

INTERIM STUDY PROPOSAL 2015-043

1  
2 State of Arkansas  
3 90th General Assembly  
4 Regular Session, 2015

**A Bill**

HOUSE BILL 1907

5  
6 By: Representative Neal

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8 Filed with: House Committee on Insurance and Commerce  
9 pursuant to A.C.A. §10-3-217.

**For An Act To Be Entitled**

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11 AN ACT TO REQUIRE THAT THE SUBROGATION AND  
12 REIMBURSEMENT RIGHTS OF PARTIES TO AN INSURANCE  
13 CONTRACT ARE TO BE DEFINED BY THE CONTRACT; TO CLARIFY  
14 WHEN AN INSURED IS MADE WHOLE; AND FOR OTHER  
15 PURPOSES.

**Subtitle**

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19 TO REQUIRE THAT THE SUBROGATION AND  
20 REIMBURSEMENT RIGHTS OF PARTIES TO AN  
21 INSURANCE CONTRACT ARE TO BE DEFINED BY  
22 THE CONTRACT; TO CLARIFY WHEN AN INSURED  
23 IS MADE WHOLE.

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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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28 SECTION 1. Arkansas Code § 23-79-146 is amended to read as follows:

29 23-79-146. Subrogation recovery.

30 (a)(1) Any property and casualty insurer, accident and health insurer, health maintenance  
31 organization, self-funded group, multiple-employer welfare arrangement, or hospital or medical services  
32 corporation that issues, delivers, or renews a contract of property and casualty insurance, accident and  
33 health insurance, or individual or group accident and healthcare coverage containing a provision for  
34 subrogation for ~~any~~ benefits or services of any kind furnished to an insured, or for payments made or  
35 credit extended to or on behalf of ~~any~~ a covered person for property damage or a physical condition or

1 injury caused by ~~a third~~ another party or for which ~~a third~~ another party may be liable, shall be entitled to  
2 receive subrogation benefits from the ~~third~~ other party.

3 (2) The right to subrogation arises and attaches at the time of the first payment of any  
4 benefits or provision of services to an insured or a covered person.

5 (3) Upon payment of benefits, the insurer is entitled to pursue the claim as subrogee of  
6 the insured and may take action as subrogee of the insured, regardless of whether or not the insured  
7 elects to pursue a claim against the party who may be liable for the property damage or a physical  
8 condition or injury.

9 (4) The terms, policy language, and conditions of the insurance contract are controlling  
10 and binding on the insured and the insured's agents, beneficiaries, assigns, and derivative claim holders.

11 (b)(1) If a recipient of benefits under a contract of property and casualty insurance, accident and  
12 health insurance, or individual or group accident and healthcare coverage recovers in tort for property  
13 damage or a physical condition or injury, either by settlement or judgment, the insurer paying the benefits  
14 has a right of reimbursement and credit out of the tort recovery or settlement as provided by and defined  
15 in the insurance contract.

16 (2) The right to reimbursement arises and attaches at the time of the first payment of  
17 benefits or provision of services to an insured or a covered person.

18 (3) The terms, policy language, and conditions of the insurance contract are controlling  
19 and binding on the insured and the insured's agents, beneficiaries, assigns, and derivative claim holders.

20 ~~(2)(c) In the event that~~ If an insured or a covered person recovers from a third party, the insurer  
21 shall not be responsible for or the insurer's subrogation claim reduced for reasonable cost of collection  
22 and attorney's fees thereof incurred to obtain the recovery shall be assessed against the insurer and the  
23 insured in the proportion each benefits from the recovery unless the insurer agreed to pay those fees in  
24 writing.

25 ~~(b) In the event more than one (1) casualty insurer, accident and health insurer, health~~  
26 ~~maintenance organization, self-funded group, multiple-employer welfare arrangement, or hospital or~~  
27 ~~medical services corporation having contractual subrogation rights is entitled to the subrogation benefits~~  
28 ~~specified in subsection (a) of this section, reasonable cost of collection and attorney's fees thereof shall~~  
29 ~~be assessed against the insurers and the insured in the proportion each benefits from the recovery.~~

30 (d) A covered person receiving notice of a subrogation claim shall protect the potential right of  
31 subrogation in settlement or judgment of a claim for damages caused in an incident or accident for which  
32 subrogation is claimed.

33 (e)(1) If a contract of property and casualty insurance, accident and health insurance, or  
34 individual or group accident and healthcare coverage does not contain a provision for subrogation, the  
35 property and casualty insurer, accident and health insurer, health maintenance organization, self-funded  
36 group, multiple-employer welfare arrangement, or hospital or medical services corporation that issued the

1 contract is not entitled to any subrogation recovery until an insured or a covered person has been made  
2 whole under common law.

