

**2001 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-AB360)**

Received: **01/14/2002**

Received By: **nelsorp1**

Wanted: **Today**

Identical to LRB:

For: **Neal Kedzie (608) 266-9650**

By/Representing: **Kent**

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

Drafter: **nelsorp1**

May Contact:

Addl. Drafters:

Subject: **Courts - immunity liability**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Kedzie@legis.state.wi.us** ✓

Carbon copy (CC:) to: **kent.vernon@legis.state.wi.us** ✓

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Wrongful birth and wrongful life 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>
/?	nelsorp1 01/14/2002	jdyer 01/14/2002		_____			
/1			jfrantze 01/14/2002	_____	lrb_docadmin 01/14/2002	lrb_docadmin 01/14/2002	
/2	nelsorp1	jdyer	pgreensl	_____	lrb_docadmin	lrb_docadmin	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	01/16/2002	01/16/2002	01/16/2002	_____	01/16/2002	01/16/2002	

FE Sent For:

**<END>**

**2001 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-AB360)**

Received: 01/14/2002

Received By: nelsorp1

Wanted: Today

Identical to LRB:

For: Neal Kedzie (608) 266-9650

By/Representing: Kent

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Addl. Drafters:

Subject: Courts - immunity liability

Extra Copies: Laura Rose,  
LC

Submit via email: YES

Requester's email: Rep.Kedzie@legis.state.wi.us

Carbon copy (CC:) to: kent.vernon@legis.state.wi.us

**Pre Topic:**

No specific pre topic given

**Topic:**

Wrongful birth and wrongful life immunity

*1/15 Mtg w/ Kent v. d  
Laura Rose. say "no person  
may recover damages..." please  
remove "negligence" in definition*

**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>
/?	nelsorp1 01/14/2002	jdyer 01/14/2002		<del>1/16</del>			
/1		1/2 1/16 jld	jfrantze 01/14/2002	<del>PS/B</del>	lrb_docadmin 01/14/2002	lrb_docadmin 01/14/2002	

*40  
P8*

01/14/2002 12:12:04 PM

Page 2

**LRBs0283**

**FE Sent For:**

**<END>**

**2001 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-AB360)**

Received: 01/14/2002

Received By: nelsorp1

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Identical to LRB:

For: Neal Kedzie (608) 266-9650

By/Representing: Kent

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Addl. Drafters:

Subject: Courts - immunity liability

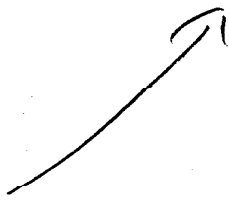
Extra Copies:

*2 Laura Rose,  
LC*

Submit via email: YES

Requester's email: Rep.Kedzie@legis.state.wi.us

Carbon copy (CC:) to: kent.vernon@legis.state.wi.us



**Pre Topic:**

No specific pre topic given

**Topic:**

Wrongful birth and wrongful life 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>
/?	nelsorp1	<i>1/14 jld</i>	<i>1/14</i>	<i>1/14</i>			

FE Sent For:

<END>

**Nelson, Robert P.**

---

**From:** Vernon, Kent  
**Sent:** Monday, January 14, 2002 10:07 AM  
**To:** Rose, Laura; Nelson, Robert P.  
**Cc:** 'mklaver@wrtl.org'  
**Subject:** RE:

Dear Laura and Bob,

Bob, would you prepare another draft based on your and Laura's suggestions? Can you have a draft ready by today or tomorrow morning, and would you have the front desk email me a .pdf file when the amendment is prepared?

Laura, Neal will not be available to review the draft until tomorrow afternoon. Assuming the new substitute amendment is ready by then and Neal immediately approves it, can you revise the January 10, 2002 a Leg. Council Staff Memo in time for Thursday's executive session?

Thank you both,

Kent

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

**From:** Rose, Laura  
**Sent:** Monday, January 14, 2002 8:25 AM  
**To:** Nelson, Robert P.; Vernon, Kent  
**Cc:** 'mklaver@wrtl.org'  
**Subject:** RE:

Bob,

I like the latter version of sub. (2) in your message below. I think that, along with the revised definitions of the causes of action, would comprise a good substitute amendment.

