

2013 DRAFTING REQUEST

Bill

Received: 1/30/2013 Received By: phurley
Wanted: As time permits Same as LRB:
For: André Jacque (608) 266-9870 By/Representing:
May Contact: Drafter: phurley
Subject: Courts - miscellaneous/other Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Rep.Jacque@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Cause of action for wrongful death of a fetus

Instructions:

see email 1-30-13

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/P1	phurley 2/21/2013	wjackson 2/21/2013	jfrantze 2/21/2013	_____	sbasford 2/21/2013		State
/1		wjackson 2/28/2013	jfrantze 2/28/2013	_____	lparisi 2/28/2013	lparisi 3/1/2013	State

FE Sent For:

03-08-2013
(7/14)

<END>

Requested by Jamie Julian

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/P1	phurley 2/12/2013	wjackson 2/21/2013	jfrantze 2/21/2013	_____	sbasford 2/21/2013		State

FE Sent For:

1 WLJ 2/28 Jb 2/28 Jb 2/28

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/P1	phurley	jeK 2/14 /P1 WJ 2/21	J g/21	pk 2/21 J			

FE Sent For:

<END>

Hurley, Peggy

From: Julian, Jamie
Sent: Wednesday, January 30, 2013 3:51 PM
To: Hurley, Peggy
Subject: RE: Drafting Request: Unborn Wrongful Death

Hi Peggy,

Yes, the comments in your first paragraph I believe fairly encapsulate the intent of the bill – to expand wrongful death from unborn “viable” to all unborn, so “conception to birth” should work. Admittedly the drafting language is a bit awkward. I should have sent along a caveat about that. It’s primarily for guidance so that you could see where we wanted to go. “Lawful abortion” will probably be sufficient, though, I have not done much research myself yet. Please advise us of anything we should consider when you look further into this. My hunch is that this will be pretty straight forward and will not bump up against other laws in an awkward way. Both the physician and mother involved in a lawful abortion would be exempt as the death in such an event is legally not “wrongful”.

Thanks,

Jamie Julian

Office of Rep. André Jacque
2nd Assembly District

Room 123 West
State Capitol
P.O. Box 8953
Madison, WI 53708

(608) 266-9870

*655.001 defs - include "unborn child"
in def of patient? 655.016 person-patient*

*895.04
895.03*

ci. "w d. of fetus"

From: Hurley, Peggy
Sent: Wednesday, January 30, 2013 3:32 PM
To: Julian, Jamie
Subject: RE: Drafting Request: Unborn Wrongful Death

Hi Jamie,

I will be drafting the unborn wrongful death bill for your office. In doing a bit of research, it appears that a Wisconsin court of appeals held that a father had a cause of action for the wrongful death of his unborn child, but the language did specify that the child was a “viable fetus.” I think that by defining a person or an individual for the purposes of wrongful death actions to include an unborn child (from the time of conception to delivery), much of the intent of this bill can be accomplished.

The final draft will look quite a bit different from the materials you submitted, mostly because we do not draft findings of fact or intent statements or explain, within the language of the bill, the purpose behind the bill. Other provisions such as severability are already in current law and need not be included.

Additionally, I note that the bill exempts physicians who perform a lawful abortion, but does not exempt the woman who obtains the lawful abortion. Is that your intent? Finally, I will need to do a bit of work to figure out how to address

the fact that there are several abortion laws on our books that are not enforceable. It is not clear to me how to reconcile all of the varying statutes with your intent to exempt abortions permitted "by state law." Perhaps simply using the phrase "lawful abortion" will suffice.

I will be able to delve into this further over the next several days, and I will let you know if I have any other concerns or questions.

Peggy

From: Miller, Steve
Sent: Wednesday, January 30, 2013 1:45 PM
To: Hanaman, Cathlene; Hurley, Peggy
Subject: FW: Drafting Request: Unborn Wrongful Death

From: Julian, Jamie
Sent: Wednesday, January 30, 2013 1:44 PM
To: Miller, Steve
Subject: Drafting Request: Unborn Wrongful Death

Good Afternoon,

Could you please forward this or let me know who I should send it to? Thank you.