3 (2) A party is presumed to be made whole if:

4 (A) A court of competent jurisdiction approves a settlement without regard to  
5 whether or not the order contains a made whole determination;

6 (B) The insured or covered person agrees, either in writing or orally, either  
7 expressly or as implied by his or her conduct, that the insured or covered person will or has been made  
8 whole;

9 (C) There is payment of any settlement less than the full limits of the responsible  
10 party's available insurance coverage or any available uninsured or underinsured motorist policy;

11 (D) An insured or a covered person endorses a check payable to the insured or  
12 covered person in favor of the insurer; or

13 (E) An insured or covered person reimburses the insurer for payments made on  
14 behalf of the insured or covered person.

15 (f)(1) To overcome the presumption that an insured or a covered person has been made whole,  
16 the insured or covered person shall prove by clear and convincing evidence that he or she has not been  
17 made whole.

18 (2) A determination of whether or not the insured or covered person has been made  
19 whole shall be made after attorney's fees are deducted only on the gross settlement proceeds and not the  
20 net proceeds.

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22 SECTION 2. Arkansas Code § 23-89-207 is amended to read as follows:

23 23-89-207. Insurer's right of reimbursement and subrogation.

24 (a)(1) ~~Whenever~~ If a recipient of benefits under § 23-89-202(1) and (2) recovers in tort for injury,  
25 either by settlement or judgment, the insurer paying the benefits has a right of reimbursement and credit  
26 out of the tort recovery or settlement, ~~less the cost of collection,~~ as defined provided by and defined in the  
27 insurance contract.

28 (2) The right to reimbursement arises and attaches at the time of the first payment of  
29 benefits or provision of services of any kind to an insured or a covered person.

30 (3) The terms, policy language, and conditions of the insurance contract are controlling  
31 and binding on the insured and the insured's agents, beneficiaries, assigns, and derivative claim holders.

32 (b) ~~All cost of collection thereof shall be assessed against the insurer and insured in the~~  
33 proportion each benefits from the recovery If a recipient of benefits under § 23-89-202(1) and (2) recovers  
34 from a third party, the insurer shall not be responsible or have the insurer's subrogation claim reduced for  
35 any attorney's fees incurred in the collection of the benefits unless the insurer agreed to pay those fees in  
36 writing.

1 (c) The insurer shall have a lien upon the recovery to the extent of ~~its~~ the insurer's benefit  
2 payments.

3 (d) The insurer for the party who is liable in damages to the injured party shall not condition  
4 settlement or payment of a judgment in favor of the injured party upon issuing a single check jointly to the  
5 injured party and the injured party's insurance company.

6 (e)(1) An automobile insurer that issues, delivers, or renews a contract of automobile insurance  
7 containing a provision for the subrogation of benefits provided under § 23-89-202(1) and (2) for damages  
8 or injury caused by a third party or for which a third party may be liable is entitled to seek subrogation  
9 against the third party.

10 (2) The right to subrogation arises and attaches at the time of the first payment of  
11 benefits or provision of services to an insured or a covered person and shall not be impaired by the  
12 application of the made whole doctrine established under common law.

13 (3) The terms, policy language, and conditions of the insurance contract are controlling  
14 and binding on the insured and the insured's agents, beneficiaries, assigns, and derivative claim holders.

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16 SECTION 3. Arkansas Code § 23-89-405 is amended to read as follows:

17 23-89-405. Subrogation and right of reimbursement of insurer making payment.

18 (a)(1) In the event of ~~If payment is made to any a~~ person under the coverage required by this  
19 subchapter and subject to the terms and conditions of the coverage, the insurer making the payment has  
20 a right of reimbursement and credit and shall, to the extent thereof, of the payment be is ~~be~~ entitled to the  
21 proceeds of any a settlement or judgment resulting from the exercise of any rights of recovery of the  
22 person against any a person or organization legally responsible for the bodily injury for which the payment  
23 is made, including the proceeds recoverable from the assets of the an insolvent insurer.

24 (2) The right to reimbursement arises and attaches at the time of the first payment of  
25 benefits or provision of services of any kind to an insured or a covered person and shall not be impaired  
26 by the application of the made whole doctrine established under common law.

27 (3) The terms, policy language, and conditions of the insurance contract are controlling  
28 and binding on the insured and the insured's agents, beneficiaries, assigns, and derivative claim holders.

29 (b)(1) An automobile insurer that issues, delivers, or renews a contract of automobile insurance  
30 containing a provision for the subrogation of benefits provided under this subchapter for damages or  
31 injury caused by a third party or for which a third party may be liable is entitled to seek subrogation  
32 against the third party.

33 (2) The right to subrogation arises and attaches at the time of the first payment of  
34 benefits or provision of services to an insured or a covered person and shall not be impaired by the  
35 application of the made whole doctrine established under common law.

1                   (3) The terms, policy language, and conditions of the insurance contract are controlling  
2 and binding on the insured and the insured's agents, beneficiaries, assigns, and derivative claim holders.

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5 Referred by the Arkansas House of Representatives

6 Prepared by: VJF

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