



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1189/1 RMR

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AN ACT ^{regu} 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), 111.337 (1w), 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), 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 professionals and health care facility employees who refuse to participate in sterilization, abortion, assisted suicide, and other procedures on moral or religious grounds; ^{and} and power of attorney for health care instruments and patient declarations regarding the 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

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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. 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.

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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. 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 ~~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.

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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. 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 this prohibition to bring a civil action for injunctive relief, damages, and attorneys' fees.

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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,

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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:

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

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

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

4 111.337 (1r) (b) Discriminating against an employee or prospective employee
5 by engaging in any of the actions prohibited under s. 111.322 on the basis of the
6 employee's or prospective employee's refusal, or statement of an intention to refuse,
7 whether or not in writing, based on his or her creed, to participate in any of the
8 following:

9 1. A sterilization procedure.

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

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

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

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

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

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

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

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

2 111.337 (1w) Nothing in sub. (1r) (b) shall be construed to limit the right of an
3 employee or prospective employee to seek redress under sub. (1r) (a) or s. 111.337 (1),
4 2003 stats., for acts of employment discrimination against him or her based on creed.

5 **SECTION 5.** 154.12 of the statutes is created to read:

6 **154.12 Conscience rights notification.** (1) In this section, "health care
7 facility" has the meaning given in s. 253.09 (1g) (a).

8 (2) A physician who receives a declaration from his or her patient who is a
9 declarant, or, if the patient is incompetent, from a legal representative of the patient,
10 shall immediately review the declaration and, if the physician intends to invoke his
11 or her rights under s. 253.09 or 448.03 (5), shall, as soon as possible, inform the
12 patient or the legal representative orally and in writing of that intent and of the
13 physician's concerns, if any, about the declaration. A health care facility that receives
14 a declaration from a patient at that health care facility who is a declarant, or, if the
15 patient is incompetent, from a legal representative of the patient, shall immediately
16 review the declaration and, if the health care facility intends to invoke its rights
17 under s. 253.09, shall, as soon as possible, inform the patient or the legal
18 representative orally and in writing of that intent and of the health care facility's
19 concerns, if any, about the declaration.

20 **SECTION 6.** 155.75 of the statutes is created to read:

21 **155.75 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 power of attorney for health care instrument
24 from his or her patient who is a principal, or, if the patient has incapacity, from the
25 patient's health care agent, shall immediately review the instrument and, if the

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1 physician intends to invoke his or her rights under s. 253.09 or 448.03 (5), shall, as
2 soon as possible, inform the patient or the patient's health care agent orally and in
3 writing of that intent and of the physician's concerns, if any, about the instrument.
4 A health care facility that receives a power of attorney for health care instrument
5 from a patient in its facility who is a principal, or, if the patient has incapacity, from
6 the patient's health care agent, shall immediately review the instrument and, if the
7 health care facility intends to invoke its rights under s. 253.09, shall, as soon as
8 possible, inform the patient or the patient's health care agent orally and in writing
9 of that intent and of the health care facility's concerns, if any, about the instrument.

10 SECTION 7. 253.09 (title) of the statutes is amended to read:

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

13 SECTION 8. 253.09 (1) of the statutes is renumbered 253.09 (1r) (a) (intro.) and
14 amended to read:

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

19 (b) A physician or any other person who is a member of or associated with the
20 staff of a ~~hospital~~ health care facility, or any employee of a ~~hospital~~ health care
21 facility in which such a procedure the performance of an activity specified in par. (a)
22 1. to 8. has been authorized, who ~~shall state in writing his or her objection to the~~
23 ~~performance of or providing assistance to such a procedure, in writing, refuses, or~~
24 states an intention to refuse, to participate in the activity on moral or religious

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1 grounds ~~shall~~ may not be required to participate in such medical procedure, and the
2 activity.

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

10 **SECTION 9.** 253.09 (1g) of the statutes is created to read:

11 253.09 (1g) In this section:

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

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

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

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

6 253.09 (1r) (a) 1. A sterilization procedure.

