

2003 DRAFTING REQUEST

Bill

Received: **04/07/2003**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Gundrum (608) 267-5158**

By/Representing: **Mary Klaver**

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

Drafter: **dkennedy**

May Contact:

Addl. Drafters: **mdsida**

Subject: **Health - abortion**

Extra Copies: **RLR**

Submit via email: **YES**

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Determination of live birth

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>
/?							State
/1	dkennedy 04/22/2003	csicilia 04/23/2003	pgreensl 04/23/2003		lemery 04/23/2003		State
/2	dkennedy 04/25/2003	csicilia 04/25/2003	jfrantze 04/28/2003		lemery 04/28/2003	mbarman 05/13/2003	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

↳ A+ intro

<END>

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FE Sent For:

Handwritten notes: 1/2 cjs 4/25/03, 1/2 Sulf 4/28

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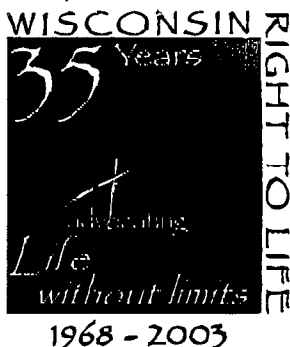
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/?	dkennedy	1 cis 4/23 03	<i>[Signature]</i>	<i>[Signature]</i>			

<END>

FE Sent For:

[Signature]



SENT VIA FAX (608-264-6948)

April 7, 2003

Debora Kennedy
 Legislative Reference Bureau
 100 North Hamilton Street
 Madison, WI 53703

Re: Born Alive Legislation

Dear Debora,

Please draft the attached proposal for Senator Mary Lazich and Representative Mark Gundrum.

The intent of this legislation is to clarify that infants who are born alive after an abortion have the same legal rights as infants born alive after a natural or induced labor or a cesarean section. In other words, the circumstance of how a live birth occurs does not affect the legal status of the newborn.

Also attached for your reference is a copy of the federal Born-Alive Infants Protection Act of 2002, which is similar legislation passed by the U.S. Congress last year. As you can see, the federal act only applies to "any Act of Congress" or "any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States". The attached proposal is an adaptation of this federal law for the State of Wisconsin.

If you have any questions, please do not hesitate to contact me at 414-778-5780.

Sincerely,

Mary A. Klaver
 Legislative Legal Counsel

cc: Senator Mary Lazich
 Representative Mark Gundrum

WRL Board of Directors
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Education Director
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Chapter Director
Dorcas Shirk

Wisconsin Right to Life, Inc.
 10625 W. North Ave., Suite LL
 Milwaukee, WI 53226-2351

Ph: 414-778-5780
 Fax: 414-778-5785
 Toll Free: 877-855-5007
 Home Page: www.wrtl.org

Help make Life Without Limits a reality for future generations
 Please remember Wisconsin Right to Life in your will, living trust or life insurance

146.705 Determination of live birth. (1) In this section:

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

(b) "Live birth" means the complete expulsion or extraction of a human being from his or her mother, at any stage of development, who after the expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, a cesarean section, or an abortion.

(2) An individual who undergoes a live birth is born alive.

(3) Nothing in this section shall be construed to affirm, deny, expand, or contract any legal status or legal right applicable to a human being at any point prior to being born alive.

116 STAT. 926

PUBLIC LAW 107-207—AUG. 5, 2002

Public Law 107-207
107th Congress

An Act

To protect infants who are born alive.

Aug. 5, 2002
[H.R. 2175]

Born-Alive
Infants
Protection Act of
2002.
1 USC 1 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Born-Alive Infants Protection Act of 2002".

SEC. 2. DEFINITION OF BORN-ALIVE INFANT.

(a) IN GENERAL.—Chapter 1 of title 1, United States Code, is amended by adding at the end the following:

"§ 8. 'Person', 'human being', 'child', and 'individual' as including born-alive infant

"(a) In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the words 'person', 'human being', 'child', and 'individual', shall include every infant member of the species homo sapiens who is born alive at any stage of development.

"(b) As used in this section, the term 'born alive', with respect to a member of the species homo sapiens, means the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.

"(c) Nothing in this section shall be construed to affirm, deny, expand, or contract any legal status or legal right applicable to any member of the species homo sapiens at any point prior to being 'born alive' as defined in this section."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1 of title 1, United States Code, is amended by adding at the end the following new item:

"8. 'Person', 'human being', 'child', and 'individual' as including born-alive infant."

