



13 MAY -2 PM 6:57  
HOUSE OF REPRESENTATIVES

FLOOR AMENDMENT NO. \_\_\_\_\_

BY: Julie

1 Amend C.S.H.B. No. 1869 (house committee printing) by  
2 striking all below the enacting clause and substituting the  
3 following:

4 SECTION 1. Title 6, Civil Practice and Remedies Code, is  
5 amended by adding Chapter 140 to read as follows:

6 CHAPTER 140. CONTRACTUAL SUBROGATION RIGHTS OF PAYORS OF CERTAIN  
7 BENEFITS

8 Sec. 140.001. DEFINITIONS. In this chapter:

9 (1) "Covered individual" means an individual entitled  
10 to benefits described by Section 140.002.

11 (2) "Payor of benefits" or "payor" means an issuer of a  
12 plan providing benefits described by Section 140.002 that:

13 (A) pays benefits to or on behalf of a covered  
14 individual as a result of personal injuries to the covered  
15 individual caused by the tortious conduct of a third party; and

16 (B) has a contractual right of subrogation  
17 described by Section 140.004.

18 Sec. 140.002. APPLICABILITY OF CHAPTER. (a) This chapter  
19 applies to an issuer of a health benefit plan that provides benefits  
20 for medical or surgical expenses incurred as a result of a health  
21 condition, accident, or sickness, a disability benefit plan, or an  
22 employee welfare benefit plan, including an individual, group,  
23 blanket, or franchise insurance policy or insurance agreement, a  
24 group hospital service contract, or an individual or group evidence  
25 of coverage or similar coverage document, including:

26 (1) an insurance company;

27 (2) a group hospital service corporation operating  
28 under Chapter 842, Insurance Code;

29 (3) a fraternal benefit society operating under

Chapter 885, Insurance Code;

(4) a stipulated premium insurance company operating under Chapter 884, Insurance Code;

(5) a reciprocal exchange operating under Chapter 942, Insurance Code;

(6) a health maintenance organization operating under Chapter 843, Insurance Code;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846, Insurance Code; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844, Insurance Code.

(b) Notwithstanding Section 172.014, Local Government Code, or any other law, this chapter applies to a risk pool providing health and accident coverage under Chapter 172, Local Government Code.

(c) Notwithstanding any other law, this chapter applies to an issuer of a plan or coverage under Chapter 1551, 1575, 1579, or 1601, Insurance Code.

(d) Notwithstanding any other law, this chapter applies to any self-funded issuer of a plan that provides a benefit described by Subsection (a).

(e) This chapter applies to any policy, evidence of coverage, or contract under which a benefit described by Subsection (a) is provided and:

(1) that is delivered, issued for delivery, or entered into in this state; or

(2) under which an individual or group in this state is entitled to benefits.

(f) This chapter does not apply to:

(1) a workers' compensation insurance policy or any other source of medical benefits under Title 5, Labor Code;

1           (2) Medicare;  
2           (3) the Medicaid program under Chapter 32, Human  
3 Resources Code;  
4           (4) a Medicaid managed care program operated under  
5 Chapter 533, Government Code;  
6           (5) the state child health plan or any other program  
7 operated under Chapter 62 or 63, Health and Safety Code; or  
8           (6) a self-funded plan that is subject to the Employee  
9 Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et  
10 seq.).

11       Sec. 140.003. CONFLICTS WITH OTHER LAW. In the event of a  
12 conflict between this chapter and another law, including a rule of  
13 procedure or evidence, this chapter controls to the extent of the  
14 conflict.

15       Sec. 140.004. CONTRACTUAL SUBROGATION RIGHTS AUTHORIZED.  
16 An issuer of a plan that provides benefits described by Section  
17 140.002 under which the policy or plan issuer may be obligated to  
18 make payments or provide medical or surgical benefits to or on  
19 behalf of a covered individual as a result of a personal injury to  
20 the individual caused by the tortious conduct of a third party may  
21 contract to be subrogated to and have a right of reimbursement for  
22 payments made or costs of benefits provided from the individual's  
23 recovery for that injury, subject to this chapter.

24       Sec. 140.005. PAYORS' RECOVERY LIMITED. (a) If an injured  
25 covered individual is entitled by law to seek a recovery from the  
26 third-party tortfeasor for benefits paid or provided by a subrogee  
27 as described by Section 140.004, then all payors are entitled to  
28 recover as provided by Subsection (b) or (c).

