

1 HB316
2 172393-2
3 By Representative Johnson (R)
4 RFD: Judiciary
5 First Read: 24-FEB-16

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8 SYNOPSIS: This bill would provide a lien for sums
9 recovered as damages for personal injury in any
10 civil action for health care services rendered to
11 the plaintiff.

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13 A BILL
14 TO BE ENTITLED
15 AN ACT

16
17 Relating to damages recovered for personal injury in
18 civil actions; to provide a lien under certain conditions for
19 health care services rendered to the plaintiff.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. (a) This act may be cited as the Health
22 Care Services Lien Act.

23 (b) For purposes of this act, the following words
24 have the following meanings:

25 (1) HEALTH CARE PROFESSIONAL. Any individual in any
26 of the following license categories: A licensed physician,
27 licensed chiropractor, licensed dentist, licensed optometrist,

1 licensed orthotist, licensed prosthetist, or licensed physical
2 therapist.

3 (2) HEALTH CARE PROVIDER. Any entity in any of the
4 following license categories: A licensed home health agency,
5 licensed durable medical equipment provider, licensed
6 long-term care facility, or licensed emergency medical service
7 personnel.

8 Section 2. (a) Subject to subsection (b), after the
9 effective date of this act, a lien is created upon any sums
10 recovered as damages for personal injury in any civil action
11 in this state in favor of any person, corporation, state
12 entity, municipal corporation, or county to whom the person
13 recovering or the person on whose behalf the recovery has been
14 made, may be indebted for any drugs, medical supplies,
15 orthopedic supplies, supplementations, devices, durable
16 medical equipment, ambulance services, services of any
17 physician, chiropractor, dentist, or nurse, including
18 treatment or maintenance, rendered in connection with the
19 injury in compensation for which the damages have been
20 recovered. Where damages are recovered for and on behalf of a
21 minor or a person who is mentally incompetent, the lien shall
22 attach to the sum recovered as fully as if the person was not
23 a minor or a person who is mentally incompetent.

24 (b) A lien is created under subsection (a) only if
25 the person entitled to the lien gives written notice of the
26 lien to the attorney or other third party representing the
27 person on whose behalf the claim for personal injury is made

1 and furnishes, upon request and without charge, an itemized
2 statement or medical report to the attorney for the use of the
3 attorney in the negotiation, settlement, or trial of the
4 claim. The lien shall include a written notice containing the
5 name and address of the injured person, the date of the
6 injury, the name and address of the health care professional
7 or health care provider, and the name of the party alleged to
8 be liable to make compensation to the injured person for the
9 injuries received. Service shall be made by registered or
10 certified mail or in person.

11 (c) This act does not provide for a lien based on
12 treatment, care, or services provided under the Workers'
13 Compensation Act.

14 (d) No action shall lie against any clerk of court
15 or any surety on any clerk's bond to recover any claim based
16 upon a lien created under subsection (a) when recovery has
17 been had by the person injured, no claim against the recovery
18 was filed with the clerk, and the clerk has otherwise
19 disbursed according to law the money recovered in the action
20 for personal injury.

21 Section 3. (a) A lien as provided in Section 2 shall
22 also attach upon all funds paid to any person in compensation
23 for or settlement of the injuries, whether in litigation or
24 otherwise. If an attorney represents the injured person and
25 the lien is perfected as provided under Section 2 before
26 disbursement of the funds, any person that receives the funds
27 shall retain a sufficient amount to pay the lien.

1 Notwithstanding the foregoing, neither this section nor
2 Section 2 shall be construed to interfere with any amount due
3 to an attorney for his or her services.

4 (b) A lien created in this act may not exceed 50
5 percent of the verdict, judgment, award, settlement, or
6 compromise less attorneys' fees. To the extent that more than
7 one health care professional perfects a lien, each lienholder
8 is entitled to a prorated share, not to exceed 50 percent less
9 attorneys' fees, of the verdict, judgment, award, settlement,
10 or compromise.

11 (c) A client's instruction for the disbursement of
12 settlement or judgment proceeds is not binding on the
13 disbursing attorney to the extent that the instruction
14 conflicts with this act.

15 (d) A judgment, award, settlement, or compromise
16 secured by or on behalf of an injured person may not be
17 satisfied without the injured person or his or her authorized
18 representative first giving notice of the judgment, award,
19 settlement, or compromise to the health care professional or
20 health care provider that rendered a service in the treatment,
21 care, or maintenance of the injured person and that has served
22 a lien notice. The notice shall be in writing and served upon
23 the lienholder or, in the case of a lienholder operated
24 entirely by a unit of local government, upon the individual or
25 entity authorized to receive service.

26 (e) The lien of a health care professional or health
27 care provider under this act, from and after the time of the

1 service of the lien notice, shall attach to any verdict,
2 judgment, award, settlement, or compromise secured by or on
3 behalf of the injured person. If the verdict, judgment, award,
4 settlement, or compromise is to be paid over a time by means
5 of an annuity or otherwise, any lien under this act shall be
6 satisfied by the party obligated to compensate the injured
7 person to the fullest extent permitted under this act before
8 the establishment of the annuity or other extended payment
9 mechanism.

10 Section 4. (a) Notwithstanding any confidentiality
11 agreement entered into between an injured person and the payor
12 of proceeds in settlement of compensation for injuries, upon
13 the written request of a lienholder and the holder's written
14 agreement to be bound by any confidentiality agreement
15 regarding the contents of the accounting, a person
16 distributing funds to the holder in an amount less than the
17 amount claimed by the holder shall provide to the holder a
18 certification with sufficient information to demonstrate that
19 the distribution was pro rata and consistent with this act. If
20 the person distributing settlement or judgment proceeds is an
21 attorney, the accounting required by this section is not a
22 breach of the attorney-client privilege.

23 (b) A certification under subsection (a) shall
24 include a statement of all of the following:

25 (1) The total amount of the settlement.

1 (2) The total distribution to lienholders, the
2 amount of each lien claimed, and the percentage of each lien
3 paid.

4 (3) The total attorneys' fees.

5 (c) Nothing in this act shall be construed to
6 require any person to act contrary to the requirements of the
7 Health Insurance Portability and Accountability Act of 1996,
8 P.L. 104-91, and regulations adopted pursuant to that act.

9 Section 5. Whenever the amount demanded for medical
10 services or hospital fees is in dispute, nothing in this act
11 shall compel payment thereof until the claim is fully
12 established and determined, in the manner provided by law.
13 Whenever the amount of a bill is in dispute, the lien may not
14 exceed the amount in dispute.

15 Section 6. Nothing in this act shall be construed as
16 limiting the right of a health care professional or health
17 care provider, or attorney, to pursue collection, through all
18 available means, of its reasonable charges for the services it
19 furnishes to an injured person. Notwithstanding any other
20 provision of law, a lienholder may seek payment of the amount
21 of its reasonable charges that remain not paid after the
22 satisfaction of its lien under this act.

23 Section 7. This act shall not affect any claim of
24 subrogation for the payment of health care services.

25 Section 8. This act shall become effective the third
26 month following its passage and approval by the Governor, or
27 its otherwise becoming law.

