

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 10-0503.01 Christy Chase

HOUSE BILL 10-1168

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A BILL FOR AN ACT

101 **CONCERNING A LIMITATION ON THE ABILITY OF AN INSURER TO**
102 **OBTAIN REPAYMENT OF BENEFITS FROM AN INJURED PARTY WHO**
103 **RECOVERS DAMAGES FROM THE PARTY RESPONSIBLE FOR THE**
104 **INJURY IN SITUATIONS WHEN THE INJURED PARTY WOULD NOT**
105 **BE FULLY COMPENSATED IF THE BENEFITS ARE REPAYED TO THE**
106 **INSURER.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Under current law, an insurer that pays benefits to a person who is injured due to an act or omission of a third party may, under some circumstances, obtain repayment of those benefits out of any recovery paid to the injured party, regardless of whether the injured party has been fully compensated for his or her losses.

The bill would limit the ability of an insurer to obtain a repayment of benefits if the repayment would cause the injured party to not be fully compensated. Additionally, if the injured party has been fully compensated and the repayment is allowed, the amount of the repayment is limited to the amount actually paid by the insurer. Finally, the bill requires the insurer to pay its proportionate share of attorney fees and costs incurred by the injured party in obtaining the settlement or judgment.

If a dispute arises regarding an insurer's right to reimbursement or subrogation, it is to be resolved in the same jurisdiction in which the underlying civil claim was handled. When the injured party recovers damages that he or she believes are not sufficient to fully compensate him or her, the injured party must notify the insurer in writing that the recovery obtained is less than the sum of all of the injured party's damages. If the insurer disputes the injured party's claim, the insurer may file a post-trial or other appropriate motion, or if there is no underlying civil action, may seek a declaratory judgment, to determine whether the injured party's recovery is insufficient to fully compensate the injured party. If the court agrees with the injured party, the insurer has no right to reimbursement or subrogation.

An insurer is precluded from bringing a direct action against the at-fault third party for subrogation or reimbursement, and the third party cannot add the insurer as a copayee on any check or draft in payment of a settlement or judgment for the injured party.

Insurers cannot delay, withhold, or reduce benefits because the obligation to pay benefits results from the acts or omissions of a third party or as a means to compel reimbursement or subrogation. Additionally, if an insurer obtains reimbursement of benefits paid, the insurer must apply the amount of the reimbursement as a credit against any applicable lifetime cap on benefits contained in the applicable policy or plan.

The bill does not affect statutory liens granted to hospitals that provide care to an injured party.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Part 1 of article 1 of title 10, Colorado Revised

3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to

1 read:

2 **10-1-135. Reimbursement for benefits - limitations - notice -**
3 **definitions - legislative declaration.** (1) THE GENERAL ASSEMBLY
4 HEREBY FINDS AND DECLARES THAT:

5 (a) WHEN A PAYER OF BENEFITS SEEKS REPAYMENT OF THE
6 BENEFITS PROVIDED TO AN INJURED PARTY, THE REPAYMENT REDUCES THE
7 AMOUNT AVAILABLE TO THE INJURED PARTY TO COMPENSATE HIM OR HER
8 FOR INJURIES AND DAMAGES OTHER THAN THE COST OF MEDICAL CARE
9 AND MEDICAL SERVICES;

10 (b) REIMBURSEMENT OR REPAYMENT OF BENEFITS SHOULD NOT BE
11 PERMITTED WHEN THE INJURED PARTY WOULD NOT BE FULLY
12 COMPENSATED FOR HIS OR HER INJURIES AND DAMAGES;

13 (c) IT IS IN THE BEST INTERESTS OF THE CITIZENS OF THIS STATE TO
14 ENSURE THAT EACH INSURED INJURED PARTY RECOVERS FULL
15 COMPENSATION FOR AN INJURY CAUSED BY THE ACT OR OMISSION OF A
16 THIRD PARTY, UNDIMINISHED BY REPAYMENT, REIMBURSEMENT, OR
17 SUBROGATION RIGHTS OF THE PAYER OF BENEFITS;

