

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Senator Ross**

A Bill

SENATE BILL

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE 18-46-101, ET SEQ., TO
9 ALLOW PROVIDERS OF AMBULANCE SERVICES TO FILE A LIEN FOR
10 THE VALUE OF SERVICES; AND FOR OTHER PURPOSES."

Subtitle

13 "TO ALLOW PROVIDERS OF AMBULANCE SERVICES TO FILE A LIEN
14 FOR THE VALUE OF SERVICES."

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18 SECTION 1. Arkansas Code 18-46-101 is amended to read as follows:
19 "18-46-101. Title.

20 This chapter may be cited as the Medical, Nursing, Hospital, and
21 Ambulance Service Lien Act."

23 SECTION 2. Arkansas Code 18-46-102 is amended to read as follows:
24 "18-46-102. Definitions.

25 As used in this chapter, unless the context otherwise requires:

26 (1) Person means a natural person, a partnership, an
27 association, and a corporation;

28 (2) Practitioner means a person licensed to treat human
29 ailments under the provisions of § 17-93-202 et seq. and includes the practice
30 of dentistry as defined in § 17-82-102 and a person licensed to practice
31 chiropractic under the provisions of § 17-81-101 et seq.;

32 (3) Patient means a person injured through the fault or neglect
33 of another person, for the relief or cure of whose injury a practitioner,
34 nurse, or hospital renders service;

35 (4) Tortfeasor means a person through whose fault or neglect a

1 person is injured;

2 (5) Insurer means a person that by a contract of insurance has
3 undertaken to indemnify a patient against loss through injury resulting from
4 accident or accidental means;

5 (6) Hospital means a person that maintains an establishment in
6 which sick and injured persons are given medical and surgical care;

7 (7) Claims means the claim of a patient:

8 (A) For damages from a tortfeasor; or

9 (B) For benefits from an insurer;

10 (8) Injury means impairment of bodily, nervous, or mental
11 integrity or health;

12 (9) Service means personal service, food, lodging, ambulance
13 service, medical supplies and appliances, and whatever else is reasonably
14 necessary for the care, treatment, and maintenance of a patient.

15 (10) Ambulance service provider means a provider that renders
16 services as defined in § 14-266-103(1) and 14-266-103(2)."

17

18 SECTION 3. Arkansas Code 18-46-104 is amended to read as follows:

19 "18-46-104. Extent of lien.

20 On compliance with the requirements of this chapter, a practitioner, a
21 nurse, a hospital, and an ambulance service provider shall each have a lien:

22 (1) For the value of the service rendered and to be rendered by the
23 practitioner, nurse, hospital, or ambulance service provider to a patient, at
24 the express or implied request of that patient or of someone acting on his
25 behalf, for the relief and cure of an injury suffered through the fault or
26 neglect of someone other than the patient himself;

27 (2) On any claim, right of action, and money to which the patient is
28 entitled because of that injury, and to costs and attorneys' fees incurred in
29 enforcing that lien."

30

31 SECTION 4. Arkansas Code 18-46-105 is amended to read as follows:

32 "18-46-105. Notice required - Contents - Service - Amendments and
33 supplements.

34 In order to establish a lien under this chapter, a practitioner, nurse,
35 hospital, or ambulance service provider shall comply with the following

1 conditions:

2 (1) NOTICE REQUIRED.

3 (A) The practitioner, nurse, hospital, or ambulance service
4 provider shall serve on the patient a written notice of his claim of lien and
5 shall serve a copy of that notice on the tortfeasor or on the insurer, if
6 there is any, or, at the discretion of the practitioner, nurse, hospital, or
7 ambulance service provider, or both. He shall file a copy of the notice so
8 served in the office of the clerk of the circuit court in the county in which
9 his professional, nursing, hospital, or ambulance service has been, or is
10 being, rendered. The notice shall be authenticated by an affidavit to show
11 that the notice and copies of it have been served as required by this chapter.
12 This notice may be served and recorded at any time while service is being
13 rendered and at any time after the discontinuance of service so long as the
14 claim of the practitioner, nurse, hospital, or ambulance service provider for
15 compensation for service is not barred by the statute of limitations.

