



## 1997 ASSEMBLY BILL 953

March 26, 1998 - Introduced by Representatives WALKER, OWENS, GREEN, HANDRICK, RYBA, SPILLNER, ALBERS, STASKUNAS, SERATTI, SYKORA, GUNDERSON, OTTE, LORGE, GROTHMAN, HUTCHISON, NASS, UNDERHEIM, F. LASEE, OTT, HUEBSCH, WIECKERT, DUFF and LAZICH, cosponsored by Senators ROESSLER, FARROW, FITZGERALD, DRZEWIECKI, SCHULTZ and WELCH. Referred to Committee on Health.

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), 253.09 (1g), 253.09 (1r) (a) 1. to 7., 441.06 (6) (a) to (g),  
5           441.06 (7), 448.03 (5) (a) 1. to 7., 448.03 (5) (am) and 450.135 of the statutes;  
6           **relating to:** employment discrimination based on creed and exemption from  
7           liability and discipline for physicians, nurses, pharmacists, other health care  
8           providers and hospital employees who refuse to participate in sterilization,  
9           abortion, assisted suicide and other procedures on moral or religious grounds.

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### ***Analysis by the Legislative Reference Bureau***

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 a health care provider on the basis of his or her written refusal, based on creed, to participate in any of the following activities: 1) sterilization procedures; 2) certain procedures that prevent the implantation of a fertilized human ovum; 3) abortions; 4) experiments or medical procedures that involve the destruction of a human embryo or that involve a human embryo or unborn child but do not relate to the beneficial treatment of the human embryo or unborn child; 5) procedures using fetal tissue or organs; 6) withholding or withdrawing nutrition or hydration under certain circumstances; or 7) acts causing or assisting in the death of an individual, including assisted suicide, euthanasia or mercy killing. There is no exception for an employer to show that the refusal poses an undue hardship.

Under current law, hospitals, certain health care professionals and hospital employes 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 employes who object, in writing, to participating in such a procedure on moral or religious grounds may not be disciplined for refusing to participate in the procedure. Also, a hospital, school or employer may not take any disciplinary action regarding employment, staff or student status against a person who refuses to participate in such a procedure if the refusal is based on moral or religious precepts. Finally, under current law, a hospital and the following persons are exempt from liability for damages that result from a refusal to perform such a procedure if the refusal is based on religious or moral precepts: persons employed by or associated with the staff of a hospital, physicians and other health care professionals licensed or certified by the medical examining board in the department of regulation and licensing (DORL) and registered nurses licensed by the board of nursing in DORL.

This bill expands all of the provisions described above regarding hospitals, health care professionals and hospital employes to include a refusal to participate, based on moral or religious grounds, in any of the 7 activities described above with respect to employment discrimination based on creed. Also, the bill provides that pharmacists licensed by the pharmacy examining board in DORL are exempt from liability for damages that result from a refusal to participate in any of the 7 activities if the refusal is based on religious or moral precepts, in addition to physicians and other health care professionals licensed or certified by the medical examining board and registered nurses licensed by the board of nursing.

Finally, the bill specifies that the medical examining board, board of nursing, pharmacy examining board or DORL may not take any disciplinary action against any of the following who, in writing, refuse, or state an intention to refuse, to participate in any of the 7 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, registered nurse licensed by the board of nursing or pharmacist licensed by the pharmacy examining board. Under the bill, the medical examining board may not take disciplinary action against a physician who makes

such a refusal even if the physician refuses to transfer a patient who has executed a declaration authorizing the withholding or withdrawal of life-sustaining procedures or feeding tubes, or who has executed a power of attorney for health care instrument consenting to the withholding or withdrawal of feeding tubes, to another physician who will comply with the declaration or instrument. Under current law, under certain circumstances, a physician who refuses to transfer such a patient to another physician is subject to discipline for unprofessional conduct.

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

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*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 employe's or prospective employe's  
6 religious observance or practice unless the employer can demonstrate that the  
7 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) "Health care provider" means any of the following:

12           1. An individual licensed, registered, permitted or certified by the department  
13 of health and family services or the department of regulation and licensing to provide  
14 health care services in this state.

15           2. An individual who provides health care services as directed, supervised or  
16 inspected by an individual specified in subd. 1.

1 (b) "Participate in" means to perform, assist in, counsel in favor of, make  
2 referrals for, prescribe, dispense or administer drugs for, or otherwise promote,  
3 encourage or aid.

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

5 111.337 (1r) (b) Discriminating against any health care provider by engaging  
6 in any of the actions prohibited under s. 111.322 on the basis of the health care  
7 provider's written refusal, or written statement of an intention to refuse, based on  
8 his or her creed, to participate in any of the following:

9 1. A sterilization procedure.

10 2. A procedure involving a drug or device that may prevent the implantation  
11 of a fertilized human ovum.

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

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

14 a. The destruction of a human embryo.

