



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB4189

by Rep. Dwight Kay

SYNOPSIS AS INTRODUCED:

770 ILCS 23/10

820 ILCS 305/5

820 ILCS 305/21

from Ch. 48, par. 138.5

from Ch. 48, par. 138.21

Amends the Health Care Services Lien Act. Deletes language exempting services rendered under the provisions of the Workers' Compensation Act or the Workers' Occupational Diseases Act from the types of services which give rise to a health care services lien. Amends the Workers' Compensation Act. Provides that a medical provider may have or claim a lien upon any reward, judgment, or fund out of which the employee might be compensated by a third party, provided that the lien complies with certain billing conditions. Makes a corresponding change.

LRB098 12939 HEP 47445 b

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Health Care Services Lien Act is amended by
5 changing Section 10 as follows:

6 (770 ILCS 23/10)

7 Sec. 10. Lien created; limitation.

8 (a) Every health care professional and health care provider
9 that renders any service in the treatment, care, or maintenance
10 of an injured person, ~~except services rendered under the~~
11 ~~provisions of the Workers' Compensation Act or the Workers'~~
12 ~~Occupational Diseases Act,~~ shall have a lien upon all claims
13 and causes of action of the injured person for the amount of
14 the health care professional's or health care provider's
15 reasonable charges up to the date of payment of damages to the
16 injured person. The total amount of all liens under this Act,
17 however, shall not exceed 40% of the verdict, judgment, award,
18 settlement, or compromise secured by or on behalf of the
19 injured person on his or her claim or right of action.

20 (b) The lien shall include a written notice containing the
21 name and address of the injured person, the date of the injury,
22 the name and address of the health care professional or health
23 care provider, and the name of the party alleged to be liable

1 to make compensation to the injured person for the injuries
2 received. The lien notice shall be served on both the injured
3 person and the party against whom the claim or right of action
4 exists. Notwithstanding any other provision of this Act,
5 payment in good faith to any person other than the healthcare
6 professional or healthcare provider claiming or asserting such
7 lien prior to the service of such notice of lien shall, to the
8 extent of the payment so made, bar or prevent the creation of
9 an enforceable lien. Service shall be made by registered or
10 certified mail or in person.

11 (c) All health care professionals and health care providers
12 holding liens under this Act with respect to a particular
13 injured person shall share proportionate amounts within the
14 statutory limitation set forth in subsection (a). The statutory
15 limitations under this Section may be waived or otherwise
16 reduced only by the lienholder. No individual licensed category
17 of health care professional (such as physicians) or health care
18 provider (such as hospitals) as set forth in Section 5,
19 however, may receive more than one-third of the verdict,
20 judgment, award, settlement, or compromise secured by or on
21 behalf of the injured person on his or her claim or right of
22 action. If the total amount of all liens under this Act meets
23 or exceeds 40% of the verdict, judgment, award, settlement, or
24 compromise, then:

25 (1) all the liens of health care professionals shall
26 not exceed 20% of the verdict, judgment, award, settlement,

1 or compromise; and

2 (2) all the liens of health care providers shall not
3 exceed 20% of the verdict, judgment, award, settlement, or
4 compromise;

5 provided, however, that health care services liens shall be
6 satisfied to the extent possible for all health care
7 professionals and health care providers by reallocating the
8 amount unused within the aggregate total limitation of 40% for
9 all health care services liens under this Act; and provided
10 further that the amounts of liens under paragraphs (1) and (2)
11 are subject to the one-third limitation under this subsection.

12 If the total amount of all liens under this Act meets or
13 exceeds 40% of the verdict, judgment, award, settlement, or
14 compromise, the total amount of all the liens of attorneys
15 under the Attorneys Lien Act shall not exceed 30% of the
16 verdict, judgment, award, settlement, or compromise. If an
17 appeal is taken by any party to a suit based on the claim or
18 cause of action, however, the attorney's lien shall not be
19 affected or limited by the provisions of this Act.

20 (d) If services furnished by health care professionals and
21 health care providers are billed at one all-inclusive rate, the
22 total reasonable charges for those services shall be reasonably
23 allocated among the health care professionals and health care
24 providers and treated as separate liens for purposes of this
25 Act, including the filing of separate lien notices. For
26 services provided under an all-inclusive rate, the liens of

1 health care professionals and health care providers may be
2 asserted by the entity that bills the all-inclusive rate.

3 (e) Payments under the liens shall be made directly to the
4 health care professionals and health care providers. For
5 services provided under an all-inclusive rate, payments under
6 liens shall be made directly to the entity that bills the
7 all-inclusive rate.

8 (Source: P.A. 93-51, eff. 7-1-03.)

