

2005 SENATE BILL 71

February 22, 2005 – Introduced by Senators KEDZIE, REYNOLDS, ROESSLER, KANAVAS, SCHULTZ, S. FITZGERALD, STEPP, COWLES, KAPANKE, LEIBHAM, LAZICH and GROTHMAN, cosponsored by Representatives HINES, SUDER, LOTHIAN, KLEEFISCH, GUNDRUM, NISCHKE, KESTELL, LEMAHIEU, TOWNS, HAHN, FREESE, GIELOW, WOOD, PETROWSKI, VAN ROY, KREIBICH, J. FITZGERALD, NASS, STRACHOTA, PRIDEMORE, OTT, BIES, ALBERS, GOTTLIEB, GUNDERSON, VRAKAS, STONE, MCCORMICK, BALLWEG, MONTGOMERY and KRAWCZYK. Referred to Committee on Judiciary, Corrections and Privacy.

- 1 **AN ACT to create** 895.68 of the statutes; **relating to:** recovery in cases involving
2 wrongful birth or 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 prohibits the recovery of damages from a person in a wrongful birth or wrongful life action if the damages resulted from a condition that existed at the time of the child's birth and the defendant's negligence contributed to the mother's decision not to undergo an abortion.

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