Approved August 5, 2002.

LEGISLATIVE HISTORY—H.R. 2175:

HOUSE REPORTS: No. 107-186 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 148 (2002):

Mar. 12, considered and passed House.

July 18, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 38 (2002):
Aug. 5, Presidential remarks.

4/7/03 Discussion with Mary Klauer, DAK, Mike Dsida,
Gordon Malaise

What is objective with the bill generally?

Objective ~~is~~ ~~is~~
Is objective

USCA PP Cont. NJ. v. Farmer 200 F3d 127 ~~127~~
(2000)

Why put in 146. ?

- ① Direct response to Cornelius case
- ② Construction clause is important

Preston v. Merten - Baby Doe problem
ENTALA

One of objectives is to remedy Farmer - re intent of how
ab took place

Wants not to get into an = pro. problem) re infants
born naturally

Mike: location in 146. may not be reviewed by a court
to have that protection

Mary: when GMM + she had talked, problem wd. be
that giving explicit right to infant w/ - would
be worse than naturally-born infants have

Kennedy, Debora

From: Dsida, Michael
Sent: Wednesday, April 09, 2003 3:35 PM
To: 'mklaver@wrtl.org'
Cc: Kennedy, Debora
Subject: Born alive rule

If I understood you correctly, you suggested yesterday that, under the born alive rule, once a child is born alive, he or she is entitled to all of the rights and privileges of every other child. According to the court of appeals in Cornelius, the born alive rule originally applied to the law of homicide. Under the common law version of that rule, a person who causes injuries to a fetus could be convicted of homicide if the fetus/child is ultimately born alive. In Puhl v. Milwaukee Automobile Ins. Co., 164 Wis. 272 (1916), the Supreme Court indicated that the rule should also apply in civil cases in which a fetus, later born alive, is injured in utero. But there does not appear to be a rule in Wisconsin that is as broad as the one you described.

The absence of that type of rule should not preclude us from drafting a bill to accomplish your objectives. But defining "born alive," without including language stating how that definition is to be used, may be insufficient.

Please let us know how you want us to proceed.

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: live birth or the circumstance of being born alive.

Analysis by the Legislative Reference Bureau

Under current law, the terms "live birth" and "born alive" are not defined and are used in various statutes, including those relating to abortion and disposition of property to heirs at death.

This bill defines "born alive" and "live birth" for application to all of the statutes. Further, the bill requires statutory construction so that one who is born alive or who undergoes live birth as the result of an abortion has the same legal status and legal rights as a human being at any point after the human being is born alive or undergoes the live birth as the result of natural or induced labor or a cesarean section. Lastly, the bill prohibits construction of this requirement to affirm, deny, expand, or contract a legal status or legal right that is applicable to a human being at any point before the human being is born alive or undergoes the live birth.

For further information see the *state* 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:

2 SECTION 1. 990.001 (17) of the statutes is created to read:

3 990.001 (17) LIVE BIRTH OR CIRCUMSTANCE OF BEING BORN ALIVE. (a) If a statute
4 refers to a live birth or to the circumstance in which an individual is born alive, the

SECTION 1

1 statute shall be construed so that whoever is born alive or undergoes a live birth as
2 the result of an abortion, as defined in s. 253.10 (2) (a), has the same legal status and
3 legal rights as a human being at any point after the human being is born alive or
4 undergoes a live birth as the result of natural or induced labor or a cesarean section.

5 (b) Paragraph (a) may not be construed to affirm, deny, expand, or contract a
6 legal status or legal right that is applicable to a human being at any point before the
7 human being is born alive or undergoes the live birth.

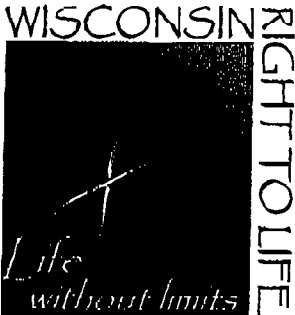
8 **SECTION 2.** 990.01 (4m) of the statutes is created to read:

9 990.01 (4m) BORN ALIVE. "Born alive" means being completely expelled or
10 extracted, at any stage of development, from a mother who is a human being and,
11 after the expulsion or extraction, breathing or having a beating heart, pulsation of
12 the umbilical cord, or definite movement of voluntary muscles, regardless of whether
13 the umbilical cord has been cut, and regardless of whether the expulsion or
14 extraction occurs as a result of natural or induced labor, a cesarean section, or an
15 abortion, as defined in s. 253.10 (2) (a).

