

**ASSEMBLY BILL 764 (LRB -3820)**

An Act to amend 893.55 (7); and to create 893.55 (8) of the statutes; relating to: awards to persons suffering damages as the result of medical malpractice and evidence of compensation for those damages. (FE)

**2005**

10-19.	A.	Introduced by Representatives <b>Gielow, Huebsch, Nischke, Gard</b> and <b>Nerison</b> ; cosponsored by Senator <b>S. Fitzgerald.</b>	
10-17.	A.	Read first time and referred to committee on Insurance .....	525
10-18.	A.	Public hearing held.	
10-19.	A.	Executive action taken.	
10-19.	A.	Assembly substitute amendment 1 offered by committee on Insurance ( <b>LRB s0261</b> ) .....	528
10-20.	A.	Report Assembly Substitute Amendment 1 adoption recommended by committee on Insurance, Ayes 9, Noes 6 .....	529
10-20.	A.	Report passage as amended recommended by committee on Insurance, Ayes 9, Noes 6 .....	529
10-20.	A.	Referred to committee on Rules .....	529
10-20.	A.	Placed on calendar 10-25-2005 by committee on Rules.	
10-25.	A.	Representative Albers added as a coauthor .....	539
10-25.	A.	Read a second time .....	539
10-25.	A.	Assembly substitute amendment 1 <b>adopted</b> .....	539
10-25.	A.	Ordered to a third reading .....	539
10-25.	A.	Refused to suspend rules to read a third time, Ayes 59, Noes 38 .....	540
10-25.	A.	Rules suspended .....	540
10-25.	A.	Placed at the foot of the calendar .....	540
10-25.	A.	Read a third time and <b>passed</b> , Ayes 60, Noes 34, Paired 4 .....	542
10-25.	A.	Ordered immediately messaged .....	542
10-26.	S.	Received from Assembly .....	410
10-26.	S.	Read first time and referred to committee on Agriculture and Insurance .....	411
10-26.	S.	Fiscal estimate received.	
10-26.	S.	Fiscal estimate received.	
10-27.	S.	Public hearing held.	
10-27.	S.	Fiscal estimate received.	
11-01.	S.	Executive action taken.	
11-01.	S.	Report concurrence recommended by committee on Agriculture and Insurance, Ayes 4, Noes 3 .....	418
11-01.	S.	Available for scheduling.	
11-02.	S.	Placed on calendar 11-8-2005 by committee on Senate Organization.	
11-07.	S.	Fiscal estimate received.	
11-08.	S.	Read a second time.	
11-08.	S.	Ordered to a third reading.	
11-08.	S.	Rules suspended.	
11-08.	S.	Read a third time and <b>concurred in</b> , Ayes 19, Noes 14.	
11-08.	S.	Senator Darling added as a cosponsor.	
11-08.	S.	Ordered immediately messaged.	
11-09.	A.	Received from Senate concurred in.	

**2005  
ENROLLED BILL**

05en AB-764

**ADOPTED DOCUMENTS:**

Orig

Engr

SubAmdt 1

05 1

Amendments to above (if none, write "NONE"): None

Corrections - show date (if none, write "NONE"): None

Topic Relay

11/9/05  
Date

[Signature]  
Enrolling Drafter

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**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.

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***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.

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***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.