16 (B) If to the knowledge of the practitioner, nurse, hospital, or
17 ambulance service provider, the patient against whose claim or right of action
18 it is desired to establish a lien has instituted an action in any court in
19 Arkansas to enforce his claim against the tortfeasor responsible for his
20 injury, or against any insurer by which he was insured against loss through
21 injury due to accident or accidental means, then the practitioner, nurse,
22 hospital, or ambulance service provider may, in his or its discretion, in lieu
23 of, or in addition to serving notice of his claim and recording the notice, as
24 authorized by subdivision (1)(A) of this section, file a notice of his claim,
25 duly authenticated under oath, in the court in which the action is pending.
26 The filing of the notice of the claim shall be notice thereof to all parties
27 to the action, without the serving of further notice of the recording of the
28 copy of any notice in the office of the clerk of the circuit court.

29 (2) CONTENTS OF NOTICE. (A) The notice required by this section shall
30 show, so far as is known to the practitioner, nurse, hospital, or ambulance
31 service provider on whose behalf it is filed or served:

32 (i) The name and address of the tortfeasor and, if a lien
33 is claimed against an insurer, then the name and address of that insurer;

34 (ii) The name of the patient, his usual address, and his
35 whereabouts when the notice is served, if elsewhere than at his usual address;

1 (iii) The name and address of the person claiming the lien,
2 and whether he claims as a practitioner, nurse, hospital, or ambulance service
3 provider;

4 (iv) The time when, place where, and circumstances under
5 which the alleged fault or neglect of the tortfeasor occurred and the nature
6 of the injury; and

7 (v) If the service of the practitioner, nurse, hospital, or
8 ambulance service provider has been completed, the amount for which his lien
9 is claimed.

10 (B) The notice shall be supported by an affidavit by the
11 practitioner, nurse, hospital, or ambulance service provider showing that the
12 facts stated of affiant's own knowledge are true, and that the facts stated on
13 information and belief he believes to be true.

14 (C) If the professional, nursing, hospital, or ambulance service
15 on which the claim of lien is based has not been completed when notice of the
16 claim of lien is served and the amount for which a lien is claimed is not
17 stated in the notice, then the practitioner, nurse, hospital, or ambulance
18 service provider on whose behalf the notice has been served shall serve,
19 within sixty (60) days after the termination of service, a supplementary
20 notice on each person previously notified and file a notice in the court in
21 which the previous notice was filed, showing the amount claimed under the
22 lien.

23 (3) METHOD OF SERVICE OF NOTICE. Any notice required by this chapter
24 to be served shall be deemed to have been served:

25 (A) If delivered to the person on whom it is to be served or left
26 at his usual place of business or residence with some person of mature years
27 employed or dwelling there; or

28 (B) If delivered by registered mail at the last known address of
29 the person to be notified, either within or without the State of Arkansas, as
30 shown by the receipt returned by the Postal Service and by an affidavit by an
31 affiant having personal knowledge of the facts, showing that the notice
32 required by this section to be served was enclosed in the letter for which the
33 receipt was returned, when that letter was deposited in the mail.

34 (4) AMENDATORY AND SUPPLEMENTARY NOTICES. The fact that a
35 practitioner, nurse, hospital, or ambulance service provider has filed a

1 notice of the lien as authorized by this chapter shall not prevent his filing
2 amendatory or supplementary notices of liens subsequently; but every
3 amendatory and supplementary notice shall be served and filed in the same
4 manner as the original notice."

5

6 SECTION 5. Arkansas Code 18-46-106 is amended to read as follows:

7 "18-46-106. Liens void after certain day unless action commenced.

