

By: Stevens

To: Insurance

HOUSE BILL NO. 1195  
(As Passed the House)

1 AN ACT TO CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION  
2 25-15-107, MISSISSIPPI CODE OF 1972, TO PROVIDE SUBROGATION RIGHTS  
3 UNDER SELF-INSURED AND POOLED RISKS HEALTH INSURANCE PLANS FOR  
4 POLITICAL SUBDIVISIONS OF THE STATE; TO EXEMPT THE BENEFITS OF ANY  
5 UNINSURED MOTORIST INSURANCE COVERAGE FROM THE SUBROGATION RIGHTS  
6 PROVIDED IN THIS ACT; AND FOR RELATED PURPOSES.

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

8 SECTION 1. The following shall be codified as Section  
9 25-15-107, Mississippi Code of 1972:

10 25-15-107. With regard to any self-insured and pooled risks  
11 health insurance plans authorized under Section 25-15-101:

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

29 subdivision or its designee may comprise or settle any such claim  
30 and execute a release of any claim it has by virtue of this  
31 section.

32 (b) The acceptance of medical assistance under this  
33 article or making of a claim thereunder shall not affect the right  
34 of the employee, dependent or his legal representative to recover  
35 the medical assistance payments made by the plan as an element of  
36 special or general damages in any action at law or as part of any  
37 settlement in favor of the employee or eligible dependent against  
38 any person, firm or corporation. However, if an action at law is  
39 pursued, a copy of the pleadings shall be mailed certified to the  
40 political subdivision or its designee at the time of the  
41 institution of suit, and proof of such notice shall be filed of  
42 record in such action. The political subdivision, at any time  
43 before the trial on the facts, may join in such action or may  
44 intervene therein.

45 Any amount recovered by an employee, dependent or legal  
46 representative through settlement or an action at law shall be  
47 applied in the following order:

48 (i) The reasonable cost of the collection incurred  
49 by the plan or its designee, including attorney's fees.

50 (ii) The actual amount of the medical assistance  
51 payments made by the plan on behalf of the employee or dependent  
52 or such pro rata amount as may be arrived at by the political  
53 subdivision or its designee and the employee, dependent or his  
54 legal representative, or as set by the court having jurisdiction,  
55 based upon admissible evidence, using the order of precedence of  
56 liens set forth herein.

57 (iii) Any excess shall be awarded to the employee  
58 or dependent.

59 (c) No compromise of any claim by the employee,  
60 dependent or his legal representative shall be binding upon or  
61 affect the rights of the political subdivision against the third  
62 party unless the political subdivision or its designee has entered  
63 into the compromise. Any compromise effected by the employee,  
64 dependent or legal representative with the third party in the  
65 absence of advance notification to and approval by the political

66 subdivision or its designee shall constitute conclusive evidence  
67 of the liability of the third party, and the political subdivision  
68 or its designee in litigating its claim against the third party  
69 shall be required only to prove the amount and correctness of its  
70 claim relating to such injury, disease or sickness. If is further  
71 provided that should the employee, dependent or his legal  
72 representative fail to notify the political subdivision or its  
73 designee of the institution of legal proceedings against a third  
74 party for which the political subdivision has a cause of action,  
75 the facts relating to negligence and the liability of the third  
76 party, if judgment is rendered for the employee or dependent,  
77 shall constitute conclusive evidence of liability in a subsequent  
78 action maintained by the political subdivision or its designee and  
79 only the amount and correctness of the political subdivision's  
80 claim relating to the injuries, disease or sickness shall be tried  
81 before the court. The political subdivision shall be authorized  
82 in bringing such action against the third party and his insurer  
83 jointly or against the insurer alone.

84 (d) Nothing herein shall be construed to diminish or  
85 otherwise restrict the subrogation right of the political  
86 subdivision against a third party for medical assistance paid by  
87 the plan in behalf of the employee or dependent as a result of  
88 injuries, disease or sickness caused under circumstances creating  
89 a cause of action in favor of the employee or dependent against  
90 such a third party.

91 SECTION 2. This act shall take effect and be in force  
92 retroactively from and after March 18, 1999.