Kent, what do you think about this?

*Laura Rose  
Legislative Council  
266-9791  
laura.rose@legis.state.wi.us*

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

**From:** Nelson, Robert P.  
**Sent:** Friday, January 11, 2002 3:34 PM  
**To:** Rose, Laura; Vernon, Kent  
**Subject:** RE:

I talked to Mary. I can understand why she is concerned. When I read the cause of action definitions in the sub., I think that the bill is talking about medical malpractice. You have to read to the end of the bill to see what acts are given immunity. I made changes in Laura's original suggested language that got rid of the "based on the....abortion" language to streamline the draft, but I should not have made that change in the definition. I suggest that we do another substitute amendment that looks like what Laura suggests in this e-mail, except that sub. (2) seems kind of strange. That subsection is not like the rest of ch. 895. The language is so broad and does not mention acts or omissions, as is done through out chapter 895. See, for example, ss 895.48 (1) and (1m), 895. 482 (2), 895.483 and 895.51 to 517. I know the definition covers negligent acts or omissions, but it just does

not sound right.

Perhaps sub. (2) should read: "No person may recover damages in a civil wrongful birth or wrongful life action", except that this language would appear to give immunity to persons who intentionally act or fail to act, which is not the author's intent. Perhaps a better way to say this is: "A person is immune from civil liability for his or her negligent acts or omissions that result in another person alleging a claim under a wrongful birth action or a wrongful life action".

Any suggestions?

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

**From:** Rose, Laura  
**Sent:** Friday, January 11, 2002 2:33 PM  
**To:** Nelson, Robert P.; Vernon, Kent  
**Cc:** 'mklaver@wrtl.org'  
**Subject:**

Hi Bob and Kent,

I just got off the phone with Mary Klaver regarding ASA 2 to AB 360. She has some concerns with the definitions of "wrongful birth action" and "wrongful life action". She thinks it would be preferable to move some of the language in the immunity provision to the definitions.

My understanding is that she would prefer a substitute amendment that would read as follows:

... (b) "Wrongful birth action" means a cause of action that is brought by a parent or other person who is legally required to provide for the support of a child, and that seeks economic or noneconomic damages resulting from a condition of the child that existed at the time of the child's birth, and is based on a claim that a person's negligent act or omission contributed to the mother's decision not to undergo an abortion.

(c) "Wrongful life action" means a cause of action that is brought by or on behalf of a child and that seeks the child's economic or noneconomic damages resulting from a condition of the child that existed at the time of the child's birth, and is based on a claim that a person's negligent action or omission contributed to the mother's decision not to undergo an abortion.

(2) In a wrongful birth action or a wrongful life action, a person is immune from civil liability for damages.

Please let me know what you think. She is concerned that the definitions in ASA 2 do not accurately define the causes of action. I spoke with Bob about this earlier, I believe.

Have a nice weekend,

Laura

*Laura Rose*  
*Legislative Council*  
*266-9791*  
*laura.rose@legis.state.wi.us*

**Nelson, Robert P.**

---

**From:** Rose, Laura  
**Sent:** Monday, January 14, 2002 8:25 AM  
**To:** Nelson, Robert P.; Vernon, Kent  
**Cc:** 'mklaver@wrti.org'  
**Subject:** RE:

Bob,

I like the latter version of sub. (2) in your message below. I think that, along with the revised definitions of the causes of action, would comprise a good substitute amendment.

Kent, what do you think about this?

*Laura Rose*  
*Legislative Council*  
*266-9791*  
*laura.rose@legis.state.wi.us*

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**From:** Nelson, Robert P.  
**Sent:** Friday, January 11, 2002 3:34 PM  
**To:** Rose, Laura; Vernon, Kent  
**Subject:** RE:

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Perhaps sub. (2) should read: "No person may recover damages in a civil wrongful birth or wrongful life action", except that this language would appear to give immunity to persons who intentionally act or fail to act, which is not the author's intent. Perhaps a better way to say this is: "A person is immune from civil liability for his or her negligent acts or omissions that result in another person alleging a claim under a wrongful birth action or a wrongful life action".

