



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1645/2
TJD:amn&wlj

2015 BILL

1 **AN ACT** *to renumber* 157.04; *to renumber and amend* 146.345 (1) (a); *to*
2 *amend* 146.345 (title); *to repeal and recreate* subchapter I (title) of chapter
3 157 [precedes 157.01] and 157.04 (title); and *to create* 69.186 (1) (m), 146.345
4 (1) (ag), 146.345 (2m), 157.04 (2) and 157.053 of the statutes; **relating to:**
5 disposition of fetal remains, determination and reporting of the sex of fetal
6 remains resulting from abortions, sale and use of fetal body parts, and
7 providing a criminal penalty.

Analysis by the Legislative Reference Bureau

Generally, this bill specifies certain requirements for the disposition of fetal remains and prohibits certain sales and uses of fetal body parts derived from an unborn child aborted by an induced abortion.

Current law prohibits a person from knowingly and for valuable consideration acquiring, receiving, or otherwise transferring a human organ. Current federal law prohibits a person from knowingly acquiring, receiving, or otherwise transferring, in interstate commerce, any fetal tissue for valuable consideration. This bill prohibits a person from knowingly and for valuable consideration acquiring, receiving, or otherwise transferring a fetal body part in this state. A fetal body part is a cell, tissue, organ, or other part of, or any material derived from any cell or tissue of, an unborn child who is aborted by an induced abortion. The bill also prohibits a

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person from knowingly providing, receiving, or using, for experimentation, a fetal body part in this state, regardless of whether the provision, receipt, or use is for valuable consideration.

Current law contains restrictions on the final disposition of corpses and stillbirths, but does not explicitly require any particular form of final disposition of corpses or stillbirths. Current law does not contain any specific provisions with respect to the disposal or final disposition of fetal remains other than stillbirths.

This bill requires the funeral director or other person assuming responsibility for any fetal remains that are not the result of an abortion to arrange for the final disposition of those fetal remains. For purposes of the bill, “fetal remains” is defined as the remains of a fetus that had completed at least ten weeks of gestation or had reached the stage of development that, upon visual inspection of the fetus or part of the fetus, the head, torso, or extremities appear to be supported by skeletal or cartilaginous structures. Under the bill, final disposition for fetal remains may be by burial, interment, entombment, cremation, or incineration.

This bill requires a physician who performs or induces an abortion to arrange for the final disposition of the fetal remains resulting from the abortion. The bill defines “abortion” as the use of an instrument, medicine, drug, or other substance or device with intent to terminate the pregnancy of a woman known to be pregnant or for whom there is reason to believe that she may be pregnant and with intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth, or to remove a dead fetus. The bill requires the physician who performs or induces the abortion to also determine the sex of the fetus, if doing so is medically possible, and ensure that the sex of the fetus is reported to the Department of Health Services in addition to other information that a hospital, clinic, or other facility is required to report on each induced abortion under current law. The bill expressly provides that a physician is not required to discuss the final disposition of the fetal remains with the mother before performing or inducing an abortion, and is not required to obtain authorization from the mother for the final disposition of the fetal remains upon completion of the abortion. A person who violates any of the provisions created in the bill related to disposition of fetal remains may be required to forfeit up to \$1,000 for each violation.

For further information see the *state and local* 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.** 69.186 (1) (m) of the statutes is created to read:
- 2 69.186 (1) (m) The sex of the fetus, if determined under s. 157.053 (3) (a) 2.
- 3 **SECTION 2.** 146.345 (title) of the statutes is amended to read:
- 4 **146.345 (title) Sale of human organs prohibited; fetal body parts.**

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1 **SECTION 3.** 146.345 (1) (a) of the statutes is renumbered 146.345 (1) (am) and
2 amended to read:

3 146.345 (1) (am) “Human organ” means a human kidney, liver, heart, lung,
4 pancreas, bone marrow, cornea, eye, bone or skin or any other human organ specified
5 by the department by rule. “Human organ” does not mean human whole blood, blood
6 plasma, a blood product or a blood derivative ~~or~~, human semen, or a fetal body part.

7 **SECTION 4.** 146.345 (1) (ag) of the statutes is created to read:

8 146.345 (1) (ag) “Fetal body part” means a cell, tissue, organ, or other part of,
9 or any material derived from any cell or tissue of, an unborn child, as defined in s.
10 939.75 (1), who is aborted by an induced abortion, as defined in s. 69.01 (13m).

11 **SECTION 5.** 146.345 (2m) of the statutes is created to read:

12 146.345 (2m) (a) No person may knowingly and for valuable consideration
13 acquire, receive, or otherwise transfer a fetal body part.

14 (b) No person may knowingly provide, receive, or use, for experimentation, a
15 fetal body part, regardless of whether the provision, receipt, or use is for valuable
16 consideration.

17 **SECTION 6.** Subchapter I (title) of chapter 157 [precedes 157.01] of the statutes
18 is repealed and recreated to read:

CHAPTER 157**SUBCHAPTER I****HUMAN REMAINS**

22 **SECTION 7.** 157.04 (title) of the statutes is repealed and recreated to read:

23 **157.04 (title) Penalties.**

24 **SECTION 8.** 157.04 of the statutes is renumbered 157.04 (1).

25 **SECTION 9.** 157.04 (2) of the statutes is created to read:

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1 157.04 (2) Any person who violates s. 157.053 (2) or (3) may be required to
2 forfeit up to \$1,000 for each violation.

3 **SECTION 10.** 157.053 of the statutes is created to read:

4 **157.053 Final disposition of fetal remains. (1)** In this section:

5 (a) “Abortion” has the meaning given in s. 253.10 (2) (a).

6 (b) “Fetal remains” means a dead fetus or part of a dead fetus that had
7 completed at least 10 weeks of gestation or had reached the stage of development
8 that, upon visual inspection of the fetus or part of the fetus, the head, torso, or
9 extremities appear to be supported by skeletal or cartilaginous structures. “Fetal
10 remains” does not include the umbilical cord or placenta.

11 (c) “Final disposition” means the disposition of human remains by burial,
12 interment, entombment, cremation, or incineration. “Final disposition” does not
13 include disposition of the ashes produced by cremation or incineration of fetal
14 remains.

15 (2) Subject to s. 69.18 (3) (e), and except as otherwise provided in sub. (3) (a),
16 the funeral director or other person assuming responsibility for any fetal remains
17 shall arrange for the final disposition of the fetal remains.

18 (3) (a) A physician who performs or induces an abortion shall do all of the
19 following:

20 1. Arrange for the final disposition of the fetal remains resulting from the
21 abortion.

22 2. Determine the sex of the fetus, if doing so is medically possible, and ensure
23 that the determination is reported to the department as provided in s. 69.186.

24 (b) This subsection does not require a physician to discuss the final disposition
25 of the fetal remains with the mother before performing or inducing an abortion and

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1 does not require a physician to obtain authorization from the mother for the final
2 disposition of the fetal remains upon completion of the abortion.

3 (END)