument and, if the physician intends to invoke his or her rights under  
 15 s. 253.09 or 448.03 (5), shall, as soon as possible, inform the patient or the patient's  
 16 health care agent orally and in writing of that intent and of the physician's concerns,  
 17 if any, about the instrument. A hospital that receives a power of attorney for health  
 18 care instrument from a patient in its facility who is a principal, or, if the patient has  
 19 incapacity, from the patient's health care agent, shall immediately review the  
 20 instrument and, if the hospital intends to invoke its rights under s. 253.09, shall, as  
 21 soon as possible, inform the patient or the patient's health care agent orally and in  
 22 writing of that intent and of the hospital's concerns, if any, about the instrument.

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

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*health care facility*

*health care facility*

*health care facility's*

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

3           SECTION ~~253.09~~ <sup>#</sup> 253.09 (1) of the statutes is renumbered 253.09 (1r) (a) (intro.) and  
4           amended to read: health care facility

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

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

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

22           SECTION ~~8.~~ <sup>#</sup> 253.09 (1g) of the statutes is created to read:

23           253.09 (1g) In this section:

24           (1) "Human embryo" means a human organism that is derived by fertilization,  
25           parthenogenesis, cloning, or any other means from one or more human gametes or

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1 human diploid cells. "Human embryo" includes a zygote but does not include a  
2 human organism at or beyond the stage of development at which the major body  
3 structures are present.

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

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

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

11 253.09 (1r) (a) 1. A sterilization procedure.

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

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

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

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

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

23 7. The withholding or withdrawal of nutrition or hydration from a patient who  
24 is not in a terminal condition, as defined in s. 154.01 (8), if the withholding or  
25 withdrawal of nutrition or hydration would result in the patient's death from

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1 malnutrition or dehydration, or complications of malnutrition or dehydration, rather  
2 than from an underlying illness or injury, unless the administration of nutrition or  
3 hydration is medically contraindicated.

4 8. An act that intentionally causes or assists in causing the death of an  
5 individual by assisted suicide, euthanasia, or mercy killing. *a health care facility*

6 SECTION ~~10~~ 253.09 (2) of the statutes is amended to read:

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

12 SECTION ~~11~~ 253.09 (3) of the statutes is amended to read:

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

20 SECTION ~~12~~ 253.09 (4) (a) of the statutes is amended to read:

21 253.09 (4) (a) Such individual to perform or assist in the performance of any  
22 sterilization procedure or removal of a human embryo or fetus participate in an  
23 activity specified in sub. (1r) (a) 1. to 8., if the individual's performance or assistance  
24 participation in the performance of such a procedure would be activity is contrary to  
25 the individual's religious beliefs or moral convictions; or

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

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

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

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

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

253.09 (5) (a) In this subsection, "damages" do not include noneconomic damages, as defined in s. 893.55 (4) (a).

(b) 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 this section 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, damages, or both. An action under this paragraph shall be commenced within one year after the cause of action accrues or be barred.

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

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



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

3           441.06 (6) (b) (intro.) ~~No~~ A person licensed as a registered nurse under this  
4 section or as a practical nurse under s. 441.10 is ~~liable for any civil damages resulting~~  
5 ~~from~~ immune from liability for any damage caused by his or her refusal to perform  
6 sterilization procedures ~~or to remove or aid in the removal of a human embryo or~~  
7 ~~fetus from a person~~ participate in any of the following, if the refusal is based on  
8 religious or moral precepts:

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

10          441.06 (6) (a) In this subsection:

11          1. "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          2. "In vitro human embryo" means a human embryo, whether cryopreserved  
17 or not, living outside of a woman's body.

18          3. "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 ~~19~~ 441.06 (6) (b) 1. to 8. of the statutes are created to read:

23          441.06 (6) (b) 1. A sterilization procedure.

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

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

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

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

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

11           7. The withholding or withdrawal of nutrition or hydration from a patient who  
12 is not in a terminal condition, as defined in s. 154.01 (8), if the withholding or  
13 withdrawal of nutrition or hydration would result in the patient's death from  
14 malnutrition or dehydration, or complications of malnutrition or dehydration, rather  
15 than from an underlying illness or injury, unless the administration of nutrition or  
16 hydration is medically contraindicated.

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

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

20           441.06 (7) A person licensed as a registered nurse under this section or as a  
21 practical nurse under s. 441.10 who, in writing, refuses, or states an intention to  
22 refuse, on moral or religious grounds to participate in a practice of practical or  
23 professional nursing that is related to an activity specified in sub. (6) (b) 1. to 8. may  
24 not be required to participate in the practice with respect to the activity and may not

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1 be disciplined by the board or the department for refusing or stating an intention to  
2 refuse to participate in the practice with respect to the activity.

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

4 441.06 (8) (a) In this subsection, "damages" do not include noneconomic  
5 damages, as defined in s. 893.55 (4) (a).