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

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

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

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

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

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

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

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

24 253.09 (2) ~~No hospital~~ A health care facility or employee of ~~any hospital shall~~
25 ~~be liable for any civil damages resulting from a health care facility is immune from~~

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1 liability for any damage caused by a refusal to perform sterilization procedures or
2 remove a human embryo or fetus from a person, if such participate in an activity
3 specified in sub. (1r) (a) 1. to 8., if the refusal is based on religious or moral precepts.

4 **SECTION 12.** 253.09 (3) of the statutes is amended to read:

5 253.09 (3) No hospital health care facility, school, or employer may
6 discriminate against any person with regard to admission, hiring or firing, tenure,
7 term, condition, or privilege of employment, student status, or staff status on the
8 ground that the person refuses to recommend, aid or perform procedures for
9 sterilization or the removal of a human embryo or fetus, or states an intention to
10 refuse, whether or not in writing, to participate in an activity specified in sub. (1r)
11 (a) 1. to 8., if the refusal is based on religious or moral precepts.

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

13 253.09 (4) (a) Such individual to perform or assist in the performance of any
14 sterilization procedure or removal of a human embryo or fetus participate in an
15 activity specified in sub. (1r) (a) 1. to 8., if the individual's performance or assistance
16 participation in the performance of such a procedure would be activity is contrary to
17 the individual's religious beliefs or moral convictions; or

18 **SECTION 14.** 253.09 (4) (b) 1. of the statutes is amended to read:

19 253.09 (4) (b) 1. Make its facilities available for the performance of any
20 sterilization procedure or removal of a human embryo or fetus an individual to
21 participate in an activity specified in sub. (1r) (a) 1. to 8., if the performance of such
22 a procedure in such facilities is prohibited by the entity prohibits the activity from
23 taking place in the facilities on the basis of religious beliefs or moral convictions; or

24 **SECTION 15.** 253.09 (4) (b) 2. of the statutes is amended to read:

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

7 **SECTION 16.** 253.09 (5) of the statutes is created to read:

8 253.09 (5) (a) In this subsection, “damages” do not include noneconomic
9 damages, as defined in s. 893.55 (4) (a).

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

21 **SECTION 17.** 441.06 (title) of the statutes is amended to read:

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

23 **SECTION 18.** 441.06 (6) of the statutes is renumbered 441.06 (6) (b) (intro.) and
24 amended to read:

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1 441.06 (6) (b) (intro.) ~~No A person licensed as a registered nurse under this~~
2 ~~section or as a practical nurse under s. 441.10 is liable for any civil damages resulting~~
3 ~~from immune from liability for any damage caused by his or her refusal to perform~~
4 ~~sterilization procedures or to remove or aid in the removal of a human embryo or~~
5 ~~fetus from a person participate in any of the following, if the refusal is based on~~
6 ~~religious or moral precepts:~~

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

8 441.06 (6) (a) 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 20.** 441.06 (6) (b) 1. to 8. of the statutes are created to read:

21 441.06 (6) (b) 1. A sterilization procedure.

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

23 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 21.** 441.06 (7) of the statutes is created to read:

15 441.06 (7) A person licensed as a registered nurse under this section or as a
16 practical nurse under s. 441.10 who, in writing, refuses, or states an intention to
17 refuse, on moral or religious grounds to participate in a practice of practical or
18 professional nursing that is related to an activity specified in sub. (6) (b) 1. to 8. may
19 not be required to participate in the practice with respect to the activity and may not
20 be disciplined by the board or the department for refusing or stating an intention to
21 refuse to participate in the practice with respect to the activity.

22 **SECTION 22.** 441.06 (8) of the statutes is created to read:

23 441.06 (8) (a) In this subsection, “damages” do not include noneconomic
24 damages, as defined in s. 893.55 (4) (a).

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1 (b) 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 sub. (7) may bring a civil action
3 for equitable relief, including reinstatement, or damages, or both. An action under
4 this paragraph 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 paragraph, the court
8 shall award reasonable attorney fees, notwithstanding s. 814.04 (1), to a person who
9 obtains equitable relief, damages, or both. An action under this paragraph shall be
10 commenced within one year after the cause of action accrues or be barred.

