

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 893
Judiciary I Committee Substitute Adopted 5/3/05

Short Title: State Health Plan Subrogation.

(Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT PERTAINING TO SUBROGATION RIGHTS OF THE TEACHERS' AND
STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-40.13A reads as rewritten:

"§ 135-40.13A. Liability of third person; right of subrogation; right of first recovery.

(a) ~~Whenever the Plan pays benefits for hospital, surgical, medical, or prescription drug expenses, with respect to any Plan member, the Plan shall be subrogated, to the extent of any payments under the Plan, to all of the Plan member's rights of recovery against liable third parties, regardless of the entity or individual from whom recovery may be due.~~ The Plan shall have the right of subrogation upon all of the Plan member's right to recover from a liable third party for payment made under the Plan, for all medical expenses, including provider, hospital, surgical, or prescription drug expenses, to the extent those payments are related to an injury caused by a liable third party. The Plan member shall do nothing to prejudice these rights. The Plan has the right to first recovery on any amounts so recovered, whether by the Plan or the Plan member, and whether recovered by litigation, arbitration, mediation, settlement, or otherwise. Notwithstanding any other provision of law to the contrary, the recovery limitation set forth in G.S. 28A-18-2 shall not apply to the Plan's right of subrogation of Plan members.

(b) If the Plan is precluded from exercising its right of subrogation, it may exercise its rights of recovery pursuant to G.S. 135-40.13(g) to the extent allowed by law. If the Plan recovers damages from a liable third party in excess of the claims paid, any excess will be paid to the member, less a proportionate share of the costs of collection.

(c) In the event a Plan member recovers any amounts from a liable third party to which the Plan is entitled under this section, the Plan may recover the amounts directly from the Plan member. The Plan has a lien, for not more than the value of claims paid

1 related to the liability of the third party, on any damages subsequently recovered against
2 the liable third party. If the Plan member fails to pursue the remedy against a liable third
3 party, the Plan is subrogated to the rights of the Plan member and is entitled to enforce
4 liability in the Plan's own name or in the name of the Plan member for the amount paid
5 by the Plan.

6 (d) In no event shall the Plan's lien exceed fifty percent (50%) of the total
7 damages recovered by the Plan member, exclusive of the Plan member's reasonable
8 costs of collection as determined by the Plan in the Plan's sole discretion. The decision
9 by the Plan as to the reasonable cost of collection is conclusive and is not a "final
10 agency decision" for purposes of a contested case under Chapter 150B of the General
11 Statutes. Notice of the Plan's lien or right to recovery shall be presumed when a Plan
12 member is represented by an attorney, and the attorney shall disburse proceeds pursuant
13 to this section."

14 **SECTION 2.** G.S. 28A-18-2(a) reads as rewritten:

15 **"§ 28A-18-2. Death by wrongful act of another; recovery not assets.**

16 (a) When the death of a person is caused by a wrongful act, neglect or default of
17 another, such as would, if the injured person had lived, have entitled him to an action
18 for damages therefor, the person or corporation that would have been so liable, and his
19 or their personal representatives or collectors, shall be liable to an action for damages, to
20 be brought by the personal representative or collector of the decedent; and this
21 notwithstanding the death, and although the wrongful act, neglect or default, causing the
22 death, amounts in law to a felony. The personal representative or collector of the
23 decedent who pursues an action under this section may pay from the assets of the estate
24 the reasonable and necessary expenses, not including attorneys' fees, incurred in
25 pursuing the action. At the termination of the action, any amount recovered shall be
26 applied first to the reimbursement of the estate for the expenses incurred in pursuing the
27 action, then to the payment of attorneys' fees, and shall then be distributed as provided
28 in this section. The amount recovered in such action is not liable to be applied as assets,
29 in the payment of debts or legacies, except as to burial expenses of the deceased, and
30 reasonable hospital and medical expenses not exceeding four thousand five hundred
31 dollars (\$4,500) incident to the injury resulting in death, except that the amount applied
32 for hospital and medical expenses shall not exceed fifty percent (50%) of the amount of
33 damages recovered after deducting attorneys' fees, but shall be disposed of as provided
34 in the Intestate Succession Act. The limitations on recovery for hospital and medical
35 expenses under this subsection do not apply to subrogation rights exercised pursuant to
36 G.S. 135-40.13A. All claims filed for such services shall be approved by the clerk of the
37 superior court and any party adversely affected by any decision of said clerk as to said
38 claim may appeal to the superior court in term time."

39 **SECTION 3.** This act is effective when it becomes law and applies to
40 actions to exercise rights of recovery under G.S. 135-40.13 or G.S. 135-40.13A
41 commenced on or after that date. Section 2 of this act applies to wrongful deaths
42 occurring on or after the effective date.