16 **SECTION 3.** 990.01 (19j) of the statutes is created to read:

17 990.01 (19j) LIVE BIRTH. "Live birth" means the complete expulsion or
18 extraction from the mother, at any stage of development, of a human being who, after
19 the expulsion or extraction, breathes or has a beating heart, pulsation of the
20 umbilical cord, or definite movement of voluntary muscles, regardless of whether the
21 umbilical cord has been cut, and regardless of whether the expulsion or extraction
22 occurs as a result of natural or induced labor, a cesarean section, or an abortion, as
23 defined in s. 253.10 (2) (a).

24 (END)



State Affiliate of Life
National Right to Life Committee, Inc.
Washington, DC 20004-1193

WRL Board of Directors

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Legislative/FAC
Director
Susan Amacast

Legislative Legal
Counsel
Mary A. Klaver

Education Director
Catherine Souhrada

Chapter Director
Mary Rice

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10625 W. North Ave., Suite LL
Milwaukee, WI 53226-2331
Tel: 414-778-5780
Fax: 414-778-5785
Toll Free: 877-855-5007
Home Page: www.wrl.org

FAX COVER SHEET

OPERATOR: PLEASE NOTIFY THE PERSON NAMED BELOW THAT THIS FAX HAS ARRIVED. THANK YOU

Important Notice: The information contained in this transmission is intended for the specific person(s) addressed. If you have received this fax in error please contact us immediately at the phone number below. Thank You!

TO (Name): Debora Kennedy
 LOCATION: HRB
 AT FAX #: 608-264-6948 AT PHONE# 608-266-0137
 FROM: Mary Klaver

WRL Fax: 414/778-5785
 WRL Phone: 414/778-5780

Date Sent: 4/15/03
 Pages: 5 (including this cover sheet)
 Time Sent: _____ a.m. / p.m.

MESSAGE: Debora,
This is the best draft yet! a
couple of changes; (1) Please use
submitted language for definition
of "live birth", (2) your definition of
"born alive" does not work when
substituted for the phrase and focus of
being a human being has to be on the
child. 2 options are attached.
Please call me.

Mary



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2506?
DAK&MGD:.....

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Option 1

1 AN ACT ...; relating to: live birth or the circumstance of being born alive.

Analysis by the Legislative Reference Bureau

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1 statute shall be construed so that whoever is born alive or undergoes a live birth as
2 the result of an abortion, as defined in s. 253.10 (2) (a), has the same legal status and
3 legal rights as a human being at any point after the human being is born alive or
4 undergoes a live birth as the result of natural or induced labor or a cesarean section.

5 (b) Paragraph (a) may not be construed to affirm, deny, expand, or contract a
6 legal status or legal right that is applicable to a human being at any point before the
7 human being is born alive or undergoes the live birth.

8 SECTION 2. 990.01 (4m) of the statutes is created to read:

9 990.01 (4m) BORN ALIVE. ^{with respect to a human being,} "Born alive", means ~~being~~ completely expelled or
10 ^{from his or her mother} extracted, at any stage of development, ~~from a mother who is a human being and,~~
11 after the expulsion or extraction, ^{breathes} ~~breathing~~ or ^{has} ~~having~~ a beating heart, pulsation of
12 the umbilical cord, or definite movement of voluntary muscles, regardless of whether RESTORE
13 the umbilical cord has been cut, and regardless of whether the expulsion or
14 extraction occurs as a result of natural or induced labor, a cesarean section, or an
15 abortion, as defined in s. 253.10 (2) (a).

16 SECTION 3. 990.01 (19j) of the statutes is created to read:

17 990.01 (19j) LIVE BIRTH. "Live birth" means the complete expulsion or
18 extraction ^{from his or her} ~~from the mother,~~ at any stage of development, ~~of a human being~~ who, after
19 the expulsion or extraction, breathes or has a beating heart, pulsation of the
20 umbilical cord, or definite movement of voluntary muscles, regardless of whether the
21 umbilical cord has been cut, and regardless of whether the expulsion or extraction
22 occurs as a result of natural or induced labor, a cesarean section, or an abortion, as
23 defined in s. 253.10 (2) (a).

