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## **New Legislation Encourages Premium Theft**

Rep. Andre Jacque and Sen. Paul Farrow have introduced Senate Bill 22 (SB-22), which will completely change Wisconsin's law regarding how juries determine the reasonable value of medical care an injured person receives as the result of an accident. The change overrules the collateral source rule, the law in Wisconsin for over a century. <sup>1</sup>

Current law allows an injured person to recover from the negligent person the reasonable value of medical services required to treat the injury. The law provides that the value of medical services is presumed to be the amount of the medical bills. Evidence of the amount paid by someone else, like health insurance, is not allowed.

The Wisconsin Association for Justice (WAJ) President Jeffrey Pitman denounced the bill, "SB-22 discriminates against responsible Wisconsinites who have planned ahead and purchased health insurance. By allowing in evidence of amounts paid by someone else, people with health insurance could recover less money for their medical care than people without insurance. That is wrong."

A unanimous Wisconsin Supreme Court in *Orlowski v. State Farm Mutual Auto Ins. Co.*, 2012 WI 21, recognized three principles of why evidence of outside (collateral) sources is not allowed:

1. **First, is to deter a tortfeasor's negligent conduct by placing the full cost of the wrongful conduct on the tortfeasor.**
2. **Second, is to fully compensate the injured party.**
3. **Third, is to allow the insured to receive the benefit of the premiums paid for coverage that he or she had the foresight to purchase.**

Pitman continued, "SB-22 denies the injured person the benefit of a reduced medical bill because of the health insurance premiums paid. Families should be encouraged to purchase health insurance. Denying a family the health insurance benefit it paid for is tantamount to stealing the premium paid."

Pitman stated, "SB-22 would allow a bad driver, like a drunk driver, to pay less to the injured person because that injured person had health insurance. This bill would mean that an injured person who has worked hard, planned ahead and made sacrifices to obtain health coverage, disability insurance and other benefits would receive **LESS** for the same injury than someone who never bothered to buy insurance. It rewards the irresponsible, not the hard-working person."

Pitman concluded, "SB-22 penalizes people who have worked hard and bought health insurance. The bill rewards bad behavior and encourages premium theft."

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<sup>1</sup> The collateral source rule has been part of Wisconsin tort law since at least 1908. *Gatzweiler v. Milwaukee Elec. Ry. & Light Co.*, 136 Wis. 34, 116 N.W. 633 (1908).