

1-1 By: Price, et al. (Senate Sponsor - Duncan) H.B. No. 1869  
1-2 (In the Senate - Received from the House May 7, 2013;  
1-3 May 8, 2013, read first time and referred to Committee on State  
1-4 Affairs; May 10, 2013, reported favorably by the following vote:  
1-5 Yeas 6, Nays 0; May 10, 2013, sent to printer.)

1-6 COMMITTEE VOTE

1-7		Yea	Nay	Absent	PNV
1-8	Duncan	X			
1-9	Deuell	X			
1-10	Ellis			X	
1-11	Fraser	X			
1-12	Huffman	X			
1-13	Lucio			X	
1-14	Nichols	X			
1-15	Van de Putte			X	
1-16	Williams	X			

1-17 A BILL TO BE ENTITLED  
1-18 AN ACT

1-19 relating to contractual subrogation and other recovery rights of  
1-20 certain insurers and benefit plan issuers.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Title 6, Civil Practice and Remedies Code, is  
1-23 amended by adding Chapter 140 to read as follows:

1-24 CHAPTER 140. CONTRACTUAL SUBROGATION RIGHTS OF PAYORS OF CERTAIN  
1-25 BENEFITS

1-26 Sec. 140.001. DEFINITIONS. In this chapter:

1-27 (1) "Covered individual" means an individual entitled  
1-28 to benefits described by Section 140.002.

1-29 (2) "Payor of benefits" or "payor" means an issuer of a  
1-30 plan providing benefits described by Section 140.002 that:

1-31 (A) pays benefits to or on behalf of a covered  
1-32 individual as a result of personal injuries to the covered  
1-33 individual caused by the tortious conduct of a third party; and

1-34 (B) has a contractual right of subrogation  
1-35 described by Section 140.004.

1-36 Sec. 140.002. APPLICABILITY OF CHAPTER. (a) This chapter  
1-37 applies to an issuer of a health benefit plan that provides benefits  
1-38 for medical or surgical expenses incurred as a result of a health  
1-39 condition, accident, or sickness, a disability benefit plan, or an  
1-40 employee welfare benefit plan, including an individual, group,  
1-41 blanket, or franchise insurance policy or insurance agreement, a  
1-42 group hospital service contract, or an individual or group evidence  
1-43 of coverage or similar coverage document, including:

1-44 (1) an insurance company;

1-45 (2) a group hospital service corporation operating  
1-46 under Chapter 842, Insurance Code;

1-47 (3) a fraternal benefit society operating under  
1-48 Chapter 885, Insurance Code;

1-49 (4) a stipulated premium insurance company operating  
1-50 under Chapter 884, Insurance Code;

1-51 (5) a reciprocal exchange operating under Chapter 942,  
1-52 Insurance Code;

1-53 (6) a health maintenance organization operating under  
1-54 Chapter 843, Insurance Code;

1-55 (7) a multiple employer welfare arrangement that holds  
1-56 a certificate of authority under Chapter 846, Insurance Code; or

1-57 (8) an approved nonprofit health corporation that  
1-58 holds a certificate of authority under Chapter 844, Insurance Code.

1-59 (b) Notwithstanding Section 172.014, Local Government Code,  
1-60 or any other law, this chapter applies to a risk pool providing  
1-61 health and accident coverage under Chapter 172, Local Government

2-1 Code.

2-2 (c) Notwithstanding any other law, this chapter applies to  
 2-3 an issuer of a plan or coverage under Chapter 1551, 1575, 1579, or  
 2-4 1601, Insurance Code.

2-5 (d) Notwithstanding any other law, this chapter applies to  
 2-6 any self-funded issuer of a plan that provides a benefit described  
 2-7 by Subsection (a).

2-8 (e) This chapter applies to any policy, evidence of  
 2-9 coverage, or contract under which a benefit described by Subsection  
 2-10 (a) is provided and:

2-11 (1) that is delivered, issued for delivery, or entered  
 2-12 into in this state; or

2-13 (2) under which an individual or group in this state is  
 2-14 entitled to benefits.