29       (b) This subsection applies when a covered individual is not  
30 represented by an attorney in obtaining a recovery. All payors'  
31 share under Subsection (a) of a covered individual's recovery is an

1 amount that is equal to the lesser of:

2 (1) one-half of the covered individual's gross  
3 recovery; or

4 (2) the total cost of benefits paid, provided, or  
5 assumed by the payor as a direct result of the tortious conduct of  
6 the third party.

7 (c) This subsection applies when a covered individual is  
8 represented by an attorney in obtaining a recovery. All payors'  
9 share under Subsection (a) of a covered individual's recovery is an  
10 amount that is equal to the lesser of:

11 (1) one-half of the covered individual's gross  
12 recovery less attorney's fees and procurement costs as provided by  
13 Section 140.007; or

14 (2) the total cost of benefits paid, provided, or  
15 assumed by the payor as a direct result of the tortious conduct of  
16 the third party less attorney's fees and procurement costs as  
17 provided by Section 140.007.

18 (d) A common law doctrine that requires an injured party to  
19 be made whole before a subrogee makes a recovery does not apply to  
20 the recovery of a payor under this section.

21 Sec. 140.006. ATTORNEY'S FEES IN DECLARATORY JUDGMENT  
22 ACTION. Notwithstanding Section 37.009 or any other law, if a  
23 declaratory judgment action is brought under this chapter, the  
24 court may not award costs or attorney's fees to any party in the  
25 action.

26 Sec. 140.007. ATTORNEY'S FEES IN RECOVERY ACTION. (a)  
27 Except as provided by Subsection (c), a payor of benefits whose  
28 interest is not actively represented by an attorney in an action to  
29 recover for a personal injury to a covered individual shall pay to  
30 an attorney representing the covered individual a fee in an amount  
31 determined under an agreement entered into between the attorney and

1 the payor plus a pro rata share of expenses incurred in connection  
2 with the recovery.

3 (b) Except as provided by Subsection (c), in the absence of  
4 an agreement described by Subsection (a), the court shall award to  
5 the attorney, payable out of the payor's share of the total gross  
6 recovery, a reasonable fee for recovery of the payor's share, not to  
7 exceed one-third of the payor's recovery.

8 (c) If an attorney representing the payor's interest  
9 actively participates in obtaining a recovery, the court shall  
10 award and apportion between the covered individual's and the  
11 payor's attorneys a fee payable out of the payor's subrogation  
12 recovery. In apportioning the award, the court shall consider the  
13 benefit accruing to the payor as a result of each attorney's  
14 service. The total attorney's fees may not exceed one-third of the  
15 payor's recovery.

16 Sec. 140.008. FIRST-PARTY RECOVERY. (a) Except as provided  
17 by Subsection (b), a payor of benefits may not pursue a recovery  
18 against a covered individual's first-party recovery.

19 (b) A payor of benefits may pursue recovery against  
20 uninsured/underinsured motorist coverage or medical payments  
21 coverage only if the covered individual or the covered individual's  
22 immediate family did not pay the premiums for the coverage.

23 Sec. 140.009. CONSTRUCTION OF CHAPTER. This chapter does  
24 not create a cause of action. Nothing in this chapter shall be  
25 construed to prevent a payor of benefits from waiving, negotiating,  
26 or not pursuing any claim or recovery described by Section 140.004  
27 or 140.005.

28 SECTION 2. Section 172.015, Local Government Code, is  
29 repealed.

30 SECTION 3. It is the intent of the legislature that if any  
31 provision, section, subsection, sentence, clause, phrase, or word

1 of this Act or the application thereof to any person or circumstance  
2 is found to be unconstitutional, the provision, section,  
3 subsection, sentence, clause, phrase, or word is hereby declared to  
4 be severable and the balance of this Act remains effective  
5 notwithstanding such unconstitutionality. Moreover, the  
6 legislature declares that it would have passed this Act, and each  
7 provision, section, subsection, sentence, clause, phrase, or word  
8 thereof, irrespective of the fact that any provision, section,  
9 subsection, sentence, clause, phrase, or word, or any of their  
10 applications, were to be declared unconstitutional.

11 SECTION 4. The change in law made by this Act applies only  
12 to a contractual right of subrogation in a cause of action that  
13 accrues on or after the effective date of this Act to assert a  
14 contractual right of subrogation or recovery described by Section  
15 140.004, Civil Practice and Remedies Code, as added by this Act.

16 SECTION 5. This Act takes effect January 1, 2014.