Request: Unborn Wrongful Death Act

Currently Wisconsin does not allow wrongful death suits for a pre-viable unborn child. We would like a bill drafted that includes pre-viable unborn children. Please see the attached drafting language.

Please let me know if you have any questions.

Sincerely,

Jamie Julian

Office of Rep. André Jacque
2nd Assembly District

Room 123 West
State Capitol
P.O. Box 8953
Madison, WI 53708

(608) 266-9870

UNBORN WRONGFUL DEATH ACT

Section 1. Title.

This Act may be known and cited as the "Unborn Wrongful Death Act."

Section 2. Legislative Findings and Purposes.

- (a) The [Legislature] of the State of [Insert name of State] finds that:
- (1) This State has statutorily recognized a wrongful death civil cause of action [Insert appropriate statutory or other reference(s)] since [Insert date].
 - (2) The wrongful death cause of action is intended to correct a flaw in the common law: At common law, no cause of action survived a victim's death. Thus, a tortfeasor (wrongdoer) could escape liability merely because he inflicted injuries so severe that they resulted in the death of his victim.
 - (3) The wrongful death cause of action provides for damages to be paid by the wrongdoer to his victim's survivors, thus deterring tortious and harmful behavior and providing for restitution to the victim's estate.
 - (4) This State has an interest in protecting every human being including unborn children from tortious and harmful acts.
 - (5) Parents of unborn children have protectable interests in the life, health, and well-being of their children.
 - (6) Tortious behavior which results in the death of an unborn child carries the same social and emotional cost as that which results in the death of a born and living human being including bereavement, a loss to society, and the lawlessness and disregard for life which characterizes all negligent, harmful, and wrongful behavior.

(b) For these reasons, the [Legislature] finds that the exclusion of unborn children from coverage under the State's wrongful death cause of action is at cross purposes with the justifications for the statute(s) and that a cause of action for the wrongful death of an unborn child at any stage of gestation or development should be permitted under the laws of this State.

Section 3. Definitions.

For the purposes of this Act only:

(a) **"Abortion"** means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:

- (1) Save the life or preserve the health of the unborn child;
- (2) Remove a dead unborn child caused by spontaneous abortion; or
- (3) Remove an ectopic pregnancy.

(b) **"Born-alive"** means the substantial expulsion or extraction of an infant from its mother, regardless of the duration of the pregnancy, that after expulsion or extraction, whether or not the umbilical cord has been cut or the placenta is attached, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion, shows any evidence of life, including, but not limited to, one or more of the following:

- (1) Breathing;
- (2) A heartbeat;
- (3) Umbilical cord pulsation; or
- (4) Definite movement of voluntary muscles.

(c) **"Conception"** means the fusion of a human spermatozoon with a human ovum.

(d) **"Physician"** means a doctor legally authorized to practice medicine or surgery in this State, or any other individual legally authorized by this State to perform abortions; *provided, however,* that any individual who is not a physician and not otherwise legally authorized by this State to perform abortions, but who nevertheless performs an abortion, shall be subject to the provisions of this Act.

(e) **"Unborn child"** means the offspring of human beings from conception until birth.

Section 4. Cause of Action.

The state or location of gestation or development of an unborn child when an injury is caused, when an injury takes effect, or at death, shall not foreclose maintenance of a cause of action under the law of this State arising from the death of the unborn child caused by a wrongful act, neglect, carelessness, lack of skill, or default.

Section 5. Exceptions.

(a) There shall be no cause of action against a physician or a medical institution for the wrongful death of an unborn child caused by an abortion where the abortion was permitted by law and the requisite consent was lawfully given; *provided, however,* that a cause of action is not prohibited where an abortion is performed in violation of state law or where the child is born-alive and subsequently dies.

(b) There shall be no cause of action against a physician or a medical institution for the wrongful death of an unborn child *in utero* based on the alleged misconduct of the physician or medical institution where the defendant did not know and, under the applicable standard of good medical care, had no medical reason to know of the pregnancy of the mother or the existence of the unborn child.

Section 6. Construction.

(a) This Act does not create, recognize, endorse, or condone a right to an abortion.

(b) It is not the intention of this Act to make lawful an abortion that is currently unlawful.

[Handwritten signature]

Section 7. Severability.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable here from and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

Section 8. Right of Intervention.

