

By: Duncan

S.B. No. 1339

A BILL TO BE ENTITLED

AN ACT

relating to contractual subrogation 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 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 described by Section 140.004.

Sec. 140.002. APPLICABILITY OF CHAPTER. (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

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 provision in Chapter 1551, 1575,
23 1579, or 1601, Insurance Code, or any other law, this chapter
24 applies to an issuer of:

25 (1) a basic coverage plan under Chapter 1551,
26 Insurance Code;

27 (2) a basic plan under Chapter 1575, Insurance Code;

1 (3) a primary care coverage plan under Chapter 1579,
2 Insurance Code; and

3 (4) basic coverage under Chapter 1601, Insurance Code.

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

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

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

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

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 SUBROGATION RIGHTS AUTHORIZED.
19 An issuer of a plan that provides benefits described by Section
20 140.002 under which the policy or plan issuer may make payments to
21 or on behalf of a covered individual as a result of a personal
22 injury to the individual caused by the tortious conduct of a third
23 party may contract to be subrogated to and have a right of
24 reimbursement from the individual's recovery for that injury,
25 subject to this chapter.

26 Sec. 140.005. PAYOR'S RECOVERY LIMITED. (a) If an injured
27 covered individual to whose rights a payor of benefits is

1 subrogated is not able to realize a complete and adequate recovery
2 for an injury sustained as a result of the actionable tortious
3 conduct of a third party, the payor is entitled to recover as
4 provided by Subsection (b).

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

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

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

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

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

23 (e) If, in an action under Subsection (c), the covered
24 individual shows by clear and convincing evidence that the payor's
25 recovery of an amount otherwise payable under this section would
26 result in a recognized injustice, the payor's total recovery under
27 this section is limited to an amount that is less than 15 percent of

1 and equal to or greater than five percent of the covered
2 individual's total recovery.

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

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

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

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

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

27 Sec. 140.008. FIRST PARTY RECOVERY. A payor of benefits may

1 not pursue a recovery against a covered individual's first party
2 recovery.

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

6 SECTION 2. The change in law made by this Act applies only
7 to a contractual right of subrogation in:

8 (1) an insurance policy or evidence of coverage
9 delivered, issued for delivery, or renewed on or after the
10 effective date of this Act; or

11 (2) a contract entered into or renewed on or after the
12 effective date of this Act.

13 SECTION 3. This Act takes effect January 1, 2014.