

State of Wisconsin



2005 Assembly Bill 207

Date of enactment:
Date of publication*:

2005 WISCONSIN ACT

AN ACT *to renumber and amend* 111.337 (1), 253.09 (1), 441.06 (6) and 448.03 (5) (a); *to amend* 253.09 (title), 253.09 (2), 253.09 (3), 253.09 (4) (a), 253.09 (4) (b) 1., 253.09 (4) (b) 2., 441.06 (title) and 448.03 (5) (title); and *to create* 111.337 (1g), 111.337 (1r) (b), 111.337 (1w), 111.337 (2) (c), 253.09 (1g), 253.09 (1r) (a) 1. to 8., 253.09 (5), 253.09 (6), 441.06 (6) (a), 441.06 (6) (b) 1. to 8., 441.06 (7), 441.06 (7m), 441.06 (8), 448.03 (5) (ag), 448.03 (5) (am) 1. to 8., 448.03 (5) (an), 448.03 (5) (ap), 448.03 (5) (ar) and 450.135 of the statutes; **relating to:** employment discrimination based on creed; and 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.

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

SECTION 1. 111.337 (1) of the statutes is renumbered 111.337 (1r) (intro.) and amended to read:

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

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

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

111.337 (1g) In this section:

(a) "Human embryo" means a human organism that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells. "Human embryo" includes a zygote but does not include a human organism at or beyond the

stage of development at which the major body structures are present.

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

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

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

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

1. A sterilization procedure.

* Section 991.11, WISCONSIN STATUTES 2003-04: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

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

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

SECTION 4m. 111.337 (2) (c) of the statutes is created to read:

111.337 (2) (c) To engage in any action prohibited under s. 111.322 on the basis of an employee's or prospective employee's violation of, or statement of intent to violate, s. 146.83 (4) (b).

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

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

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

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

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

be required to participate in such ~~medical procedure, and the activity.~~

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

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

253.09 (1g) In this section:

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

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

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

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

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

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

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

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

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

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

6. A procedure, including a transplant procedure, that uses 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, as defined in s. 154.01 (8), by withholding or withdrawing nutrition or hydration.

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

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

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

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

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

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

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

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

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

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

253.09 (4) (b) 2. Provide any personnel ~~for the performance or assistance in the performance of any steril-~~

~~ization procedure or assistance to participate in an activity specified in sub. (1r) (a) 1. to 8., if the performance or assistance in the performance of such procedure or the removal of a human embryo or fetus by such personnel would be activity is~~ contrary to the religious beliefs or moral convictions of ~~such the~~ personnel.

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

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

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

SECTION 14m. 253.09 (6) of the statutes is created to read:

253.09 (6) (a) Nothing in this section prohibits any of the following:

1. Disciplinary or recriminatory action against a physician or any other person who is a member of or associated with the staff of a health care facility, or any employee of a health care facility who violates, or states an intention to violate, s. 146.83 (4) (b).

2. By a health care facility, school, or employer, discrimination with regard to admission; hiring or firing; tenure, term, condition, or privilege of employment; student status; or staff status against a person who violates, or states an intention to violate, s. 146.83 (4) (b).

3. By a court, public official, or other public authority, an order requiring a recipient, under state or federal law, of a grant, contract, loan, or loan guarantee to comply with s. 146.83 (4) (b).

(b) Nothing in this section authorizes a health care facility, a physician, or any other person who is a member of or associated with the staff of a health care facility, or any employee of a health care facility to conceal or withhold a patient health care record in violation of s. 146.83 (4) (b).

(c) Nothing in this section limits the liability of a health care facility, a physician, or any other person who is a member of or associated with the staff of a health care facility, or any employee of a health care facility for damage caused by a violation of s. 146.83 (4) (b).

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

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

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

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

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

441.06 (6) (a) In this subsection:

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

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

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

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

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

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

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

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

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

6. A procedure, including a transplant procedure, that uses 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, as defined in s. 154.01 (8), by withholding or withdrawing nutrition or hydration.

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

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

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

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

441.06 (7m) (a) Nothing in sub. (6) (b) limits the liability of a person licensed as a registered nurse under this section or as a practical nurse under s. 441.10 for damage caused by a violation of s. 146.83 (4) (b).

(b) Nothing in sub. (7) authorizes a person licensed as a registered nurse under this section or as a practical nurse under s. 441.10 to withhold or conceal a patient health care record in violation of s. 146.83 (4) (b) or prohibits the board or department from disciplining a person who violates s. 146.83 (4) (b).

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

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

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

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

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

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

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

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

448.03 (5) (ag) In this subsection:

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

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

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

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

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

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

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

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

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

6. A procedure, including a transplant procedure, that uses 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, as defined in s. 154.01 (8), by withholding or withdrawing nutrition or hydration.

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

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

448.03 (5) (an) A person licensed or certified under this subchapter who, in writing, refuses, or states an intention to refuse, on moral or religious grounds to par-

ticipate in a practice within the scope of his or her license or certification that is related to an activity specified in par. (am) 1. to 8. may not be required to participate in the practice with respect to the activity and, subject to ss. 154.07 (1) (a) 3. and 155.50 (1) (b), may not be disciplined by the board or the department for refusing or stating an intention to refuse to participate in the practice with respect to the activity.

SECTION 25m. 448.03 (5) (ap) of the statutes is created to read:

448.03 (5) (ap) Nothing in par. (am) limits the liability of a person licensed or certified under this subchapter for damage caused by a violation of s. 146.83 (4) (b). Nothing in par. (an) authorizes a person licensed or certified under this subchapter to withhold or conceal a patient health care record in violation of s. 146.83 (4) (b), or prohibits the board or department from disciplining a person licensed or certified under this subchapter who violates s. 146.83 (4) (b).

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

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

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

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

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

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

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

(c) "Participate in" means to perform; practice; engage in; assist in; recommend; counsel in favor of; make referrals for; prescribe, dispense, or administer drugs or devices, other than contraceptive articles, as

defined in s. 450.155 (1) (a), for; or otherwise promote or encourage.

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

(a) A sterilization procedure.

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

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

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

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

(f) A procedure, including a transplant procedure, that uses fetal tissue or organs other than fetal tissue or organs from a stillbirth, spontaneous abortion, or miscarriage.

(g) 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.

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

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

(3m) (a) Nothing in sub. (2) limits the liability of a person licensed as a pharmacist under this chapter for damage caused by a violation of s. 146.83 (4) (b).

(b) Nothing in sub. (3) authorizes a person licensed as a pharmacist under this chapter to withhold or conceal a patient health care record in violation of s. 146.83 (4) (b) or prohibits the board or department from disciplining a person who violates s. 146.83 (4) (b).

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

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

SECTION 28. Initial applicability.

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