

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1189/1dn
CTS:kjf:rs

December 9, 2004

Representative Hundertmark:

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 one instance, *has* happened — even 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.

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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1189 Redraft

- ① Restore prop. 111:337 (1v) (c)
- ② Waive sov. immunity
- ③ "Participate in": take out "aid"
- ④ Except 154.07 (1) (a) (3) and 155.50 (1) (b) from physicians' right to refuse

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

In: 12/20/04
D note

2005 Bill

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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), 154.12, 155.75, 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),
6 448.03 (5) (am) 1. to 8., 448.03 (5) (an), 448.03 (5) (ar) and 450.135 of the
7 statutes, **relating to:** employment discrimination based on creed; exemption
8 from liability and discipline for health care professionals and health care
9 facility 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 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

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 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 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 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.

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

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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 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. Intentionally causing the death of an individual who is not in a terminal
16 condition, as defined in s. 154.01 (8), by withholding or withdrawing nutrition or
17 hydration.
- 18 8. An act that intentionally causes or assists in causing the death of an
19 individual by assisted suicide, euthanasia, or mercy killing.

20 ~~SECTION 4.~~ SECTION 154.12 of the statutes is created to read:

21 **154.12 Conscience rights notification.** (1) In this section, "health care
22 facility" has the meaning given in s. 253.09 (1g) (a).

23 (2) A physician who receives a declaration from his or her patient who is a
24 declarant, or, if the patient is incompetent, from a legal representative of the patient,
25 shall immediately review the declaration and, if the physician intends to invoke his

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

10 **SECTION 5.** 155.75 of the statutes is created to read:

11 **155.75 Conscience rights notification.** (1) In this section, "health care
12 facility" has the meaning given in s. 253.09 (1g) (a).

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

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

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

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

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

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

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

24 ~~SECTION 8~~ 253.09 (1g) of the statutes is created to read:

25 253.09 (1g) In this section:

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

8 (b) "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.

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

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

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

20 253.09 (1r) (a) 1. A sterilization procedure.

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

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

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

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 ~~10~~ [#] 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 ~~11~~ [#] 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 12. 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

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7 SECTION 13. 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

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13 SECTION 14. 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.

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20 SECTION 15. 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. In an action

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1 under this paragraph, the court shall award reasonable attorney fees,
2 notwithstanding s. 814.04 (1), to a person who obtains equitable relief, damages, or
3 both. An action under this paragraph shall be commenced within one year after the
4 cause of action accrues or be barred.

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

6 **441.06 (title) Licensure; civil liability and disciplinary exemption.**

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

9 441.06 (6) (b) (intro.) ~~No~~ A person licensed as a registered nurse under this
10 section ~~or as a practical nurse under s. 441.10 is liable for any civil damages resulting~~
11 ~~from~~ immune from liability for any damage caused by his or her refusal to perform
12 ~~sterilization procedures or to remove or aid in the removal of a human embryo or~~
13 ~~fetus from a person~~ participate in any of the following, if the refusal is based on
14 religious or moral precepts:

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

16 441.06 (6) (a) In this subsection:

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

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

24 3. "Participate in" means to perform; practice; engage in; assist in; recommend;
25 counsel in favor of; make referrals for; prescribe, dispense, or administer drugs or

1 devices, other than contraceptive articles, as defined in s. 450.155 (1) (a), for; or
2 otherwise promote, encourage, or aid;

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

4 441.06 (6) (b) 1. A sterilization procedure.

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

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

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

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

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

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

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

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

22 441.06 (7) A person licensed as a registered nurse under this section or as a
23 practical nurse under s. 441.10 who, in writing, refuses, or states an intention to
24 refuse, on moral or religious grounds to participate in a practice of practical or
25 professional nursing that is related to an activity specified in sub. (6) (b) 1. to 8. may

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

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

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

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

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

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

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

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

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

1 448.03 (5) (ag) In this subsection:

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

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

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

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

14 448.03 (5) (am) 1. A sterilization procedure.

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

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

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

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

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

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

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

6 SECTION ~~26~~. 448.03 (5) (an) of the statutes is created to read:

7 448.03 (5) (an) A person licensed or certified under this subchapter who, in
8 writing, refuses, or states an intention to refuse, on moral or religious grounds to
9 participate in a practice within the scope of his or her license or certification that is
10 related to an activity specified in par. (am) 1. to 8. may not be required to participate
11 in the practice with respect to the activity and may not be disciplined by the board
12 or the department for refusing or stating an intention to refuse to participate in the
13 practice with respect to the activity.

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

15 448.03 (5) (ar) 1. In this paragraph, "damages" do not include noneconomic
16 damages, as defined in s. 893.55 (4) (a).