8 (a) If at the expiration of sixty (60) days immediately following the
9 day on which the most recent notice, amendatory notice, or supplementary
10 notice of a claim of lien was filed in the office of the clerk of the circuit
11 court, as authorized by this chapter, and if, in any event, immediately on the
12 expiration of the period during which the practitioner, nurse, hospital, or
13 ambulance service provider can enter action to enforce his or its claim
14 against the patient for compensation for service rendered the lien remains
15 unsatisfied and unreleased, and no suit by the practitioner, nurse, hospital,
16 or ambulance service provider by which notice of the lien was filed to enforce
17 that lien is pending in any court, then the lien shall be void and of no
18 effect.

19 (b) Any patient against whose claim or right of action any void lien
20 exists may enforce that claim or right of action discharged from that lien, on
21 delivering to the tortfeasor or insurer an affidavit showing that no action is
22 pending against the affiant to enforce the lien claimed by the practitioner,
23 nurse, hospital, or ambulance service provider. On filing a copy of that
24 affidavit with the clerk of the circuit court in whose office notice of the
25 lien was originally filed, the clerk shall enter on his docket and file a
26 notation to show that the lien has lapsed and is void.

27 (c) If the amount claimed under any lien has been paid into court as
28 authorized by this chapter remains in the custody of the court after the lien
29 has become void, on application by the tortfeasor or the insurer by which the
30 money was so paid, supported by a copy of the record of the circuit court
31 showing that the lien has lapsed, then the court may return the money to the
32 person by whom it was deposited and give him judgment against the lienor for
33 interest on the money during the time it was on deposit and for costs and a
34 reasonable counsel fee.

35 (d) Any person who, in order to obtain the release of an alleged lapsed

1 lien, makes a false affidavit and delivers a copy of it to any tortfeasor or
2 insurer or files a copy of any such affidavit in the office of the clerk of
3 the circuit court shall be guilty of perjury and subject to the penalties
4 prescribed for that offense.

5 (e) If at the expiration of the sixty (60) days stated in subsection
6 (a) of this section an action is pending by the practitioner, nurse, hospital,
7 or ambulance service provider to enforce a claim of lien filed by him, the
8 lien shall continue in full force and effect during the pendency of that suit,
9 unless released by the practitioner, nurse, hospital, or ambulance service
10 provider by whom the claim was filed."

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12 SECTION 6. Arkansas Code 18-46-107 is amended to read as follows:

13 "18-46-107. Enforcement of perfected liens - Parties.

14 (a) A practitioner, nurse, hospital, or ambulance service provider that
15 has perfected a lien under the provisions of this chapter to secure the
16 payment of a debt for service rendered may enforce that lien by any proper
17 action against the patient, the tortfeasor, and the insurer, jointly or
18 severally, in any court of competent jurisdiction. However, no such action
19 shall be begun after action on the debt itself is barred by the statute of
20 limitations.

21 (b) The plaintiff in any such case shall make any and all persons having
22 interests in the subject matter of the action, of whose interest he has
23 knowledge, parties defendant. Any person having an interest in the subject
24 matter of the action who is not made a party to it may, with the consent of
25 the court, become a party in order to protect his interest. Persons having an
26 interest in the subject matter of the action include, within the meaning of
27 this section, all persons authorized by this chapter to establish liens to
28 secure their interests, those whose claims against the patients are not, as
29 well as those whose claims against the patients are, due at the time of the
30 commencement of the action.

31 (c) Any two (2) or more persons having liens on the same claim or right
32 of action of any patient may join in bringing action setting forth their
33 respective rights in their pleading.

34 (d) An action to which any practitioner, nurse, hospital, or ambulance
35 service provider having a lien on the subject matter is a party shall not be

1 dismissed without his consent."

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3 SECTION 7. Arkansas Code 18-46-108 is amended to read as follows:

4 "18-46-108. Liens assignable - Enforcement.

5 All liens or claims of liens that accrue to any practitioner, nurse,
6 hospital, or ambulance service providers under this chapter are assignable.
7 Proceedings to enforce assigned liens or claims of liens may be maintained by,
8 and in the name of, the assignee. The assignee shall have as full and complete
9 power to enforce the lien or claim of lien assigned to him as if proceedings
10 to that end were taken under this chapter by and in the name of the assignor."

