

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

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

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.

HOUSE
Amended 2nd Reading
March 5, 2010

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 BODILY INJURY CAUSED BY THE ACT OR OMISSION OF
16 A THIRD PARTY, AND THAT SUCH COMPENSATION IS NOT DIMINISHED BY
17 REPAYMENT, REIMBURSEMENT, OR SUBROGATION RIGHTS OF THE PAYER
18 OF BENEFITS;

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

26 (e) IN THE ABSENCE OF THIS SECTION, PAYERS OF BENEFITS MAY
27 SEEK REPAYMENT OF BENEFITS OUT OF A RECOVERY OBTAINED BY THE

1 INJURED PARTY WITHOUT PAYING ATTORNEY FEES INCURRED BY THE
2 INJURED PARTY IN OBTAINING THE RECOVERY, THEREBY BENEFITTING
3 FROM ATTORNEY SERVICES FOR WHICH THEY DID NOT PAY;

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

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

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

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

27 (c) "PAYER OF BENEFITS" MEANS ANY INSURER, HEALTH

1 MAINTENANCE ORGANIZATION, HEALTH BENEFIT PLAN, PREFERRED
2 PROVIDER ORGANIZATION, EMPLOYEE BENEFIT PLAN, OTHER INSURANCE
3 POLICY OR PLAN, OR ANY OTHER PAYER OF BENEFITS. "PAYER OF
4 BENEFITS" INCLUDES A FIDUCIARY OF AN INSURER, PLAN, OR OTHER PAYER
5 OF BENEFITS.

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

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

20 (II) THIS PARAGRAPH (a) DOES NOT LIMIT THE RIGHT OF AN
21 INSURER TO SEEK REIMBURSEMENT OR SUBROGATION TO RECOVER
22 AMOUNTS PAID FOR PROPERTY DAMAGE OR THE RIGHT OF AN INSURER
23 PROVIDING UNINSURED OR UNDERINSURED MOTORIST COVERAGE
24 PURSUANT TO SECTION 10-4-609 TO AN INJURED PARTY TO PURSUE CLAIMS
25 AGAINST AN AT-FAULT THIRD PARTY, AND ANY AMOUNTS RECOVERED BY
26 SUCH INSURER SHALL NOT BE REDUCED PURSUANT TO PARAGRAPH (c) OF
27 THIS SUBSECTION (3).

1 (b) IF THE INJURED PARTY IS FULLY COMPENSATED AND
2 REIMBURSEMENT OR SUBROGATION OF BENEFITS IS AUTHORIZED, THE
3 REIMBURSEMENT OR SUBROGATION AMOUNT CANNOT EXCEED THE
4 AMOUNT ACTUALLY PAID BY THE PAYER OF BENEFITS TO COVER BENEFITS
5 UNDER THE POLICY, CONTRACT, OR BENEFIT PLAN OR, FOR HEALTH CARE
6 SERVICES PROVIDED ON A CAPITATED BASIS, THE AMOUNT EQUAL TO
7 EIGHTY PERCENT OF THE USUAL AND CUSTOMARY CHARGE FOR THE SAME
8 SERVICES BY HEALTH CARE PROVIDERS THAT PROVIDE HEALTH CARE
9 SERVICES ON A NONCAPITATED BASIS IN THE GEOGRAPHIC REGION IN
10 WHICH THE SERVICES ARE RENDERED.

11 (c) THE AMOUNT RECOVERABLE, IF ANY, BY THE PAYER OF
12 BENEFITS FOR REIMBURSEMENT OR SUBROGATION SHALL BE REDUCED BY
13 AN AMOUNT EQUAL TO THE PAYER OF BENEFITS' PROPORTIONATE SHARE
14 OF THE ATTORNEY FEES AND EXPENSES INCURRED BY OR ON BEHALF OF
15 THE INJURED PARTY IN MAKING THE RECOVERY, BASED ON THE RATIO OF
16 THE AMOUNT OF ATTORNEY FEES AND EXPENSES INCURRED TO THE
17 AMOUNT OF THE RECOVERY.