The [*Legislature*], by joint resolution, may appoint one or more of its members, who sponsored or cosponsored this Act in his or her official capacity, to intervene as a matter of right to defend this law in any case in which its constitutionality is challenged.

Section 9. Effective Date.

This Act takes effect on [*Insert date*].



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1420/P1

PJH:.....

jek

twlj

THUR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Checked
X-rel or
sec. AM.

2-12-13

GENCAT

1 AN ACT ...; relating to: wrongful death of an unborn child.

Analysis by the Legislative Reference Bureau

Under current law, if a minor child dies as a result of another person's wrongful act or omission, the deceased minor's relative or other representative may bring a wrongful death action to recover damages from the wrongdoer. This bill defines "deceased minor" to include an unborn child who has died, and defines unborn child as a human being from the time of fertilization to the time of live birth.

Under current law, if a minor child dies as a result of medical malpractice, his or her parents, minor siblings, or representative may bring a claim for compensation from the injured patients and families compensation fund. This bill defines "patient" for purposes of a medical malpractice claim to include an unborn child and defines unborn child as a human being from the time of fertilization to the time of live birth.

Under the bill, if the death of an unborn child occurs as a result of a lawful abortion, no one may bring a wrongful death action or a medical malpractice claim against the mother of the child or the abortion provider. Under the bill, no one may bring a medical malpractice claim against a health care provider who did not know, and who had no reason to know, that the mother of the deceased patient was pregnant.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

For purposes of a medical malpractice claim

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

1 **SECTION 1.** 655.001 (10) of the statutes is amended to read:

2 655.001 (10) "Patient" means an individual who received or should have
3 received health care services from a health care provider or from an employee of a
4 health care provider acting within the scope of his or her employment, and includes
5 an unborn child, as defined in s. 895.04 (1g) (d).

History: 1975 c. 37, 79; 1977 c. 26 s. 75; 1977 c. 131; 1977 c. 203 s. 106; Sup. Ct. Order, 88 Wis. 2d xiii (1979); 1979 c. 124, 185, 355; 1983 a. 189 s. 329 (5); 1985 a. 340; 1987 a. 27, 182, 264, 403; 1989 a. 187; 1991 a. 214; 1993 a. 473; 1995 a. 27 s. 9126 (19); 1999 a. 22; 2001 a. 52; 2003 a. 111; 2005 a. 36, 51; 2007 a. 20 s. 9121 (6) (a).

6 **SECTION 2.** 655.016 of the statutes is amended to read:

7 **655.016 Claim by minor sibling for loss of society and companionship.**

8 Subject to s. 655.017, a sibling of a person patient who dies as a result of malpractice
9 has a cause of action for damages for loss of society and companionship if the sibling
10 was a minor at the time of the deceased sibling's death. This section does not affect
11 any other claim available under this chapter.

History: 1997 a. 89.

12 **SECTION 3.** 655.27 (5) (a) 1. of the statutes is amended to read:

13 655.27 (5) (a) 1. Any Except as provided in sub. (5m), any person may file a
14 claim for damages arising out of the rendering of medical care or services or
15 participation in peer review activities under s. 146.37 within this state against a
16 health care provider or an employee of a health care provider. A person filing a claim
17 may recover from the fund only if the health care provider or the employee of the
18 health care provider has coverage under the fund, the fund is named as a party in
19 the action, and the action against the fund is commenced within the same time
20 limitation within which the action against the health care provider or employee of
21 the health care provider must be commenced.

History: 1975 c. 37, 79, 199; 1977 c. 29, 131; 1979 c. 34, 194; 1981 c. 20; 1983 a. 27, 158; 1985 a. 340; 1987 a. 27, 186, 247, 399; 1989 a. 102, 187, 332; 1991 a. 214, 315; 1993 a. 473; 1995 a. 10; 2001 a. 65; 2003 a. 111; 2005 a. 36, 410; 2007 a. 20.