Any suggestions?

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**From:** Rose, Laura  
**Sent:** Friday, January 11, 2002 2:33 PM  
**To:** Nelson, Robert P.; Vernon, Kent  
**Cc:** 'mklaver@wrti.org'  
**Subject:**

Hi Bob and Kent,



I just got off the phone with Mary Klaver regarding ASA 2 to AB 360. She has some concerns with the definitions of "wrongful birth action" and wrongful life action". She thinks it would be preferable to move some of the language in the immunity provision to the definitions.

My understanding is that she would prefer a substitute amendment that would read as follows:

... (b) "Wrongful birth action" means a cause of action that is brought by a parent or other person who is legally required to provide for the support of a child and that seeks economic or noneconomic damages resulting from a condition of the child that existed at the time of the child's birth, and is based on a claim that a person's negligent act or omission contributed to the mother's decision not to undergo an abortion.

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(2) In a wrongful birth action or a wrongful life action, a person is immune from civil liability for damages.

Please let me know what you think. She is concerned that the definitions in ASA 2 do not accurately define the causes of action. I spoke with Bob about this earlier, I believe.

Have a nice weekend,

Laura

*Laura Rose*  
*Legislative Council*  
*266-9791*  
*[laura.rose@legis.state.wi.us](mailto:laura.rose@legis.state.wi.us)*

## **Nelson, Robert P.**

---

**From:** Nelson, Robert P.  
**Sent:** Friday, January 11, 2002 3:34 PM  
**To:** Rose, Laura; Vernon, Kent  
**Subject:** RE:

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Any suggestions?

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**From:** Rose, Laura  
**Sent:** Friday, January 11, 2002 2:33 PM  
**To:** Nelson, Robert P.; Vernon, Kent  
**Cc:** 'mklaver@wrtl.org'  
**Subject:**

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**Nelson, Robert P.**

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**Sent:** Friday, January 11, 2002 2:33 PM  
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**Cc:** 'mklaver@wrtl.org'

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*Laura Rose  
Legislative Council  
266-9791  
laura.rose@legis.state.wi.us*

Please let me know what you think. She is concerned that the definitions in ASA 2 do not accurately define the causes of action. I spoke with Bob about this earlier, I believe.

Have a nice weekend,

Laura

*Laura Rose*  
*Legislative Council*  
*266-9791*  
*[laura.rose@legis.state.wi.us](mailto:laura.rose@legis.state.wi.us)*

1/14 lpm

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

~~December 17, 2001 - Offered by Representative KEDZIE.~~

Regen

1 **AN ACT** to create 895.68 of the statutes; relating to: immunity in cases  
2 involving wrongful birth or 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) "Wrongful birth action" means a cause of action that is brought by a parent  
8 or other person who is legally required to provide for the support of a child, ~~and that~~  
9 seeks economic or noneconomic damages resulting from a condition of the child that  
10 existed at the time of the child's birth, and ~~that~~ is based

on a claim that a person's negligent act or omission contributed to the mother's decision not to undergo an abortion.

1 (c) "Wrongful life action" means a cause of action that is brought by or on behalf  
 2 of a child, ~~and that~~ seeks the child's economic or noneconomic damages resulting from  
 3 a condition of the child that existed at the time of the child's birth.

4 (2) ~~In a wrongful birth action or a wrongful life action,~~ a person is immune from  
 5 civil liability for ~~damages resulting from any condition that existed at the time of the~~  
 6 ~~child's birth if the cause of action is based on a claim that the person's negligent act~~  
 7 ~~or omission contributed to the mother's decision not to undergo an abortion.~~

8 (END)

his or her negligent acts or omissions  
 that result in another person alleging  
 a claim under a wrongful birth  
 action or a wrongful life action

**Nelson, Robert P.**

---

**From:** Rose, Laura  
**Sent:** Monday, January 14, 2002 1:38 PM  
**To:** Nelson, Robert P.; Vernon, Kent  
**Subject:** FW: LRB 0283/1

Bob and Kent,

I think the reference to "negligent" should be removed from both definitions, and just mentioned in the immunity section. Couldn't wrongful birth and wrongful life actions also include intentional acts or omissions, even though the draft only provides immunity for negligent acts or omissions?