11 SECTION 8. Arkansas Code 18-46-109 is amended to read as follows:

12 "18-46-109. Subrogation of rights.

13 Any person who, with the consent of a patient injured through the fault
14 or neglect of another person, pays to a practitioner, nurse, hospital, or
15 ambulance service provider the amount due for service to that patient shall be
16 subrogated to the rights of the payee with respect to the establishment and
17 enforcement of a lien under this chapter."

18

19 SECTION 9. Arkansas Code 18-46-111 is amended to read as follows:

20 "18-46-111. Incorporation of lien in action by patient.

21 If a patient has instituted an action in any court in Arkansas to
22 enforce his claim against the tortfeasor through whose fault or neglect he was
23 injured, or against any insurer by which he was insured against loss through
24 accident or accidental means, and a practitioner, nurse, hospital, or
25 ambulance service provider has filed in the court in which the action is
26 pending a notice of his claim of lien, as authorized by this chapter, the
27 court before which the action is pending shall have jurisdiction with respect
28 to that claim of lien and shall embody in its judgment such an award with
29 respect thereto as the evidence warrants."

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31 SECTION 10. Arkansas Code 18-46-112 is amended to read as follows:

32 "18-46-112. Settlement of patient's claim without satisfaction of lien
33 prohibited.

34 (a) A tortfeasor and an insurer, and each of them, who have been
35 notified, as authorized by this chapter, of a claim of lien against any claim

1 or right of action that a patient has against the tortfeasor or insurer by
2 reason of an injury caused by the fault or neglect of a tortfeasor shall not,
3 within sixty (60) days after the service of the notice, nor at any time after
4 a copy of that notice has been recorded in the office of the clerk of the
5 circuit court of the county in which the professional, nursing, hospital,
6 ambulance service was rendered, pay to the patient, either directly or
7 indirectly, any money or deliver to him, either directly or indirectly,
8 anything of value, in settlement or part settlement of the patient's claim or
9 right of action, without having previously:

10 (1) Paid to the practitioner, nurse, hospital, or ambulance
11 service provider that gave notice of the claim of lien the amount claimed
12 under it; or

13 (2) Received a written release of the claim of lien from the
14 practitioner, nurse, hospital, or ambulance service provider that gave notice
15 of it, except as otherwise authorized by this chapter.

16 (b) A tortfeasor and an insurer, and either of them, that have been
17 notified by a practitioner, nurse, hospital, or ambulance service provider of
18 claim of lien under this chapter and who, directly or indirectly, otherwise
19 than as is authorized by this chapter, pays to the patient any money or
20 delivers to him anything of value as a settlement or compromise of the
21 patient's claim arising out of the injury done to him shall be liable to the
22 practitioner, nurse, hospital, or ambulance provider for the money value of the
23 service rendered by the practitioner, nurse, hospital, or ambulance service
24 provider, in an amount not in excess of the amount to which the patient was
25 entitled from the tortfeasor or insurer because of the injury."

26

27 SECTION 11. Arkansas Code 18-46-113 is amended to read as follows:

28 "18-46-113. Waiver or release of claim by patient.

29 (a) A patient who has been notified by a practitioner, nurse, hospital,
30 or ambulance service provider of a claim of lien on any claim or right of
31 action that the patient has because of the injury for which service was
32 rendered shall not waive or release that claim, or any part of it, unless:

33 (1) The amount claimed by the practitioner, nurse, hospital, or
34 ambulance service provider, under the lien, has been paid; or

35 (2) The practitioner, nurse, hospital, or ambulance service

1 provider has in writing released his lien.

2 (b) Any waiver or release given contrary to the provisions of this
3 chapter shall be void and of no effect."

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5 SECTION 12. Arkansas Code 18-46-114 is amended to read as follows:

6 "18-46-114. Release on satisfaction or waiver of lien required.