18 (d) (I) IF THE INJURED PARTY MAKES A RECOVERY OF AN AMOUNT
19 THAT IS LESS THAN THE TOTAL AMOUNT OF COVERAGE AVAILABLE UNDER
20 ANY THIRD-PARTY LIABILITY INSURANCE POLICY OR UNINSURED OR
21 UNDERINSURED MOTORIST COVERAGE PURSUANT TO SECTION 10-4-609,
22 THERE IS A REBUTTABLE PRESUMPTION THAT THE INJURED PARTY HAS
23 BEEN FULLY COMPENSATED. IF THE INJURED PARTY MAKES A RECOVERY
24 OF AN AMOUNT EQUAL TO THE TOTAL AMOUNT OF COVERAGE AVAILABLE
25 UNDER ALL THIRD-PARTY LIABILITY INSURANCE POLICIES AND UNINSURED
26 OR UNDERINSURED MOTORIST COVERAGES, THERE IS A REBUTTABLE
27 PRESUMPTION THAT THE INJURED PARTY HAS NOT BEEN FULLY

1 COMPENSATED.

2 (II) IF THE INJURED PARTY OBTAINS A JUDGMENT, THE AMOUNT OF
3 THE JUDGMENT IS PRESUMED TO BE THE AMOUNT NECESSARY TO FULLY
4 COMPENSATE THE INJURED PARTY.

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

11 (II) IF THE INJURED PARTY OBTAINS A RECOVERY THAT IS LESS
12 THAN THE SUM OF ALL DAMAGES INCURRED BY THE INJURED PARTY AND
13 INTENDS TO ENFORCE THE REQUIREMENTS OF SUBSECTION (3) OF THIS
14 SECTION, THE INJURED PARTY SHALL NOTIFY THE PAYER OF BENEFITS
15 WITHIN SIXTY DAYS OF RECEIPT OF EACH RECOVERY. THE NOTICE SHALL
16 INCLUDE THE TOTAL AMOUNT AND SOURCE OF THE RECOVERY; THE
17 COVERAGE LIMITS APPLICABLE TO ANY AVAILABLE INSURANCE POLICY,
18 CONTRACT, OR BENEFIT PLAN; AND THE AMOUNT OF ANY COSTS CHARGED
19 TO THE INJURED PARTY. IF RECOVERY WAS OBTAINED THROUGH A
20 SETTLEMENT AGREEMENT THAT CONTAINS A CONFIDENTIALITY PROVISION
21 THAT AFFECTS THE INFORMATION REQUIRED BY THIS SUBPARAGRAPH (II),
22 THE CONFIDENTIALITY PROVISION IS UNENFORCEABLE AS TO THE
23 DISCLOSURE OF THE REQUIRED INFORMATION.

24 (III) IF THE PAYER OF BENEFITS DISPUTES THAT THE INJURED
25 PARTY'S RECOVERY IS LESS THAN THE SUM OF ALL DAMAGES INCURRED BY
26 THE INJURED PARTY, THE DISPUTE SHALL BE RESOLVED BY ARBITRATION.
27 THE PAYER OF BENEFITS MAY REQUEST ARBITRATION OF THE DISPUTE TO

1 DETERMINE THE EXTENT TO WHICH THE PAYER OF BENEFITS MAY BE
2 ENTITLED TO SHARE IN THE RECOVERY PURSUANT TO SUBSECTION (3) OF
3 THIS SECTION. THE PAYER OF BENEFITS MAY REQUEST ARBITRATION NO
4 LATER THAN SIXTY DAYS AFTER RECEIPT OF ANY NOTICE UNDER
5 SUBPARAGRAPH (II) OF THIS PARAGRAPH (a).

6 (IV) IF THE PAYER OF BENEFITS REQUESTS ARBITRATION OF THE
7 DISPUTE, THE INJURED PARTY AND THE PAYER OF BENEFITS SHALL JOINTLY
8 CHOOSE AN ARBITRATOR TO RESOLVE THE DISPUTE. IF THE INJURED PARTY
9 AND THE PAYER OF BENEFITS CANNOT AGREE ON AN ARBITRATOR, THE
10 DISPUTE SHALL BE RESOLVED BY A PANEL OF THREE ARBITRATORS
11 SELECTED AS FOLLOWS:

12 (A) THE INJURED PARTY SHALL SELECT ONE ARBITRATOR;

13 (B) THE PAYER OF BENEFITS SHALL SELECT ONE ARBITRATOR; AND

14 (C) THE ARBITRATORS CHOSEN BY THE PARTIES PURSUANT TO
15 SUB-SUBPARAGRAPHS (A) AND (B) OF THIS SUBPARAGRAPH (IV) SHALL
16 SELECT THE THIRD ARBITRATOR.

