

2013 DRAFTING REQUEST

Bill

Received: 1/3/2013 Received By: phurley
Wanted: As time permits Same as LRB:
For: Andre Jacque (608) 266-9870 By/Representing: Jamie
May Contact: Drafter: phurley
Subject: Courts - evidence Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Rep.Jacque@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Collateral source rule changes

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 1/10/2013			_____			
/P1	phurley 1/29/2013	kfollett 1/25/2013	rschlue 1/25/2013	_____	sbasford 1/25/2013		
/1		kfollett 2/2/2013	jfrantze 2/3/2013	_____	sbasford 2/3/2013	mbarman 2/12/2013	

FE Sent For:

Not needed

<END>

2013 DRAFTING REQUEST

Bill

Received: 1/3/2013 Received By: phurley
Wanted: As time permits Same as LRB:
For: Andre Jacque (608) 266-9870 By/Representing: Jamie
May Contact: Drafter: phurley
Subject: Courts - evidence Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Rep.Jacque@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Collateral source rule changes

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 1/10/2013			_____			
/P1	phurley 1/29/2013	kfollett 1/25/2013	rschlue 1/25/2013	_____	sbasford 1/25/2013		
/1		kfollett 2/2/2013	jfrantze 2/3/2013	_____	sbasford 2/3/2013		

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: 1/3/2013 Received By: phurley
 Wanted: As time permits Same as LRB:
 For: Andre Jacque (608) 266-9870 By/Representing: Jamie
 May Contact: Drafter: phurley
 Subject: Courts - evidence Addl. Drafters:
 Extra Copies:

Submit via email: YES
 Requester's email: Rep.Jacque@legis.wisconsin.gov
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Collateral source rule changes

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 1/10/2013			_____			
/P1		kfollett 1/25/2013	rschluet 1/25/2013	_____	sbasford 1/25/2013		

FE Sent For:

1/15f
 2/2
 JB 2/3
 <END>

2013 DRAFTING REQUEST

Bill

Received: 1/3/2013 Received By: phurley
 Wanted: As time permits Same as LRB:
 For: Andre Jacque (608) 266-9870 By/Representing: Jamie
 May Contact: Drafter: phurley
 Subject: Courts - evidence Addl. Drafters:
 Extra Copies:

Submit via email: YES
 Requester's email: Rep.Jacque@legis.wisconsin.gov
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

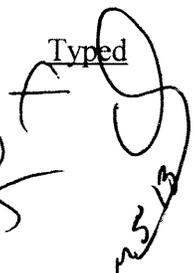
Collateral source rule changes

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

/?	phurley	1/11/13		==			
		1/25		==			

FE Sent For:

<END>

Hurley, Peggy

From: Julian, Jamie
Sent: Thursday, January 10, 2013 3:53 PM
To: Hurley, Peggy
Subject: RE: Preliminary draft requested: Collateral Source

Hi,

I do think that looks good! Perhaps we should turn the sentence just a bit so it reads more like:

"In an action seeking damages for personal injury or wrongful death that is not subject to ss. 893.55(7) or 893.555(8), or seeking payment based on uninsured or underinsured motorists coverage, evidence of . . ."

..and keep the personal injury/wrongful death at the 'top' ?

Thank you much,

Jamie Julian

Office of Rep. André Jacque
2nd Assembly District

Room 123 West
State Capitol
P.O. Box 8953
Madison, WI 53708

(608) 266-9870

From: Hurley, Peggy
Sent: Monday, January 07, 2013 4:56 PM
To: Julian, Jamie
Subject: RE: Preliminary draft requested: Collateral Source

Jamie,

Would this work for your purposes:

"In an action seeking payment based on uninsured or underinsured motorists coverage or for damages for personal injury or wrongful death that is not subject to ss. 893.55(7) or 893.555(8), evidence of . . ."

I think this would ensure that the insurance cases use the new rule without seeming to carve out a special type of "damages" case. Your thoughts?

Peggy

From: Hurley, Peggy
Sent: Thursday, January 03, 2013 4:32 PM
To: Julian, Jamie
Subject: RE: Preliminary draft requested: Collateral Source

Hi Jamie,

I do have a question: in the proposed s. 901.057, I am not sure what a "claim for benefits based on uninsured or underinsured motorists coverage" means. I think the word "benefits" is throwing me – is this something *other* than a civil action for tort or other personal injury that is brought in the civil courts? If it is something different from a regular plaintiff's claim in civil court, please explain. If it is not, then I don't think the phrase needs to be included in the proposed statute, because s. 901.01 states that the rules within chapter 901 to 911 govern all (with certain exceptions I don't think apply here) civil suits brought in the state. Can you clarify?