6 (b) Except for claims that are subject to s. 111.321 or 111.322, a person who is  
7 adversely affected by conduct that is in violation of sub. (7) may bring a civil action  
8 for equitable relief, including reinstatement, or damages, or both. In an action under  
9 this paragraph, the court shall award reasonable attorney fees, notwithstanding s.  
10 814.04 (1), to a person who obtains equitable relief, damages, or both. An action  
11 under this paragraph shall be commenced within one year after the cause of action  
12 accrues or be barred.

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

14 448.03 (5) (title) CIVIL LIABILITY AND DISCIPLINARY EXEMPTION; CERTAIN MEDICAL  
15 PROCEDURES AND REPORTS.

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

18 448.03 (5) (am) (intro.) ~~No~~ A person licensed or certified under this subchapter  
19 ~~shall be liable for any civil damages resulting from such~~ is immune from liability for  
20 any damage caused by the person's refusal to perform sterilization procedures or to  
21 remove or aid in the removal of a human embryo or fetus from a person if such  
22 participate in any of the following if the refusal is based on religious or moral  
23 precepts:

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

25 448.03 (5) (ag) In this subsection:

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

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

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

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

13           448.03 (5) (am) 1. A sterilization procedure.

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

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

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

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

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

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1 7. The withholding or withdrawal of nutrition or hydration from a patient who  
2 is not in a terminal condition, as defined in s. 154.01 (8), if the withholding or  
3 withdrawal of nutrition or hydration would result in the patient's death from  
4 malnutrition or dehydration, or complications of malnutrition or dehydration, rather  
5 than from an underlying illness or injury, unless the administration of nutrition or  
6 hydration is medically contraindicated.

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

9 SECTION ~~20m.~~ 448.03 (5) (an) and (aq) of the statutes ~~are~~ <sup>is</sup> created to read:

10 448.03 (5) (an) A person licensed or certified under this subchapter who, in  
11 writing, refuses, or states an intention to refuse, on moral or religious grounds to  
12 participate in a practice within the scope of his or her license or certification that is  
13 related to an activity specified in par. (am) 1. to 8. may not be required to participate  
14 in the practice with respect to the activity and may not be disciplined by the board  
15 or the department for refusing or stating an intention to refuse to participate in the  
16 practice with respect to the activity.

17 (aq) Except as provided in s. 154.07 (1) (a) 3., regarding the failure of a  
18 physician to comply with a declaration of a qualified patient that directs the  
19 physician to participate in the activity specified in par. (am) 7., and s. 155.50 (1) (b),  
20 regarding the failure of a physician to comply with a power of attorney for health care  
21 instrument or the decision of a health care agent that directs the physician to  
22 participate in the activity specified in par. (am) 7., a physician is not required to  
23 locate another physician who is willing to participate in an activity specified in par.  
24 (am) 1. to 8.

25 SECTION ~~20,~~ 448.03 (5) (ar) of the statutes is created to read:

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

3           2. Except for claims that are subject to s. 111.321 or 111.322, a person who is  
4 adversely affected by conduct that is in violation of par. (an) or (aq) may bring a civil  
5 action for equitable relief, including reinstatement, or damages, or both. In an action  
6 under this subdivision, the court shall award reasonable attorney fees,  
7 notwithstanding s. 814.04 (1), to a person who obtains equitable relief, damages, or  
8 both. An action under this subdivision shall be commenced within one year after the  
9 cause of action accrues or be barred.

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 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) The withholding or withdrawal of nutrition or hydration from a patient who  
18 is not in a terminal condition, as defined in s. 154.01 (8), if the withholding or  
19 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 an underlying illness or injury, unless the administration of nutrition or  
22 hydration is medically contraindicated.

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

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

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

9 2. Except for claims that are subject to s. 111.321 or 111.322, a person who is  
10 adversely affected by conduct that is in violation of par. (a) may bring a civil action  
11 for equitable relief, including reinstatement, or damages, or both. In an action under  
12 this subdivision, the court shall award reasonable attorney fees, notwithstanding s.  
13 814.04 (1), to a person who obtains equitable relief, damages, or both. An action  
14 under this subdivision shall be commenced within one year after the cause of action  
15 accrues or be barred.

16 **SECTION 29. Initial applicability.**

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



1 (2t) The treatment of sections 154.12, 155.75, and 448.03 (5) (aq) of the statutes  
2 first applies to declarations or powers of attorney for health care instruments that  
3 are received on the effective date of this subsection.

4 (END)

and

D-Note

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**Insert A:**

*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 employees of health care facilities 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 destroy a human embryo, that use cells or tissue derived from the destruction of an embryo, or that involve a developing child in an artificial womb or a human embryo but do not relate to the beneficial treatment of the developing child or human embryo; 4) procedures using fetal tissue or organs other than fetal tissue or organs from a stillbirth, spontaneous abortion, or miscarriage; 5) acts intentionally causing the death of an individual by 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. The bill does not allow an employer to avoid liability by showing 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 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

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\* 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. 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. 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. 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 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.

