



1997 ASSEMBLY BILL 538

September 29, 1997 - Introduced by Representatives GREEN, SCHAFER, PLALE, WIECKERT, RYBA, HOVEN, FREESE, KREIBICH, HANDRICK, VRAKAS, OURADA, ZUKOWSKI, WALKER, ALBERS, GROTHMAN, LADWIG, AINSWORTH, GUNDERSON, DUFF, OTTE, KEDZIE, GOETSCH, OTT, SYKORA, SERATTI, URBAN, HUEBSCH, POWERS and NASS, cosponsored by Senators DRZEWIECKI, WELCH, FITZGERALD, FARROW, ZIEN and SCHULTZ. Referred to Committee on Judiciary.

- 1 **AN ACT to create** 895.68 of the statutes; **relating to:** immunity in cases involving
2 wrongful birth and 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 creates an immunity from a wrongful birth or wrongful life action for a person who commits an act or fails to commit an act and that act or omission results in the birth of a child because a woman did not undergo an abortion that she would have undergone had the person not committed the act or not failed to commit the act.

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

