

By: Smithee

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 (f), 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, the payor's pro rata share under
13 Subsection (d) is an amount that is equal to the lesser of:

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

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

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

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

1 SECTION 3. This Act takes effect immediately if it receives
2 a vote of two-thirds of all the members elected to each house, as
3 provided by Section 39, Article III, Texas Constitution. If this
4 Act does not receive the vote necessary for immediate effect, this
5 Act takes effect September 1, 2007.