

BILL ANALYSIS

Senate Research Center

S.B. 561
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State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law requires a political subdivision to be subrogated to its employees' right of recovery for personal injuries caused by a third party. However, the decision in *Texas Association of School Boards v. Ward* maintains that a political subdivision is prohibited from being reimbursed until an injured employee is made whole from injuries. As a result, political subdivisions are not being fully compensated for funds that were used to pay for an employee's medical costs incurred due to a third party's negligence.

S.B. 561 entitles a political subdivision to the lesser of one-third of the injured employee's recovery or the total cost of benefits paid by the political subdivision, with an exception, and provides that the political subdivision is required to pay to the injured employee's attorney an amount not greater than one-third of the political subdivision's recovery when the political subdivision is not represented by its own attorney.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 172.015, Local Government Code, as follows:

Sec. 172.015. New Heading: SUBROGATION; ADEQUATE RECOVERY. (a) Defines "covered individual."

(b) Provides that the payor of employee benefits (payor) is subrogated to a covered individual's, rather than the employees', right of recovery for personal injuries caused by the tortious actions of a third party.

(c) Requires a payor who is not represented by an attorney in a third-party action to pay a fee in an amount determined under an agreement between the attorney and the payor to an attorney representing the covered individual. Requires the court to award to the attorney a reasonable fee for recovery of the interest of the payor payable from the recovery of the payor, not in excess of one-third of the payor's recovery, except as provided by Subsection (i), in the absence of an agreement.

(d) Entitles the payor to a certain pro rata recovery if the injured covered individual is unable to realize a complete and adequate recovery for injuries sustained as a result of the actionable fault of a third party. Provides that a common law that requires that an injured party be made whole before a subrogee makes a recovery does not apply to the recovery of the payor under this section.

(e) Provides that the payor's pro rata share under Subsection (d) is equal to the lesser of one-third of the covered individual's total recovery, or the total cost of employee benefits paid by the payor as a result of the tortious conduct of the third party, unless otherwise agreed by a covered individual and the payor and subject to Subsection (f).

(f) Authorizes a covered individual to bring an action for declaratory judgment to establish that the amount of the pro rata recovery which the payor is entitled is an amount that is less than the pro rata share described by Subsection (e). Requires the covered individual to prove by a preponderance of the evidence that the amount of the covered individual's total recovery is less than 50 percent of the value of the covered person's underlying claim for damages to prevail in an action brought under this section.

(g) Requires the court to establish the payor's pro rata recovery under Subsection (f) in an amount that is not less than 15 percent of and not more than one-third of the covered individual's total recovery, except as otherwise provided by this section. Requires the court to establish the payor's pro rata recovery in an amount that is less than 15 percent of and equal to or greater than five percent of the covered individual's total recovery if a covered individual shows by clear and convincing evidence that the pro rata share otherwise described by this subsection would result in manifest injustice.

(h) Prohibits the court from awarding costs or attorney's fees to any party in an action brought under Subsection (f), notwithstanding Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code, or any other law.

(i) Prohibits a payor from being assessed any attorney's fees under any theory or rule of law, including the common fund doctrine, out of the recovery which the payor is entitled under Subsection (e) or (f), notwithstanding Subsection (c).

(j) Provides that Subsections (c)-(i) do not apply to a payor of employee benefits participating in a cooperative effort to design and administer benefits through an administrative agency that includes a cooperative member that is a county with a population of at least two million that is adjacent to a county with a population of at least one million.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2007.