1   AN ACT

2 relating to contractual subrogation and other recovery rights of

3 certain insurers and benefit plan issuers.

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

5   SECTION 1. Title 6, Civil Practice and Remedies Code, is

6 amended by adding Chapter 140 to read as follows:

7 CHAPTER 140. CONTRACTUAL SUBROGATION RIGHTS OF PAYORS OF CERTAIN

8   BENEFITS

9   Sec. 140.001. DEFINITIONS. In this chapter:

10   (1) "Covered individual" means an individual entitled

11 to benefits described by Section 140.002.

12   (2) "Payor of benefits" or "payor" means an issuer of a

13 plan providing benefits described by Section 140.002 that:

14   (A) pays benefits to or on behalf of a covered

15 individual as a result of personal injuries to the covered

16 individual caused by the tortious conduct of a third party; and

17   (B) has a contractual right of subrogation

18 described by Section 140.004.

19   Sec. 140.002. APPLICABILITY OF CHAPTER. (a) This chapter

20 applies to an issuer of a health benefit plan that provides benefits

21 for medical or surgical expenses incurred as a result of a health

22 condition, accident, or sickness, a disability benefit plan, or an

23 employee welfare benefit plan, including an individual, group,

24 blanket, or franchise insurance policy or insurance agreement, a

1 group hospital service contract, or an individual or group evidence

2 of coverage or similar coverage document, including:

3   (1) an insurance company;

4   (2) a group hospital service corporation operating

5 under Chapter 842, Insurance Code;

6   (3) a fraternal benefit society operating under

7 Chapter 885, Insurance Code;

8   (4) a stipulated premium insurance company operating

9 under Chapter 884, Insurance Code;

10   (5) a reciprocal exchange operating under Chapter 942,

11 Insurance Code;

12   (6) a health maintenance organization operating under

13 Chapter 843, Insurance Code;

14   (7) a multiple employer welfare arrangement that holds

15 a certificate of authority under Chapter 846, Insurance Code; or

16   (8) an approved nonprofit health corporation that

17 holds a certificate of authority under Chapter 844, Insurance Code.

18   (b) Notwithstanding Section 172.014, Local Government Code,

19 or any other law, this chapter applies to a risk pool providing

20 health and accident coverage under Chapter 172, Local Government

21 Code.

22   (c) Notwithstanding any other law, this chapter applies to

23 an issuer of a plan or coverage under Chapter 1551, 1575, 1579, or

24 1601, Insurance Code.

25   (d) Notwithstanding any other law, this chapter applies to

26 any self-funded issuer of a plan that provides a benefit described

27 by Subsection (a).

1   (e) This chapter applies to any policy, evidence of

2 coverage, or contract under which a benefit described by Subsection

3 (a) is provided and:

4   (1) that is delivered, issued for delivery, or entered

5 into in this state; or

6   (2) under which an individual or group in this state is

7 entitled to benefits.

8   (f) This chapter does not apply to:

9   (1) a workers' compensation insurance policy or any

10 other source of medical benefits under Title 5, Labor Code;

11   (2) Medicare;

12   (3) the Medicaid program under Chapter 32, Human

13 Resources Code;

14   (4) a Medicaid managed care program operated under

15 Chapter 533, Government Code;

16   (5) the state child health plan or any other program

17 operated under Chapter 62 or 63, Health and Safety Code; or

18   (6) a self-funded plan that is subject to the Employee

19 Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et

20 seq.).

21   Sec. 140.003. CONFLICTS WITH OTHER LAW. In the event of a

22 conflict between this chapter and another law, including a rule of

23 procedure or evidence, this chapter controls to the extent of the

24 conflict.

25   Sec. 140.004. CONTRACTUAL SUBROGATION RIGHTS AUTHORIZED.

26 An issuer of a plan that provides benefits described by Section

27 140.002 under which the policy or plan issuer may be obligated to

1 make payments or provide medical or surgical benefits to or on

2 behalf of a covered individual as a result of a personal injury to

3 the individual caused by the tortious conduct of a third party may

4 contract to be subrogated to and have a right of reimbursement for

5 payments made or costs of benefits provided from the individual's

6 recovery for that injury, subject to this chapter.

7   Sec. 140.005. PAYORS' RECOVERY LIMITED. (a) If an injured

8 covered individual is entitled by law to seek a recovery from the

9 third-party tortfeasor for benefits paid or provided by a subrogee

10 as described by Section 140.004, then all payors are entitled to

11 recover as provided by Subsection (b) or (c).

