

2003 DRAFTING REQUEST

Bill

Received: 05/12/2003

Received By: rnelson2

Wanted: As time permits

Identical to LRB:

For: Gary George (608) 266-2500

By/Representing:

This file may be shown to any legislator: NO

Drafter: rnelson2

May Contact:

Addl. Drafters:

Subject: Courts - immunity liability

Extra Copies:

Submit via email: YES

Requester's email: Sen.George@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Damages for loss of society and companionship in medical malpractice

Instructions:

See Attached 01sb193

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>
/?	rnelson2 05/12/2003	jdyer 05/12/2003 jdyer 05/13/2003		_____			
/1			rschluet 05/13/2003	_____	amentkow 05/13/2003	amentkow 06/03/2003	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For: *None Needed* <END>

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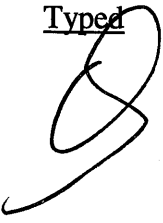
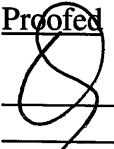
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5-13-3 GPH

FE Sent For:

<END>

TELEPHONE DRAFTING INSTRUCTIONS

Drafting instructions received by Debora Kennedy.

DATE: 5/9/03

CONVERSATION WITH: Aaron

OF: Sen Gary George's Off

TELEPHONE NO: 6-2500

REGARDING ~~LRB#~~
OR DRAFT TOPIC:

INSTRUCTIONS: Please redraft 2001 SB 193

SB193

SENATE BILL 193

An Act to amend 655.007; and to create 655.018 of the statutes; relating to: claims for loss of society and companionship in medical malpractice cases.

2001

05-23-01. S.	Introduced by Senators George, Lazich, Grobschmidt, Harsdorf, Risser and Plache; cosponsored by Representatives Plale, Krug, Bock, Riley, La Fave, Carpenter, Young, Reynolds and Cullen.	
05-23-01. S.	Read first time and referred to committee on Judiciary, Consumer Affairs, and Campaign Finance Reform.	199
06-05-01. S.	Public hearing held.	
10-29-01. S.	Executive action taken.	
10-29-01. S.	Placed on calendar 10-30-2001 pursuant to Senate Rule 18(1).	
10-30-01. S.	Report introduction and adoption of Senate substitute amendment 1 recommended by committee on Judiciary, Consumer Affairs, and Campaign Finance Reform, Ayes 4, Noes 1.	430
10-30-01. S.	Report passage as amended recommended by committee on Judiciary, Consumer Affairs, and Campaign Finance Reform, Ayes 4, Noes 1.	430
10-30-01. S.	Available for scheduling.	
10-30-01. S.	Read a second time.	433
10-30-01. S.	Placed at the foot of the 11th order of business on the calendar of 10-30-2001.	433
10-30-01. S.	Senate amendment 1 to Senate substitute amendment 1 offered by Senator George. . .	435
10-30-01. S.	Senate amendment 2 to Senate substitute amendment 1 offered by Senator George. . .	435
10-30-01. S.	Senate substitute amendment 1 laid on table.	435
10-30-01. S.	Senate substitute amendment 2 offered by Senator Huelsman.	435
10-30-01. S.	Senate substitute amendment 2 rejected, Ayes 18, Noes 14.	435
10-30-01. S.	Ordered to a third reading.	435
10-30-01. S.	Rules suspended.	435
10-30-01. S.	Read a third time and passed, Ayes 17, Noes 16.	435
10-30-01. S.	Ordered immediately messaged.	436
11-01-01. A.	Received from Senate.	497
11-01-01. A.	Read first time and referred to committee on Judiciary.	497

2002

02-21-02. A.	Public hearing held.	
03-26-02. A.	Failed to concur in pursuant to Senate Joint Resolution 1.	811

SB193

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stays

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2001 SENATE BILL 193

May 23, 2001 - Introduced by Senators GEORGE, LAZICH, GROBSCHMIDT, HARSDORF, RISSER and PLACHE, cosponsored by Representatives PLALE, KRUG, BOCK, RILEY, LA FAVE, CARPENTER, YOUNG, REYNOLDS and CULLEN. Referred to Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform.

Regen

1 AN ACT to amend 655.007; and to create 655.018 of the statutes; relating to:
2 claims for loss of society and companionship in medical malpractice cases.

Analysis by the Legislative Reference Bureau

Under current law, as stated in *In re Wells*, 174 Wis. 2d 503 (Ct. App. 1993), a parent does not have the right to recover for the loss of society and companionship of an adult child who died as the result of medical malpractice. This bill provides that a parent does have the right to recover for loss of society and companionship if the parent's adult child dies as the result of medical malpractice.

Under current law, as stated in *Czapinski v. St. Francis Hospital, Inc.*, 236 Wis. 2d 316 (2000), an adult child does not have the right to recover for the loss of society and companionship of a parent who died as the result of medical malpractice. This bill provides that an adult child does have the right to recover for loss of society and companionship if the adult child's parent dies as the result of medical malpractice.

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

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

655.007 Patients' claims. On and after July 24, 1975, any patient or the patient's representative having a claim or any spouse, parent, minor sibling, or adult

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SENATE BILL 193

1 or minor child of the patient having a derivative claim for injury or death on account
2 of malpractice is subject to this chapter.

3 SECTION 2. 655.018[✓] of the statutes is created to read:

4 **655.018 Claim by parent or adult child for loss of society and**
5 **companionship.** If a parent dies as the result of medical malpractice, the adult
6 child of that parent has a cause of action for damages for loss of society and
7 companionship against the person who committed the medical malpractice. If an
8 adult child dies as the result of medical malpractice, the parent of that adult child
9 has a cause of action for damages for loss of society and companionship against the
10 person who committed the medical malpractice. This section[✓] does not affect any
11 other claim available under this chapter.

12 SECTION 3. Initial applicability.

13 (1) This act first applies to acts or omissions occurring on May 25, 1995[✓].

14 (END)

D-Note

The Wisconsin supreme court has struck down as unconstitutional ^{the} recent ~~reter~~ retroactive application of increases in the medical malpractice maximum recovery for the loss of society and companionship. See Heiman v.

① → American National Property & Casualty Co. ^{plain comma}
2000 WI 83, 236 Wis2d 111, and Schultz v.
① → Natwick, 2002 WI 125, 257 Wis2d 19. This draft includes such a retroactive applicability, which the courts may also find unconstitutional.

RPN

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2700/1dn
RPN;jld:rs

May 13, 2003

The Wisconsin Supreme Court has struck down as unconstitutional the recent retroactive application of increases in the medical malpractice maximum recovery for the loss of society and companionship. See *Neiman v. American National Property & Casualty Co.*, 2000 WI 83, 236 Wis 2d 411, and *Schultz v. Natwick*, 2002 WI 125, 257 Wis 2d 19. This draft includes such a retroactive applicability, which the court may also find unconstitutional.

Robert P. Nelson
Senior Legislative Attorney
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