15 b. A human embryo or unborn child, at any stage of development, including a  
16 fertilized human ovum, in which the experiment or procedure is not related to the  
17 beneficial treatment of the human embryo or unborn child.

18 5. A procedure that uses fetal tissue or organs, including a transplant  
19 procedure.

20 6. The withholding or withdrawal of nutrition or hydration, unless the  
21 administration of nutrition or hydration is medically contraindicated.

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

24 **SECTION 4.** 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 5.** 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 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:

8           (b) A physician or any other person who is a member of or associated with the  
9 staff of a hospital, or any employe of a hospital in which such a procedure the  
10 performance of an activity specified in par. (a) 1. to 7. 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 not be required to participate in  
14 such medical procedure, and the activity.

15           (c) A physician or any other person who is a member of or associated with the  
16 staff of a hospital, or any employe 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 7. on moral or religious grounds.

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

23           253.09 (1g) In this section, "participate in" means to perform, assist in, counsel  
24 in favor of, make referrals for, prescribe, dispense or administer drugs for, or  
25 otherwise promote, encourage or aid.

1           **SECTION 7.** 253.09 (1r) (a) 1. to 7. of the statutes are created to read:

2           253.09 (1r) (a) 1. A sterilization procedure.

3           2. A procedure involving a drug or device that may prevent the implantation  
4 of a fertilized human ovum.

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

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

7           a. The destruction of a human embryo.

8           b. A human embryo or unborn child, at any stage of development, including a  
9 fertilized human ovum, in which the experiment or procedure is not related to the  
10 beneficial treatment of the human embryo or unborn child.

11          5. A procedure that uses fetal tissue or organs, including a transplant  
12 procedure.

13          6. The withholding or withdrawal of nutrition or hydration, unless the  
14 administration of nutrition or hydration is medically contraindicated.

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

17          **SECTION 8.** 253.09 (2) of the statutes is amended to read:

18          253.09 (2) ~~No A hospital or employe of any a hospital shall be liable for any civil~~  
19 ~~damages resulting from~~ is immune from liability for any damage caused by a refusal  
20 ~~to perform sterilization procedures or remove a human embryo or fetus from a~~  
21 ~~person, if such participate in an activity specified in sub. (1r) (a) 1. to 7., if the refusal~~  
22 is based on religious or moral precepts.

23          **SECTION 9.** 253.09 (3) of the statutes is amended to read:

24          253.09 (3) No hospital, school or employer may discriminate against any  
25 person with regard to admission, hiring or firing, tenure, term, condition or privilege

1 of employment, student status or staff status on the ground that the person, in  
2 writing, ~~refuses to recommend, aid or perform procedures for sterilization or the~~  
3 ~~removal of a human embryo or fetus, or states an intention to refuse, to participate~~  
4 ~~in an activity specified in sub. (1r) (a) 1. to 7.,~~ if the refusal is based on religious or  
5 moral precepts.

6 **SECTION 10.** 253.09 (4) (a) of the statutes is amended to read:

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

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

13 253.09 (4) (b) 1. Make its facilities available for ~~the performance of any~~  
14 ~~sterilization procedure or removal of a human embryo or fetus~~ an individual to  
15 participate in an activity specified in sub. (1r) (a) 1. to 7., if the performance of such  
16 ~~a procedure in such facilities is prohibited by the entity~~ prohibits the activity from  
17 taking place in the facilities on the basis of religious beliefs or moral convictions; or

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

19 253.09 (4) (b) 2. Provide any personnel ~~for the performance or assistance in the~~  
20 ~~performance of any sterilization procedure or assistance~~ to participate in an activity  
21 specified in sub. (1r) (a) 1. to 7., if the performance or assistance in the performance  
22 of such procedure or the removal of a human embryo or fetus by such personnel would  
23 be activity is contrary to the religious beliefs or moral convictions of such the  
24 personnel.

25 **SECTION 13.** 441.06 (title) of the statutes is amended to read:

1           **441.06** (title) **Licensure; civil liability and disciplinary exemption.**

2           **SECTION 14.** 441.06 (6) of the statutes is renumbered 441.06 (6) (intro.) and  
3 amended to read:

4           441.06 **(6)** (intro.) ~~No~~ A person licensed as a registered nurse under this section  
5 is liable for any civil damages resulting from immune from liability for any damage  
6 caused by his or her refusal to perform sterilization procedures or to remove or aid  
7 in the removal of a human embryo or fetus from a person, assist in, counsel in favor  
8 of, make referrals for, prescribe, dispense or administer drugs for, or otherwise  
9 promote, encourage or aid any of the following, if the refusal is based on religious or  
10 moral precepts:

11           **SECTION 15.** 441.06 (6) (a) to (g) of the statutes are created to read:

12           441.06 **(6)** (a) A sterilization procedure.

