

5
SB 772

FILED

2006 MAR 31 P 2:43

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

SENATE BILL NO. 772

(By Senator Prezioso)

PASSED March 11, 2006

In Effect 90 days from Passage

FILED

2006 MAR 31 P 2:43

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 772

(BY SENATOR PREZIOSO)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5Q-4, relating to subrogation rights of the Department of Health and Human Resources on behalf of the James "Tiger" Morton Catastrophic Illness Commission from personal insurance or other sources; legal assignment of rights; setting forth effect of subrogation; allowing action for compensatory damages; notice to the Department of Health and Human Resources of intent to enter judgment, award or settlement; giving the Department of Health and Human Resources right to assert interest through assignment; and providing for attorney fees.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §16-5Q-4, to read as follows:

**ARTICLE 5Q. THE JAMES "TIGER" MORTON CATASTROPHIC ILLNESS
FUND.**

**§16-5Q-4. Assignment of rights; right of subrogation by the
James "Tiger" Morton Catastrophic Illness
Commission to the rights of recipients of medical
assistance; rules as to effect of subrogation.**

1 (a) (1) Submission of an application to the Catastrophic
2 Illness Commission for medical assistance is, as a matter
3 of law, an assignment of the right of the applicant, or legal
4 representative thereof, to recovery from personal insur-
5 ance or other sources, including, but not limited to, liable
6 third parties, to the extent of the cost of medical services
7 paid for by the Catastrophic Illness Commission's Medical
8 Assistance Program.

9 (2) At the time the application is made, the Catastrophic
10 Illness Commission shall include a statement along with
11 such application that explains that the applicant has
12 assigned all such rights to the Catastrophic Illness Com-
13 mission, and the legal implications of making such assign-
14 ment as provided in this section.

15 (3) If medical assistance is paid or will be paid by the
16 Catastrophic Illness Commission to a provider of medical
17 care on behalf of a recipient of medical assistance because
18 of a "catastrophic illness", as defined by this article, and
19 another person is legally liable for such expense, either
20 pursuant to contract, negligence or otherwise, the Depart-
21 ment of Health and Human Resources, on behalf of the
22 Catastrophic Illness Commission, shall have the right to
23 recover full reimbursement from any award or settlement
24 for such medical assistance from such other person, or
25 from the recipient of such assistance if he has been reim-
26 bursed by the other person. The Department of Health and
27 Human Resources shall be legally assigned the rights of
28 the recipient against the person so liable, but only to the
29 extent of the reasonable value of the medical assistance

30 paid and attributable to the catastrophic illness for which
31 the recipient has received damages.

32 (4) When an action or claim is brought by a medical
33 assistance recipient, or by someone on his or her behalf,
34 against a third party who may be liable for the cata-
35 strophic illness or death of a medical assistance recipient,
36 any settlement, judgment or award obtained is subject to
37 the claim of the Department of Health and Human Re-
38 sources on behalf of the Catastrophic Illness Commission
39 for reimbursement of an amount sufficient to reimburse
40 the Department of Health and Human Resources the full
41 amount of benefits paid on behalf of the recipient under
42 the Catastrophic Illness Commission's Medical Assistance
43 Program for the catastrophic illness of the medical assis-
44 tance recipient. The claim of the Department of Health
45 and Human Resources, on behalf of the Catastrophic
46 Illness Commission, assigned by such recipient shall not
47 exceed the amount of medical expenses for the cata-
48 strophic illness of the recipient paid by the Department of
49 Health and Human Resources on behalf of the recipient.
50 The right of subrogation created in this section includes all
51 portions of the cause of action, by either settlement,
52 compromise, judgment or award, notwithstanding any
53 settlement allocation or apportionment that purports to
54 dispose of portions of the cause of action not subject to the
55 subrogation. Any settlement, compromise, judgement or
56 award that excludes or limits the cost of actual medical
57 services or care shall not preclude the Department of
58 Health and Human Resources from enforcing its rights
59 under this section. The Secretary of the Department of
60 Health and Human Resources may compromise, settle and
61 execute a release of any such claim in whole or in part.

