

By: Kolkhorst

H.B. No. 1272

A BILL TO BE ENTITLED

1 AN ACT

2 relating to a lien on a cause of action or claim of an individual who
3 receives emergency medical services.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 55, Property Code, is amended to read as
6 follows:

7 CHAPTER 55. HOSPITAL AND EMERGENCY MEDICAL SERVICES LIENS [~~LIEN~~]

8 Sec. 55.001. DEFINITIONS. In this chapter:

9 (1) "Emergency medical services" has the meaning
10 assigned by Section 773.003, Health and Safety Code.

11 (2) "Emergency medical services provider" has the
12 meaning assigned by Section 773.003, Health and Safety Code.

13 (3) "Hospital" means a person or institution
14 maintaining a facility that provides hospital services in this
15 state.

16 (4) [~~(2)~~] "Person" does not include a county, common,
17 or independent school district.

18 Sec. 55.002. LIEN. (a) A hospital has a lien on a cause of
19 action or claim of an individual who receives hospital services for
20 injuries caused by an accident that is attributed to the negligence
21 of another person. For the lien to attach, the individual must be
22 admitted to a hospital not later than 72 hours after the accident.

23 (b) The lien extends to both the admitting hospital and a
24 hospital to which the individual is transferred for treatment of

1 the same injury.

2 (c) An emergency medical services provider has a lien on a
3 cause of action or claim of an individual who receives emergency
4 medical services for injuries caused by an accident that is
5 attributed to the negligence of another person. For the lien to
6 attach, the individual must receive the emergency medical services
7 not later than 72 hours after the accident.

8 Sec. 55.003. PROPERTY TO WHICH LIEN ATTACHES. (a) A ~~[The]~~
9 lien under this chapter attaches to:

10 (1) a cause of action for damages arising from an
11 injury for which the injured individual is admitted to the hospital
12 or receives emergency medical services;

13 (2) a judgment of a court in this state or the decision
14 of a public agency in a proceeding brought by the injured individual
15 or by another person entitled to bring the suit in case of the death
16 of the individual to recover damages arising from an injury for
17 which the injured individual is admitted to the hospital or
18 receives emergency medical services; and

19 (3) the proceeds of a settlement of a cause of action
20 or a claim by the injured individual or another person entitled to
21 make the claim, arising from an injury for which the injured
22 individual is admitted to the hospital or receives emergency
23 medical services.

24 (b) The lien does not attach to:

25 (1) a claim under the workers' compensation law of this
26 state, the Federal Employers' ~~[Employees]~~ Liability Act, or the
27 federal ~~[Federal]~~ Longshore and ~~[Longshoremen's or]~~ Harbor Workers'

1 Compensation Act; or

2 (2) [~~a claim against the owner or operator of a~~
3 ~~railroad company that maintains or whose employees maintain a~~
4 ~~hospital in which the injured individual is receiving hospital~~
5 ~~services; or~~

6 [~~(3)~~] the proceeds of an insurance policy in favor of
7 the injured individual or the injured individual's beneficiary or
8 legal representative, except public liability insurance carried by
9 the insured that protects the insured against loss caused by an
10 accident or collision.

11 (c) A hospital lien described by Section 55.002(a) does not
12 attach to a claim against the owner or operator of a railroad
13 company that maintains or whose employees maintain a hospital in
14 which the injured individual is receiving hospital services.

15 Sec. 55.004. AMOUNT OF LIEN. (a) In this section,
16 "emergency hospital care" means health care services provided in a
17 hospital to evaluate, stabilize, and treat a serious medical
18 problem of recent onset or severity, including severe pain that
19 would lead a prudent layperson possessing an average knowledge of
20 medicine and health to believe that the condition, illness, or
21 injury is of such a nature that failure to obtain immediate medical
22 care would in all reasonable probability:

- 23 (1) seriously jeopardize the patient's health;
24 (2) seriously impair one or more bodily functions;
25 (3) seriously harm an organ or other part of the body;
26 (4) cause serious disfigurement; or
27 (5) in the case of a pregnant woman, seriously

1 jeopardize the health of the fetus.

2 (b) A hospital [~~The~~] lien described by Section 55.002(a) is
3 for the amount of the hospital's charges for services provided to
4 the injured individual during the first 100 days of the injured
5 individual's hospitalization.

6 (c) A hospital [~~The~~] lien described by Section 55.002(a) may
7 also include the amount of a physician's reasonable and necessary
8 charges for emergency hospital care services provided to the
9 injured individual during the first seven days of the injured
10 individual's hospitalization. At the request of the physician, the
11 hospital may act on the physician's behalf in securing and
12 discharging the lien.