Peggy

From: Julian, Jamie
Sent: Thursday, January 03, 2013 2:41 PM
To: Hurley, Peggy
Subject: Preliminary draft requested: Collateral Source

Hi Peggy,

1. Create Wis. Stat. § 901.057, in the Evidence Code chapter on "General Provisions," as follows:

901.057 Admissibility of Evidence of Collateral Source Payments. In an action to recover damages for personal injury or wrongful death that is not subject to ss. 893.55(7) or 893.555(8), but including claims for benefits based on uninsured or underinsured motorists coverage, evidence of any compensation for bodily injury, including payment for medical expenses incurred by the injured person, received from sources other than the defendant, is admissible to determine the reasonable value of the claim, including the reasonable value of the medical expenses. Evidence of the claimant's obligations of subrogation or reimbursement arising from collateral source payments also is admissible. Evidence of amounts paid or incurred by the claimant in recovering the collateral source payments is not admissible. This section does not limit the substantive or procedural rights of persons who have claims based on subrogation or lien.

2. Amend Wis. Stat. § 908.03(6m)(bm), in the Evidence Code chapter on "Hearsay," as follows:

908.03(6m)(bm) Presumption. Billing statements or invoices that are patient health care records are presumed to state the reasonable value of the health care services provided and the health care services provided are presumed to be reasonable and necessary to the care of the patient. Any party attempting to rebut the presumption of the reasonable value of the health care services provided may **not** present evidence of payments made or benefits conferred by collateral sources or expert testimony on the reasonable value of the health care services provided.

As always, let me know if there are any questions. Thank you!

Jamie Julian

Office of Rep. André Jacque
2nd Assembly District

Room 123 West
State Capitol
P.O. Box 8953
Madison, WI 53708

(608) 266-9870



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0986/P1
PJH:ca

Friday please
per requester

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen

1-10-13

1 AN ACT ...; relating to: collateral source payments

Analysis by the Legislative Reference Bureau

Under current law, as a general rule in a personal injury case, evidence may not be admitted regarding payments made to compensate a person for injury from persons other than the defendant (collateral source payments). Current law makes an exception and allows evidence of collateral source payments to be admitted for medical malpractice cases and cases involving a personal injury sustained as the result of negligence by a long-term care provider, but specifically prohibits the admission of evidence of collateral source payments for the purpose of rebutting the presumption that billing statements and invoices that are patient health care records state the reasonable value of the health care services provided to an injured person.

The bill allows, for the purpose of determining the reasonable value of any type of personal injury claim or of any action seeking payment for uninsured or underinsured motorist coverage, including the reasonable medical expenses involved in those claims, the fact finder to consider evidence of collateral source payments and evidence of the injured person's obligations of subrogation or reimbursement resulting from those collateral source payments. Under the bill, evidence of amounts paid or incurred by the claimant in recovering a collateral source payment is not admissible. The bill allows the admission of evidence of collateral source payments for the purpose of rebutting the presumption that billing

statements and invoices that are patient health care records state the reasonable value of the health care services provided to the injured person.

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

1 **SECTION 1.** 901.057 of the statutes is created to read:

2 **901.057 Collateral source payments and rights of subrogation.** In

3 actions for damages caused by personal injury or wrongful death that ^{are} is not subject

4 to s. 893.55 (7) or 893.555 (8), or seeking payment based on uninsured or

5 underinsured motorists coverage, evidence of any compensation for bodily injury

6 received from a source other than the defendant to compensate the claimant for the

7 injury or to pay for medical expenses incurred by the claimant is admissible for the

8 purpose of determining the reasonable value of the claim, including the reasonable

9 value of the injured person's medical expenses. Evidence of the claimant's

10 obligations of subrogation or reimbursement resulting from payments made by a

11 source other than the defendant to compensate the claimant for injury is admissible.

12 Evidence of amounts paid or incurred by the claimant in recovering a payment from

13 a source other than the defendant is not [✓]admissible. Admission of evidence under

14 this section [✓]does not limit the substantive or procedural rights of persons who have

15 claims based upon subrogation or lien.

16 **SECTION 2.** 908.03 (6m) (bm) of the statutes is amended to read:

17 908.03 (6m) (bm) *Presumption.* Billing statements or invoices that are patient

18 health care records are presumed to state the reasonable value of the health care

19 services provided and the health care services provided are presumed to be

20 reasonable and necessary to the care of the patient. Any party attempting to rebut

1 the presumption of the reasonable value of the health care services provided may ~~not~~ ✓
2 present evidence of payments made or benefits conferred by collateral sources.

