

1-1 By: Carona S.B. No. 561
1-2 (In the Senate - Filed February 9, 2007; February 26, 2007,
1-3 read first time and referred to Committee on State Affairs;
1-4 April 10, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; April 10, 2007,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 561 By: Carona

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the subrogation interests of certain political
1-11 subdivisions or insurance carriers providing reinsurance for
1-12 subdivisions.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 172.015, Local Government Code, is
1-15 amended to read as follows:

1-16 Sec. 172.015. SUBROGATION; ADEQUATE RECOVERY. (a) In this
1-17 section, "covered individual" means a person who is covered by the
1-18 pool. The term includes an official, an employee, a retiree, and an
1-19 employee of an affiliated service contractor and their dependents.

1-20 (b) The payor of employee benefits, whether a political
1-21 subdivision, group of political subdivisions, pool, or carrier
1-22 providing reinsurance to one of those entities, is ~~shall be~~
1-23 subrogated to a covered individual's ~~the employees'~~ right of
1-24 recovery for personal injuries caused by the tortious conduct of a
1-25 third party.

1-26 (c) A payor of employee benefits whose interest is not
1-27 actively represented by an attorney in a third-party action shall
1-28 pay to an attorney representing the covered individual a fee in an
1-29 amount determined under an agreement entered into between the
1-30 attorney and the payor of employee benefits. Except as provided by
1-31 Subsection (i), in the absence of an agreement, the court shall
1-32 award to the attorney, payable out of the recovery of the payor of
1-33 employee benefits, a reasonable fee for recovery of the interest of
1-34 the payor of employee benefits, not to exceed one-third of the
1-35 payor's recovery.

1-36 (d) If the injured covered individual is not able to realize
1-37 a complete and adequate recovery for injuries sustained as a result
1-38 of the actionable fault of a third party, the payor of employee
1-39 benefits is entitled to a pro rata recovery described by Subsection
1-40 (e). A common law doctrine that requires that an injured party be
1-41 made whole before a subrogee makes a recovery does not apply to the
1-42 recovery of the payor of employee benefits under this subsection.

1-43 (e) Unless otherwise agreed by a covered individual and the
1-44 payor of employee benefits and subject to Subsection (f), the
1-45 payor's pro rata share under Subsection (d) is an amount that is
1-46 equal to the lesser of:

1-47 (1) one-third of the covered individual's total
1-48 recovery; or

1-49 (2) the total cost of employee benefits paid by the
1-50 payor as a direct result of the tortious conduct of the third party.

1-51 (f) A covered individual may bring an action for declaratory
1-52 judgment to establish that the amount of the pro rata recovery to
1-53 which the payor of employee benefits is entitled is an amount that
1-54 is less than the pro rata share described by Subsection (e). To
1-55 prevail in an action brought under this subsection, the covered
1-56 individual must prove by a preponderance of the evidence that the
1-57 amount of the covered individual's total recovery is less than 50
1-58 percent of the value of the covered person's underlying claim for
1-59 damages.

1-60 (g) Except as otherwise provided by this subsection, the
1-61 court shall establish the payor's pro rata recovery under
1-62 Subsection (f) in an amount that is not less than 15 percent of and
1-63 not more than one-third of the covered individual's total recovery.

2-1 If a covered individual shows by clear and convincing evidence that
2-2 the pro rata share otherwise described by this subsection would
2-3 result in manifest injustice, the court shall establish the payor's
2-4 pro rata recovery in an amount that is less than 15 percent of and
2-5 equal to or greater than five percent of the covered individual's
2-6 total recovery.

2-7 (h) Notwithstanding Chapter 37, Civil Practice and Remedies
2-8 Code, or any other law, in an action brought under Subsection (f)
2-9 the court may not award costs or attorney's fees to any party in the
2-10 action.

2-11 (i) Notwithstanding Subsection (c), a payor of employee
2-12 benefits may not be assessed out of the recovery to which the payor
2-13 is entitled under Subsection (e) or (f) any attorney's fees under
2-14 any theory or rule of law, including the common fund doctrine.

2-15 SECTION 2. Section 172.015, Local Government Code, as
2-16 amended by this Act, applies only to a cause of action that accrues
2-17 on or after the effective date of this Act. An action that accrued
2-18 before the effective date of this Act is governed by the law
2-19 applicable to the action immediately before the effective date of
2-20 this Act, and that law is continued in effect for that purpose.

2-21 SECTION 3. This Act takes effect immediately if it receives
2-22 a vote of two-thirds of all the members elected to each house, as
2-23 provided by Section 39, Article III, Texas Constitution. If this
2-24 Act does not receive the vote necessary for immediate effect, this
2-25 Act takes effect September 1, 2007.

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