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2 89th General Assembly
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4
5 By: Representative Lea

A Bill

HOUSE BILL 2203

For An Act To Be Entitled

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

Subtitle

15 TO PROVIDE THAT THE SUBROGATION AND
16 REIMBURSEMENT RIGHTS OF PARTIES TO AN
17 INSURANCE CONTRACT ARE TO BE DEFINED BY
18 THE CONTRACT.

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

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

24 23-79-146. ~~Subrogation recovery~~ Insurer's right of reimbursement and
25 right to seek subrogation.

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



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

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

7 (b)(1) If a recipient of benefits under a contract of property and
 8 casualty insurance, accident and health insurance, or individual or group
 9 accident and health care coverage recovers in tort for property damage or a
 10 physical condition or injury, either by settlement or judgment, the insurer
 11 paying the benefits has a right of reimbursement and credit out of the tort
 12 recovery or settlement as provided by and defined in the insurance contract.

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

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

19 ~~(2)(c)(1)~~ In the event that If an insured or covered person recovers
 20 from a third party, the reasonable cost of collection and reasonable
 21 attorney's fees ~~thereof~~ incurred to obtain the recovery shall be assessed
 22 against the insurer and the insured in the proportion each benefits from the
 23 recovery.

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

27 ~~(b)(d)(1)~~ In the event If more than one (1) casualty insurer, accident
 28 and health insurer, health maintenance organization, self-funded group,
 29 multiple-employer welfare arrangement, or hospital or medical services
 30 corporation having with contractual subrogation rights is entitled to the
 31 subrogation benefits specified in subsection (a) of this section, the
 32 reasonable cost of collection and reasonable attorney's fees ~~thereof~~ incurred
 33 to obtain the subrogation benefits shall be assessed against the insurers and
 34 the insured in the proportion each benefits from the recovery.

35 (2) An insurer's share of the costs of collection and attorney's
 36 fees under subdivision (d)(1) of this section shall not exceed twenty-five

1 percent (25%) of the amount the insurer recovers through reimbursement.

2
3 SECTION 2. Arkansas Code § 23-89-207 is amended to read as follows:
4 23-89-207. Insurer's right of reimbursement and subrogation.

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

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

13 (3) 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) All cost of collection ~~thereof~~ incurred to obtain the recovery
17 shall be assessed against the insurer and insured in the proportion each
18 benefits from the recovery.

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

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

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

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

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

36 (3) The terms, policy language, and conditions of the insurance

1 contract are controlling and binding on the insured and the insured's agents,
2 beneficiaries, assigns, and derivative claim holders.

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

5 23-89-405. Subrogation and right of reimbursement of insurer making
6 payment.

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

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

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

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

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

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.