LRB-4771

2001 DRAFTING REQUEST

Bill

Received: **01/24/2002**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Mary Lazich (608) 266-5400**

By/Representing: **Katie**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters: **malaigm**

Subject: **Criminal Law - miscellaneous**
Health - miscellaneous

Extra Copies: **rlr**
dak

Submit via email: **YES**

Requester's email: **Sen.Lazich@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Destruction of human embryo; use of human embryo for nontherapeutic purpose; human cloning

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Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mdsida 01/24/2002	jdyer 01/24/2002		_____ _____			S&L
/1			jfrantze 01/25/2002	_____ _____	lrb_docadmin 01/25/2002	lrb_docadmin 01/25/2002	

FE Sent For:

<END>

At Intro.

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/?	mdsida	1/24 jld	1/25	Sub 1/25			

FE Sent For:

<END>

Emery, Lynn

From: Kempfert, Kathryn
Sent: Thursday, January 24, 2002 8:43 AM
To: LRB.Legal
Subject: Bill Jacketing

Could you please have LRB 2888 AB 736 jacket as a Senate Bill for Senator Lazich?

Thank you,

Katie
Office of Senator Lazich

Needs a companion to be jacketed for Senate.

4771/1

2001 – 2002 LEGISLATURE

LRB–2888/3
MGD&GMM:jld:pg

SOON

2001 ASSEMBLY BILL 736

January 16, 2002 – Introduced by Representatives FREESE, SUDER, J. FITZGERALD, GROTHMAN, GUNDERSON, GUNDRUM, HINES, KESTELL, KRAWCZYK, KREIBICH, LEIBHAM, LOEFFELHOLZ, MCCORMICK, NASS, OTT, OWENS, PETTIS and WALKER, cosponsored by Senators LAZICH, S. FITZGERALD and ROESSLER. Referred to Committee on Health.

Regen

AN ACT *to create* 146.347 and 940.17 of the statutes; **relating to:** intentionally causing the death of an in vitro human embryo, nontherapeutic research involving an in vitro human embryo, the use of cells or tissue derived from an in vitro human embryo, the purchase or sale of in vitro human embryos, requesting the joint legislative council to conduct a study on how to reduce the number of in vitro human embryos created by assisted reproductive services clinics and how to facilitate the adoption of unused in vitro human embryos, and human cloning and providing penalties.

Analysis by the Legislative Reference Bureau

Prohibitions relating to in vitro human embryos

Through a number of separate provisions, current law prohibits causing the death of an unborn child, other than through a legally authorized induced abortion. The penalties applicable to these prohibitions vary. For example, a person who intentionally causes the death of an unborn child may be sentenced to life imprisonment, while a person who causes the death of an unborn child by the negligent operation or handling of a vehicle may be fined not more than $10,000 or imprisoned for not more than five years or both. Current law also prohibits a person from intentionally performing an abortion after the fetus or unborn child reaches

viability, as determined by the reasonable medical judgment of the woman's attending physician. A person who violates this prohibition may be fined not more than $10,000 or imprisoned for not more than five years or both.

Under this bill, no person may do any of the following: 1) intentionally cause the death of an in vitro human embryo; 2) intentionally subject an in vitro human embryo to a substantial risk of injury or death for the purpose of "nontherapeutic human embryo research," which is defined as research involving an in vitro human embryo that is not intended to help protect or preserve the life or protect, preserve, or promote the health of the in vitro human embryo; 3) create an in vitro human embryo outside of a woman's body for the purpose of nontherapeutic human embryo research; 4) use, transfer, or acquire any living cell or tissue that the actor knows was obtained through conduct that is described in the preceding three prohibitions; 5) with the knowledge that any person will intentionally cause the death of the in vitro human embryo, transfer an in vitro human embryo to another person; 6) with the knowledge that the in vitro human embryo will intentionally be subjected to a substantial risk of injury or death for the purpose of nontherapeutic human embryo research, transfer an in vitro human embryo to another person; or 7) purchasing or selling an in vitro human embryo. The bill defines "in vitro human embryo" as a human embryo living outside of a woman's body, regardless of how the embryo is derived and regardless of whether the embryo has undergone cryopreservation (freezing), which is a process regularly used by clinics that provide assisted reproductive services (clinics) to preserve embryos for implantation at a later date in a woman's uterus. A person who violates one of the prohibitions contained in the bill relating to in vitro human embryos may be fined not more than $10,000 or imprisoned for not more than five years or both.