Kent, are you planning to run this by Mary Klaver before it is introduced?

Laura

*Laura Rose*  
*Legislative Council*  
*266-9791*  
*[laura.rose@legis.state.wi.us](mailto:laura.rose@legis.state.wi.us)*

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

**From:** Basford, Sarah  
**Sent:** Monday, January 14, 2002 12:18 PM  
**To:** Rose, Laura  
**Cc:** Vernon, Kent  
**Subject:**



01s0283/1

**Sarah Basford**  
Program Assistant  
State of Wisconsin  
Legislative Reference Bureau  
PH: (608) 266-3561/FAX: (608) 264-6948  
[sarah.basford@legis.state.wi.us](mailto:sarah.basford@legis.state.wi.us)

**Nelson, Robert P.**

---

**From:** Vernon, Kent  
**Sent:** Monday, January 14, 2002 3:35 PM  
**To:** Nelson, Robert P.; Rose, Laura  
**Subject:** RE: LRB 0283/1

Bob, I will make sure Rep. Kedzie is aware of your and Laura's suggestion.

Kent

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

**From:** Nelson, Robert P.  
**Sent:** Monday, January 14, 2002 3:33 PM  
**To:** Rose, Laura; Vernon, Kent  
**Subject:** RE: LRB 0283/1

Let me know if you want to remove the word "negligent". I think Laura is right, but I will do whatever Kent says.

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

**From:** Rose, Laura  
**Sent:** Monday, January 14, 2002 1:38 PM  
**To:** Nelson, Robert P.; Vernon, Kent  
**Subject:** FW: LRB 0283/1

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I think the reference to "negligent" should be removed from both definitions, and just mentioned in the immunity section. Couldn't wrongful birth and wrongful life actions also include intentional acts or omissions, even though the draft only provides immunity for negligent acts or omissions?

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Laura

*Laura Rose  
Legislative Council  
266-9791  
laura.rose@legis.state.wi.us*

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

**From:** Basford, Sarah  
**Sent:** Monday, January 14, 2002 12:18 PM  
**To:** Rose, Laura  
**Cc:** Vernon, Kent  
**Subject:**

<< File: 01s0283/1 >>

**Sarah Basford**  
Program Assistant  
State of Wisconsin  
Legislative Reference Bureau  
PH: (608) 266-3561/FAX: (608) 264-6948  
[sarah.basford@legis.state.wi.us](mailto:sarah.basford@legis.state.wi.us)



**Nelson, Robert P.**

---

**From:** Mary Klaver [mklaver@wrtl.org]  
**Sent:** Monday, January 14, 2002 10:18 AM  
**To:** Rose, Laura  
**Cc:** Nelson, Robert P.; Vernon, Kent  
**Subject:** Re: AB 360

Laura, Bob and Kent,

I agree with Bob's recommendation, as modified by Laura's preference. It would be a good substitute amendment and take care of the concerns about medical malpractice.

I would appreciate an opportunity to review the final draft before it is introduced.

Mary Klaver  
Wisconsin Right to Life  
414-778-5780

-----  
"Rose, Laura" wrote:

> Bob,  
>  
> I like the latter version of sub. (2) in your message below. I think that,  
> along with the revised definitions of the causes of action, would comprise a  
> good substitute amendment.  
>  
> Kent, what do you think about this?  
>  
> Laura Rose  
> Legislative Council  
> 266-9791  
> laura.rose@legis.state.wi.us  
>  
> > -----Original Message-----  
> > From: Nelson, Robert P.  
> > Sent: Friday, January 11, 2002 3:34 PM  
> > To: Rose, Laura; Vernon, Kent  
> > Subject: RE:  
> >  
> > I talked to Mary. I can understand why she is concerned. When I read the  
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> > language is so broad and does not mention acts or omissions, as is done  
> > through out chapter 895. See, for example, ss 895.48 (1) and (1m), 895.  
> > 482 (2), 895.483 and 895.51 to 517. I know the definition covers  
> > negligent acts or omissions, but it just does not sound right.  
> >  
> > Perhaps sub. (2) should read: "No person may recover damages in a civil  
> > wrongful birth or wrongful life action", except that this language would  
> > appear to give immunity to persons who intentionally act or fail to act,  
> > which is not the author's intent. Perhaps a better way to say this is: "A  
> > person is immune from civil liability for his or her negligent acts or  
> > omissions that result in another person alleging a claim under a wrongful  
> > birth action or a wrongful life action".