22 **SECTION 4.** 655.27 (5) (a) 2. of the statutes is amended to read:

1 655.27 (5) (a) 2. Any Except as provided in sub. (5m), any person may file an
2 action for damages arising out of the rendering of medical care or services or
3 participation in peer review activities under s. 146.37 outside this state against a
4 health care provider or an employee of a health care provider. A person filing an
5 action may recover from the fund only if the health care provider or the employee of
6 the health care provider has coverage under the fund, the fund is named as a party
7 in the action, and the action against the fund is commenced within the same time
8 limitation within which the action against the health care provider or employee of
9 the health care provider must be commenced. If the rules of procedure of the
10 jurisdiction in which the action is brought do not permit naming the fund as a party,
11 the person filing the action may recover from the fund only if the health care provider
12 or the employee of the health care provider has coverage under the fund and the fund
13 is notified of the action within 60 days of service of process on the health care provider
14 or the employee of the health care provider. The board of governors may extend this
15 time limit if it finds that enforcement of the time limit would be prejudicial to the
16 purposes of the fund and would benefit neither insureds nor claimants.

History: 1975 c. 37, 79, 199; 1977 c. 29, 131; 1979 c. 34, 194; 1981 c. 20; 1983 a. 27, 158; 1985 a. 340; 1987 a. 27, 186, 247, 399; 1989 a. 102, 187, 332; 1991 a. 214, 315; 1993 a. 473; 1995 a. 10; 2001 a. 65; 2003 a. 111; ~~2005~~ a. 36, 410; 2007 a. 20.

17 **SECTION 5.** 655.27 (5m) of the statutes is created to read:

18 655.27 (5m) EXCEPTIONS. (a) No person may file an action for damages for the
19 death of patient who is an unborn child if the death was caused by a lawful induced
20 abortion.

21 (b) No person may file an action for damages for the death of a patient who is
22 an unborn child arising out of the rendering of medical care or services if the person
23 rendering the medical care or services did not know, and under the applicable

1 medical standard care, had no reason to know, that the mother of the patient was
2 pregnant.

3 **SECTION 6.** 895.04 (1) of the statutes is renumbered 895.04 (1m) and amended
4 to read:

5 895.04 (1m) An Except as provided in sub. (8), an action for wrongful death may
6 be brought by the personal representative of the deceased person or by the person
7 to whom the amount recovered belongs.

History: 1971 c. 59; Sup. Ct. Order, 67 Wis. 2d 585, 784 (1975); 1975 c. 94 s. 91 (3); 1975 c. 166, 199, 287, 421, 422; 1979 c. 166; 1983 a. 315; 1985 a. 130; 1989 a. 307; 1991 a. 308; 1997 a. 89, 290; 2009 a. 28, 276.

8 **SECTION 7.** 895.04 (1g) of the statutes is created to read:

9 895.04 (1g) In this section:

10 (a) "Deceased minor" includes an unborn child who is deceased.

11 (a) (b) "Deceased person" means a human being who is deceased, and includes an
12 unborn child who is deceased.

13 (c) "Live birth" means means the substantial expulsion or extraction from his
14 or her mother of a human being, at any stage of development, who, after the
15 expulsion or extraction, breathes or has a beating heart, pulsation of the umbilical
16 cord, or definite movement of voluntary muscles, regardless of whether the umbilical
17 cord has been cut, and regardless of whether the expulsion or extraction occurs as
18 a result of natural or induced labor, a cesarean section, or an abortion, as defined in
19 s. 253.10 (2) (a).

20 (d) "Unborn child" means a human being from the time of fertilization to the
21 time of live birth.

22 **SECTION 8.** 895.04 (2) of the statutes is amended to read:

23 895.04 (2) If the deceased person leaves surviving a spouse or domestic partner
24 under ch. 770 and minor children under 18 years of age with whose support the

