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3 90th General Assembly
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A Bill

HOUSE BILL 1907

5
6 By: Representative Neal

7
8 Filed with: House Committee on Insurance and Commerce
9 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

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

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18 TO REQUIRE THAT THE SUBROGATION AND
19 REIMBURSEMENT RIGHTS OF PARTIES TO AN
20 INSURANCE CONTRACT ARE TO BE DEFINED BY
21 THE CONTRACT; TO CLARIFY WHEN AN INSURED
22 IS MADE WHOLE.
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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28 SECTION 1. Arkansas Code § 23-79-146 is amended to read as follows:
29 23-79-146. Subrogation recovery.

30 (a)(1) Any property and casualty insurer, accident and health insurer,
31 health maintenance organization, self-funded group, multiple-employer welfare
32 arrangement, or hospital or medical services corporation that issues,
33 delivers, or renews a contract of property and casualty insurance, accident
34 and health insurance, or individual or group accident and healthcare coverage
35 containing a provision for subrogation for ~~any~~ benefits or services of any
36 kind furnished to an insured, or for payments made or credit extended to or

1 on behalf of ~~any~~ a covered person for property damage or a physical condition
 2 or injury caused by a ~~third~~ another party or for which a ~~third~~ another party
 3 may be liable, shall be entitled to receive subrogation benefits from the
 4 ~~third~~ other party.

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

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

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

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

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

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

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

34 ~~(b)~~ In the event more than one (1) casualty insurer, accident and
 35 health insurer, health maintenance organization, self-funded group, multiple-
 36 employer welfare arrangement, or hospital or medical services corporation

1 ~~having contractual subrogation rights is entitled to the subrogation benefits~~
2 ~~specified in subsection (a) of this section, reasonable cost of collection~~
3 ~~and attorney's fees thereof shall be assessed against the insurers and the~~
4 ~~insured in the proportion each benefits from the recovery.~~

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

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

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

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

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

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

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

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

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

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

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

3 23-89-207. Insurer's right of reimbursement and subrogation.

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

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

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

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

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

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

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

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

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

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5 SECTION 3. Arkansas Code § 23-89-405 is amended to read as follows:
6 23-89-405. Subrogation and right of reimbursement of insurer making
7 payment.

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

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

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

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

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

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

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Referred by the Arkansas House of Representatives

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