7 (a) When a lien has been satisfied or waived, the practitioner, nurse,
8 hospital, or ambulance service provider that established or waived it shall,
9 on written demand and at the expense of the patient, or the person by whom the
10 patient was injured, or by the insurer obligated by reason of the injury, give
11 a written release, duly acknowledged before a justice of the peace or notary
12 public.

13 (b) Any practitioner, nurse, hospital, or ambulance service provider
14 that refuses or fails under the circumstances stated, for a period of five (5)
15 days or more after a written demand is made for a release, to execute and
16 deliver the release shall be liable to the demandant for any injury or damage
17 that results from refusal or failure. In any event he shall forfeit to the
18 demandant the sum of twenty-five dollars (\$25.00), which may be recovered in
19 any action for damages because of the failure, or in a civil action before a
20 justice of the peace, as the circumstances of the case require."

21

22 SECTION 13. Arkansas Code 18-46-115(a) is amended to read as follows:

23 "18-46-115. Records of liens and releases.

24 (a) The clerk of the circuit court in each county shall maintain, at
25 the expense of the county, a file designated and labeled Medical, Nursing,
26 Hospital, and Ambulance Service Provider Liens, and an appropriate and
27 sufficient book record and index of the liens, properly labeled. He shall make
28 a record in this book of notices of liens filed in the order in which they are
29 filed, noting therein the names and addresses of patients of practitioners,
30 nurses, hospitals, ambulance service providers, and other persons on whose
31 behalf a notice of lien has been filed, and of tortfeasors and insurers."

32

33 SECTION 14. Arkansas Code 18-46-116 is amended to read as follows:

34 "18-46-116. Receipt and payment of money by court.

35 (a) Any court having jurisdiction in an action by a patient injured

1 through the fault or neglect of another person against the person whose fault
2 or neglect caused the injury or against an insurer obligated by reason of that
3 injury, and if an action has not been begun, then any court having authority
4 to entertain an action under the circumstances stated above, if and when an
5 action is brought, on petition or other procedure conformable to the rules of
6 practice of the court, by the tortfeasor or by the insurer who has been
7 notified of a claim of lien under the provisions of this chapter, may receive
8 and impound:

9 (1) The amount claimed by any practitioner, nurse, hospital, or
10 ambulance service provider under the lien; or

11 (2) If no amount is named in the notice of the claim of lien that
12 has been served, then the entire amount claimed by the patient from the
13 tortfeasor or from the insurer or any less amount that the court deems
14 sufficient to pay the amount claimed under the claims of lien or liens as have
15 been served.

16 (b) The court may pay or distribute the money in accordance with that
17 petition, motion, or judgment and pay any remaining balance to the person by
18 whom the money was deposited:

19 (1) On joint motion or petition of the patient and the
20 practitioner or practitioners, nurse or nurses, hospital or hospitals, and
21 ambulance service provider or providers claiming interest in the money so paid
22 into court; or

23 (2) On judgment by any competent court."
24

25 SECTION 15. Arkansas Code 18-46-117 is amended to read as follows:

26 "18-46-117. Pro rata payment of claims.

27 If the amount for which a tortfeasor or an insurer is liable to the
28 patient on account of his injury is not sufficient to pay in full the claims
29 of all practitioners, nurses, hospitals, and ambulance service providers that
30 rendered service in the case and who have given notice of liens, then each
31 practitioner, nurse, hospital, and ambulance service provider shall share in
32 the amount payable to the patient in the proportion that his claim bears to
33 the total amount claimed by all other practitioners, nurses, hospitals, and
34 ambulance service providers."
35

1 SECTION 16. All provisions of this act of a general and permanent
2 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
3 Code Revision Commission shall incorporate the same in the Code.

4

5 SECTION 17. If any provision of this act or the application thereof to
6 any person or circumstance is held invalid, such invalidity shall not affect
7 other provisions or applications of the act which can be given effect without
8 the invalid provision or application, and to this end the provisions of this
9 act are declared to be severable.

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11 SECTION 18. All laws and parts of laws in conflict with this act are
12 hereby repealed.

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