

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

# A Bill

HOUSE BILL 1907

4  
5 By: Representative Neal  
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## For An Act To Be Entitled

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

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17 TO REQUIRE THAT THE SUBROGATION AND  
18 REIMBURSEMENT RIGHTS OF PARTIES TO AN  
19 INSURANCE CONTRACT ARE TO BE DEFINED BY  
20 THE CONTRACT; TO CLARIFY WHEN AN INSURED  
21 IS MADE WHOLE.  
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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26 SECTION 1. Arkansas Code § 23-79-146 is amended to read as follows:  
27 23-79-146. Subrogation recovery.

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



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

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

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

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

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

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

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

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

32 ~~(b) In the event more than one (1) casualty insurer, accident and~~  
33 ~~health insurer, health maintenance organization, self-funded group, multiple-~~  
34 ~~employer welfare arrangement, or hospital or medical services corporation~~  
35 ~~having contractual subrogation rights is entitled to the subrogation benefits~~  
36 ~~specified in subsection (a) of this section, reasonable cost of collection~~

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

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

7 (e)(1) If a contract of property and casualty insurance, accident and  
8 health insurance, or individual or group accident and healthcare coverage  
9 does not contain a provision for subrogation, the property and casualty  
10 insurer, accident and health insurer, health maintenance organization, self-  
11 funded group, multiple-employer welfare arrangement, or hospital or medical  
12 services corporation that issued the contract is not entitled to any  
13 subrogation recovery until an insured or a covered person has been made whole  
14 under common law.

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

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

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

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

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

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

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

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

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

1           23-89-207. Insurer's right of reimbursement and subrogation.

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

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

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

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

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

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

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

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

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

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

3 23-89-405. Subrogation and right of reimbursement of insurer making  
4 payment.

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

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

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

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

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

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

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