

By: Smithee

H.B. No. 1226

Substitute the following for H.B. No. 1226:

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C.S.H.B. No. 1226

A BILL TO BE ENTITLED

AN ACT

relating to the subrogation interests of certain political subdivisions or insurance carriers providing reinsurance for subdivisions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 172.015, Local Government Code, is amended to read as follows:

Sec. 172.015. SUBROGATION; ADEQUATE RECOVERY. (a) In this section, "covered individual" means a person who is covered by the pool. The term includes an official, an employee, a retiree, and an employee of an affiliated service contractor and their dependents.

(b) The payor of employee benefits, whether a political subdivision, group of political subdivisions, pool, or carrier providing reinsurance to one of those entities, is ~~[shall be]~~ subrogated to a covered individual's ~~[the employees']~~ right of recovery for personal injuries caused by the tortious conduct of a third party.

(c) A payor of employee benefits whose interest is not actively represented by an attorney in a third-party action shall pay to an attorney representing the covered individual a fee in an amount determined under an agreement entered into between the attorney and the payor of employee benefits. Except as provided by Subsection (i), in the absence of an agreement, the court shall award to the attorney, payable out of the recovery of the payor of

1 employee benefits, a reasonable fee for recovery of the interest of
2 the payor of employee benefits, not to exceed one-third of the
3 payor's recovery.

4 (d) If the injured covered individual is not able to realize
5 a complete and adequate recovery for injuries sustained as a result
6 of the actionable fault of a third party, the payor of employee
7 benefits is entitled to a pro rata recovery described by Subsection
8 (e). A common law doctrine that requires that an injured party be
9 made whole before a subrogee makes a recovery does not apply to the
10 recovery of the payor of employee benefits under this subsection.

11 (e) Unless otherwise agreed by a covered individual and the
12 payor of employee benefits and subject to Subsection (f), the
13 payor's pro rata share under Subsection (d) is an amount that is
14 equal to the lesser of:

15 (1) one-third of the covered individual's total
16 recovery; or

17 (2) the total cost of employee benefits paid by the
18 payor as a direct result of the tortious conduct of the third party.

19 (f) A covered individual may bring an action for declaratory
20 judgment to establish that the amount of the pro rata recovery to
21 which the payor of employee benefits is entitled is an amount that
22 is less than the pro rata share described by Subsection (e). To
23 prevail in an action brought under this subsection, the covered
24 individual must prove by a preponderance of the evidence that the
25 amount of the covered individual's total recovery is less than 50
26 percent of the value of the covered person's underlying claim for
27 damages.

1 (g) Except as otherwise provided by this subsection, the
2 court shall establish the payor's pro rata recovery under
3 Subsection (f) in an amount that is not less than 15 percent of and
4 not more than one-third of the covered individual's total recovery.
5 If a covered individual shows by clear and convincing evidence that
6 the pro rata share otherwise described by this subsection would
7 result in manifest injustice, the court shall establish the payor's
8 pro rata recovery in an amount that is less than 15 percent of and
9 equal to or greater than five percent of the covered individual's
10 total recovery.

11 (h) Notwithstanding Chapter 37, Civil Practice and Remedies
12 Code, or any other law, in an action brought under Subsection (f)
13 the court may not award costs or attorney's fees to any party in the
14 action.

15 (i) Notwithstanding Subsection (c), a payor of employee
16 benefits may not be assessed out of the recovery to which the payor
17 is entitled under Subsection (e) or (f) any attorney's fees under
18 any theory or rule of law, including the common fund doctrine.

19 SECTION 2. Section 172.015, Local Government Code, as
20 amended by this Act, applies only to a cause of action that accrues
21 on or after the effective date of this Act. An action that accrued
22 before the effective date of this Act is governed by the law
23 applicable to the action immediately before the effective date of
24 this Act, and that law is continued in effect for that purpose.

25 SECTION 3. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

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- 1 Act does not receive the vote necessary for immediate effect, this
- 2 Act takes effect September 1, 2007.