

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

State of Arkansas
91st General Assembly
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A Bill

HOUSE BILL 1753

By: Representative Collins

By: Senator Rapert

For An Act To Be Entitled

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

Subtitle

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

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

SECTION 1. DO NOT CODIFY. Legislative intent.

It is the intent of the General Assembly to abolish the common law rule that equitable subrogation and the made whole doctrine cannot be modified by an insurance contract, a rule that has been applied by the Arkansas Supreme Court in a number of cases, including without limitation Franklin v. Healthsource of Arkansas, 328 Ark. 163, 942 S.W.2d 837 (1997) and Ryder v. State Farm Mutual Automobile Insurance Company, 371 Ark. 508, 268 S.W.3d 298 (2007).

SECTION 2. Arkansas Code § 23-79-146 is amended to read as follows:

23-79-146. ~~Subrogation recovery~~ Insurer's right of reimbursement and 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 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~~ is entitled to ~~receive~~ seek subrogation ~~benefits~~ from the ~~third~~ other party.

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

(3) The terms, policy language, and conditions of the insurance contract are controlling and binding on the covered person and the covered person'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 or entity 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 any benefits or provision of services to a covered person.

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

(c)(1) In the event that an insured or Except as provided in subdivision (c)(3) of this section, if a covered person recovers from a ~~third~~ another party, the reasonable ~~cost~~ costs of collection and reasonable attorney's fees ~~thereof~~ incurred to obtain the recovery shall be assessed against the insurer and the ~~insured~~ covered person 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.

(3) If an insurer hires its own attorney to pursue its subrogation or reimbursement claim, the recovery of the insurer is not subject to a reduction under subdivision (c)(1) of this section.

~~(b)(d)(1) In the event~~ Except as provided in subdivision (d)(3) of this section, if more than one (1) property and 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~~ costs of collection and reasonable attorney's fees ~~thereof~~ incurred to obtain the subrogation benefits shall be assessed against the insurers and the ~~insured~~ covered person 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.

(3) If an insurer hires its own attorney to pursue its subrogation or reimbursement claim, the recovery of the insurer is not subject to a reduction under subdivision (d)(1) of this section.

SECTION 3. 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 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 any benefits or provision of services of any kind to the recipient of any benefits.

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

~~(b)(1) All~~ costs of collection ~~thereof~~ incurred to obtain the

recovery shall be assessed against the insurer and ~~insured~~ the recipient of benefits 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.

(3) If an insurer hires its own attorney to pursue its subrogation or reimbursement claim, the recovery of the insurer is not subject to a reduction under subdivision (b)(1) of this section.

(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~~ that 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 another party or for which another party may be liable is entitled to seek subrogation against the 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 the recipient of benefits.

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

SECTION 4. 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 shall, has a right of reimbursement and credit, and to the extent thereof, be of the payment, the insurer making the payment 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 any benefits or provision of services of any kind to the recipient of benefits.

(3) The terms, policy language, and conditions of the insurance contract are controlling and binding on the recipient of benefits and the recipient'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 another party or for which another party may be liable is entitled to seek subrogation against the 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 the recipient of benefits.

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

(c)(1) All costs of collection incurred to obtain the recovery shall be assessed against the insurer and recipient of benefits 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.

(3) If an insurer hires its own attorney to pursue its subrogation or reimbursement claim, the recovery of the insurer is not subject to a reduction under subdivision (c)(1) of this section.