

By: Stevens

To: Insurance

HOUSE BILL NO. 645  
(As Passed the House)

1 AN ACT TO PROVIDE SUBROGATION RIGHTS UNDER THE STATE AND  
2 SCHOOL EMPLOYEES HEALTH INSURANCE PLAN; TO EXEMPT THE BENEFITS OF  
3 ANY UNINSURED MOTORIST INSURANCE COVERAGE FROM THE SUBROGATION  
4 RIGHTS PROVIDED IN THIS ACT; AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 SECTION 1. The following shall be codified as Section  
7 25-15-18, Mississippi Code of 1972:

8 25-15-18. (1) If medical assistance is provided to an  
9 employee or dependent under this article for injuries, disease or  
10 sickness caused under circumstances creating a cause of action in  
11 favor of the employee or eligible dependent against any person,  
12 firm or corporation, then the board, or its designee, shall be  
13 entitled to recover the proceeds that may result from the exercise  
14 of any rights of recovery which the employee or dependent may have  
15 against any such person, firm or corporation to the extent of the  
16 actual amount of the medical payments made by the plan on behalf  
17 of the employee or dependent. However, any benefits received by  
18 the employee or dependent from uninsured motorist insurance  
19 coverage are exempted from the subrogation rights of the board  
20 provided herein. The employee or dependent shall execute and  
21 deliver instruments and papers to do whatever is necessary to  
22 secure such rights and shall do nothing after the medical  
23 assistance is provided to prejudice the subrogation rights of the  
24 board.

25 The board, or its designee, may compromise or settle any such  
26 claim and execute a release of any claim it has by virtue of this  
27 section.

28           (2) The acceptance of medical assistance under this article  
29 or making of a claim thereunder shall not affect the right of the  
30 employee, dependent or his legal representative to recover the  
31 medical assistance payments made by the plan as an element of  
32 special damages in any action at law; however, a copy of the  
33 pleadings shall be mailed certified to the board, or its designee,  
34 at the time of the institution of suit, and proof of such notice  
35 shall be filed of record in such action. The board, at any time  
36 before the trial on the facts, may join in such action or may  
37 intervene therein. Any amount recovered by an employee, dependent  
38 or legal representative shall be applied in the order as follows:

39           (a) The reasonable cost of the collection, including  
40 attorney's fees, as approved and allowed by the court having  
41 jurisdiction based upon admissible evidence or, in case of  
42 settlement without suit, by the board, or its designee;

43           (b) The actual amount of the medical assistance  
44 payments made by the plan on behalf of the employee, or dependent  
45 or such pro rata amount as may be arrived at by the board, or its  
46 designee, and the employee, dependent or his legal representative,  
47 or as set by the court having jurisdiction, based upon admissible  
48 evidence, using the order of precedence of liens set forth herein;

49           (c) Any excess shall be awarded to the employee or  
50 dependent.

51           (3) No compromise of any claim by the employee, dependent or  
52 his legal representative shall be binding upon or affect the  
53 rights of the board against the third party unless the board, or  
54 its designee, has entered into the compromise. Any compromise  
55 effected by the employee, dependent or legal representative with  
56 the third party in the absence of advance notification to and  
57 approval by the board, or its designee, shall constitute  
58 conclusive evidence of the liability of the third party, and the  
59 board, or its designee, in litigating its claim against the third  
60 party shall be required only to prove the amount and correctness

61 of its claim relating to such injury, disease or sickness. It is  
62 further provided that should the employee, dependent or his legal  
63 representative fail to notify the board, or its designee, of the  
64 institution of legal proceedings against a third party for which  
65 the board has a cause of action, the facts relating to negligence  
66 and the liability of the third party, if judgment is rendered for  
67 the employee or dependent, shall constitute conclusive evidence of  
68 liability in a subsequent action maintained by the board, or its  
69 designee, and only the amount and correctness of the board's claim  
70 relating to the injuries, disease or sickness shall be tried  
71 before the court. The board shall be authorized in bringing such  
72 action against the third party and his insurer jointly or against  
73 the insurer alone.

74 (4) Nothing herein shall be construed to diminish or  
75 otherwise restrict the subrogation right of the board against a  
76 third party for medical assistance paid by the plan in behalf of  
77 the employee or dependent as a result of injuries, disease or  
78 sickness caused under circumstances creating a cause of action in  
79 favor of the employee or dependent against such a third party.

80 SECTION 2. This act shall take effect and be in force from  
81 and after July 1, 2000.