

2001 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB360)

Received: 05/24/2001

Received By: nelsorp1

Wanted: 05/25/2001

Identical to LRB:

For: Neal Kedzie (608) 266-9650

By/Representing:

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:

Pre Topic:

No specific pre topic given

Topic:

Wrongful birth and wrongful life action immunity

Instructions:

See Attached

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>
/1	nelsorp1 05/24/2001	gilfokm 05/24/2001	rschlue 05/24/2001		lrb_docadmin 05/24/2001	lrb_docadmin 05/24/2001	
/2	nelsorp1 05/29/2001	gilfokm 05/29/2001	pgreensl 05/30/2001		lrb_docadmin 05/30/2001	lrb_docadmin 05/30/2001	

FE Sent For:

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Text: 5/29 changed 2nd "and" on p 2, 14 to "or"

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FE Sent For:		12-5/KWG 129-01	5/30 PG				<END>

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1?	nelsorp1	11-5/KMG 10-12-01	B 5-24-01	JF 5-24-01			

FE Sent For:

<END>

APP to AB 360

1. Add definitions (in)

2. Add "civil" before immunity

Person immune

wrongful birth -

wrongful life -

injured damages

associated w/

whether or not

W L
Wisconsin
Right to Life, Inc.

11275 West North Avenue
Milwaukee, WI 53226
TEL: 778-5720
FAX: 778-5785

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Wisconsin Right to Life, Inc.
The Wisconsin Right to Life Foundation
11275 West North Avenue
Milwaukee, WI 53226
TEL: 778-5720
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May 15, 1997

Robert P. Nelson
Legislative Reference Bureau
100 N. Hamilton Street, 5th Floor
Madison, WI 53703

Re: LRB-2585 -- Wrongful Birth and Wrongful Life

Dear Bob,

This is to confirm the conversation Representative Mark Green and I had with you today concerning the final draft for LRB-2585.

The intent of the draft is to prohibit civil actions for wrongful birth and wrongful life, and to specifically nullify the ruling in Dumer v. St. Michael's Hospital, 69 Wis.2d 766 (1975). For clarification, these actions are defined as follows:

Wrongful birth -- an action brought by parents seeking damages for the birth of a child with disabilities, alleging that they would have aborted the child if the defendants had properly tested, detected, or warned them of the risks of a disability.

Wrongful life -- an action brought by or on behalf of a child with disabilities, alleging that its very existence is a legal wrong and that, but for the negligence of the defendants in failing to test, detect, or warn of a disability, the child would have been aborted.

It is not the intent of this legislation to effect any claims for wrongful conception or wrongful pregnancy, which are defined as follows:

Wrongful conception -- an action brought by parents against the defendant for the pregnancy and birth of a nondisabled child following a negligently performed sterilization or contraception procedure.

Wrongful pregnancy -- an action brought by parents against a defendant for the pregnancy and birth of a nondisabled child following a negligently performed abortion procedure.

Please use the attached Minnesota statute section 145.424 as a model, especially subdivisions 1 and 2, using terminology prohibiting a person from maintaining an action (see also, s. 895.50 (7), Wis. Stats.), and the immunity language that LRB prefers.

Delivered by the Wisconsin Statewide Mail

Sub AB 360

the child's

any

brought by a parent or legal guardian

895.68 Liability exemption; wrongful birth action or wrongful life action. (1) In this section:

- (a) "Abortion" has the meaning given in s. 253.10 (2). *the time of that manifestation (existed)*
- (b) "Wrongful birth action" means any action that seeks damages for the cost of raising a child who has any birth defect or physical or developmental disability. *at birth*
- (c) "Wrongful life action" means any action that seeks damages for pain, suffering or medical costs associated with any birth defect or physical or developmental disability. *that existed at birth*

(2) In a wrongful birth action or wrongful life action, a person is immune from civil liability for the birth of a child if his or her act or omission contributed to a woman's decision not to undergo an abortion.

whether or not

brought by or on behalf of child

Damages resulting from

Add DD's
BD's
PD
Definitions



D-Note

King

**ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2001 ASSEMBLY BILL 360**

Gen. Cost.