12   (b) This subsection applies when a covered individual is not

13 represented by an attorney in obtaining a recovery. All payors'

14 share under Subsection (a) of a covered individual's recovery is an

15 amount that is equal to the lesser of:

16   (1) one-half of the covered individual's gross

17 recovery; or

18   (2) the total cost of benefits paid, provided, or

19 assumed by the payor as a direct result of the tortious conduct of

20 the third party.

21   (c) This subsection applies when a covered individual is

22 represented by an attorney in obtaining a recovery. All payors'

23 share under Subsection (a) of a covered individual's recovery is an

24 amount that is equal to the lesser of:

25   (1) one-half of the covered individual's gross

26 recovery less attorney's fees and procurement costs as provided by

27 Section 140.007; or

1   (2) the total cost of benefits paid, provided, or

2 assumed by the payor as a direct result of the tortious conduct of

3 the third party less attorney's fees and procurement costs as

4 provided by Section 140.007.

5   (d) 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 DECLARATORY JUDGMENT

9 ACTION. Notwithstanding Section 37.009 or any other law, if a

10 declaratory judgment action is brought under this chapter, the

11 court may not award costs or attorney's fees to any party in the

12 action.

13   Sec. 140.007. ATTORNEY'S FEES IN RECOVERY ACTION. (a)

14 Except as provided by Subsection (c), a payor of benefits whose

15 interest is not actively represented by an attorney in an action to

16 recover for a personal injury to a covered individual shall pay to

17 an attorney representing the covered individual a fee in an amount

18 determined under an agreement entered into between the attorney and

19 the payor plus a pro rata share of expenses incurred in connection

20 with the recovery.

21   (b) Except as provided by Subsection (c), in the absence of

22 an agreement described by Subsection (a), the court shall award to

23 the attorney, payable out of the payor's share of the total gross

24 recovery, a reasonable fee for recovery of the payor's share, not to

25 exceed one-third of the payor's recovery.

26   (c) If an attorney representing the payor's interest

27 actively participates in obtaining a recovery, the court shall

1 award and apportion between the covered individual's and the

2 payor's attorneys a fee payable out of the payor's subrogation

3 recovery. In apportioning the award, the court shall consider the

4 benefit accruing to the payor as a result of each attorney's

5 service. The total attorney's fees may not exceed one-third of the

6 payor's recovery.

7 Sec. 140.008. FIRST-PARTY RECOVERY. (a) Except as provided

8 by Subsection (b), a payor of benefits may not pursue a recovery

9 against a covered individual's first-party recovery.

10 (b) A payor of benefits may pursue recovery against

11 uninsured/underinsured motorist coverage or medical payments

12 coverage only if the covered individual or the covered individual's

13 immediate family did not pay the premiums for the coverage.

14 Sec. 140.009. CONSTRUCTION OF CHAPTER. This chapter does

15 not create a cause of action. Nothing in this chapter shall be

16 construed to prevent a payor of benefits from waiving, negotiating,

17 or not pursuing any claim or recovery described by Section 140.004

18 or 140.005.

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

20 repealed.

21 SECTION 3. It is the intent of the legislature that if any

22 provision, section, subsection, sentence, clause, phrase, or word

23 of this Act or the application thereof to any person or circumstance

24 is found to be unconstitutional, the provision, section,

25 subsection, sentence, clause, phrase, or word is hereby declared to

26 be severable and the balance of this Act remains effective

27 notwithstanding such unconstitutionality. Moreover, the

1 legislature declares that it would have passed this Act, and each

2 provision, section, subsection, sentence, clause, phrase, or word

3 thereof, irrespective of the fact that any provision, section,

4 subsection, sentence, clause, phrase, or word, or any of their

5 applications, were to be declared unconstitutional.

6   SECTION 4. The change in law made by this Act applies only

7 to a contractual right of subrogation in a cause of action that

8 accrues on or after the effective date of this Act to assert a

9 contractual right of subrogation or recovery described by Section

10 140.004, Civil Practice and Remedies Code, as added by this Act.

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

_____   _____
President of the Senate   Speaker of the House

I certify that H.B. No. 1869 was passed by the House on May 6, 2013, by the following vote: Yeas 144, Nays 0, 1 present, not voting.

                                         _____
                                         Chief Clerk of the House

I certify that H.B. No. 1869 was passed by the Senate on May 14, 2013, by the following vote: Yeas 31, Nays 0.

                                         _____
                                         Secretary of the Senate

APPROVED: _____
                    Date

_____
Governor