2005 ASSEMBLY BILL 1072

February 27, 2006 – Introduced by Representatives GIELOW, HAHN, HUNDERTMARK, KERKMAN, KREIBICH, F. LASEE, NEWCOMER, NISCHKE, OTT, TOWNS and VUKMIR, cosponsored by Senators S. FITZGERALD, KEDZIE, LEIBHAM and ROESSLER. Referred to 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 or death 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 or dead 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 bill 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 bill 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 obligated to reimburse the persons who made the collateral source payments. The bill permits the finder of fact to subtract some or all of the amount the claimant is obligated to reimburse the persons

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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.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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   injured or dead person's obligations of subrogation or reimbursement resulting from

6   payments made by sources other than the defendant to compensate the claimant for

7   the injury or death is admissible in an action to recover damages for medical

8   malpractice. This section does not limit the substantive or procedural rights of

9   persons who have claims based 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 or death resulting from the medical

15   malpractice.

16   2. The amount that the claimant is obligated to reimburse the sources under

17   subd. 1. for the compensation provided by those sources under subd. 1.

1   (b) The finder of fact may subtract some or all the amount determined under

2   par. (a) 2. from the amount determined under par. (a) 1. and reduce the amount of

3   damages awarded to the claimant under ch. 655 by that difference.

4   **SECTION 3. Initial applicability.**

5   (1) This act first applies to medical malpractice acts or omissions occurring on

6   the effective date of this subsection.

7   **(END)**