

By: Kirby

To: Insurance

SENATE BILL NO. 3157

1 AN ACT TO CREATE A NEW 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; 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 25-15-107, Mississippi Code of 1972:

8 25-15-107. (1) If medical assistance is provided to an
9 employee or dependant 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 political subdivision or its
13 designee shall be entitled to recover the proceeds that may result
14 from the exercise of any rights of recovery which the employee or
15 dependent may have against any such person, firm or corporation to
16 the extent of the actual amount of the medical payments made by
17 the plan on behalf of the employee or dependent. The employee
18 dependent shall execute and deliver instruments and papers to do
19 whatever is necessary to secure such rights and shall do nothing
20 after the medical assistance is provided to prejudice the
21 subrogation rights of the board. The political subdivision or its
22 designee may compromise or settle any such claim and execute a
23 release of any claim it has by virtue of this section.

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

28 special or general damages in any action at law or as part of any
29 settlement in favor of the employee or eligible dependent against
30 any person, firm or corporation. However, if an action at law is
31 pursued, a copy of the pleadings shall be mailed certified to the
32 political subdivision or its designee at the time of the
33 institution of suit, and proof of such notice shall be filed of
34 record in such action. The political subdivision, at any time
35 before the trial on the facts, may join in such action or may
36 intervene therein. Any amount recovered by an employee, dependent
37 or legal representative shall be applied in the following order:

38 (a) The reasonable cost of the collection, including
39 attorney's fees;

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

47 (c) Any excess shall be awarded to the employee or
48 dependent.

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

65 the facts relating to negligence and the liability of the third
66 party, if judgment is rendered for the employee or dependent,
67 shall constitute conclusive evidence of liability in a subsequent
68 action maintained by the political subdivision or its designee and
69 only the amount and correctness of the political subdivision's
70 claim relating to the injuries, disease or sickness shall be tried
71 before the court. The political subdivision shall be authorized
72 in bringing such action against the third party and his insurer
73 jointly or against the insurer alone.

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

81 SECTION 2. This act shall take effect and be in force from
82 and after March 18, 1999.