17 (b) IF THE ARBITRATOR DETERMINES THAT THE AMOUNT OF THE
18 RECOVERY DOES NOT FULLY COMPENSATE THE INJURED PARTY FOR HIS OR
19 HER DAMAGES, THE PAYER OF BENEFITS SHALL HAVE NO RIGHT TO
20 REPAYMENT, REIMBURSEMENT, OR SUBROGATION.

21 (5) A PAYER OF BENEFITS SHALL NOT DENY OR REFUSE TO PROVIDE
22 ANY PLAN BENEFITS OTHERWISE AVAILABLE TO AN INJURED PARTY
23 BECAUSE OF THE EXISTENCE OF A POTENTIAL PERSONAL INJURY OR
24 SIMILAR CLAIM OR THE RESOLUTION OF A PERSONAL INJURY OR SIMILAR
25 CLAIM.

26 (6) (a) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
27 PARAGRAPH (a), A PAYER OF BENEFITS SHALL NOT BRING A DIRECT ACTION

1 FOR SUBROGATION OR REIMBURSEMENT OF BENEFITS AGAINST A THIRD
2 PARTY ALLEGEDLY AT FAULT FOR THE INJURY TO THE INJURED PARTY OR
3 AN INSURER PROVIDING UNINSURED MOTORIST COVERAGE.

4 (II) IF AN INJURED PARTY HAS NOT PURSUED A CLAIM AGAINST A
5 THIRD PARTY ALLEGEDLY AT FAULT FOR THE INJURED PARTY'S INJURIES BY
6 THE DATE THAT IS SIXTY DAYS PRIOR TO THE DATE ON WHICH THE STATUTE
7 OF LIMITATIONS APPLICABLE TO THE CLAIM EXPIRES, A PAYER OF BENEFITS
8 MAY BRING A DIRECT ACTION FOR SUBROGATION OR REIMBURSEMENT OF
9 BENEFITS AGAINST AN AT-FAULT THIRD PARTY. NOTHING IN THIS
10 SUBPARAGRAPH (II) PRECLUDES AN INJURED PARTY FROM PURSUING A
11 CLAIM AGAINST THE AT-FAULT THIRD PARTY AFTER THE PAYER OF
12 BENEFITS BRINGS A DIRECT ACTION PURSUANT TO THIS SUBPARAGRAPH
13 (II), AND THE PAYER OF BENEFITS' RIGHT TO REIMBURSEMENT OR
14 SUBROGATION IS LIMITED BY SUBSECTION (3) OF THIS SECTION.

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

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

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

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

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

1 (8) WHEN A PAYER OF BENEFITS OBTAINS REIMBURSEMENT OF
2 BENEFITS PAID IN ACCORDANCE WITH THIS SECTION, THE PAYER OF
3 BENEFITS SHALL APPLY THE AMOUNT OF THE REIMBURSEMENT AS A CREDIT
4 AGAINST ANY LIFETIME MAXIMUM BENEFIT CONTAINED IN THE POLICY,
5 PLAN, OR CONTRACT UNDER WHICH THE BENEFITS WERE PAID.

6 (9) ANY LANGUAGE IN AN INSURANCE POLICY, CONTRACT, OR
7 BENEFIT PLAN THAT IS CONTRARY TO THIS SECTION IS VOID AND
8 UNENFORCEABLE. ALTHOUGH SUCH LANGUAGE IS UNENFORCEABLE,
9 NOTHING IN THIS SECTION REQUIRES AN INSURER TO MODIFY AND REFILE
10 WITH THE COMMISSIONER, PRIOR TO THE STANDARD FILING DATE, AN
11 INSURANCE POLICY, CONTRACT, OR BENEFIT PLAN THAT CONTAINS
12 LANGUAGE THAT IS CONTRARY TO THIS SECTION.

13 (10) NOTHING IN THIS SECTION MODIFIES:

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

21 (b) LIEN RIGHTS OF HOSPITALS PURSUANT TO SECTION 38-27-101,
22 C.R.S., OR OF THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING
23 PURSUANT TO SECTION 25.5-4-301 (5), C.R.S.; OR

24 (c) SUBROGATION AND LIEN RIGHTS GRANTED TO WORKERS'
25 COMPENSATION CARRIERS OR SELF-INSURED EMPLOYERS PURSUANT TO
26 SECTION 8-41-203, C.R.S.

27 **SECTION 2. Act subject to petition - effective date -**

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

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