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1 deceased ^{person} was legally charged, the court before whom the action is pending, or if no
 2 action is pending, any court of record, in recognition of the duty and responsibility
 3 of a parent to support minor children, shall determine the amount, if any, to be set
 4 aside for the protection of such children after considering the age of such children,
 5 the amount involved, the capacity and integrity of the surviving spouse or surviving
 6 domestic partner, and any other facts or information it may have or receive, and such
 7 amount may be impressed by creation of an appropriate lien in favor of such children
 8 or otherwise protected as circumstances may warrant, but such amount shall not be
 9 in excess of 50% of the net amount received after deduction of costs of collection. If
 10 there are no such surviving minor children, the amount recovered shall belong and
 11 be paid to the spouse or domestic partner of the deceased person; if no spouse or
 12 domestic partner survives, to the deceased's deceased person's lineal heirs as
 13 determined by s. 852.01; if no lineal heirs survive, to the deceased's deceased person's
 14 brothers and sisters. If any such relative dies before judgment in the action, the
 15 relative next in order shall be entitled to recover for the wrongful death. A surviving
 16 nonresident alien spouse or a nonresident alien domestic partner under ch. 770 and
 17 minor children shall be entitled to the benefits of this section. In cases subject to s.
 18 102.29 this subsection shall apply only to the surviving spouse's or surviving
 19 domestic partner's interest in the amount recovered. If the amount allocated to any
 20 child under this subsection is less than \$10,000, s. 807.10 may be applied. Every
 21 settlement in wrongful death cases in which the deceased person leaves minor
 22 children under 18 years of age shall be void unless approved by a court of record
 23 authorized to act hereunder.

History: 1971 c. 59; Sup. Ct. Order, 67 Wis. 2d 585, 784 (1975); 1975 c. 94 s. 91 (3); 1975 c. 166, 199, 287, 421, 422; 1979 c. 166; 1983 a. 315; 1985 a. 130; 1989 a. 307; 1991 a. 308; 1997 a. 89, 290; 2009 a. 28, 276.

24 **SECTION 9.** 895.04 (4) of the statutes is amended to read:

1 895.04 (4) Judgment for damages for pecuniary injury from wrongful death
 2 may be awarded to any person entitled to bring a wrongful death action. Additional
 3 damages not to exceed \$500,000 per occurrence in the case of a deceased minor, or
 4 \$350,000 per occurrence in the case of a deceased adult, for loss of society and
 5 companionship may be awarded to the spouse, children or parents of the deceased
 6 person, or to the siblings of the deceased person, if the siblings were minors at the
 7 time of the death. ^(Not) ~~for purposes of this subsection, deceased minor~~
 includes an unborn child who is deceased.

History: 1971 c. 59; Sup. Ct. Order, 67 Wis. 2d 585, 784 (1975); 1975 c. 94 s. 91 (3); 1975 c. 166, 199, 287, 421, 422; 1979 c. 166; 1983 a. 315; 1985 a. 130; 1989 a. 307; 1991 a. 308; 1997 a. 89, 290; 2009 a. 28, 276.

8 SECTION 10. 895.04 (6) of the statutes is amended to read:

9 895.04 (6) Where the wrongful death of a deceased person creates a cause of
 10 action in favor of the decedent's estate and also a cause of action in favor of a spouse,
 11 domestic partner under ch. 770, or relatives as provided in this section, such spouse,
 12 domestic partner, or relatives may waive and satisfy the estate's cause of action in
 13 connection with or as part of a settlement and discharge of the cause of action of the
 14 spouse, domestic partner, or relatives.

History: 1971 c. 59; Sup. Ct. Order, 67 Wis. 2d 585, 784 (1975); 1975 c. 94 s. 91 (3); 1975 c. 166, 199, 287, 421, 422; 1979 c. 166; 1983 a. 315; 1985 a. 130; 1989 a. 307; 1991 a. 308; 1997 a. 89, 290; 2009 a. 28, 276.

15 SECTION 11. 895.04 (7) of the statutes is amended to read:

16 895.04 (7) Damages found by a jury in excess of the maximum amount specified
 17 in sub. (4) shall be reduced by the court to such maximum. The aggregate of the
 18 damages covered by subs. (4) and (5) shall be diminished under s. 895.045 if the
 19 deceased person or person entitled to recover is found negligent.

History: 1971 c. 59; Sup. Ct. Order, 67 Wis. 2d 585, 784 (1975); 1975 c. 94 s. 91 (3); 1975 c. 166, 199, 287, 421, 422; 1979 c. 166; 1983 a. 315; 1985 a. 130; 1989 a. 307; 1991 a. 308; 1997 a. 89, 290; 2009 a. 28, 276.