> > Any suggestions?

> > -----Original Message-----

> > From: Rose, Laura  
> > Sent: Friday, January 11, 2002 2:33 PM  
> > To: Nelson, Robert P.; Vernon, Kent  
> > Cc: 'mklaver@wrtl.org'  
> > Subject:

> > Hi Bob and Kent,

> > I just got off the phone with Mary Klaver regarding ASA 2 to AB 360.

> > She has some concerns with the definitions of "wrongful birth action" and  
> > wrongful life action". She thinks it would be preferable to move some of  
> > the language in the immunity provision to the definitions.

> > My understanding is that she would prefer a substitute amendment

> > that would read as follows:

> > . . .(b) "Wrongful birth action" means a cause of action that

is

> > brought by a parent or other person who is legally required to provide for  
> > the support of a child and that seeks economic or noneconomic damages  
> > resulting from a condition of the child that existed at the time of the  
> > child's birth, and is based on a claim that a person's negligent act or  
> > omission contributed to the mother's decision not to undergo an abortion.

> >

> > (c) "Wrongful life action" means a cause of action that is

> > brought by or on behalf of a child and that seeks the child's economic or  
> > noneconomic damages resulting from a condition of the child that existed  
> > at the time of the child's birth, and is based on a claim that a person's  
> > negligent action or omission contributed to the mother's decision not to  
> > undergo an abortion.

> >

> > (2) In a wrongful birth action or a wrongful life action,

a  
> > person is immune from civil liability for damages.

> >

> >

> > Please let me know what you think. She is concerned that the  
> > definitions in ASA 2 do not accurately define the causes of action.

I

> > spoke with Bob about this earlier, I believe.

> >

> > Have a nice weekend,

> >

> > Laura

> >

> > Laura Rose

> > Legislative Council

> > 266-9791

> > laura.rose@legis.state.wi.us

> >



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRBs0283/1  
RPN:jld:jf

1/16 CO an

2

ASSEMBLY SUBSTITUTE AMENDMENT,  
TO 2001 ASSEMBLY BILL 360

1 <sup>Reger</sup> AN ACT <sup>recovery</sup> to create 895.68 of the statutes; relating to: ~~immunity~~ in cases involving  
2 wrongful birth or 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 <sup>Limit on recovery</sup> 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) "Wrongful birth action" means a cause of action that is brought by a parent  
8 or other person who is legally required to provide for the support of a child, seeks  
9 economic or noneconomic damages resulting from a condition of the child that existed  
10 at the time of the child's birth, and is based on a claim that a person's ~~parent~~ act  
11 or omission contributed to the mother's decision not to undergo an abortion.

1 (c) "Wrongful life action" means a cause of action that is brought by or on behalf  
2 of a child, seeks the child's economic or noneconomic damages resulting from a  
3 condition of the child that existed at the time of the child's birth, and is based on a  
4 claim that a person's ~~negligent~~ act or omission contributed to the mother's decision  
5 not to undergo an abortion.

6 (2) ~~A person is immune from civil liability for his or her negligent acts or~~  
7 ~~omissions that result in another person alleging a claim under~~ a wrongful birth  
8 action or a wrongful life action.

9 (END)

↓  
no person may recover damages  
from another person  
resulting from any condition that  
existed at the time of a child's  
birth if that other person's negligent  
act or omission contributed to the  
mother's decision not to undergo an  
abortion.

**Emery, Lynn**

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**From:** Emery, Lynn  
**Sent:** Wednesday, January 16, 2002 9:34 AM  
**To:** Vernon, Kent  
**Subject:** LRBs0283/2 (attached from RPN)

**Lynn Emery**

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