

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-12-83

70: 51

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983



ENROLLED

SENATE BILL NO. 51

(By Mr. Halliday)



PASSED March 1 1983

In Effect ninety days from Passage



ENROLLED
Senate Bill No. 51

(BY MR. HOLLIDAY)

[Passed March 1, 1983; in effect ninety days from passage]

AN ACT to amend article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven, relating to right of subrogation by department of welfare to the rights of recipients of medical assistance; establishing certain procedures with respect to such right of subrogation; the rights of the recipients of medical assistance to maintain actions for injuries and the inclusion of such assistance as a portion of damages therein; prohibiting certain information from being given the jury in such cases; distribution of amount awarded and payment of attorney fees in such cases; establishing certain rights and duties with respect to the settlement of such cases; rules with respect to the bringing of action by the department of welfare to enforce its right of subrogation and the effect thereof; and permitting certain causes of action to be split for such purpose.

Be it enacted by the Legislature of West Virginia:

That article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eleven, to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.**§9-5-11. Right of subrogation by department of welfare to the rights of recipients of medical assistance; rules as to effect of subrogation.**

1 (a) If medical assistance is paid on behalf of a recipient
2 of medical assistance because of any sickness, injury,
3 disease or disability and another person is legally liable for
4 such expense, the department may recover reimbursement
5 for such medical assistance from such other person, or from
6 the recipient of such assistance if he has been reimbursed by
7 the other person. The department shall be legally
8 subrogated to the rights of the recipient against the person
9 so liable, but only to the extent of the reasonable value of
10 the medical assistance paid and attributable to such
11 sickness, injury, disease or disability; and the commissioner
12 may compromise, settle and execute a release of any such
13 claim. The provisions of this subsection are subject to the
14 provisions of subsection (b) of this section.

15 (b) Nothing in this section shall be construed so as to
16 prevent the recipient of medical assistance from
17 maintaining an action for injuries received by him against
18 any other person and from including therein, as part of the
19 compensatory damages sought to be recovered, the amount
20 or amounts of his medical expenses, even though such
21 person received medical assistance in the payment of such
22 medical expenses, in whole or in part.

23 If the action be tried by a jury, the jury shall not be
24 informed as to the interest of the department of welfare, if
25 any, and such fact shall not be disclosed to the jury at any
26 time. The trial judge shall, upon the entry of judgment on
27 the verdict, direct that an amount equal to the amount of
28 medical assistance given be withheld and paid over to the
29 department of welfare. Irrespective of whether the case be
30 terminated by judgment or by settlement without trial,
31 from the amount required to be paid to the department of
32 welfare there shall be deducted the attorney fees
33 attributable to such amount in accordance with and in
34 proportion to the fee arrangement made between the
35 recipient and his attorney of record so that the department
36 shall bear the pro rata portion of such attorney fees.
37 Nothing in this section shall preclude any person who has
38 received medical assistance from settling any cause of

39 action which he may have against another person and
40 delivering to the department, from the proceeds of such
41 settlement, the sums received by him from the department
42 or paid by the department for his medical assistance. Any
43 release given by a person who has received medical
44 assistance to another person releasing such other person of
45 liability with respect to any cause of action, shall be binding
46 upon the department if the person for whose benefit the
47 release inures is unaware of, or has not been informed of the
48 interest of the department therein. If such other person is
49 aware of or has been informed of the department's interest
50 in the matter, it shall be the duty of the person to whose
51 benefit the release inures to withhold so much of the
52 settlement as may be necessary to reimburse the
53 department to the extent of its interest in the settlement. If
54 the department intends to maintain an action against any
55 person for the collection of sums paid by it for medical
56 assistance, it shall, prior thereto, notify the recipient of such
57 assistance of its intent to bring an action at least thirty days
58 prior to the bringing thereof. Such notice shall inform the
59 recipient of the department's intent and shall advise the
60 recipient of his right to bring such action in his own name in
61 which he may include as a part of his claim the sums
62 claimed by the department. Such notice shall also advise
63 the recipient that unless the department is notified by him
64 or his representative within thirty days of the date of the
65 receipt of such notice, the department shall proceed to
66 maintain an action to the extent of its interest in the name of
67 the department. Any action subsequently brought by the
68 department in its name as subrogee of the recipient shall not
69 preclude the recipient from maintaining an action in his
70 own name for the full amount of the claim and any verdict
71 rendered therein shall be reduced by the amount previously
72 awarded the department as hereinafter provided. To the
73 extent provided herein and in no other event, unless
74 specifically provided by law, shall any cause of action be
75 divisible or capable of being split if such cause arises from
76 the same transaction.



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

James L. Davis
.....
Chairman Senate Committee

Arnold Queller
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Jed C. Wicks
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Walter P. McRae
.....
President of the Senate

W. M. Lee, Jr.
.....
Speaker House of Delegates

The within... *is approved* this the... *12*
day of... *March* 1983

.....
Robert R. Byrd
.....
Governor



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SECY. OF STATE