20 SECTION 12. 895.04 (8) of the statutes is created to read:

21 895.04 (8) (a) No action for the wrongful death of a deceased ^{person who is an}
 22 ^{deceased} unborn child may be brought against the mother of the ^{deceased} unborn child if the death of the deceased unborn
 23 child was caused by a lawful induced abortion.



Stays (Mr)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2-27-13
by fri am

Regen

1 AN ACT ~~to renumber and amend~~ 895.04 (1); ~~to amend~~ 655.001 (10), 655.016,
2 655.27 (5) (a) 1., 655.27 (5) (a) 2., 895.04 (2), 895.04 (4), 895.04 (6) and 895.04
3 (7); and **to create** 655.27 (5m), 895.04 (1g) and 895.04 (8) of the statutes;
4 **relating to:** wrongful death of an unborn child.

Analysis by the Legislative Reference Bureau

Under current law, if a minor child dies as a result of another person's wrongful act or omission, the deceased minor's relative or other representative may bring a wrongful death action to recover damages from the wrongdoer. This bill defines "deceased minor" to include an unborn child who has died, and defines "unborn child" as a human being from the time of fertilization to the time of live birth.

Under current law, if a minor child dies as a result of medical malpractice, his or her parents, minor siblings, or representative may bring a claim for compensation from the injured patients and families compensation fund. This bill, for purposes of a medical malpractice claim, defines "patient" to include an unborn child and defines "unborn child" as a human being from the time of fertilization to the time of live birth.

Under the bill, if the death of an unborn child occurs as a result of a lawful abortion, no one may bring a wrongful death action or a medical malpractice claim against the mother of the child or the abortion provider. Under the bill, no one may bring a medical malpractice claim against a health care provider who did not know, and who had no reason to know, that the mother of the deceased patient was pregnant.

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.** 655.001 (10) of the statutes is amended to read:

2 655.001 (10) “Patient” means an individual who received or should have
3 received health care services from a health care provider or from an employee of a
4 health care provider acting within the scope of his or her employment, and includes
5 an unborn child, as defined in s. 895.04 (1g) (c).

6 **SECTION 2.** 655.016 of the statutes is amended to read:

7 **655.016 Claim by minor sibling for loss of society and companionship.**

8 Subject to s. 655.017, a sibling of a person patient who dies as a result of malpractice
9 has a cause of action for damages for loss of society and companionship if the sibling
10 was a minor at the time of the deceased sibling’s death. This section does not affect
11 any other claim available under this chapter.

12 **SECTION 3.** 655.27 (5) (a) 1. of the statutes is amended to read:

13 655.27 (5) (a) 1. Any Except as provided in sub. (5m), any person may file a
14 claim for damages arising out of the rendering of medical care or services or
15 participation in peer review activities under s. 146.37 within this state against a
16 health care provider or an employee of a health care provider. A person filing a claim
17 may recover from the fund only if the health care provider or the employee of the
18 health care provider has coverage under the fund, the fund is named as a party in
19 the action, and the action against the fund is commenced within the same time
20 limitation within which the action against the health care provider or employee of
21 the health care provider must be commenced.

1 **SECTION 4.** 655.27 (5) (a) 2. of the statutes is amended to read:

2 655.27 (5) (a) 2. Any Except as provided in sub. (5m), any person may file an
3 action for damages arising out of the rendering of medical care or services or
4 participation in peer review activities under s. 146.37 outside this state against a
5 health care provider or an employee of a health care provider. A person filing an
6 action may recover from the fund only if the health care provider or the employee of
7 the health care provider has coverage under the fund, the fund is named as a party
8 in the action, and the action against the fund is commenced within the same time
9 limitation within which the action against the health care provider or employee of
10 the health care provider must be commenced. If the rules of procedure of the
11 jurisdiction in which the action is brought do not permit naming the fund as a party,
12 the person filing the action may recover from the fund only if the health care provider
13 or the employee of the health care provider has coverage under the fund and the fund
14 is notified of the action within 60 days of service of process on the health care provider
15 or the employee of the health care provider. The board of governors may extend this
16 time limit if it finds that enforcement of the time limit would be prejudicial to the
17 purposes of the fund and would benefit neither insureds nor claimants.

