



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-0218/1
SWB:cdc

2023 ASSEMBLY BILL 871

January 2, 2024 - Introduced by Representatives SINICKI, CABRERA, BALDEH, DRAKE, EMERSON, JACOBSON, OHNSTAD, ORTIZ-VELEZ, RATCLIFF, STUBBS and MADISON, cosponsored by Senator TAYLOR. Referred to Committee on Judiciary.

1 **AN ACT** *to amend* 655.007; and *to create* 655.0165 of the statutes; **relating to:**
2 claims for loss of society and companionship resulting from medical
3 malpractice.

Analysis by the Legislative Reference Bureau

This bill adds adult children to the list of relatives who are entitled to sue for injury or death resulting from medical malpractice. Under current law, as stated in *Czapinski v. St. Francis Hospital, Inc.*, 236 Wis. 2d 316 (2000), *Lornson v. Siddiqui*, 302 Wis. 2d 519 (2007), and *Ziulkowski v. Nierengarten*, 210 Wis. 2d 98 (Ct. App. 1997), an adult child does not have the right to recover for the loss of society and companionship of a parent who is injured or dies as the result of medical malpractice.

This bill provides that both minor and certain adult children have the right to recover for loss of society and companionship and other damages if the parent is injured or dies as the result of medical malpractice. Under the bill, an adult child is entitled to bring an action if 1) the adult child has a disability and was, prior to the parent's injury or death, dependent on the deceased parent for custodial, financial, or emotional support for managing the basic or instrumental activities of daily living; 2) at the time of the parent's injury or death, the adult child was enrolled in a post-secondary education program, was dependent on the deceased parent for financial support, and, following the parent's injury or death, lacks the independent means to support himself or herself without financial support from the parent that is no longer available as a result of the parent's injury or death; or 3) the adult child incurred out-of-pocket costs to pay for expenses incurred as a result of the medical

ASSEMBLY BILL 871

malpractice, including medical or custodial care expenses or funeral or legal expenses.

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:

1 **SECTION 1.** 655.007 of the statutes is amended to read:

2 **655.007 Patients' claims.** ~~On and after July 24, 1975, any~~ Any patient or the
3 patient's representative having a claim or any spouse, parent, minor sibling, or adult
4 or minor child of the patient having a derivative claim for injury or death on account
5 of malpractice is subject to this chapter.

6 **SECTION 2.** 655.0165 of the statutes is created to read:

7 **655.0165 Claim by minor or adult child for injury or death.** (1) If a
8 parent is injured or dies as the result of medical malpractice, an adult child of the
9 parent for which any of the following is true or a minor child of the parent has a cause
10 of action for damages for loss of society and companionship and other damages
11 incurred by the minor or adult child against the person who committed the medical
12 malpractice:

13 (a) The adult child has a disability and was, prior to the parent's injury or death,
14 dependent on the injured or deceased parent for custodial, financial, or emotional
15 support for managing the basic or instrumental activities of daily living, which the
16 parent can no longer provide.

17 (b) At the time of the parent's injury or death, the adult child was enrolled in
18 a post-secondary education program, was dependent on the injured or deceased
19 parent for financial support, and lacks the independent means to support himself or

ASSEMBLY BILL 871

1 herself without financial support from the parent that is no longer available as a
2 result of the parent's injury or death.

3 (c) The adult child incurred out-of-pocket costs to pay for expenses resulting
4 from the medical malpractice, including any of the following:

5 1. Medical or custodial care expenses for the injured or deceased parent
6 beginning from the time of the medical malpractice.

7 2. Funeral or legal expenses incurred as a result of the injury or death of the
8 parent.

9 **(2)** This section does not affect any other claim available under this chapter.

10 **SECTION 3. Initial applicability.**

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

13

(END)