

State of Arkansas  
89th General Assembly  
Regular Session, 2013

# A Bill

HOUSE BILL 2203

By: Representative Lea

## For An Act To Be Entitled

AN ACT TO PROVIDE THAT THE SUBROGATION AND REIMBURSEMENT RIGHTS OF PARTIES TO AN INSURANCE CONTRACT ARE TO BE DEFINED BY THE CONTRACT; AND FOR OTHER PURPOSES.

### Subtitle

TO PROVIDE THAT THE SUBROGATION AND REIMBURSEMENT RIGHTS OF PARTIES TO AN INSURANCE CONTRACT ARE TO BE DEFINED BY THE CONTRACT.

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

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

23-79-146. ~~Subrogation recovery~~ Insurer's right of reimbursement and right to seek subrogation.

(a)(1) ~~Any~~ A property and casualty insurer, accident and health insurer, health maintenance organization, self-funded group, multiple-employer welfare arrangement, or hospital or medical services corporation that issues, delivers, or renews a contract of property and casualty insurance, accident and health insurance, or individual or group accident and health care coverage containing a provision for subrogation for ~~any~~ benefits or services of any kind furnished to an insured, or for payments made or credit extended to or on behalf of ~~any~~ a covered person for property damage or a physical condition or injury caused by a third party or for which a third party may be liable, ~~shall be~~ is entitled to ~~receive~~ seek subrogation ~~benefits from~~ against the third party.



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

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

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

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

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

~~(2)(c)(1)~~ In the event that If an insured or covered person recovers from a third party, the reasonable cost of collection and reasonable attorney's fees ~~thereof~~ incurred to obtain the recovery shall be assessed against the insurer and the insured in the proportion each benefits from the recovery.

(2) An insurer's share of the costs of collection and attorney's fees under subdivision (c)(1) of this section shall not exceed twenty-five percent (25%) of the amount the insurer recovers through reimbursement.

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

(2) An insurer's share of the costs of collection and attorney's fees under subdivision (d)(1) of this section shall not exceed twenty-five

percent (25%) of the amount the insurer recovers through reimbursement.

SECTION 2. Arkansas Code § 23-89-207 is amended to read as follows:  
23-89-207. Insurer's right of reimbursement and subrogation.

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

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

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

(b)(1) All cost of collection ~~thereof~~ incurred to obtain the recovery shall be assessed against the insurer and insured in the proportion each benefits from the recovery.

(2) An insurer's share of the costs of collection and attorney's fees under subdivision (b)(1) of this section shall not exceed twenty-five percent (25%) of the amount the insurer recovers through reimbursement.

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

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

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

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

(3) The terms, policy language, and conditions of the insurance

contract are controlling and binding on the insured and the insured's agents, beneficiaries, assigns, and derivative claim holders.

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

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

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

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

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

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

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

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