18 (d) THIS LAW REGULATING INSURANCE AND HEALTH BENEFIT
19 PLANS IS INTENDED TO ENSURE THAT AN INJURED PARTY WHO RECOVERS
20 DAMAGES FOR INJURIES CAUSED BY A THIRD PARTY AND RECEIVES
21 BENEFITS PURSUANT TO AN INSURANCE POLICY, CONTRACT, OR BENEFIT
22 PLAN IS FULLY COMPENSATED FOR HIS OR HER INJURIES AND DAMAGES
23 BEFORE THE PAYER OF BENEFITS MAY SEEK REPAYMENT OF THE AMOUNT
24 OF BENEFITS PROVIDED TO THE INJURED PARTY;

25 (e) IN THE ABSENCE OF THIS SECTION, PAYERS OF BENEFITS MAY
26 SEEK REPAYMENT OF BENEFITS WITHOUT PAYING ATTORNEY FEES
27 INCURRED BY THE INJURED PARTY IN OBTAINING A SETTLEMENT OR

1 JUDGMENT, THEREBY BENEFITTING FROM ATTORNEY SERVICES FOR WHICH
2 THEY DID NOT PAY;

3 (f) THIS SECTION IS INTENDED TO REQUIRE A PAYER OF BENEFITS
4 TO PAY A PROPORTIONATE SHARE OF THE ATTORNEY FEES WHEN THE
5 PAYER OF BENEFITS IS A BENEFICIARY OF THE ATTORNEY SERVICES PAID
6 FOR BY THE INJURED PARTY.

7 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
8 REQUIRES:

9 (a) "BENEFITS" MEANS PAYMENT OR REIMBURSEMENT OF HEALTH
10 CARE EXPENSES, HEALTH CARE SERVICES, DISABILITY PAYMENTS, LOST
11 WAGE PAYMENTS, OR ANY OTHER BENEFITS OF ANY KIND, INCLUDING
12 DISCOUNTS AND WRITE-OFFS, PROVIDED TO OR ON BEHALF OF AN INJURED
13 PARTY UNDER A POLICY OF INSURANCE, CONTRACT, OR BENEFIT PLAN WITH
14 AN INDIVIDUAL OR GROUP, WHETHER OR NOT PROVIDED THROUGH AN
15 EMPLOYER.

16 (b) "INJURED PARTY" MEANS A PERSON WHO HAS SUSTAINED
17 BODILY INJURY AS THE RESULT OF THE ACT OR OMISSION OF A THIRD
18 PARTY, HAS PURSUED A PERSONAL INJURY OR SIMILAR CLAIM AGAINST THE
19 THIRD PARTY OR HAS MADE A CLAIM UNDER HIS OR HER UNINSURED OR
20 UNDERINSURED MOTORIST COVERAGE, AND HAS RECEIVED BENEFITS AS A
21 POLICYHOLDER, PARTICIPANT, OR BENEFICIARY FROM THE PAYER OF
22 BENEFITS. "INJURED PARTY" INCLUDES THE PERSONAL REPRESENTATIVE
23 OF THE ESTATE OF AN INJURED PARTY OR THE LEGAL REPRESENTATIVE OF
24 A PERSON UNDER A DISABILITY AS PROVIDED IN ARTICLE 81 OF TITLE 13,
25 C.R.S.

26 (c) "PAYER OF BENEFITS" MEANS ANY INSURER, HEALTH
27 MAINTENANCE ORGANIZATION, HEALTH BENEFIT PLAN, PREFERRED

1 PROVIDER ORGANIZATION, EMPLOYEE BENEFIT PLAN, OTHER INSURANCE
2 POLICY OR PLAN, OR ANY OTHER PAYER OF BENEFITS. "PAYER OF
3 BENEFITS" INCLUDES FIDUCIARIES OF INSURERS, PLANS, OR PAYERS OF
4 BENEFITS.

5 (d) "RECOVERY" MEANS RECOVERY OF A MONETARY AWARD FROM
6 A THIRD PARTY THROUGH EITHER SETTLEMENT OR JUDGMENT TO
7 COMPENSATE AN INJURED PARTY FOR BODILY INJURY SUSTAINED AS A
8 RESULT OF AN ACT OR OMISSION OF THE THIRD PARTY. "RECOVERY"
9 INCLUDES BENEFITS PAID OR SETTLEMENT OF CLAIMS UNDER UNINSURED
10 OR UNDERINSURED MOTORIST COVERAGE PURSUANT TO SECTION 10-4-609.