18 **SECTION 5.** 655.27 (5m) of the statutes is created to read:

19 655.27 (5m) EXCEPTIONS. (a) No person may file an action for damages for the
20 death of patient who is an unborn child if the death was caused by a lawful induced
21 abortion.

22 (b) No person may file an action for damages for the death of a patient who is
23 an unborn child arising out of the rendering of medical care or services if the person
24 rendering the medical care or services did not know, and under the applicable

1 medical standard care, had no reason to know, that the mother of the patient was
2 pregnant.

3 Please
Fix
Comp. → SECTION 6. 895.04 (1) of the statutes is renumbered 895.04 (1m) and amended
4 to read:

5 895.04 (1m) ~~An~~ Except as provided in sub. (8), an action for wrongful death may
6 be brought by the personal representative of the deceased person or by the person
7 to whom the amount recovered belongs.

8 SECTION 7. 895.04 (1g) of the statutes is created to read:

9 895.04 (1g) In this section:

10 (a) "Deceased person" means a human being who is deceased, and includes an
11 unborn child who is deceased.

12 (b) "Live birth" means the substantial expulsion or extraction from his or her
13 mother, of a human being, at any stage of development, who, after the expulsion or
14 extraction, breathes or has a beating heart, pulsation of the umbilical cord, or
15 definite movement of voluntary muscles, regardless of whether the umbilical cord
16 has been cut, and regardless of whether the expulsion or extraction occurs as a result
17 of natural or induced labor, a cesarean section, or an abortion, as defined in s. 253.10
18 (2) (a).

19 (c) "Unborn child" means a human being from the time of fertilization to the
20 time of live birth.

21 SECTION 8. 895.04 (2) of the statutes is amended to read:

22 895.04 (2) If the deceased person leaves surviving a spouse or domestic partner
23 under ch. 770 and minor children under 18 years of age with whose support the
24 deceased person was legally charged, the court before whom the action is pending,
25 or if no action is pending, any court of record, in recognition of the duty and

1 responsibility of a parent to support minor children, shall determine the amount, if
2 any, to be set aside for the protection of such children after considering the age of such
3 children, the amount involved, the capacity and integrity of the surviving spouse or
4 surviving domestic partner, and any other facts or information it may have or
5 receive, and such amount may be impressed by creation of an appropriate lien in
6 favor of such children or otherwise protected as circumstances may warrant, but
7 such amount shall not be in excess of 50% of the net amount received after deduction
8 of costs of collection. If there are no such surviving minor children, the amount
9 recovered shall belong and be paid to the spouse or domestic partner of the deceased
10 person; if no spouse or domestic partner survives, to the ~~deceased's~~ deceased person's
11 lineal heirs as determined by s. 852.01; if no lineal heirs survive, to the ~~deceased's~~
12 deceased person's brothers and sisters. If any such relative dies before judgment in
13 the action, the relative next in order shall be entitled to recover for the wrongful
14 death. A surviving nonresident alien spouse or a nonresident alien domestic partner
15 under ch. 770 and minor children shall be entitled to the benefits of this section. In
16 cases subject to s. 102.29 this subsection shall apply only to the surviving spouse's
17 or surviving domestic partner's interest in the amount recovered. If the amount
18 allocated to any child under this subsection is less than \$10,000, s. 807.10 may be
19 applied. Every settlement in wrongful death cases in which the deceased person
20 leaves minor children under 18 years of age shall be void unless approved by a court
21 of record authorized to act hereunder.

22 **SECTION 9.** 895.04 (4) of the statutes is amended to read:

23 895.04 (4) Judgment for damages for pecuniary injury from wrongful death
24 may be awarded to any person entitled to bring a wrongful death action. Additional
25 damages not to exceed \$500,000 per occurrence in the case of a deceased minor, or

1 \$350,000 per occurrence in the case of a deceased adult, for loss of society and
2 companionship may be awarded to the spouse, children or parents of the deceased
3 person, or to the siblings of the deceased person, if the siblings were minors at the
4 time of the death. For purposes of this subsection, “deceased minor” includes an
5 unborn child who is deceased.