13 (d) A hospital [~~The~~] lien described by Section 55.002(a)
14 does not cover:

15 (1) charges for other services that exceed a
16 reasonable and regular rate for the services;

17 (2) charges by the physician related to any services
18 provided under Subsection (c) for which the physician has accepted
19 insurance benefits or payment under a private medical indemnity
20 plan or program, regardless of whether the benefits or payment
21 equals the full amount of the physician's charges for those
22 services;

23 (3) charges by the physician for services provided
24 under Subsection (c) if the injured individual has coverage under a
25 private medical indemnity plan or program from which the physician
26 is entitled to recover payment for the physician's services under
27 an assignment of benefits or similar rights; or

1 (4) charges by the physician related to any services
2 provided under Subsection (c) if the physician is a member of the
3 legislature.

4 (e) A hospital ~~[The]~~ lien described by Section 55.002(a) is
5 not affected by a hospital's use of a method of classifying patients
6 according to their ability to pay that is solely intended to obtain
7 a lien for services provided to an indigent injured individual.

8 (f) An emergency medical services lien described by Section
9 55.002(c) is for the amount charged by the emergency medical
10 services provider for emergency medical services provided to the
11 injured individual during the 72 hours following the accident that
12 caused the individual's injuries, except that the lien does not
13 cover charges for services that exceed a reasonable and regular
14 rate for the services.

15 Sec. 55.005. SECURING LIEN. (a) To secure the lien, a
16 hospital or emergency medical services provider must file written
17 notice of the lien with the county clerk of the county in which the
18 ~~[hospital]~~ services were provided. The notice must be filed before
19 money is paid to an entitled person because of the injury.

20 (b) The notice must contain:

21 (1) the injured individual's name and address;

22 (2) the date of the accident;

23 (3) the name and location of the hospital or emergency
24 medical services provider claiming the lien; and

25 (4) the name of the person alleged to be liable for
26 damages arising from the injury, if known.

27 (c) The county clerk shall record the name of the injured

1 individual, the date of the accident, and the name and address of
2 the hospital or emergency medical services provider and shall index
3 the record in the name of the injured individual.

4 Sec. 55.0051. PRIORITY OF HOSPITAL LIEN. A hospital lien
5 described by Section 55.002(a) has priority over any emergency
6 medical services lien described by Section 55.002(c).

7 Sec. 55.006. DISCHARGE OF LIEN. (a) To discharge a [the]
8 lien under this chapter, the [hospital] authorities of the hospital
9 or emergency medical services provider claiming the lien or the
10 person in charge of the finances of the hospital or emergency
11 medical services provider must execute and file with the county
12 clerk of the county in which the lien notice was filed a certificate
13 stating that the debt covered by the lien has been paid or released
14 and authorizing the clerk to discharge the lien.

15 (b) The county clerk shall record a memorandum of the
16 certificate and the date it was filed.

17 (c) The filing of the certificate and recording of the
18 memorandum discharge the lien.

19 Sec. 55.007. VALIDITY OF RELEASE. (a) A release of a
20 cause of action or judgment to which a [the] lien under this chapter
21 may attach is not valid unless:

22 (1) the [hospital's] charges of the hospital or
23 emergency medical services provider claiming the lien were paid in
24 full before the execution and delivery of the release;

25 (2) the [hospital's] charges of the hospital or
26 emergency medical services provider claiming the lien were paid
27 before the execution and delivery of the release to the extent of

1 any full and true consideration paid to the injured individual by or
2 on behalf of the other parties to the release; or

3 (3) the hospital or emergency medical services
4 provider claiming the lien is a party to the release.

5 (b) A judgment to which a [the] lien under this chapter has
6 attached remains in effect until the [hospital's] charges of the
7 hospital or emergency medical services provider claiming the lien
8 are paid in full or to the extent set out in the judgment.

9 Sec. 55.008. [~~HOSPITAL~~] RECORDS. (a) On request by an
10 attorney for a party by, for, or against whom a claim is asserted
11 for damages arising from an injury, a hospital or emergency medical
12 services provider shall as promptly as possible make available for
13 the attorney's examination its records concerning the services
14 provided to the injured individual.

15 (b) The hospital or emergency medical services provider may
16 issue reasonable rules for granting access to its records under
17 this section, but it may not deny access because a record is
18 incomplete.

19 (c) The records are admissible, subject to applicable rules
20 of evidence, in a civil suit arising from the injury.

21 SECTION 2. (a) This Act takes effect September 1, 2003.

22 (b) The change in law made by this Act applies only to
23 emergency medical services provided by an emergency medical
24 services provider on or after the effective date of this Act.
25 Emergency medical services provided by an emergency medical
26 services provider before the effective date of this Act are
27 governed by the law in effect at the time the services were

1 provided, and the former law is continued in effect for that
2 purpose.