

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 552
SENATE BILL 516

AN ACT TO GRANT SUBROGATION RIGHTS AND PENALTIES FOR
WITHHOLDING INFORMATION TO THE DEPARTMENT OF HUMAN
RESOURCES, DIVISION OF VOCATIONAL REHABILITATION.

The General Assembly of North Carolina enacts:

Section 1. Article 59 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-547. Subrogation rights; withholding of information a misdemeanor.

(a) Notwithstanding any other provisions of law, to the extent of payments under this Article, the State Vocational Rehabilitation program shall be subrogated to all rights of recovery, contractual or otherwise, of the beneficiary of the assistance, or his personal representative, his heirs, or the administrator or executor of his estate, against any person; provided, however, that any attorney retained by the beneficiary of the assistance shall be compensated for his services in accordance with the following schedule and in the following order of priority from any amount obtained on behalf of the beneficiary by settlement with, judgment against, or otherwise from a third party by reason of such injury or death:

- (1) First to the payment of any court costs taxed by the judgment;
- (2) Second to the payment of the fee of the attorney representing the beneficiary making the settlement or obtaining the judgment, but this fee shall not exceed one-third of the amount obtained or recovered to which the right of subrogation applies;
- (3) Third to the payment of the amount of assistance received by the beneficiary as prorated with other claims against the amount obtained or received from the third party to which the right of subrogation applies, but the amount shall not exceed one-third of the amount obtained or recovered to which the right of subrogation applies; and
- (4) Fourth to the payment of any amount remaining to the beneficiary or his personal representative.

The United States and the State of North Carolina shall be entitled to shares in each net recovery under this section. Their shares shall be promptly paid under this section and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient.

(b) In furnishing a person rehabilitation services, including medical case services under this Chapter, the Division of Vocational Rehabilitation Services is subrogated to the person's right of recovery from:

- (1) Personal insurance;
- (2) Worker's Compensation;
- (3) Any other person or personal injury caused by the other person's negligence or wrongdoing; or
- (4) Any other source.

(c) The Division of Vocational Rehabilitation Services' right to subrogation is limited to the cost of the rehabilitation services provided by or through the Division for which a financial needs test is a condition of the service provisions. Those services that are provided without a financial needs test are excluded from these subrogation rights.

(d) The Division of Vocational Rehabilitation Services may totally or partially waive subrogation rights when the Division finds that enforcement would tend to defeat the client's process of rehabilitation or when client assets can be used to offset additional Division costs.

(e) The Division of Vocational Rehabilitation Services may adopt rules for the enforcement of its rights of subrogation.

(f) It is a misdemeanor for a person seeking or having obtained assistance under this Part for himself or another to willfully fail to disclose to the Division of Vocational Rehabilitation Services or its attorney the identity of any person or organization against whom the recipient of assistance has a right of recovery, contractual or otherwise."

Sec. 2. This act shall become effective October 1, 1989, and applies to recoveries granted on or after that date.

In the General Assembly read three times and ratified this the 4th day of July, 1989.