11 (3) (a) REIMBURSEMENT OR SUBROGATION PURSUANT TO A
12 PROVISION IN AN INSURANCE POLICY, CONTRACT, OR BENEFIT PLAN IS
13 PERMITTED ONLY IF THE INJURED PARTY HAS FIRST BEEN FULLY
14 COMPENSATED FOR ALL DAMAGES ARISING OUT OF THE CLAIM. ANY
15 PROVISION IN A POLICY, CONTRACT, OR BENEFIT PLAN ALLOWING OR
16 REQUIRING REIMBURSEMENT OR SUBROGATION IN CIRCUMSTANCES IN
17 WHICH THE INJURED PARTY HAS NOT BEEN FULLY COMPENSATED IS VOID
18 AS AGAINST PUBLIC POLICY.

19 (b) IF THE INJURED PARTY IS FULLY COMPENSATED AND
20 REIMBURSEMENT OR SUBROGATION OF BENEFITS IS AUTHORIZED, THE
21 REIMBURSEMENT OR SUBROGATION AMOUNT CANNOT EXCEED THE
22 AMOUNT ACTUALLY PAID BY THE PAYER OF BENEFITS TO COVER BENEFITS
23 UNDER THE POLICY, CONTRACT, OR BENEFIT PLAN.

24 (c) THE AMOUNT RECOVERABLE, IF ANY, BY THE PAYER OF
25 BENEFITS FOR REIMBURSEMENT OR SUBROGATION SHALL BE REDUCED BY
26 AN AMOUNT EQUAL TO THE PAYER OF BENEFITS' PROPORTIONATE SHARE
27 OF THE ATTORNEY FEES AND EXPENSES INCURRED BY OR ON BEHALF OF

1 THE INJURED PARTY IN MAKING THE RECOVERY, BASED ON THE RATIO OF
2 THE AMOUNT OF ATTORNEY FEES AND EXPENSES INCURRED TO THE
3 AMOUNT OF THE RECOVERY.

4 (4) (a) ANY DISPUTES BETWEEN THE PAYER OF BENEFITS AND THE
5 INJURED PARTY REGARDING ENTITLEMENT TO REIMBURSEMENT OR
6 SUBROGATION SHALL BE RESOLVED IN THE JURISDICTION OF THE
7 UNDERLYING CIVIL CLAIM, REGARDLESS OF WHETHER ADMINISTRATIVE
8 REMEDIES CONTAINED IN THE POLICY, CONTRACT, OR BENEFIT PLAN
9 DOCUMENTS HAVE BEEN EXHAUSTED BY THE INJURED PARTY.

10 (b) IF THE INJURED PARTY NOTIFIES THE PAYER OF BENEFITS IN
11 WRITING THAT THE AMOUNT OF THE RECOVERY IS LESS THAN THE SUM OF
12 ALL DAMAGES INCURRED BY THE INJURED PARTY, AND THE PAYER OF
13 BENEFITS DISPUTES THAT CLAIM, THE PAYER OF BENEFITS MAY FILE A
14 POST-TRIAL OR OTHER APPROPRIATE MOTION IN THE UNDERLYING CIVIL
15 ACTION OR, IF NO UNDERLYING CIVIL ACTION EXISTS, MAY SEEK A
16 DECLARATORY JUDGMENT PURSUANT TO SECTION 13-51-106, C.R.S., TO
17 DETERMINE THE EXTENT TO WHICH THE PAYER OF BENEFITS MAY BE
18 ENTITLED TO SHARE IN THE RECOVERY. IF THE PAYER OF BENEFITS FILES
19 A DECLARATORY JUDGMENT ACTION, THE PAYER OF BENEFITS SHALL
20 BRING THE ACTION NO LATER THAN SIXTY DAYS AFTER THE INJURED PARTY
21 NOTIFIES THE PAYER OF BENEFITS THAT THE SUM OF ALL HIS OR HER
22 DAMAGES EXCEEDS THE AMOUNT OF THE RECOVERY. IF THE COURT
23 DETERMINES THAT THE AMOUNT OF THE RECOVERY DOES NOT FULLY AND
24 COMPLETELY COMPENSATE THE INJURED PARTY FOR HIS OR HER DAMAGES,
25 THE PAYER OF BENEFITS SHALL HAVE NO RIGHT TO REPAYMENT,
26 REIMBURSEMENT, OR SUBROGATION.