24 (END)



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-25067
DAK&MGD:.....

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Option 2

1 AN ACT ...; relating to: live birth or the circumstance of being born alive.

Analysis by the Legislative Reference Bureau

Under current law, the terms "live birth" and "born alive" are not defined and are used in various statutes, including those relating to abortion and disposition of property to heirs at death.

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3 An individual who undergoes a live birth is born alive.
4 990.001 (17) LIVE BIRTH OR CIRCUMSTANCE OF BEING BORN ALIVE. (a) If a statute
refers to a live birth or to the circumstance in which an individual is born alive, the

2003 - 2004 Legislature

- 2 -

LRB-2506?
DAK&MGD:.....
SECTION 1

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2 the result of an abortion, as defined in s. 253.10 (2) (a), has the same legal status and
3 legal rights as a human being at any point after the human being is born alive or
4 undergoes a live birth as the result of natural or induced labor or a cesarean section.

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7 human being is born alive or undergoes the live birth.

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10 extracted, at any stage of development, from a mother who is a human being and,
11 after the expulsion or extraction, breathing or having a beating heart, pulsation of
12 the umbilical cord, or definite movement of voluntary muscles, regardless of whether
13 the umbilical cord has been cut, and regardless of whether the expulsion or
14 extraction occurs as a result of natural or induced labor, a cesarean section, or an
15 abortion, as defined in s. 253.10 (2) (a).~~

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20 umbilical cord, or definite movement of voluntary muscles, regardless of whether the
21 umbilical cord has been cut, and regardless of whether the expulsion or extraction
22 occurs as a result of natural or induced labor, a cesarean section, or an abortion, as
23 defined in s. 253.10 (2) (a).

24 (END)

4/15/03 Discussion w/ Mary Keaver

DAK: Option 1 is preferable, except that it's necessary to retain "breathing" in def. of "live birth" grammatically and except that placement of "of a human being" in "live birth" def implies that it is the mother who has a beating heart, etc.

Mary Keaver finally agreed.

4/18, 4/21

Voice mail: Mary Keaven

Concerned about definition of "born alive";
thinks changing "breathes" to "breathing" changes
the meaning and implies more than one
occurrence of breath

4/22 DAK suggested "taking a breath" for
"breathing"; Mary Keaven agreed, although
prefers "breathes" DAK indicated that
"breathes" is not grammatical



SOON - In edit 4/22

State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2506/1
DAK&MGD:1:....

Cjs

Editors + LPS's -
These drafts are
identical.
DAK
NCSL
Your Legislative Support System

5/14
MWC
4-2004

Gen con

1 AN ACT relating to: live birth or the circumstance of being born alive.

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For further information see the *state* 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:

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BILL

SECTION 1

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4 undergoes a live birth as the result of natural or induced labor or a cesarean section. ✓

5 (b) Paragraph (a) may not be construed to affirm, deny, expand, or contract a
6 legal status or legal right that is applicable to a human being at any point before the
7 human being is born alive or undergoes ^{the} live birth. ✓

taking a breath

8 **SECTION 2.** 990.01 (4m) of the statutes is created to read:

9 990.01 (4m) BORN ALIVE. "Born alive" means, with respect to a human being,
10 completely expelled or extracted from his or her mother, at any stage of development,
11 and, after the expulsion or extraction, ~~breathing~~ or having a beating heart, pulsation
12 of the umbilical cord, or definite movement of voluntary muscles, regardless of
13 whether the umbilical cord has been cut, and regardless of whether the expulsion or
14 extraction occurs as a result of natural or induced labor, a cesarean section, or an
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22 extraction occurs as a result of natural or induced labor, a cesarean section, or an
23 abortion, as defined in s. 253.10 (2) (a).

24 (END)

TELEPHONE DRAFTING INSTRUCTIONS

Drafting instructions received by Debora Kennedy.

DATE: 4/24/03
CONVERSATION WITH: Mary Kauer
OF: WRTL
TELEPHONE NO:
REGARDING LRB # OR DRAFT TOPIC: 2506/1 + 2507/1
INSTRUCTIONS: Redraft

- ① Analysis mistake 2d par.
- ② Comma after "mother", p. 2, l. 20 -
DAK indicated that it is used for clarification
and to separate the phrase from "mother"; MK
indicated it could stand
- ③ p. 2, l. 1 - MK wants these to apply
to rules as well as statutes; DK to determine
if ch. 990 applies to rules through ch. 227 and
indicate view in D. NOTE



D-NOTE

2003 BILL

- 1 AN ACT to create 990.001 (17), 990.01 (4m) and 990.01 (19j) of the statutes;
2 relating to: live birth or the circumstance of being born alive.

