

**2001 DRAFTING REQUEST**

**Bill**

Received: 03/12/2001

Received By: nelsorp1

Wanted: As time permits

Identical to LRB:

For: Neal Kedzie (608) 266-9650

By/Representing: Dan Johnson

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Addl. Drafters:

Subject: Courts - immunity liability

Extra Copies:

Submit via email: NO

Requester's email:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Immunity in cases involving wrongful birth and wrongful life

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**Instructions:**

See Attached 99-3575

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	nelsorp1 03/22/2001	jdyer 03/26/2001		_____			
/1			martykr 03/27/2001	_____	lrb_docadmin 03/27/2001	lrb_docadmin 04/06/2001	
				_____		<del>lrb_docadmin</del> 04/06/2001	
				_____			

FE Sent For:

**<END>**

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1?	nelsorp1	1 3/20 jld	*m 3/27	<del>2</del> 3/27 *m/27			

FE Sent For:

<END>

# Bill Request Form

Legislative Reference Bureau  
100 N. Hamilton Street  
Legal Section 266-3561

*Use of this form is optional. It is often better to talk directly with the LRB attorney who will draft the bill.  
Use this form only for bill draft requests. Attach more pages if necessary.*

Date 3/9/01

Legislator, agency, or other person requesting this draft REP. NEAL KEDZIE

Person submitting request (name and phone number) DAN JOHNSON, 6-9650

Persons to contact for questions about this draft (names and phone numbers) SAME AS ABOVE

Describe the problem, including any helpful examples. How do you want to solve the problem?

RE-DRAFT REQUEST OF 1999 ASSEMBLY BILL 535.  
LRB 3575/1. BILL ATTACHED

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 1999 LRB-2345/1 or 1997 AB-67).

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? YES  NO

If yes:                      Anyone who asks?    YES    NO  
   Any legislator?        YES    NO

Only the following persons \_\_\_\_\_

Do you consider this request urgent?    YES    NO                      If yes, please indicate why \_\_\_\_\_

Should we give this request priority over any pending request of this legislator, agency, or person?  
YES  NO

**Nelson, Robert P.**

---

**From:** Johnson, Dan (Legislature)  
**Sent:** Thursday, March 22, 2001 8:58 AM  
**To:** Nelson, Robert P.  
**Subject:** RE: Status of re-draft request

Right, no amendments. Thank you Bob!

Dan

-----Original Message-----

**From:** Nelson, Robert P.  
**Sent:** Thursday, March 22, 2001 8:57 AM  
**To:** Johnson, Dan (Legislature)  
**Subject:** RE: Status of re-draft request

The draft is LRB-2813. Since it is a redraft, I hope to get it done by next week. I assume you do not want any of the amendments from last session added to the bill. I will draft it without any amendments unless I hear otherwise from you.

-----Original Message-----

**From:** Johnson, Dan (Legislature)  
**Sent:** Thursday, March 22, 2001 8:51 AM  
**To:** Nelson, Robert P.  
**Subject:** Status of re-draft request

Hi Bob,

Just a short note to inquire of the status of our re-draft request of 1999 AB 535 (LRB 3575/1).

Thank you!

Dan Johnson  
**State Representative Neal Kedzie**  
43rd Assembly District  
(608) 266-9650

**AB535**

**ASSEMBLY BILL 535**

An Act to create 895.68 of the statutes; relating to: immunity in cases involving wrongful birth and wrongful life.

