

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
90th General Assembly  
Regular Session, 2015

# A Bill

HOUSE BILL 1907

By: Representative Neal

## For An Act To Be Entitled

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

## Subtitle

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

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.

(a)(1) Any 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 healthcare 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~~ another party or for which ~~a third~~ another party



may be liable, shall be entitled to receive subrogation benefits from the ~~third~~ other party.

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

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

(4) 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 healthcare 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) In the event that~~ If an insured or a covered person recovers from a third party, the insurer shall not be responsible for or the insurer's subrogation claim reduced for reasonable cost of collection and 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 unless the insurer agreed to pay those fees in writing.

~~(b) In the event 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 contractual subrogation rights is entitled to the subrogation benefits specified in subsection (a) of this section, reasonable cost of collection~~

~~and attorney's fees thereof shall be assessed against the insurers and the insured in the proportion each benefits from the recovery.~~

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

(e)(1) If a contract of property and casualty insurance, accident and health insurance, or individual or group accident and healthcare coverage does not contain a provision for subrogation, the 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 issued the contract is not entitled to any subrogation recovery until an insured or a covered person has been made whole under common law.

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

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

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

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

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

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

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

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

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

(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 and shall not be impaired by the application of the made whole doctrine established under common law.

(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 and shall not be impaired by the application of the made whole doctrine established under common law.

(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 and shall not be impaired by the application of the made whole doctrine established under common law.

(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.