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State of Misconsin 2005 - 2006 LEGISLATURE

LRB-0642/1 RPN:lmk&jld:rs

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
 - 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 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:

SENATE BILL 71

SECTION 1. 895.68 of the statutes is created to read:

2 895.68 Limit on recovery; wrongful birth and wrongful life. (1) In this
3 section:

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

5 (b) "Wrongful birth action" means a cause of action that is brought by a parent 6 or other person who is legally required to provide for the support of a child, seeks 7 economic or noneconomic damages resulting from a condition of the child that existed 8 at the time of the child's birth, and is based on a claim that a person's act or omission 9 contributed to the mother's decision not to undergo an abortion.

10 (c) "Wrongful life action" means a cause of action that is brought by or on behalf 11 of a child, seeks the child's economic or noneconomic damages resulting from a 12 condition of the child that existed at the time of the child's birth, and is based on a 13 claim that a person's act or omission contributed to the mother's decision not to 14 undergo an abortion.

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

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(END)