1999

- 10-14-99. A. Introduced by Representatives Kedzie, Albers, Gundrum, Ladwig, Ziegelbauer, Walker, Huebsch, Owens, Goetsch, Porter, Leibham, Plale, Nass, Pettis, Urban, Suder, Sykora, Duff, Meyerhofer, Ryba, Spillner, Handrick, Freese, Seratti, Grothman, Ott, Powers, Kreibich, Vrakas, Wieckert and Montgomery; cosponsored by Senators Fitzgerald, Drzewiecki, Lazich, Welch, Roessler, Zien, Farrow and Schultz.
- 10-14-99. A. Read first time and referred to committee on Family Law . . . . . **390**
- 10-14-99. A. Public hearing held.
- 10-20-99. A. Executive action taken.
- 10-28-99. A. Report passage recommended by committee on Family Law, Ayes 8, Noes 1 **474**
- 10-28-99. A. Referred to committee on Rules . . . . . **474**
- 11-04-99. A. Placed on calendar 11-9-1999 by committee on Rules.
- 11-09-99. A. Read a second time . . . . . **532**
- 11-09-99. A. Assembly amendment 1 offered by Representatives Berceau, Wasserman and Sinicki . . . . . **532**
- 11-09-99. A. Assembly amendment 1 laid on table, Ayes 59, Noes 37 . . . . . **532**
- 11-09-99. A. Assembly amendment 2 offered by Representative Wasserman . . . . . **533**
- 11-09-99. A. Assembly amendment 2 placed after Assembly amendment 3 . . . . . **533**
- 11-09-99. A. Assembly amendment 3 offered by Representatives Cullen, Wasserman, Richards, Riley and Bock . . . . . **533**
- 11-09-99. A. Assembly amendment 3 laid on table, Ayes 59, Noes 36, Paired 2 . . . . . **533**
- 11-09-99. A. Assembly amendment 2 laid on table, Ayes 61, Noes 34, Paired 2 . . . . . **533**
- 11-09-99. A. Assembly amendment 4 offered by Representatives Colon, Sinicki, Krug, Bock, Berceau, Morris-Tatum, Young and Lassa. . . . . **533**
- 11-09-99. A. Assembly amendment 4 laid on table, Ayes 59, Noes 36, Paired 2 . . . . . **533**
- 11-09-99. A. Assembly amendment 5 offered by Representative Wasserman . . . . . **534**
- 11-09-99. A. Point of order that Assembly amendment 5 not germane well taken . . . . . **534**
- 11-09-99. A. Ordered to a third reading. . . . . **534**
- 11-09-99. A. Rules suspended . . . . . **534**
- 11-09-99. A. Read a third time and passed, Ayes 62, Noes 30, Paired 6 . . . . . **534**
- 11-09-99. A. Ordered immediately messaged . . . . . **534**
- 11-10-99. S. Received from Assembly . . . . . **338**
- 11-10-99. S. Read first time and referred to committee on Judiciary and Consumer Affairs **339**

2000

- 03-14-00. S. Refused to withdraw from committee on Judiciary and Consumer Affairs and

	take up, <u>Ayes 16, Noes 17</u> .....	<u>503</u>
04-06-00. S.	Failed to concur in pursuant to Senate Joint Resolution 1 .....	<u>583</u>



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

LRB-3575/1dn  
RPN:cjs&ksh:kjf

September 9, 1999

I am concerned that the draft may create immunity in unintended situations, such as if the mother dies as a result of the birth of the child. Should we refer to wrongful birth and wrongful life actions as being subject to the immunity and then define those terms?

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511

2001  
~~1999~~ ASSEMBLY BILL 535

October 14, 1999 – Introduced by Representatives KEDZIE, ALBERS, GUNDRUM, LADWIG, ZIEGELBAUER, WALKER, HUEBSCH, OWENS, GOETSCH, PORTER, LEIBHAM, PLALE, NASS, PETTIS, URBAN, SUDER, SYKORA, DUFF, MEYERHOFER, RYBA, SPILLNER, HANDRICK, FREESE, SERATTI, GROTHMAN, OTT, POWERS, KREIBICH, VRAKAS, WIECKERT and MONTGOMERY, cosponsored by Senators FITZGERALD, DRZEWIECKI, LAZICH, WELCH, ROESSLER, ZIEN, FARROW and SCHULTZ. Referred to Committee on Family Law.

Regen

1 AN ACT to create 895.68 of the statutes; relating to: immunity in cases involving  
2 wrongful birth and wrongful life. ✓

**Analysis by the Legislative Reference Bureau**

Under current law, if a child is born with a disability that a person (usually a health care provider) could have informed the parents about while there was still time for the child to be aborted, that person may be liable for the costs of caring for that child and for the child's related medical expenses. The person could be liable under current law if he or she negligently failed to inform the parents of the disability or if he or she negligently incorrectly diagnosed the fetus's condition while an abortion was an available option. If the parents of the child sue for costs resulting from caring for that child, the action is called a wrongful birth action. ✓ If the child sues for damages because of being born with a disability, the action is called a wrongful life action. The Wisconsin supreme court has recognized the right to sue for wrongful birth, but has not recognized the right to sue for wrongful life.

This bill creates an immunity from a wrongful birth or wrongful life action for a person who commits an act or fails to commit an act and that act or omission results in the birth of a child because a woman did not undergo an abortion that she would have undergone had the person not committed the act or not failed to commit the act.

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





STEPHEN R. MILLER  
CHIEF

# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET  
5TH FLOOR  
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561  
LEGAL FAX: (608) 264-6948

March 27, 2001

### MEMORANDUM

To: Representative Kedzie

From: Robert P. Nelson, Senior Legislative Attorney

Re: LRB-2813 Immunity in cases involving wrongful birth and wrongful life

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY     JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 267-7511 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.