The prohibitions described in the preceding paragraph apply regardless of whether there is any contract currently in effect relating to the conduct involved. In addition, the fourth prohibition applies even if the conduct from which the cells or tissues were derived has already occurred or occurs outside of the state. On the other hand, the bill excepts the following conduct from all of the prohibitions described in the preceding paragraph, other than the prohibition on purchasing or selling an in vitro human embryo: 1) cryopreserving an in vitro human embryo, if the actor uses all available means to protect and preserve the life and protect, preserve, and promote the health of the embryo (the "cryopreservation exception"); 2) thawing an in vitro human embryo, if the thawing is done to facilitate a live birth and if the actor uses all available means to protect and preserve the life and protect, preserve, and promote the health of the embryo (the "thawing exception"); 3) implanting or attempting to implant an in vitro human embryo in a woman's uterus, if the embryo was created by fertilization and if the implantation or attempted implantation is done for the purpose of facilitating a live birth (the "implantation exception"); and 4) transferring or acquiring an in vitro human embryo, if the actor intends that the embryo be cryopreserved, thawed, or implanted consistent with the cryopreservation, thawing, or implantation exceptions. The prohibitions listed in the preceding paragraph — again, excluding the prohibition on purchasing or selling

a human embryo — also do not apply to the donor of any sperm cell or egg cell from which an in vitro human embryo is derived.

Human cloning

This bill also prohibits human cloning; attempting to perform human cloning; or transferring or acquiring a human embryo produced by human cloning or any cell, tissue, or product derived from such an embryo. The bill defines "human cloning" as introducing nuclear material from one or more human somatic cells (a human cell with a complete set of chromosomes) into an egg cell, the nuclear material of which has been removed or inactivated, so as to produce a living organism, including a human embryo, having genetic material that is virtually identical to the genetic material of an existing or previously existing human organism. A person who violates one of the prohibitions against human cloning shall be fined not more than $10,000 and may be imprisoned for not more than ten years. A person who violates one of the cloning prohibitions is also subject to a civil monetary penalty (a forfeiture) of $1,000,000 if the person derives a pecuniary gain from the violation, unless the person's gross pecuniary gain exceeds $500,000. In that case, the amount of the forfeiture must be between $1,000,000 and twice the amount of the person's gross pecuniary gain.

Legislative council study relating to in vitro human embryos

The bill requires the joint legislative council to study the issues relating to the adoption of in vitro human embryos and the regulation of clinics and to prepare proposed legislation with a view toward accomplishing all of the following: 1) reducing the number of in vitro human embryos created by clinics to a reasonable number needed for reproductive purposes; 2) facilitating the adoption and implantation of unused in vitro human embryos created by clinics; 3) providing a procedure by which those unused in vitro human embryos may be relinquished by their genetic parents for adoption and implantation; and 4) requiring that persons receiving assisted reproductive services at clinics be informed of the option of relinquishing their unused in vitro human embryos for adoption and implantation. The joint legislative council shall include in its study a study of current law relating to the adoption of children and other current law that might be relevant to the adoption of in vitro human embryos with a view toward modeling the proposed legislation relating to the adoption of in vitro human embryos after that current law. The joint legislative council must report its findings, conclusions, and recommendations to the legislature by January 1, 2003.

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.** 146.347 of the statutes is created to read:

2 **146.347 Human cloning. (1)** In this section:

1 (a) "Asexual reproduction" means reproduction not initiated by the union of an
2 oocyte and a sperm.

3 (b) "Enucleated oocyte" means a fertilized or unfertilized oocyte, the nuclear
4 material of which has been removed or inactivated.

5 (c) "Human cloning" means asexual reproduction accomplished by introducing
6 nuclear material from one or more human somatic cells into an enucleated oocyte so
7 as to produce a living organism having genetic material that is virtually identical to
8 the genetic material of an existing or previously existing human organism.

9 (d) "Human embryo" has the meaning given in s. 940.17 (2) (a).

