



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3146/1
RPN:kjf:jf

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

