



2009 SENATE BILL 563

February 26, 2010 - Introduced by Senators MILLER and RISSER, cosponsored by Representatives POPE-ROBERTS, YOUNG, TURNER and A. WILLIAMS. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1 **AN ACT to amend** 893.55 (1m) (intro.) and 895.03; and **to create** 893.55 (3m) of
2 the statutes; **relating to:** the statute of limitations for wrongful death claims
3 arising out of medical malpractice.

Analysis by the Legislative Reference Bureau

Under current law, wrongful death claims are subject to the statute of limitations (time limit) under either the general personal injury statute or the medical malpractice statute. This time limit is counted from the time specified in the relevant statute. After the time limit has elapsed, the claim is time barred. For a wrongful death claim that is not based on medical malpractice, the limit is three years from the person's death. However, Wisconsin courts have concluded that wrongful death claims caused by medical malpractice are subject to the medical malpractice statute of limitations. This limit is three years from the injury, or one year from the date the injury was or should have been discovered, for up to five years after the malpractice. The court held in *Estate of Genrich v. OHIC Ins. Co.*, 2009 WI 67, that the time limit for a wrongful death action caused by medical malpractice is counted from the date of the deceased person's injury instead of the date of death.

This bill reverses that decision. Under this bill, the time limit on all wrongful death claims is counted from the date of the person's death. The wrongful death

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claim, even if caused by medical malpractice, exists for three years from the person's death, for up to six years after the malpractice.

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

1 **SECTION 1.** 893.55 (1m) (intro.) of the statutes is amended to read:

2 893.55 **(1m)** (intro.) Except as provided by subs. (2), ~~and (3),~~ and (3m), an action
3 to recover damages for injury arising from any treatment or operation performed by,
4 or from any omission by, a person who is a health care provider, regardless of the
5 theory on which the action is based, shall be commenced within the later of:

6 **SECTION 2.** 893.55 (3m) of the statutes is created to read:

7 893.55 **(3m)** An action under s. 895.03 to recover damages for death arising
8 from any treatment or operation performed by, or from any omission by, a person who
9 is a health care provider shall be commenced within the time limit under s. 893.54
10 (2), except that an action may not be commenced under this subsection more than 6
11 years from the date of the act or omission.

12 **SECTION 3.** 895.03 of the statutes is amended to read:

13 **895.03 Recovery for death by wrongful act.** Whenever the death of a
14 person shall be caused by a wrongful act, neglect or default and the act, neglect or
15 default is such as would, if death had not ensued, have entitled the party injured to
16 maintain an action and recover damages in respect thereof, then and in every such
17 case the person who would have been liable, if death had not ensued, shall be liable
18 to an action for damages notwithstanding the death of the person injured; provided,
19 that such action shall be brought for a death caused in this state. An action for
20 damages under this section accrues on the date of the person's death.

21

(END)