6 **SECTION 10.** 895.04 (6) of the statutes is amended to read:

7 895.04 (6) Where the wrongful death of a deceased person creates a cause of
8 action in favor of the decedent’s estate and also a cause of action in favor of a spouse,
9 domestic partner under ch. 770, or relatives as provided in this section, such spouse,
10 domestic partner, or relatives may waive and satisfy the estate’s cause of action in
11 connection with or as part of a settlement and discharge of the cause of action of the
12 spouse, domestic partner, or relatives.

13 **SECTION 11.** 895.04 (7) of the statutes is amended to read:

14 895.04 (7) Damages found by a jury in excess of the maximum amount specified
15 in sub. (4) shall be reduced by the court to such maximum. The aggregate of the
16 damages covered by subs. (4) and (5) shall be diminished under s. 895.045 if the
17 deceased person or person entitled to recover is found negligent.

18 **SECTION 12.** 895.04 (8) of the statutes is created to read:

19 895.04 (8) (a) No action for the wrongful death of a deceased person who is an
20 unborn child may be brought against the mother of the deceased unborn child if the
21 death of the deceased unborn child was caused by a lawful induced abortion.

22 (b) No action for the wrongful death of a deceased person who is an unborn child
23 may be brought under this section or under ch. 655 against a person who performs

1

a lawful induced abortion that causes the death of the deceased person who is an

2

unborn child.

3

(END)

Barman, Mike

From: Hurley, Peggy
Sent: Thursday, February 21, 2013 2:13 PM
To: Julian, Jamie
Cc: Barman, Mike
Subject: RE: Final Draft Requested: LRB -1420/P1 Topic: Cause of action for wrongful death of a fetus

No problem. I will put the draft into editing to redraft it to a /1 and ask the front office to jacket it for you.

Peggy

From: Julian, Jamie
Sent: Thursday, February 21, 2013 2:11 PM
To: Hurley, Peggy
Subject: RE: Final Draft Requested: LRB -1420/P1 Topic: Cause of action for wrongful death of a fetus

Yes, thank you.

Jamie Julian

Office of Rep. André Jacques
2nd Assembly District

Room 123 West
State Capitol
P.O. Box 8952
Madison, WI 53709

(608) 266-9870

From: Hurley, Peggy
Sent: Thursday, February 21, 2013 2:11 PM
To: Julian, Jamie
Subject: RE: Final Draft Requested: LRB -1420/P1 Topic: Cause of action for wrongful death of a fetus

Sure. I'll redraft to a /1. Would you like it jacketed?

From: Julian, Jamie
Sent: Thursday, February 21, 2013 2:10 PM
To: Hurley, Peggy
Subject: Final Draft Requested: LRB -1420/P1 Topic: Cause of action for wrongful death of a fetus

Please send a final draft of 1420/P1.

Sincerely,

Jamie Julian

Office of Rep. André Jacques
2nd Assembly District

Memo

To: Representative **Jacque**

(The Draft's Requester)

Per your request ... the attached fiscal estimate was prepared for your un-introduced 2013 session draft.

LRB Number: LRB-1420

Version: “/1”

Fiscal Estimate Prepared By: (agency abbr.) DA

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: 03 / 25 / 2013

*** * * * ***

To: LRB – Legal Section PA’s

Subject: *Fiscal Estimate Received For An Un-introduced Draft*

> **If re-drafted** ... please insert this cover sheet and attached early fiscal estimate into the drafting file “guts” ... after the draft’s old version (the version that this fiscal estimate was based on), and just before re-draft of the updated version.

> **If introduced** ... please make sure the attached fiscal estimate is for the **current version** ... write the draft’s new introduction number below and give this packet to Mike (or Lori) to re-process the fiscal estimate (w/intro. number included).

THIS DRAFT WAS INTRODUCED AS: 2013 AB 160

Barman, Mike

From: Barman, Mike
Sent: Monday, March 25, 2013 8:16 AM
To: Rep.Jacque
Cc: Julian, Jamie
Subject: LRB-1420/1 (un-introduced) (FE by DA - attached - for your review)



FE-1420_DA.PDF

Drafter: PJH
Subject: Courts - miscellaneous/other

Mike Barman (Lead Program Assistant)

State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office

1 East Main Street, Suite 200, Madison, WI 53703

(608) 266-3561 / mike.barman@legis.wisconsin.gov