11 **SECTION 23.** 448.03 (5) (title) of the statutes is amended to read:

12 448.03 (5) (title) CIVIL LIABILITY AND DISCIPLINARY EXEMPTION; CERTAIN MEDICAL
13 PROCEDURES AND REPORTS.

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

16 448.03 (5) (am) (intro.) ~~No~~ A person licensed or certified under this subchapter
17 ~~shall be liable for any civil damages resulting from such~~ is immune from liability for
18 any damage caused by the person's refusal to perform sterilization procedures or to
19 remove or aid in the removal of a human embryo or fetus from a person if such
20 participate in any of the following if the refusal is based on religious or moral
21 precepts.:

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

23 448.03 (5) (ag) In this subsection:

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

6 3. “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 or encourage.

10 **SECTION 26.** 448.03 (5) (am) 1. to 8. of the statutes are created to read:

11 448.03 (5) (am) 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. Intentionally causing the death of an individual who is not in a terminal
24 condition, as defined in s. 154.01 (8), by withholding or withdrawing nutrition or
25 hydration.

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

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

4 448.03 (5) (an) A person licensed or certified under this subchapter who, in
5 writing, refuses, or states an intention to refuse, on moral or religious grounds to
6 participate in a practice within the scope of his or her license or certification that is
7 related to an activity specified in par. (am) 1. to 8. may not be required to participate
8 in the practice with respect to the activity and, subject to ss. 154.07 (1) (a) 3. and
9 155.50 (1) (b), may not be disciplined by the board or the department for refusing or
10 stating an intention to refuse to participate in the practice with respect to the
11 activity.

12 **SECTION 28.** 448.03 (5) (ar) of the statutes is created to read:

13 448.03 (5) (ar) 1. In this paragraph, "damages" do not include noneconomic
14 damages, as defined in s. 893.55 (4) (a).

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

25 **SECTION 29.** 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 or encourage.

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.

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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. An action under
23 this subdivision may be commenced against the state and any office, department,
24 independent agency, authority, institution, association, society, or other body in state
25 government created or authorized to be created by the constitution or any law,

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

SECTION 30. Initial applicability.

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

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

16 (END)

D-Note

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1189/2ins
CTS::

Insert A-1:

10 ~~11~~ (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.

Insert A-2:

10 ~~11~~ The bill prohibits a plaintiff in such an action from recovering noneconomic damages.

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

LRB-1189/2dn

CTS::



Date

Representative Hundertmark:

* This is a redraft of LRB-1189/1. I have made corrections to the analysis to ensure its accuracy and I have eliminated the physician notification requirements.

* Note that the reference in proposed s. 111.37 (1r) (b) 7. (and repeated elsewhere in the draft) to assisted suicide is probably unnecessary. Under current s. 940.12, assisting suicide is a class H felony.

Christopher T. Sundberg
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1189/2dn
CTS:kjfrs

January 19, 2005

Representative Hundertmark:

This is a redraft of LRB-1189/1. I have made corrections to the analysis to ensure its accuracy and I have eliminated the physician notification requirements.

Note that the reference in proposed s. 111.37 (1r) (b) 7. (and repeated elsewhere in the draft) to assisted suicide is probably unnecessary. Under current s. 940.12, assisting suicide is a Class H felony.

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Basford, Sarah

From: Eng, Peter
Sent: Thursday, January 27, 2005 4:00 PM
To: LRB.Legal
Subject: Draft review: LRB 05-1189/2 Topic: Exempting certain health care professionals from discipline and liability for refusing to participate in abortions, sterilizations, euthanasia, and certain other procedures on moral or religious groun

It has been requested by <Eng, Peter> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-1189/2 Topic: Exempting certain health care professionals from discipline and liability for refusing to participate in abortions, sterilizations, euthanasia, and certain other procedures on moral or religious groun

CORRECTED COPY

2005 - 2006 LEGISLATURE

LRB-1189/2

CTS:kjfrs

06-13-2005

2005 ASSEMBLY BILL 207

see page 2

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

ASSEMBLY BILL 207

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. 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, 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,

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(1099) Throughout the bill, "participate in" is broadly defined, but does not include prescribing, dispensing, or administering contraceptive articles, as defined in current law.

(END INSERT)