

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

SENATE BILL

58

By: Senate Gordon

For An Act To Be Entitled

"AN ACT TO REENACT EXISTING LAW ESTABLISHING AN ATTORNEY'S LIEN AND TO ENSURE THAT AN ATTORNEY SHALL BE ENTITLED TO A LIEN FOR SERVICES BASED ON AN AGREEMENT WITH HIS OR HER CLIENT; AND FOR OTHER PURPOSES."

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

SECTION 1. Arkansas Code, Title 16, Chapter 22, Subchapter 3, is hereby amended to add the following additional sections:

"16-22-308. Intent. It is hereby found and determined by the General Assembly of the State of Arkansas that the Supreme Court in *Henry, Walden, and Davis v. Goodman*, 294 Ark. 25 (1987), limited the existing Attorney's Lien Law by allowing only a quantum meruit recovery in a case in which the attorney was dismissed by the client; that the Supreme Court's interpretation of the Attorney Lien Law is contrary to what was intended by the enactment of Acts 59 and 306 of 1941, the Attorney Lien Law; that an attorney should have the right to rely on his contract with his client; and that the Attorney's Lien Law should be reenacted to protect the contractual rights of attorneys. Therefore, it is the intent of Sections 16-22-309 through 16-22-312 to allow an attorney to obtain a lien for services based on his or her agreement with his or her client and to provide for compensation in case of a settlement or compromise without the consent of the attorney.

16-22-309. Compensation governed by contract. The compensation of an attorney at law, solicitor, or counselor for his services is governed by agreement, expressed or implied, which is not restrained by law.

16-22-310. Lien of attorney created. (a) (1) From and after service upon the adverse party of a written notice signed by the client and by the attorney at law, solicitor, or counselor representing the client, which notice is to be served by certified mail, a return receipt being required to establish actual

delivery of the notice, the attorney at law, solicitor, or counselor serving the notice upon the adversary party shall have a lien upon his client's cause of action, claim, or counterclaim, which attaches to any settlement, verdict, report, decision, judgment, or final order in his client's favor, and the proceeds thereof in whosoever's hands they may come.

(2) The lien cannot be defeated and impaired by any subsequent negotiation or compromise by any parties litigant.

(3) However, the lien shall apply only to the cause or causes of action specifically enumerated in the notice.

(b) In the event that the notice is not served upon the adverse party by an attorney at law, solicitor, or counselor representing his client, the same lien created in this section shall attach in favor of the attorney at law, solicitor, or counselor from and after the commencement of an action or special proceeding or the service upon an answer containing a counterclaim, in favor of the attorney at law, solicitor, or counselor who appears for and signs a pleading for his client in the action, claim, or counterclaim in which the attorney at law, solicitor, or counselor has been employed to represent the client.

16-22-311. Compromise or settlement without attorney's consent - Effect.

(a) Any agreement, contract, or arrangement between litigants or any conduct of the one seeking affirmative relief at the instance and procurement of his adversary which deprives the litigant of his asserted right against his adversary shall constitute a compromise or settlement of his cause of action within the meaning of this section.

(b) (1) In case a compromise or settlement is made by the parties litigant to the action after service of the notice by certified mail and before the filing of suit, or if made after suit is filed upon the action and such compromise or settlement is made without the consent of such attorney at law, solicitor, or counselor, the court of proper jurisdiction shall, upon motion, enter judgment for a reasonable fee or compensation against all of the parties to the compromise or settlement so made without the consent of the attorney at law, solicitor, or counselor, and the amount of the fee or compensation shall not be necessarily limited to the amount, if any, of the compromise or settlement between the parties litigant.

(2) If the compromise or settlement is effected by an agent or agents of such party, the judgment shall be entered against the agent or

agents as well as against those parties from whom the attorney at law, solicitor, or counselor is entitled to judgment for the fee or compensation; and, if the compromise or settlement is made with the knowledge or advice of the attorney at law, solicitor, or counselor of those parties from whom the attorney at law, solicitor, or counselor is entitled to judgment for the fee or compensation, the court shall also enter judgment against such attorneys at law, solicitors, or counselors as well.

16-22-312. Determination and enforcement of lien. The court before which an action was instituted, or in which an action may be pending at the time of settlement, compromise, or verdict, or in any chancery court of proper venue, upon the petition of the client or attorney at law, shall determine and enforce the lien created by this section."

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

SECTION 3. Arkansas Code 16-22-301, 16-22-302, 16-22-303 and 16-22-304 are hereby repealed.

SECTION 4. Emergency. It is hereby found and determined by the General Assembly of the State of Arkansas that the Supreme Court in *Henry, Walden and Davis v. Goodman*, 294 Ark. 25 (1987), limited the existing Attorney's Lien Law by allowing only a quantum meruit recovery in a case in which the attorney was dismissed by the client; that the Supreme Court's interpretation of the Attorney Lien Law is contrary to what was intended by the enactment of Acts 59 and 306 of 1941, the Attorney Lien Law; that an attorney should have the right to rely on his contract with his client; and that the Attorney's Lien Law should be reenacted to protect the contractual rights of attorneys. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.