

By: Stevens

To: Insurance

HOUSE BILL NO. 645

1 AN ACT TO PROVIDE SUBROGATION RIGHTS UNDER THE STATE AND
2 SCHOOL EMPLOYEES HEALTH INSURANCE PLAN; AND FOR RELATED PURPOSES.

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

4 SECTION 1. The following shall be codified as Section
5 25-15-18, Mississippi Code of 1972:

6 25-15-18. (1) If medical assistance is provided to an
7 employee or dependant under this article for injuries, disease or
8 sickness caused under circumstances creating a cause of action in
9 favor of the employee or eligible dependent against any person,
10 firm or corporation, then the board or its designee shall be
11 entitled to recover the proceeds that may result from the exercise
12 of any rights of recovery which the employee of dependent may have
13 against any such person, firm or corporation to the extent of the
14 actual amount of the medical payments made by the plan on behalf
15 of the employee or dependent. The employee dependent shall
16 execute and deliver instruments and papers to do whatever is
17 necessary to secure such rights and shall do nothing after the
18 medical assistance is provided to prejudice the subrogation rights
19 of the board.

20 The board or its designee may compromise or settle any such
21 claim and execute a release of any claim it has by virtue of this
22 section.

23 (2) the acceptance of medical assistance under this article
24 or making of a claim thereunder shall not affect the right of the
25 employee, dependent or his legal representative to recover the
26 medical assistance payments made by the plan as an element of

27 special damages in any action at law; however, a copy of the
28 pleadings shall be mailed certified to the board or its designee
29 at the time of the institution of suit, and proof of such notice
30 shall be filed of record in such action. The board, at any time
31 before the trial on the facts, may join in such action or may
32 intervene therein. Any amount recovered by an employee, dependent
33 or legal representative shall be applied in the order as follows:

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

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

44 (c) Any excess shall be awarded to the employee or
45 dependent.

46 (3) No compromise of any claim by the employee, dependent or
47 his legal representative shall be binding upon or affect the rights
48 of the board against the third party unless the board or its
49 designee has entered into the compromise. Any compromise effected
50 by the employee, dependent or legal representative with the third
51 party in the absence of advance notification to and approval by
52 the board or its designee shall constitute conclusive evidence of
53 the liability of the third party, and the board or its designee in
54 litigating its claim against the third party shall be required
55 only to prove the amount and correctness of its claim relating to
56 such injury, disease or sickness. It is further provided that
57 should the employee, dependent or his legal representative fail to
58 notify the board or its designee of the institution of legal
59 proceedings against a third party for which the board has a cause
60 of action, the facts relating to negligence and the liability of
61 the third party, if judgment is rendered for the employee or
62 dependent, shall constitute conclusive evidence of liability in a
63 subsequent action maintained by the board or its designee and only

64 the amount and correctness of the board's claim relating to the
65 injuries, disease or sickness shall be tried before the court.
66 The board shall be authorized in bringing such action against the
67 third party and his insurer jointly or against the insurer alone.

68 (4) Nothing herein shall be construed to diminish or
69 otherwise restrict the subrogation right of the board against a
70 third party for medical assistance paid by the plan in behalf of
71 the employee or dependent as a result of injuries, disease or
72 sickness caused under circumstances creating a cause of action in
73 favor of the employee or dependent against such a third party.

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