17 2. Except for claims that are subject to s. 111.321 or 111.322, a person who is
18 adversely affected by conduct that is in violation of par. (an) may bring a civil action
19 for equitable relief, including reinstatement, or damages, or both. In an action under
20 this subdivision, the court shall award reasonable attorney fees, notwithstanding s.
21 814.04 (1), to a person who obtains equitable relief, damages, or both. An action
22 under this subdivision shall be commenced within one year after the cause of action
23 accrues or be barred.

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

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1 **450.135 Pharmacist's refusal to participate in certain activities. (1)** In
2 this section:

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

10 (c) "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, or

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

17 (a) A sterilization procedure.

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

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

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

1 (e) 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 (f) 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 (g) 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 (h) An act that intentionally causes or assists in causing the death of an
11 individual by assisted suicide, euthanasia, or mercy killing.

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

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

20 2. Except for claims that are subject to s. 111.321 or 111.322, a person who is
21 adversely affected by conduct that is in violation of par. (a) may bring a civil action
22 for equitable relief, including reinstatement, or damages, or both. In an action under
23 this subdivision, the court shall award reasonable attorney fees, notwithstanding s.
24 814.04 (1), to a person who obtains equitable relief, damages, or both. An action

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

3 **SECTION 29. Initial applicability.**

and page (1w)

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

11 (2) The treatment of sections 154.12 and 155.75 of the statutes first applies to
12 declarations or powers of attorney for health care instruments that are received on
13 the effective date of this subsection.

14 (END)

D. Note

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1189/lins
CTS:kjfrs

1 **Insert A-1:**

Not

2 The bill clarifies that the expanded definition of discrimination based on creed is not
3 intended to narrow the scope of rights existing under current law.

4 **Insert A-2:**

Not

5 The bill expressly permits such actions to be brought against the state and any
6 department, agency, authority, or other body in state government.

7 **Insert A-3:**

Not

8 With regard to discipline against physicians, the bill leaves intact current law
9 providing that it is unprofessional conduct if a physician refuses to comply with a
10 declaration to physician instrument, power of attorney for health care instrument,
11 or decision of a health care agent, but fails to make a good faith effort to transfer the
12 patient to another physician who will comply.

13 **Insert 5-20:**

~~#~~

14 SECTION 111.337 (1w) of the statutes is created to read:

15 111.337 (1w) Nothing in sub. (1r) (b) shall be construed to limit the right of an
16 employee or prospective employee to seek redress under sub. (1r) (a) or s. 111.337 (1),
17 2003 stats., for acts of employment discrimination against him or her based on creed.

18 **Insert 10-25:**

Not

19 An action under this paragraph may be commenced against the state and any office,
20 department, independent agency, authority, institution, association, society, or other
21 body in state government created or authorized to be created by the constitution or
22 any law, including the legislature and the courts.

23 **Insert 13-10:**

1 *No #* An action 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.

Insert 15-11:

, subject to ss. 154.07 (1) (a) 3. and 155.50 (1) (b),

Insert 15-19:

8 *No #* An action under this paragraph *subdivision* may be commenced against the state and any office,
 9 department, independent agency, authority, institution, association, society, or other
 10 body in state government created or authorized to be created by the constitution or
 11 any law, including the legislature and the courts.

Insert 17-22:

13 *subdivision* An action under this paragraph may be commenced against the state and any office,
 14 department, independent agency, authority, institution, association, society, or other
 15 body in state government created or authorized to be created by the constitution or
 16 any law, including the legislature and the courts.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1189/1dn

CTS:kjfs

Date

Representative Hundertmark:

This is a redraft of LRB-1189/P1. I have made the following changes:

1. I have included Wisconsin Right to Life, Inc.'s (WRL) proposed s. 111.337 (1r) (c), which is intended to clarify that existing law regarding discrimination based upon creed is not narrowed by the expanded creed discrimination provisions in the draft. For the sake of readability, I have placed the proposed provision at s. 111.337 (1w).
2. I have included language expressly authorizing civil actions against the state and state government bodies.
3. I have modified the definition of "participate in" by eliminating the reference to "aid." WRL's Mary Klaver indicated that this was a way to narrow the definition of "participate in" that was acceptable to her organization.
4. I have added language to proposed s. 448.03 (5) ~~(an)~~ ^{an} to preserve current law that provides 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.

Please review these changes carefully to ensure they are consistent with your intent. If you wish to discuss this draft or if you wish to make any changes, contact me.

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail: christopher.sundberg@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1189/1dn
CTS:kjf:pg

December 23, 2004

Representative Hundertmark:

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LRB 1189/1

Redraft: ✓ analysis for items that were on the sub to 03 AB 67, but taken out by senate amendments.

1/14/05

Petc/Hundertmark

Changes:

① strike 154.12 → notification
155.75

Section 5 + 10 of the prev. draft