10 (e) "Living organism" includes a human embryo.

11 (f) "Somatic cell" means a cell that has a complete set of chromosomes and that
12 is obtained or derived from a living or dead human organism at any stage of
13 development.

14 **(2)** (a) No person may knowingly do any of the following:

15 1. Perform or attempt to perform human cloning.

16 2. Transfer or acquire for any purpose a human embryo produced by human
17 cloning or any cell, tissue, or product derived from such an embryo.

18 (b) If a person violates par. (a) by creating, attempting to create, transferring,
19 or acquiring more than one human embryo, the creation, attempted creation,
20 transfer, or acquisition of each individual human embryo constitutes a separate
21 violation.

22 **(3)** Any person who violates sub. (2) shall be fined not more than $10,000 and
23 may be imprisoned for not more than 10 years.

24 **(4)** (a) Except as provided in par. (b), any person who violates sub. (2) and who
25 derives a pecuniary gain from the violation shall be required to forfeit $1,000,000.

(b) Any person who violates sub. (2) and who derives a pecuniary gain of more than $500,000 from the violation shall be required to forfeit not less than $1,000,000 nor more than an amount equal to twice the gross amount of the person's pecuniary gain.

SECTION 2. 940.17 of the statutes is created to read:

940.17 In vitro human embryos. **(1)** (a) *Legislative findings.* The legislature finds that:

1. There are no laws in this state specifically regulating the procedures used at a clinic that provides assisted reproductive services for infertile couples, other couples, or individuals using the clinic's services.

2. The procedures used at an assisted reproductive services clinic in this state are governed by a private contract between the clinic and the couple or individual using the clinic's services.

3. It is quite common for an assisted reproductive services clinic to create more human embryos than the number needed to reasonably meet the reproductive purposes of the couples or individuals using its services.

4. The private contract usually contains a provision regarding the disposition of human embryos not used by the couple or individual. Often this provision permits the couple or individual to choose to have the unused human embryos destroyed or donated for research.

5. It is also possible for the couple or individual to choose to have the unused human embryos donated to another couple or individual for implantation into the woman's uterus for the purpose of having a child. This option is often part of the private contract.

1 6. The donation of unused human embryos for adoption by another couple or
2 individual is a positive, life–affirming alternative to having the embryos destroyed
3 or donated for research.

4 7. A substantial number of citizens have objections to the destruction of any
5 human embryo or the use of any human embryo for nontherapeutic research that
6 subjects the embryo to a substantial risk of injury or death.

7 (b) *Policy declaration.* It is declared to be the public policy of this state that a
8 human embryo living outside a woman's body should be protected from intentional
9 destruction or research that causes the embryo's death or unnecessarily subjects the
10 embryo to a substantial risk of harm. The legislature reaffirms the positive value
11 of human life at all stages of development and promotes the adoption of unused
12 human embryos. A human embryo is a human being at an early stage of
13 development, not an item of property.

14 (c) *Construction of act.* The following statutory provisions shall be broadly
15 construed to effect the objectives set forth in this section.

16 **(2)** In this section:

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

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

1 (c) "Nontherapeutic human embryo research" means research involving an in
2 vitro human embryo that is not intended to help protect or preserve the life or protect,
3 preserve, or promote the health of the in vitro human embryo.

4 (d) "Research" means a systematic investigation, including research
5 development, testing, and evaluation, designed to develop or contribute to
6 generalizable knowledge.

7 **(3)** Whoever intentionally causes the death of an in vitro human embryo is
8 guilty of a Class E felony.

9 **(4)** Whoever, with the knowledge that any person will intentionally cause the
10 death of the in vitro human embryo, transfers an in vitro human embryo to any
11 person is guilty of a Class E felony.

12 **(5)** Whoever intentionally subjects an in vitro human embryo to a substantial
13 risk of injury or death for the purpose of nontherapeutic human embryo research is
14 guilty of a Class E felony.

15 **(6)** Whoever, with the knowledge that the in vitro human embryo will
16 intentionally be subjected to a substantial risk of injury or death for the purpose of
17 nontherapeutic human embryo research, transfers an in vitro human embryo to
18 another person is guilty of a Class E felony.