History: Sup. Ct. Order, 59 Wis. 2d R250; Sup. Ct. Order, 67 Wis. 2d vii (1975); 1983 a. 447; Sup. Ct. Order, 158 Wis. 20d xxv (1990); 1991 a. 32, 269; 1993 a. 105; 1995 a. 27 s. 9126 (19); 1997 a. 67, 156; 1999 a. 32, 85, 162; 2001 a. 74, 109; Sup. Ct. Order No. 04-09, 2005 WI 148, 283 Wis. 2d xv; 2007 a. 20 s. 9121 (6) (a); 2009 a. 28; 2011 a. 32; s. 35.17 correction in (6m) (a) 1.

SECTION 3. Initial applicability.

3
4
5

(1) This act first applies to actions filed on the effective date of this subsection. ✓

(END)

Hurley, Peggy

From: Julian, Jamie
Sent: Tuesday, January 29, 2013 9:17 AM
To: Hurley, Peggy
Subject: collateral source

Here's the tweak:

In the second sentence in the first paragraph of the LRB summary, there should be a period after the phrase "long-term care provider." The next words "but specifically" should be replaced with "A separate provision" and the resulting sentence should end with the phrase "in all other matters."

Reading it that way doesn't change the overall meaning as far as I can tell.

Thank you,

Jamie Julian

Office of Rep. André Jacqué
2nd Assembly District

Room 123 West
State Capitol
P.O. Box 8953
Madison, WI 53708

(608) 266-9870



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0986/P1
PJH:kjf:rs

1
rmr

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1-29-13

Regen

- 1 AN ACT *to amend* 908.03 (6m) (bm); and *to create* 901.057 of the statutes;
- 2 relating to: collateral source payments.

A separate provision

Analysis by the Legislative Reference Bureau

Under current law, as a general rule in a personal injury case, evidence may not be admitted regarding payments made to compensate a person for injury from persons other than the defendant (collateral source payments). Current law makes an exception and allows evidence of collateral source payments to be admitted for medical malpractice cases and cases involving a personal injury sustained as the result of negligence by a long-term care provider, but specifically prohibits the admission of evidence of collateral source payments for the purpose of rebutting the presumption that billing statements and invoices that are patient health care records state the reasonable value of the health care services provided to an injured person. *in all other matters.*

The bill allows, for the purpose of determining the reasonable value of any type of personal injury claim or of any action seeking payment for uninsured or underinsured motorist coverage, including the reasonable medical expenses involved in those claims, the fact finder to consider evidence of collateral source payments and evidence of the injured person's obligations of subrogation or reimbursement resulting from those collateral source payments. Under the bill, evidence of amounts paid or incurred by the claimant in recovering a collateral source payment is not admissible. The bill allows the admission of evidence of collateral source payments for the purpose of rebutting the presumption that billing

statements and invoices that are patient health care records state the reasonable value of the health care services provided to the injured person.

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

1 **SECTION 1.** 901.057 of the statutes is created to read:

2 **901.057 Collateral source payments and rights of subrogation.** In
3 actions for damages caused by personal injury or wrongful death that are not subject
4 to s. 893.55 (7) or 893.555 (8), or seeking payment based on uninsured or
5 underinsured motorists coverage, evidence of any compensation for bodily injury
6 received from a source other than the defendant to compensate the claimant for the
7 injury or to pay for medical expenses incurred by the claimant is admissible for the
8 purpose of determining the reasonable value of the claim, including the reasonable
9 value of the injured person's medical expenses. Evidence of the claimant's
10 obligations of subrogation or reimbursement resulting from payments made by a
11 source other than the defendant to compensate the claimant for injury is admissible.
12 Evidence of amounts paid or incurred by the claimant in recovering a payment from
13 a source other than the defendant is not admissible. Admission of evidence under
14 this section does not limit the substantive or procedural rights of persons who have
15 claims based upon subrogation or lien.

16 **SECTION 2.** 908.03 (6m) (bm) of the statutes is amended to read:

17 **908.03 (6m) (bm) Presumption.** Billing statements or invoices that are patient
18 health care records are presumed to state the reasonable value of the health care
19 services provided and the health care services provided are presumed to be
20 reasonable and necessary to the care of the patient. Any party attempting to rebut

1 the presumption of the reasonable value of the health care services provided may not
2 present evidence of payments made or benefits conferred by collateral sources.

3 **SECTION 3. Initial applicability.**

4 (1) This act first applies to actions filed on the effective date of this subsection.

5 (END)

Parisi, Lori

From: Julian, Jamie
Sent: Tuesday, February 12, 2013 2:09 PM
To: LRB.Legal
Subject: Draft Review: LRB -0986/1 Topic: Collateral source rule changes

Please Jacket LRB -0986/1 for the ASSEMBLY.

Jamie Julian

Rep. Jacqu

123 West

266-9870