62 (b) (1) Nothing in this section shall be construed so as to
63 prevent the recipient of medical assistance from maintain-
64 ing an action for injuries received by him against any other
65 person and from including therein, as part of the compen-
66 satory damages sought to be recovered, the amount or

67 amounts of his or her medical expenses, even though such
68 person received medical assistance in the payment of such
69 medical expenses in whole or in part.

70 (2) If the action be tried by a jury, the jury shall not be
71 informed as to the interest of the Department of Health
72 and Human Resources on behalf of the Catastrophic Illness
73 Commission, if any, and such fact shall not be disclosed to
74 the jury at any time. The trial judge shall, upon the entry
75 of judgment on the verdict, direct that an amount equal to
76 the amount of medical assistance given by the commission
77 be withheld and paid over to the Department of Health
78 and Human Resources on behalf of the commission.
79 Irrespective of whether the case be terminated by judg-
80 ment or by settlement without trial, from the amount
81 required to be paid to the Department of Health and
82 Human Resources, on behalf of the Catastrophic Illness
83 Commission, there shall be deducted the attorney fees
84 attributable to such amount in accordance with and in
85 proportion to the fee arrangement made between the
86 recipient and his or her attorney of record so that the
87 Department of Health and Human Resources shall bear the
88 pro rata portion of such attorney fees. Nothing in this
89 section shall preclude any person who has received
90 medical assistance from settling any cause of action which
91 he or she may have against another person and delivering
92 to the Department of Health and Human Resources from
93 the proceeds of such settlement the sums received by him
94 or her from the commission or paid by the commission for
95 his or her medical assistance. If such other person is aware
96 of or has been informed of the interest of the Department
97 of Health and Human Resources on behalf of the commis-
98 sion in the matter, it shall be the duty of the person to
99 whose benefit the release inures to withhold so much of
100 the settlement as may be necessary to reimburse the
101 Department of Health and Human Resources, to the extent
102 of its interest in the settlement. No judgment, award of or
103 settlement in any action or claim by a medical assistance
104 recipient or his representative to recover damages for a

105 catastrophic illness or death, in which the Department of
106 Health and Human Resources on behalf of the commission
107 has an interest, shall be satisfied without first giving the
108 Department of Health and Human Resources notice and
109 reasonable opportunity to establish its interest. The
110 Department of Health and Human Resources shall have
111 sixty days from the receipt of such written notice to advise
112 the recipient or his or her representative in writing of its
113 desire to establish its interest through the assignment. If
114 no such written intent is received within the sixty-day
115 period, then the recipient may proceed and in the event of
116 full recovery forward to the Department of Health and
117 Human Resources the portion of the recovery proceeds less
118 the Department of Health and Human Resources's share of
119 attorney's fees and costs expended in the matter. In the
120 event of less than full recovery the recipient and the
121 Department of Health and Human Resources shall agree as
122 to the amount to be paid to it for its claim. If there is no
123 recovery, the Department of Health and Human Resources
124 shall under no circumstances be liable for any costs or
125 attorney fees expended in the matter. If, after being
126 notified in writing of a subrogation claim and possible
127 liability of the recipient, guardian, attorney or personal
128 representative for failure to subrogate the Department of
129 Health and Human Resources, a recipient, his or her
130 guardian, attorney or personal representative disposes of
131 the funds representing the judgment, settlement or award
132 without the written approval of the Department of Health
133 and Human Resources, that person shall be liable to the
134 Department of Health and Human Resources for any
135 amount that, as a result of the disposition of the funds, is
136 not recoverable by the Department of Health and Human
137 Resources. In the event that a controversy arises concern-
138 ing the subrogation claims by the Department of Health
139 and Human Resources, an attorney shall interplead,
140 pursuant to Rule 22 of the Rules of Civil Procedure, the
141 portion of the recipient's settlement that will satisfy the
142 Department of Health and Human Resources exclusive of

143 attorney fees and costs regardless of any contractual
144 arrangement between the client and the attorney.

145 (c) Nothing contained herein shall authorize the Depart-
146 ment of Health and Human Resources or the Catastrophic
147 Illness Commission to institute a class action or multiple
148 plaintiff action against any manufacturer, distributor or
149 vendor of any product to recover medical care expendi-
150 tures paid for by the Catastrophic Illness Commission's
151 Medical Assistance Program.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *31st*
Day of *June* , 2006.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 27 2006

Time 9:15 AM