1 AN ACT ~~relating to~~; relating to: immunity in cases involving wrongful birth and wrongful
2 life.

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

3 SECTION 1. 895.68 of the statutes is created to read:

4 **895.68 Liability exemption; wrongful birth and wrongful life.** (1) In
5 this section:

6 (a) "Abortion" has the meaning given in s. 253.10 (2) (a).

7 (b) "Birth defect" has the meaning given in s. 253.12 (1) (a).

8 (c) "Developmental disability" has the meaning given in s. 51.01 (5) (a).

9 (d) "Physical disability" has the meaning given in s. 15.197 (4) (a) 2.

10 (e) "Wrongful birth action" means a cause of action ^{that is} brought by a parent, legal
11 custodian, or legal guardian ~~who~~ seeks damages for the costs of raising a child who

and that

1 has any birth defect or any physical disability or developmental disability that
2 existed at the time of the child's birth.

3 (f) "Wrongful life action" means a cause of action brought by or on behalf of a
4 child ^{and} that seeks the child's economic and noneconomic damages resulting from any
5 birth defect or any physical disability or developmental disability that existed at the
6 time of the child's birth.

7 (2) In a wrongful birth action or a wrongful life action, a person is immune from
8 civil liability for ~~the~~ damages resulting from any birth defect or any physical
9 disability or developmental disability that existed at the time of the child's birth if
10 the person's act or omission contributed to a woman's decision not to undergo an
11 abortion.

12 **SECTION 2. Initial applicability.**

13 (1) This act first applies to acts or omissions occurring on the effective date of
14 this subsection.

15 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0128/1dn

RPN: f...
King

I did include the possibility of a legal custodian bringing an action for wrongful birth, by enlarging the definition to include them to make sure ^{that} the immunity would cover such actions. However, I am not sure that someone, such as a county that is given legal custody of a child, has the right to bring an action for wrongful birth.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0128/1dn
RPN:kmg:rs

May 24, 2001

I did include the possibility of a legal custodian bringing an action for wrongful birth, by enlarging the definition to include them to make sure that the immunity would cover such actions. However, I am not sure that someone, such as a county that is given legal custody of a child, has the right to bring an action for wrongful birth.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
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500n (5/29)
State of Wisconsin
2001 - 2002 LEGISLATURE

LRBs0128/A
RPN:kmg:rs

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2001 ASSEMBLY BILL 360

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

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

3 SECTION 1. 895.68 of the statutes is created to read:

4 895.68 Liability exemption; wrongful birth and wrongful life. (1) In
5 this section:

6 (a) "Abortion" has the meaning given in s. 253.10 (2) (a).

7 (b) "Birth defect" has the meaning given in s. 253.12 (1) (a).

8 (c) "Developmental disability" has the meaning given in s. 51.01 (5) (a).

9 (d) "Physical disability" has the meaning given in s. 15.197 (4) (a) 2.

10 (e) "Wrongful birth action" means a cause of action that is brought by a parent,
11 legal custodian, or legal guardian and that seeks damages for the costs of raising a

1 child who has any birth defect or any physical disability or developmental disability
2 that existed at the time of the child's birth.

3 (f) "Wrongful life action" means a cause of action that is brought by or on behalf
4 of a child and that seeks the child's economic ~~and~~^{or} noneconomic damages resulting
5 from any birth defect or any physical disability or developmental disability that
6 existed at the time of the child's birth.

7 (2) In a wrongful birth action or a wrongful life action, a person is immune from
8 civil liability for damages resulting from any birth defect or any physical disability
9 or developmental disability that existed at the time of the child's birth if the person's
10 act or omission contributed to a woman's decision not to undergo an abortion.

11 **SECTION 2. Initial applicability.**

12 (1) This act first applies to acts or omissions occurring on the effective date of
13 this subsection.

14 (END)

Barman, Mike

From: Barman, Mike
Sent: Thursday, May 31, 2001 11:05 AM
To: Rep.Kedzie
Subject: LRBs0128/2 (attached) (requested by Kent)

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
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05/31/2001