

By: Price

H.B. No. 1869

Substitute the following for H.B. No. 1869:

By: Raymond

C.S.H.B. No. 1869

A BILL TO BE ENTITLED

AN ACT

relating to contractual subrogation and other recovery rights of certain insurers and benefit plan issuers.

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

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

CHAPTER 140. CONTRACTUAL SUBROGATION AND OTHER RECOVERY RIGHTS OF PAYORS OF CERTAIN BENEFITS

Sec. 140.001. DEFINITIONS. In this chapter:

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

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

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

(B) has a contractual right of subrogation, reimbursement, lien, assignment, credit, or offset or other contractual right of recovery described by Section 140.004.

Sec. 140.002. APPLICABILITY OF CHAPTER; EXCEPTION. (a) This chapter applies to an issuer of a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, a disability benefit plan, or an employee welfare benefit plan, including an

individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document, including:

(1) an insurance company;

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

(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, and to any other payor of benefits described by Section 172.015, 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.

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

4 (e) Except as provided by Subsection (f), this chapter
5 applies to any policy, evidence of coverage, or contract under
6 which a benefit described by Subsection (a) is provided and:

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

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

11 (f) This chapter does not apply with respect to a workers'
12 compensation insurance policy or any other source of medical
13 benefits under Title 5, Labor Code.

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

18 Sec. 140.004. CONTRACTUAL RECOVERY RIGHTS AUTHORIZED. An
19 issuer of a plan that provides benefits described by Section
20 140.002 under which the plan issuer may make payments to or on
21 behalf of a covered individual as a result of a personal injury to
22 the individual caused by the tortious conduct of a third party may
23 contract to be subrogated to or have a right of reimbursement, lien,
24 assignment, credit, or offset or other right of recovery from the
25 individual's third-party recovery for that injury, subject to this
26 chapter.

27 Sec. 140.005. PAYOR'S RECOVERY LIMITED. (a) If an injured

1 covered individual whose third-party recovery is subject to a
2 payor's right of subrogation or recovery described by Section
3 140.004 is not able to realize a complete and adequate recovery for
4 an injury sustained as a result of the actionable tortious conduct
5 of a third party, the payor is entitled to recover as provided by
6 Subsection (b).

7 (b) Subject to Subsections (c), (d), and (e), a payor's
8 share under Subsection (a) of a covered individual's recovery is an
9 amount that is equal to the lesser of:

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

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

14 (c) A covered individual may bring a declaratory judgment
15 action to limit the amount of a payor's recovery under this section
16 to an amount that is less than the amount otherwise payable under
17 Subsection (b), as provided by Subsections (d) and (e).

18 (d) If, in an action under Subsection (c), the covered
19 individual proves by a preponderance of the evidence that the
20 covered individual's total recovery is less than 50 percent of the
21 value of the covered person's underlying claim for damages, the
22 payor's total recovery under this section is limited to an amount
23 that is not less than 15 percent of and not more than one-third of
24 the covered individual's total recovery.

25 (e) If, in an action under Subsection (c), the covered
26 individual shows by clear and convincing evidence that the payor's
27 recovery of an amount otherwise payable under this section would

1 result in a recognized injustice, the payor's total recovery under
2 this section is limited to an amount that is less than 15 percent of
3 and equal to or greater than five percent of the covered
4 individual's total recovery.

5 (f) A common law doctrine that requires an injured party to
6 be made whole before a subrogee makes a recovery does not apply to
7 the recovery of a payor under this section.

8 Sec. 140.006. ATTORNEY'S FEES IN ACTION TO LIMIT PAYOR'S
9 RECOVERY. Notwithstanding Section 37.009 or any other law, in an
10 action brought under Section 140.005(c), the court may not award
11 costs or attorney's fees to any party in the action.

12 Sec. 140.007. ATTORNEY'S FEES IN THIRD-PARTY ACTION. (a)
13 Except as provided by Subsection (c), a payor of benefits whose
14 interest is not actively represented by an attorney in a
15 third-party action to recover for a personal injury to a covered
16 individual shall pay to an attorney representing the covered
17 individual a fee in an amount determined under an agreement entered
18 into between the attorney and the payor plus a pro rata share of
19 expenses incurred in connection with the recovery.

20 (b) Except as provided by Subsection (c), in the absence of
21 an agreement described by Subsection (a), the court shall award to
22 the attorney, payable out of the payor's share of the total
23 recovery, a reasonable fee for recovery of the payor's share, not to
24 exceed one-third of the payor's recovery.

25 (c) Notwithstanding Subsection (a) or (b), a payor may not
26 be assessed out of a recovery limited under Section 140.005(d) or
27 (e) any attorney's fees under any theory or rule of law, including

1 the common fund doctrine.

2 Sec. 140.008. FIRST PARTY RECOVERY. A payor of benefits may
3 not pursue a recovery against a covered individual's first party
4 recovery.

5 Sec. 140.009. CONSTRUCTION OF CHAPTER. Except as provided
6 by Section 140.005(c), this chapter does not create a cause of
7 action.

8 SECTION 2. Chapter 140, Civil Practice and Remedies Code,
9 as added by this Act, applies only to an action commenced on or
10 after the effective date of this Act to assert a contractual right
11 of subrogation or recovery described by Section 140.004, Civil
12 Practice and Remedies Code, as added by this Act.

13 SECTION 3. This Act takes effect September 1, 2013.