

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

A Bill

ACT 271 OF 1993
SENATE BILL 298

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
36 person is injured;

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

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

6 (7) _Claims_ means the claim of a patient:

7 (A) For damages from a tortfeasor; or

8 (B) For benefits from an insurer;

9 (8) _Injury_ means impairment of bodily, nervous, or mental
10 integrity or health;

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

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

16

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

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

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

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

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

29

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

31 "18-46-105. Notice required - Contents - Service - Amendments and
32 supplements.

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

1 (1) NOTICE REQUIRED.

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

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

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

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

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

35 (iii) The name and address of the person claiming the lien,

1 and whether he claims as a practitioner, nurse, hospital, or ambulance service
2 provider;

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

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

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

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

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

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

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

33 (4) AMENDATORY AND SUPPLEMENTARY NOTICES. The fact that a
34 practitioner, nurse, hospital, or ambulance service provider has filed a
35 notice of the lien as authorized by this chapter shall not prevent his filing

1 amendatory or supplementary notices of liens subsequently; but every
2 amendatory and supplementary notice shall be served and filed in the same
3 manner as the original notice."
4

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

6 "18-46-106. Liens void after certain day unless action commenced.

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

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

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

34 (d) Any person who, in order to obtain the release of an alleged lapsed
35 lien, makes a false affidavit and delivers a copy of it to any tortfeasor or

1 insurer or files a copy of any such affidavit in the office of the clerk of
2 the circuit court shall be guilty of perjury and subject to the penalties
3 prescribed for that offense.

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

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

12 "18-46-107. Enforcement of perfected liens - Parties.

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

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

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

33 (d) An action to which any practitioner, nurse, hospital, or ambulance
34 service provider having a lien on the subject matter is a party shall not be
35 dismissed without his consent."

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

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

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

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

"18-46-109. Subrogation of rights.

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

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

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

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

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

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

(a) A tortfeasor and an insurer, and each of them, who have been notified, as authorized by this chapter, of a claim of lien against any claim or right of action that a patient has against the tortfeasor or insurer by

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

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

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

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

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

27 "18-46-113. Waiver or release of claim by patient.

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

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

34 (2) The practitioner, nurse, hospital, or ambulance service
35 provider has in writing released his lien.

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

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

5 "18-46-114. Release on satisfaction or waiver of lien required.

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

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

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

22 "18-46-115. Records of liens and releases.

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

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

33 "18-46-116. Receipt and payment of money by court.

34 (a) Any court having jurisdiction in an action by a patient injured
35 through the fault or neglect of another person against the person whose fault

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

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

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

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

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

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

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

25 "18-46-117. Pro rata payment of claims.

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

35 SECTION 16. All provisions of this act of a general and permanent

1 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
2 Code Revision Commission shall incorporate the same in the Code.

3

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

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

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APPROVED: 02/26/93

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