\* **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, or who is notified that a patient has executed a declaration authorizing the (the) withholding or withdrawal of life-sustaining procedures or feeding tubes, must immediately review the instrument or declaration. If the physician intends to refuse to participate in any of the six activities, the bill requires that the physician inform the patient as soon as possible, 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 declaration that a patient who has executed a power of attorney for health care instrument is incompetent. A physician who receives such a declaration must immediately review it and, if the physician intends to refuse to participate in any of the six activities,

must inform the patient's principal as soon as possible, orally and in writing, about the refusal and about any concerns regarding the declaration.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

1           **Insert 3-15:**

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

5           **Insert 3-24:**

6           10# (1) In this section, "health care facility" has the meaning given in s. 253.09 (1g)  
7 (a).

8           **Insert 4-12:**

9           B (1) In this section, "health care facility" has the meaning given in s. 253.09 (1g)  
10 (a).

11           **Insert 5-24:**

12           (a) "Health care facility" means any public or private organization, corporation,  
13 authority, partnership, sole proprietorship, association, agency, network, joint  
14 venture, or other entity that is involved in providing health care services, including  
15 a hospital, clinic, medical center, ambulatory surgical center, private physician's  
16 office, pharmacy, nursing home, university hospital, medical school, nursing school,  
17 medical training facility, inpatient health care facility, as defined in s. 252.14 (1) (d),  
18 or other place where health care services are provided.

19           **Insert 6-23:**

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.

1           **Insert 10-11:**

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

5           **Insert 13-1:**

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

9           **Insert 15-17:**

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

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

LRB-0767/1dn  
CTS:16/

Date

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Representative Hundertmark:

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\* This is a preliminary redraft of 2003 AB 67 based on instructions provided by Mary Klaver of Wisconsin Right to Life, Inc. (WRL). The following issues should be resolved before introduction:

1. I have not included WRL's proposed s. 111.337 (1r) (c), because it appears to be a statement of legislative intent. Such statements may be included in a draft only in very limited circumstances that do not seem to be present here.

\* 2. WRL's proposed definition of "health care facility" (proposed s. 253.09 (1g) (a)) may be problematic. A court may conclude, based on the statute's identification of several specific entities that constitute health care facilities, that anything not so identified is not a health care facility. This could happen ~~in~~ <sup>once</sup> instance, ~~has happened~~ <sup>even</sup> if an enumeration of specifics is preceded by language to the effect of "including, but not limited to." For this reason, your intent may be better captured by a broad description of what a health care facility does or what happens at a health care facility.

3. By including both public and private institutions in the definition of "health care facility," WRL's language seems to contemplate civil actions against the state under proposed s. 253.09 (5) (a). Is this correct? If so, the draft should include language that unambiguously indicates an intention to waive the state's sovereign immunity from suit.

\* 4. The draft creates a conflict with existing statutes. Under current s. 154.07 (1) (a) 3., "failure by a physician to comply with a declaration of a qualified patient constitutes unprofessional conduct if the physician refuses or fails to make a good faith attempt to transfer the qualified patient to another physician who will comply with the declaration." For purposes of s. 154.07, a declaration of a qualified patient may contain instructions to withhold or withdraw nutrition or hydration from an individual who is diagnosed and certified by at least two physicians as afflicted with a terminal condition, or who is in a persistent vegetative state. Similarly, current s. 155.50 (1) (b) provides that it is unprofessional conduct if a physician: (1) fails to comply with a power of attorney for health care instrument or the decision of a health care agent; and (2) refuses or fails to make a good faith attempt to transfer the principal to another physician who will comply. A power of attorney for health care instrument may also authorize the principal to consent to the withdrawal of nutrition or hydration, if it is not orally administered.

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Current law therefore provides that a physician engages in unprofessional conduct if he or she: (1) fails to comply with a directive in a declaration or from a health care agent to withhold nutrition or hydration from a patient in a persistent vegetative state, and (2) fails to make a good faith effort to transfer the patient.

Under the draft, various health care professionals, including physicians, may not be disciplined for refusing to participate in any of eight practices, including "intentionally causing the death of an individual who is not in a terminal condition, as defined in s. 154.01 (8), by withholding or withdrawing nutrition or hydration" (proposed s. 111.337 (1r) (b) 7.). Under the draft, "participates in" includes, in the draft, to "make referrals for" (proposed s. 111.337 (1g) (c)). Because a person in a persistent vegetative state may not be in a terminal condition, the draft appears to prohibit discipline against a physician who refuses to comply with a valid directive to cause the death of an individual who is in a persistent vegetative state by withholding nutrition or hydration, even if the physician makes no effort to transfer the patient.

Please call me if you would like to discuss this further or if you would like to make any changes to the draft.

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