



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 764**

October 19, 2005 - Offered by COMMITTEE ON INSURANCE.

1 **AN ACT to amend** 893.55 (7); and **to create** 893.55 (8) of the statutes; **relating**
2 **to:** awards to persons suffering damages as the result of medical malpractice
3 and evidence of compensation for those damages.

Analysis by the Legislative Reference Bureau

Under current law, as recently interpreted by the Supreme Court in *Lagerstrom v. Myrtle Werth Hospital-Mayo Health System*, 2005 WI 124 (2005), in a medical malpractice case, evidence of payments made to compensate a person for injury from persons other than the defendant (collateral source payments) are allowed. The court also held that current law permitted the introduction of evidence of the injured person's obligations of subrogation or reimbursement resulting from those collateral source payments for medical services. But, the court held that the obligation evidence can only be used to determine the reasonable value of those medical services, not to reduce the value of those medical services for the purpose of determining the amount of the damage award for those medical services.

This substitute amendment allows the introduction of collateral source payments in a medical malpractice case and the introduction of evidence of the injured person's obligations of subrogation or reimbursement resulting from those collateral source payments. The substitute amendment requires the finder of fact to determine the amount of collateral source payments made to compensate the claimant for the injury resulting from the medical malpractice and the amount that

the claimant is legally obligated to pay the persons who made the collateral source payments. The substitute amendment requires the court to subtract the amount the claimant is legally obligated to pay the persons who made the collateral source payments from the amount of those collateral source payments and reduce the amount of damages awarded to the claimant by that difference.

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

1 **SECTION 1.** 893.55 (7) of the statutes is amended to read:

2 893.55 (7) Evidence of any compensation for bodily injury received from
3 sources other than the defendant to compensate the claimant for the injury is
4 admissible in an action to recover damages for medical malpractice. Evidence of the
5 claimant's obligations of subrogation or reimbursement resulting from payments
6 made by sources other than the defendant to compensate the claimant for the injury
7 is admissible in an action to recover damages for medical malpractice. This section
8 does not limit the substantive or procedural rights of persons who have claims based
9 upon subrogation.

10 **SECTION 2.** 893.55 (8) of the statutes is created to read:

11 893.55 (8) (a) If medical malpractice did occur, the finder of fact shall determine
12 all of the following:

13 1. The amount that was provided from sources other than the defendant to
14 compensate the claimant for the injury resulting from the medical malpractice.

15 2. The amount that the claimant is legally obligated to pay the sources under
16 subd. 1. for the compensation provided by those sources under subd. 1., either
17 through subrogation or by reimbursement.

