

## HOUSE BILL No. 2789

By Representatives Kinzer and Yoder

2-1

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9 AN ACT concerning subrogation rights under health insurance policies.

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11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. As used in this act:

13 (a) "Health care insurer" means any insurer, self-insurer, insurance  
14 arrangement or health maintenance organization providing health insur-  
15 ance or health care services or benefits.

16 (b) "Health care services" means the same as provided in K.S.A. 40-  
17 3202 and amendments thereto.

18 (c) "Health insurance" means the same as provided in K.S.A. 40-2118  
19 and amendments thereto.

20 (d) "Health maintenance organization" means the same as provided  
21 in K.S.A. 40-3202 and amendments thereto.

22 (e) "Injured person" means any person suffering injury who has  
23 health insurance or is entitled to health care services or benefits through  
24 an insurance arrangement, and if the injured person is a minor, incapac-  
25 itated or deceased, the injured person's legal representative.

26 (f) "Injury" means bodily harm, sickness, disease or death.

27 (g) "Insurance arrangement" means the same as provided in K.S.A.  
28 40-2118 and amendments thereto. Insurance arrangement also includes  
29 all government and church employment benefit plans which are exempt  
30 from the employee retirement income act of 1974 or any other applicable  
31 law.

32 (h) "Insurer" means the same as provided in K.S.A. 40-2118 and  
33 amendments thereto.

34 (i) "Tort recovery" means the amount of an award received through  
35 a judgment, settlement or otherwise.

36 Sec. 2. (a) Any policy, contract or plan of health insurance issued or  
37 delivered in this state, or insuring any resident of or person in this state,  
38 or insurance arrangement providing health care services or benefits in  
39 this state or to any resident of this state, may include or incorporate a  
40 provision authorizing the policy, contract, plan or arrangement to assert  
41 and enforce the subrogation interest and lien created by this act. If the  
42 policy, contract or plan of health insurance does not contain a subrogation  
43 provision, subrogation does not apply.

1 (b) If health care services or benefits are paid or provided by a health  
2 care insurer for an injury creating a legal liability against a tortfeasor and  
3 the health care insurer's policy, contract or plan of health insurance con-  
4 tains a subrogation provision and if there is a tort recovery from the  
5 tortfeasor by the injured person, the health care insurer, if authorized  
6 under this section, shall be subrogated to the injured person's tort recov-  
7 ery of duplicative health care services or benefits paid or provided to the  
8 date of such recovery, and shall have a lien therefor against such recovery  
9 and the health care insurer may intervene in any action to protect and  
10 enforce such lien.

11 (c) In the event an injured person, the injured person's dependents  
12 or personal representative fails to commence an action against such tort-  
13 feasor within 18 months after the date of the accident resulting in the  
14 injury, such failure shall operate to permit the health care insurer to file  
15 any cause of action in tort which the injured person, the dependents of  
16 such person or personal representative of such person may have against  
17 such tortfeasor for the purpose and to the extent of recovery of all dam-  
18 ages caused by the alleged tortfeasor. Such health care insurer may en-  
19 force same in the health care insurer's or self-insurer's own name or in  
20 the name of the injured person, dependents or representative of the in-  
21 jured person for their benefit and the benefit of the injured party as their  
22 interest may appear by any proper action in any court of competent  
23 jurisdiction.

24 (d) In the event of a recovery the health care insurer's right of sub-  
25 rogation shall be proportional to plaintiff's net actual recovery of damages  
26 for nonduplicative health care services or benefits.

27 (e) Attorney fees and claim expenses shall be paid proportionately by  
28 the health care insurer or self-insurer and the injured person, the injured  
29 person's dependents or personal representative, and the attorney shall  
30 have a lien therefor against any such recovery.

31 (f) In the event of recovery pursuant to K.S.A. 60-258a, and amend-  
32 ments thereto, the health care insurer or self-insurer's right of subroga-  
33 tion shall be reduced by the percentage of negligence attributable to the  
34 injured person.

35 (g) To the extent a subrogation recovery is allowed under this act, the  
36 health care insurer shall credit any lifetime cap or limit under the injured  
37 person's insurance policy, contract or plan of health insurance.

38 (h) Nothing in this act shall be interpreted as creating a legal cause  
39 of action for subrogation in favor of any entity or plan against whom a  
40 legal action for damages for negligence or bad faith in connection with  
41 the handling of claims for health care services or benefits is prohibited  
42 by federal law.

43 Sec. 3. The provisions of this act shall apply only to causes of action

1 accruing on or after July 1, 2006.

2     Sec. 4. If any provision or clause of this act or application thereof to  
3 any person or circumstance is held invalid, such invalidity shall not affect  
4 other provisions or applications of the act which can be given effect with-  
5 out the invalid provision or application, and to this end the provisions of  
6 this act are declared to be severable.

7     Sec. 5. This act shall take effect and be in force from and after its  
8 publication in the statute book.