19 **(7)** Whoever creates an in vitro human embryo outside of a woman's body,
20 including through the removal of one or more cells from an existing in vitro human
21 embryo, for the purpose of undertaking nontherapeutic human embryo research is
22 guilty of a Class E felony.

23 **(8)** Whoever uses, transfers, or acquires any living cell or tissue that the actor
24 knows was obtained through conduct that is described under sub. (3), (5), or (7) is
25 guilty of a Class E felony. This subsection does not apply to a person who transfers

1 or acquires an in vitro human embryo for the purpose of having the embryo
2 implanted in a woman's uterus.

3 **(9)** Subsections (3) to (8) do not apply to any of the following:

4 (a) Cryopreserving an in vitro human embryo if the actor uses all available
5 means to protect and preserve the life and protect, preserve, and promote the health
6 of the embryo.

7 (b) Thawing an in vitro human embryo if the thawing is done for the purpose
8 of facilitating the implantation of the embryo in a woman's uterus consistent with
9 the criteria listed in par. (c) and if the actor uses all available means to protect and
10 preserve the life and protect, preserve, and promote the health of the embryo.

11 (c) Implanting or attempting to implant an in vitro human embryo in a woman's
12 uterus if the embryo was created by fertilization, if the implantation or attempted
13 implantation is done for the purpose of human reproduction, and if the woman
14 intends to carry any resultant pregnancy to term.

15 (d) The transfer or acquisition of an in vitro human embryo if the actor intends
16 that the embryo be cryopreserved consistent with the criteria listed in par. (a),
17 thawed consistent with the criteria listed in par. (b), or implanted in a woman's
18 uterus consistent with the criteria listed in par. (c).

19 (e) The donor of any gamete from which an in vitro human embryo is derived.

20 **(10)** Whoever purchases or sells an in vitro human embryo is guilty of a Class
21 E felony.

22 **SECTION 3. Nonstatutory provisions.**

23 (1) STUDY OF ADOPTION OF EMBRYOS AND REGULATION OF ASSISTED REPRODUCTIVE
24 SERVICES CLINICS.

25 (a) In this subsection:

1. "Clinic" means a clinic that provides assisted reproductive services.

2. "In vitro human embryo" has the meaning given in section 940.17 (2) (b) of the statutes.

(b) The joint legislative council shall study the issues relating to the adoption of in vitro human embryos and the regulation of clinics and shall prepare proposed legislation with a view toward accomplishing all of the following:

1. Reducing the number of in vitro human embryos created by clinics to a reasonable number needed for reproductive purposes.

2. Facilitating the adoption and implantation of unused in vitro human embryos created by clinics.

3. Providing a procedure by which those unused in vitro human embryos may be relinquished by their genetic parents for adoption and implantation.

4. Requiring that persons receiving assisted reproductive services at clinics be informed of the option of relinquishing their unused in vitro human embryos for adoption and implantation.

(c) The joint legislative council shall include in the study a study of current law relating to the adoption of children and other current law that might be relevant to the adoption of in vitro human embryos with a view toward modeling the proposed legislation relating to the adoption of in vitro human embryos after that current law.

(d) The joint legislative council shall report its findings, conclusions, and recommendations to the legislature in the manner provided under section 13.172 (2) of the statutes by January 1, 2003.

SECTION 4. Initial applicability.

(1) The treatment of section 940.17 (3) to (7) and (10) of the statutes first applies to offenses committed on the effective date of this subsection.

1 (2) The treatment of section 940.17 (8) of the statutes first applies to a use,
2 transfer, or acquisition of a living cell or tissue occurring on the effective date of this
3 subsection, even if the conduct that is described under section 940.17 (3), (5), or (7)
4 of the statutes and through which the cell or tissue was obtained occurred before the
5 effective date of this subsection.

6 (END)

Emery, Lynn

From: Gehrke, Jim
Sent: Friday, January 25, 2002 11:56 AM
To: LRB.Legal
Subject: Draft review: LRB-4771/1 Topic: Destruction of human embryo; use of human embryo for nontherapeutic purpose; human cloning

It has been requested by <Gehrke, Jim> that the following draft be jacketed for the SENATE:

Draft review: LRB-4771/1 Topic: Destruction of human embryo; use of human embryo for nontherapeutic purpose; human cloning