Analysis by the Legislative Reference Bureau

Under current law, the terms "live birth" and "born alive" are not defined and are used in various statutes, including those relating to abortion and disposition of property to heirs at death.

This bill defines "born alive" and "live birth" for application to all of the statutes. Further, the bill requires statutory construction such that one who is born alive or who undergoes a live birth as the result of an abortion has the same legal status and legal rights as a human being at any point after the human being is born alive or undergoes a live birth as the result of natural or induced labor or a cesarean section. Lastly, the bill prohibits construction of this requirement to affirm, deny, expand, or contract a legal status or legal right that is applicable to a human being at any point before the human being is born alive or undergoes a live birth.

For further information see the *state* 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:

- 3 SECTION 1. 990.001 (17) of the statutes is created to read:

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or rule

1 990.001 (17) LIVE BIRTH OR CIRCUMSTANCE OF BEING BORN ALIVE. (a) If a statute
 2 refers to a live birth or to the circumstance in which an individual is born alive, the
 3 statute shall be construed so that whoever is born alive or undergoes a live birth as
 4 the result of an abortion, as defined in s. 253.10 (2) (a), has the same legal status and
 5 legal rights as a human being at any point after the human being is born alive or
 6 undergoes a live birth as the result of natural or induced labor or a cesarean section.

7 (b) Paragraph (a) may not be construed to affirm, deny, expand, or contract a
 8 legal status or legal right that is applicable to a human being at any point before the
 9 human being is born alive or undergoes a live birth.

10 SECTION 2. 990.01 (4m) of the statutes is created to read:

11 990.01 (4m) BORN ALIVE. "Born alive" means, with respect to a human being,
 12 completely expelled or extracted from his or her mother, at any stage of development,
 13 and, after the expulsion or extraction, taking a breath or having a beating heart,
 14 pulsation of the umbilical cord, or definite movement of voluntary muscles,
 15 regardless of whether the umbilical cord has been cut, and regardless of whether the
 16 expulsion or extraction occurs as a result of natural or induced labor, a cesarean
 17 section, or an abortion, as defined in s. 253.10 (2) (a).

18 SECTION 3. 990.01 (19j) of the statutes is created to read:

19 990.01 (19j) LIVE BIRTH. "Live birth" means the complete expulsion or
 20 extraction from his or her mother, of a human being, at any stage of development,
 21 who, after the expulsion or extraction, breathes or has a beating heart, pulsation of
 22 the umbilical cord, or definite movement of voluntary muscles, regardless of whether
 23 the umbilical cord has been cut, and regardless of whether the expulsion or

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1 extraction occurs as a result of natural or induced labor, a cesarean section, or an
2 abortion, as defined in s. 253.10 (2) (a).

3 (END)


D-NOTE

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2506/2dn
DAK&MGD:cjs:48

In general, rules are promulgated to augment statutes, and agencies are prohibited, under s. 227.10 (2), stats., from promulgating rules that conflict with state law. However, it seems to me that s. 227.10 (2), stats., by itself, would not necessarily compel a rule to be construed in the way you intend, particularly if the rule is promulgated without reference to s. 990.001 (17), as created in this bill. Therefore, I have in this draft added "or rule" to s. 990.001 (17), to ensure that a rule concerning a human being that is promulgated that refers to a live birth or the circumstances in which an individual is born alive will have the construction you intend.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2506/2dn
DAK&MGD:cjs:jf

April 28, 2003

In general, rules are promulgated to augment statutes, and agencies are prohibited, under s. 227.10 (2), stats., from promulgating rules that conflict with state law. However, it seems to me that s. 227.10 (2), stats., by itself, would not necessarily compel a rule to be construed in the way you intend, particularly if the rule is promulgated without reference to s. 990.001 (17), as created in this bill. Therefore, I have in this draft added "or rule" to s. 990.001 (17), to ensure that a rule concerning a human being that is promulgated that refers to a live birth or the circumstances in which an individual is born alive will have the construction you intend.

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