2-15 (f) This chapter does not apply to:

2-16 (1) a workers' compensation insurance policy or any  
 2-17 other source of medical benefits under Title 5, Labor Code;

2-18 (2) Medicare;

2-19 (3) the Medicaid program under Chapter 32, Human  
 2-20 Resources Code;

2-21 (4) a Medicaid managed care program operated under  
 2-22 Chapter 533, Government Code;

2-23 (5) the state child health plan or any other program  
 2-24 operated under Chapter 62 or 63, Health and Safety Code; or

2-25 (6) a self-funded plan that is subject to the Employee  
 2-26 Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et  
 2-27 seq.).

2-28 Sec. 140.003. CONFLICTS WITH OTHER LAW. In the event of a  
 2-29 conflict between this chapter and another law, including a rule of  
 2-30 procedure or evidence, this chapter controls to the extent of the  
 2-31 conflict.

2-32 Sec. 140.004. CONTRACTUAL SUBROGATION RIGHTS AUTHORIZED.  
 2-33 An issuer of a plan that provides benefits described by Section  
 2-34 140.002 under which the policy or plan issuer may be obligated to  
 2-35 make payments or provide medical or surgical benefits to or on  
 2-36 behalf of a covered individual as a result of a personal injury to  
 2-37 the individual caused by the tortious conduct of a third party may  
 2-38 contract to be subrogated to and have a right of reimbursement for  
 2-39 payments made or costs of benefits provided from the individual's  
 2-40 recovery for that injury, subject to this chapter.

2-41 Sec. 140.005. PAYORS' RECOVERY LIMITED. (a) If an injured  
 2-42 covered individual is entitled by law to seek a recovery from the  
 2-43 third-party tortfeasor for benefits paid or provided by a subrogee  
 2-44 as described by Section 140.004, then all payors are entitled to  
 2-45 recover as provided by Subsection (b) or (c).

2-46 (b) This subsection applies when a covered individual is not  
 2-47 represented by an attorney in obtaining a recovery. All payors'  
 2-48 share under Subsection (a) of a covered individual's recovery is an  
 2-49 amount that is equal to the lesser of:

2-50 (1) one-half of the covered individual's gross  
 2-51 recovery; or

2-52 (2) the total cost of benefits paid, provided, or  
 2-53 assumed by the payor as a direct result of the tortious conduct of  
 2-54 the third party.

2-55 (c) This subsection applies when a covered individual is  
 2-56 represented by an attorney in obtaining a recovery. All payors'  
 2-57 share under Subsection (a) of a covered individual's recovery is an  
 2-58 amount that is equal to the lesser of:

2-59 (1) one-half of the covered individual's gross  
 2-60 recovery less attorney's fees and procurement costs as provided by  
 2-61 Section 140.007; or

2-62 (2) the total cost of benefits paid, provided, or  
 2-63 assumed by the payor as a direct result of the tortious conduct of  
 2-64 the third party less attorney's fees and procurement costs as  
 2-65 provided by Section 140.007.

2-66 (d) A common law doctrine that requires an injured party to  
 2-67 be made whole before a subrogee makes a recovery does not apply to  
 2-68 the recovery of a payor under this section.

2-69 Sec. 140.006. ATTORNEY'S FEES IN DECLARATORY JUDGMENT

ACTION. Notwithstanding Section 37.009 or any other law, if a declaratory judgment action is brought under this chapter, the court may not award costs or attorney's fees to any party in the action.

Sec. 140.007. ATTORNEY'S FEES IN RECOVERY ACTION. (a) Except as provided by Subsection (c), a payor of benefits whose interest is not actively represented by an attorney in an action to recover for a personal injury to a covered individual 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 plus a pro rata share of expenses incurred in connection with the recovery.

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

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

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

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

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

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

SECTION 3. It is the intent of the legislature that if any provision, section, subsection, sentence, clause, phrase, or word of this Act or the application thereof to any person or circumstance is found to be unconstitutional, the provision, section, subsection, sentence, clause, phrase, or word is hereby declared to be severable and the balance of this Act remains effective notwithstanding such unconstitutionality. Moreover, the legislature declares that it would have passed this Act, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or any of their applications, were to be declared unconstitutional.

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

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

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