

By: Thierry

H.B. No. 4048

A BILL TO BE ENTITLED

AN ACT

relating to the attachment of a hospital lien on a cause of action or claim of an injured person who receives hospital services.

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

SECTION 1. Section 55.001(3), Property Code, is amended to read as follows:

(3) "Hospital" has the meaning assigned by Section 241.003, Health and Safety Code ~~[means a person or institution maintaining a facility that provides hospital services in this state]~~.

SECTION 2. Sections 55.002(a) and (b), Property Code, are amended to read as follows:

(a) A hospital has a lien on a cause of action or claim of an individual who receives hospital services for injuries caused by an accident that is attributed to the negligence of another person. For the lien to attach, the individual must receive services from ~~[be admitted to]~~ a hospital not later than 72 hours after the accident.

(b) The lien extends to both the ~~[admitting]~~ hospital from which an individual initially receives services and a hospital to which the individual is transferred for treatment of the same injury.

SECTION 3. Section 55.003(a), Property Code, is amended to read as follows:

(a) A lien under this chapter attaches to:

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

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

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

SECTION 4. Sections 55.004(b) and (c), Property Code, are amended to read as follows:

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

(c) A hospital lien described by Section 55.002(a) may also include the amount of a physician's reasonable and necessary charges for emergency hospital care services provided to the injured individual during the first seven days that ~~[of]~~ the injured individual receives services from the hospital

1 ~~[individual's hospitalization]~~. At the request of the physician,
2 the hospital may act on the physician's behalf in securing and
3 discharging the lien.

4 SECTION 5. Section 55.009 Property Code, is added to read as
5 follows:

6 Sec. 55.009. RECOVERY LIMITED. (a) If a person is entitled
7 by law to seek a recovery of medical expenses for injuries caused by
8 an accident that is attributed to the negligence of another person,
9 the person and all lien holders are entitled to recover as provided
10 by Subsection (b) or (c).

11 (b) This subsection applies when a person is not represented
12 by an attorney in obtaining a recovery. The person and all lien
13 holders are entitled to recover under Subsection (a) of a person's
14 recovery in an amount that is equal to the lesser of:

15 (1) one-half of the person's gross recovery; or

16 (2) the total amount provided by Sec 55.004.

17 (c) This subsection applies when a person is represented by
18 an attorney in obtaining a recovery. The person and lien holders
19 share under Subsection (a) of a person's recovery is an amount that
20 is equal to the lesser of:

21 (1) one-half of the person's gross recovery less
22 attorney's fees and procurement costs as provided by Section
23 55.011; or

24 (2) the total under Sec 55.004 less attorney's fees and
25 procurement costs as provided by Section 55.011.

26 SECTION 6. Section 55.010 Property Code, is added to read as
27 follows:

1 Sec. 55.010. ATTORNEY'S FEES IN DECLARATORY JUDGMENT
2 ACTION. Notwithstanding Section 37.009 or any other law, if a
3 declaratory judgment action is brought under this chapter, the
4 court may not award costs or attorney's fees to any party in the
5 action for the declaratory judgment action.

6 SECTION 7. Section 55.011 Property Code, is added to read as
7 follows:

8 Sec. 55.011. ATTORNEY'S FEES IN RECOVERY ACTION. (a) Except
9 as provided by Subsection (c), a lien holder whose interest is not
10 actively represented by an attorney in an action seeking a recovery
11 for injuries caused by an accident that is attributed to the
12 negligence of another person shall pay to an attorney representing
13 the person a fee in an amount determined under an agreement entered
14 into between the attorney and the lien holder plus a pro rata share
15 of expenses incurred in connection with the recovery.

16 (b) Except as provided by Subsection (c), in the absence of
17 an agreement described by Subsection (a), the court shall award to
18 the attorney, payable out of the lien holder's share of the total
19 gross recovery, a reasonable fee for recovery of their share, not
20 to exceed one-third of their recovery, plus a pro rata share of
21 expenses incurred in connection with the recovery.

22 (c) If an attorney representing the lien holder's interest
23 actively participates in obtaining a recovery, the court shall
24 award and apportion between the person's attorney and lien holder's
25 attorney a fee and pro rata expenses payable out of recovery. In
26 apportioning the award, the court shall consider the benefit
27 accruing to the lien holder as a result of each attorney's service.

1 The total attorney's fees may not exceed one-third of the payor's
2 recovery.

3 SECTION 8. Section 55.012 Property Code, is added to read as
4 follows:

5 Sec. 55.012. CONSTRUCTION OF CHAPTER. Nothing in this
6 chapter shall be construed to prevent a hospital or emergency
7 medical services provider from waiving, negotiating, or not
8 pursuing any claim or recovery described in this chapter. The
9 injured individual or their authorized representative retains
10 exclusive authority to conduct negotiations on behalf of the
11 injured individual in the absence of a court order.

12 SECTION 13. The change in law made by this Act applies only
13 to a lien for services provided to an injured individual on or after
14 the effective date of this Act. A lien for services provided before
15 the effective date of this Act is governed by the law as it existed
16 immediately before the effective date of this Act, and that law is
17 continued in effect for that purpose.

18 SECTION 14. This Act takes effect September 1, 2017.