

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

HOUSE BILL 1753

5 By: Representative Collins
6 By: Senator Rapert
7

For An Act To Be Entitled

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

15 TO CLARIFY THAT THE SUBROGATION AND
16 REIMBURSEMENT RIGHTS OF PARTIES TO AN
17 INSURANCE CONTRACT ARE TO BE DEFINED BY
18 THE INSURANCE CONTRACT.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. DO NOT CODIFY. Legislative intent.

25 It is the intent of the General Assembly to abolish the common law rule
26 that equitable subrogation and the made whole doctrine cannot be modified by
27 an insurance contract, a rule that has been applied by the Arkansas Supreme
28 Court in a number of cases, including without limitation Franklin v.
29 Healthsource of Arkansas, 328 Ark. 163, 942 S.W.2d 837 (1997) and Ryder v.
30 State Farm Mutual Automobile Insurance Company, 371 Ark. 508, 268 S.W.3d 298
31 (2007).
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33 SECTION 2. Arkansas Code § 23-79-146 is amended to read as follows:

34 23-79-146. ~~Subrogation recovery~~ Insurer's right of reimbursement and
35 subrogation.

36 (a)(1) ~~Any~~ A property and casualty insurer, accident and health



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

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

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

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

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

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

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

36 (2) An insurer's share of the costs of collection and attorney's

1 fees under subdivision (c)(1) of this section shall not exceed twenty-five
 2 percent (25%) of the amount the insurer recovers through reimbursement.

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

6 ~~(b)(d)(1)~~ In the event Except as provided in subdivision (d)(3) of
 7 this section, if more than one (1) property and casualty insurer, accident
 8 and health insurer, health maintenance organization, self-funded group,
 9 multiple-employer welfare arrangement, or hospital or medical services
 10 corporation having with contractual subrogation rights is entitled to the
 11 subrogation benefits specified in subsection (a) of this section, the
 12 reasonable ~~cost~~ costs of collection and reasonable attorney's fees thereof
 13 incurred to obtain the subrogation benefits shall be assessed against the
 14 insurers and the insured covered person in the proportion each benefits from
 15 the recovery.

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

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

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 23 SECTION 3. Arkansas Code § 23-89-207 is amended to read as follows:

24 23-89-207. Insurer's right of reimbursement and subrogation.

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

30 (2) The right to reimbursement arises and attaches at the time
 31 of the first payment of any benefits or provision of services of any kind to
 32 the recipient of any benefits.

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

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

1 recovery shall be assessed against the insurer and ~~insured~~ the recipient of
2 benefits in the proportion each benefits from the recovery.

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

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

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

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

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

20 (2) The right to subrogation arises and attaches at the time of
21 the first payment of any benefits or provision of services to the recipient
22 of benefits.

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

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27 SECTION 4. Arkansas Code § 23-89-405 is amended to read as follows:

28 23-89-405. Subrogation and right of reimbursement of insurer making
29 payment.

30 (a)(1) ~~In the event of~~ If payment is made to any a person under the
31 coverage required by this subchapter and subject to the terms and conditions
32 of the coverage, the insurer making the payment shall, has a right of
33 reimbursement and credit, and to the extent thereof, be of the payment, the
34 insurer making the payment is entitled to the proceeds of ~~any a~~ a settlement or
35 judgment resulting from the exercise of ~~any~~ rights of recovery of the person
36 against ~~any a~~ a person or organization legally responsible for the bodily

1 injury for which the payment is made, including the proceeds recoverable from
2 the assets of ~~the~~ an insolvent insurer.

3 (2) The right to reimbursement arises and attaches at the time
4 of the first payment of any benefits or provision of services of any kind to
5 the recipient of benefits.

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

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

14 (2) The right to subrogation arises and attaches at the time of
15 the first payment of any benefits or provision of services to the recipient
16 of benefits.

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

20 (c)(1) All costs of collection incurred to obtain the recovery shall
21 be assessed against the insurer and recipient of benefits in the proportion
22 each benefits from the recovery.

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

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

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