13           (b) A procedure involving a drug or device that may prevent the implantation  
14 of a fertilized human ovum.

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

16           (d) An experiment or medical procedure involving any of the following:

17           1. The destruction of a human embryo.

18           2. A human embryo or unborn child, at any stage of development, including a  
19 fertilized human ovum, in which the experiment or procedure is not related to the  
20 beneficial treatment of the human embryo or unborn child.

21           (e) A procedure that uses fetal tissue or organs, including a transplant  
22 procedure.

23           (f) The withholding or withdrawal of nutrition or hydration, unless the  
24 administration of nutrition or hydration is medically contraindicated.



1 (g) An act that causes or assists in causing the death of an individual, such as  
2 by assisted suicide, euthanasia or mercy killing.

3 **SECTION 16.** 441.06 (7) of the statutes is created to read:

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

10 **SECTION 17.** 448.03 (5) (title) of the statutes is amended to read:

11 448.03 (5) (title) CIVIL LIABILITY AND DISCIPLINARY EXEMPTION; CERTAIN MEDICAL  
12 PROCEDURES AND REPORTS.

13 **SECTION 18.** 448.03 (5) (a) of the statutes is renumbered 448.03 (5) (a) (intro.)  
14 and amended to read:

15 448.03 (5) (a) (intro.) ~~No~~ A person licensed or certified under this chapter shall  
16 ~~be liable for any civil damages resulting from such~~ is immune from liability for any  
17 damage caused by the person's refusal to perform sterilization procedures or to  
18 remove or aid in the removal of a human embryo or fetus from a person if such, assist  
19 in, counsel in favor of, make referrals for, prescribe, dispense or administer drugs for,  
20 or otherwise promote, encourage or aid any of the following if the refusal is based on  
21 religious or moral precepts.;

22 **SECTION 19.** 448.03 (5) (a) 1. to 7. of the statutes are created to read:

23 448.03 (5) (a) 1. A sterilization procedure.

24 2. A procedure involving a drug or device that may prevent the implantation  
25 of a fertilized human ovum.

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

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

3           a. The destruction of a human embryo.

4           b. A human embryo or unborn child, at any stage of development, including a  
5 fertilized human ovum, in which the experiment or procedure is not related to the  
6 beneficial treatment of the human embryo or unborn child.

7           5. A procedure that uses fetal tissue or organs, including a transplant  
8 procedure.

9           6. The withholding or withdrawal of nutrition or hydration, unless the  
10 administration of nutrition or hydration is medically contraindicated.

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

13           **SECTION 20.** 448.03 (5) (am) of the statutes is created to read:

14           448.03 (5) (am) A person licensed or certified under this chapter who, in  
15 writing, refuses, or states an intention to refuse, on moral or religious grounds to  
16 engage in a practice within the scope of his or her license or certification that is  
17 related to an activity specified in par. (a) 1. to 7. shall not be required to engage in  
18 the practice with respect to the activity and, notwithstanding s. 154.07 (1) (a) 3. or  
19 155.50 (1) (b), may not be disciplined by the board or the department for refusing or  
20 stating an intention to refuse to engage in the practice with respect to the activity.

21           **SECTION 21.** 450.135 of the statutes is created to read:

22           **450.135 Pharmacist's refusal to be involved in certain activities. (1)**

23 A person licensed as a pharmacist under this chapter is immune from liability for any  
24 damage caused by his or her refusal to be involved in the performance of, assistance  
25 in, counseling in favor of, making referrals for, prescribing, dispensing or

1 administering drugs for, or otherwise promoting, encouraging or aiding any of the  
2 following, if the refusal is based on religious or moral precepts:

3 (a) A sterilization procedure.

4 (b) A procedure involving a drug or device that may prevent the implantation  
5 of a fertilized human ovum.

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

7 (d) An experiment or medical procedure involving any of the following:

8 1. The destruction of a human embryo.

9 2. A human embryo or unborn child, at any stage of development, including a  
10 fertilized human ovum, in which the experiment or procedure is not related to the  
11 beneficial treatment of the human embryo or unborn child.

12 (e) A procedure that uses fetal tissue or organs, including a transplant  
13 procedure.

14 (f) The withholding or withdrawal of nutrition or hydration, unless the  
15 administration of nutrition or hydration is medically contraindicated.

16 (g) An act that causes or assists in causing the death of an individual, such as  
17 by assisted suicide, euthanasia or mercy killing.

18 **(2)** A person licensed as a pharmacist under this chapter who, in writing,  
19 refuses, or states an intention to refuse, on moral or religious grounds to engage in  
20 a practice of pharmacy that is related to an activity specified in sub. (1) (a) to (g) shall  
21 not be required to engage in the practice with respect to the activity and may not be  
22 disciplined by the board or department for refusing or stating an intention to refuse  
23 to engage in the practice with respect to the activity.

24 **SECTION 22. Initial applicability.**