27 (5) A PAYER OF BENEFITS SHALL NOT DENY OR REFUSE TO PROVIDE

1 ANY PLAN BENEFITS OTHERWISE AVAILABLE TO AN INJURED PARTY
2 BECAUSE OF THE EXISTENCE OF A POTENTIAL PERSONAL INJURY OR
3 SIMILAR CLAIM OR THE RESOLUTION OF A PERSONAL INJURY OR SIMILAR
4 CLAIM.

5 (6) (a) A PAYER OF BENEFITS SHALL NOT BRING A DIRECT ACTION
6 FOR SUBROGATION OR REIMBURSEMENT OF BENEFITS AGAINST A THIRD
7 PARTY ALLEGEDLY AT FAULT FOR THE INJURY TO THE INJURED PARTY OR
8 AN INSURER PROVIDING UNINSURED MOTORIST COVERAGE.

9 (b) A THIRD PARTY SHALL NOT INCLUDE A PAYER OF BENEFITS
10 THAT IS CLAIMING REPAYMENT OR REIMBURSEMENT PURSUANT TO
11 SUBSECTION (3) OF THIS SECTION AS A COPAYEE ON ANY CHECK OR DRAFT
12 IN PAYMENT OF A SETTLEMENT WITH OR JUDGMENT FOR OR ON BEHALF OF
13 THE INJURED PARTY.

14 (7) (a) A PAYER OF BENEFITS SHALL NOT DELAY, WITHHOLD, OR
15 OTHERWISE REDUCE BENEFITS:

16 (I) BECAUSE THE OBLIGATION TO PAY BENEFITS RESULTS FROM AN
17 ACT OR OMISSION FOR WHICH A THIRD PARTY MAY BE LIABLE; OR

18 (II) AS A MEANS OF ENFORCING OR ATTEMPTING TO ENFORCE A
19 CLAIM FOR REIMBURSEMENT OR SUBROGATION.

20 (b) NOTHING IN THIS SUBSECTION (7) PROHIBITS THE
21 COORDINATION OF BENEFITS BETWEEN OR AMONG PAYERS OF BENEFITS.

22 (8) WHEN A PAYER OF BENEFITS OBTAINS REIMBURSEMENT OF
23 BENEFITS PAID IN ACCORDANCE WITH THIS SECTION, THE PAYER OF
24 BENEFITS SHALL APPLY THE AMOUNT OF THE REIMBURSEMENT AS A CREDIT
25 AGAINST ANY LIFETIME MAXIMUM BENEFIT CONTAINED IN THE POLICY,
26 PLAN, OR CONTRACT UNDER WHICH THE BENEFITS WERE PAID.

27 (9) ANY LANGUAGE IN AN INSURANCE POLICY, CONTRACT, OR

1 BENEFIT PLAN THAT IS CONTRARY TO THIS SECTION REGULATING
2 INSURANCE BENEFITS IS VOID AND UNENFORCEABLE.

3 (10) NOTHING IN THIS SECTION MODIFIES:

4 (a) THE REQUIREMENT OF SECTION 13-21-111.6, C.R.S.,
5 REGARDING THE REDUCTION OF DAMAGES BASED ON AMOUNTS PAID FOR
6 THE DAMAGES FROM A COLLATERAL SOURCE. THE FACT OR AMOUNT OF
7 ANY COLLATERAL SOURCE PAYMENT OR BENEFITS SHALL NOT BE
8 ADMITTED AS EVIDENCE IN ANY ACTION AGAINST AN ALLEGED
9 THIRD-PARTY TORTFEASOR OR IN AN ACTION TO RECOVER BENEFITS UNDER
10 SECTION 10-4-609; OR

11 (b) LIEN RIGHTS OF HOSPITALS PURSUANT TO SECTION 38-27-101,
12 C.R.S.

13 **SECTION 2. Act subject to petition - effective date -**
14 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
15 following the expiration of the ninety-day period after final adjournment
16 of the general assembly (August 11, 2010, if adjournment sine die is on
17 May 12, 2010); except that, if a referendum petition is filed pursuant to
18 section 1 (3) of article V of the state constitution against this act or an
19 item, section, or part of this act within such period, then the act, item,
20 section, or part shall not take effect unless approved by the people at the
21 general election to be held in November 2010 and shall take effect on the
22 date of the official declaration of the vote thereon by the governor.

23 (2) The provisions of this act shall apply to a recovery made on or
24 after the applicable effective date of this act.