9 Section 10. The Workers' Compensation Act is amended by
10 changing Sections 5 and 21 as follows:

11 (820 ILCS 305/5) (from Ch. 48, par. 138.5)

12 (Text of Section WITHOUT the changes made by P.A. 89-7,
13 which has been held unconstitutional)

14 Sec. 5. (a) No common law or statutory right to recover
15 damages from the employer, his insurer, his broker, any service
16 organization retained by the employer, his insurer or his
17 broker to provide safety service, advice or recommendations for
18 the employer or the agents or employees of any of them for
19 injury or death sustained by any employee while engaged in the
20 line of his duty as such employee, other than the compensation
21 herein provided, is available to any employee who is covered by
22 the provisions of this Act, to any one wholly or partially
23 dependent upon him, the legal representatives of his estate, or
24 any one otherwise entitled to recover damages for such injury.

1 However, in any action now pending or hereafter begun to
2 enforce a common law or statutory right to recover damages for
3 negligently causing the injury or death of any employee it is
4 not necessary to allege in the complaint that either the
5 employee or the employer or both were not governed by the
6 provisions of this Act or of any similar Act in force in this
7 or any other State.

8 Any illegally employed minor or his legal representatives
9 shall, except as hereinafter provided, have the right within 6
10 months after the time of injury or death, or within 6 months
11 after the appointment of a legal representative, whichever
12 shall be later, to file with the Commission a rejection of his
13 right to the benefits under this Act, in which case such
14 illegally employed minor or his legal representatives shall
15 have the right to pursue his or their common law or statutory
16 remedies to recover damages for such injury or death.

17 No payment of compensation under this Act shall be made to
18 an illegally employed minor, or his legal representatives,
19 unless such payment and the waiver of his right to reject the
20 benefits of this Act has first been approved by the Commission
21 or any member thereof, and if such payment and the waiver of
22 his right of rejection has been so approved such payment is a
23 bar to a subsequent rejection of the provisions of this Act.

24 (b) Where the injury or death for which compensation is
25 payable under this Act was caused under circumstances creating
26 a legal liability for damages on the part of some person other

1 than his employer to pay damages, then legal proceedings may be
2 taken against such other person to recover damages
3 notwithstanding such employer's payment of or liability to pay
4 compensation under this Act. In such case, however, if the
5 action against such other person is brought by the injured
6 employee or his personal representative and judgment is
7 obtained and paid, or settlement is made with such other
8 person, either with or without suit, then from the amount
9 received by such employee or personal representative there
10 shall be paid to the employer the amount of compensation paid
11 or to be paid by him to such employee or personal
12 representative including amounts paid or to be paid pursuant to
13 paragraph (a) of Section 8 of this Act.

14 Out of any reimbursement received by the employer pursuant
15 to this Section the employer shall pay his pro rata share of
16 all costs and reasonably necessary expenses in connection with
17 such third-party claim, action or suit and where the services
18 of an attorney at law of the employee or dependents have
19 resulted in or substantially contributed to the procurement by
20 suit, settlement or otherwise of the proceeds out of which the
21 employer is reimbursed, then, in the absence of other
22 agreement, the employer shall pay such attorney 25% of the
23 gross amount of such reimbursement.

24 If the injured employee or his personal representative
25 agrees to receive compensation from the employer or accept from
26 the employer any payment on account of such compensation, or to

1 institute proceedings to recover the same, the employer may
2 have or claim a lien upon any award, judgment or fund out of
3 which such employee might be compensated from such third party.

4 A medical provider may have or claim a lien upon any
5 reward, judgment, or fund out of which the employee might be
6 compensated by a third party, provided that the lien complies
7 with subsection (e) of Section 8.2 of this Act.

8 In such actions brought by the employee or his personal
9 representative, he shall forthwith notify his employer by
10 personal service or registered mail, of such fact and of the
11 name of the court in which the suit is brought, filing proof
12 thereof in the action. The employer may, at any time thereafter
13 join in the action upon his motion so that all orders of court
14 after hearing and judgment shall be made for his protection. No
15 release or settlement of claim for damages by reason of such
16 injury or death, and no satisfaction of judgment in such
17 proceedings shall be valid without the written consent of both
18 employer and employee or his personal representative, except in
19 the case of the employers, such consent is not required where
20 the employer has been fully indemnified or protected by Court
21 order.

22 In the event the employee or his personal representative
23 fails to institute a proceeding against such third person at
24 any time prior to 3 months before such action would be barred,
25 the employer may in his own name or in the name of the
26 employee, or his personal representative, commence a

1 proceeding against such other person for the recovery of
2 damages on account of such injury or death to the employee, and
3 out of any amount recovered the employer shall pay over to the
4 injured employee or his personal representatives all sums
5 collected from such other person by judgment or otherwise in
6 excess of the amount of such compensation paid or to be paid
7 under this Act, including amounts paid or to be paid pursuant
8 to paragraph (a) of Section 8 of this Act, and costs,
9 attorney's fees and reasonable expenses as may be incurred by
10 such employer in making such collection or in enforcing such
11 liability.

12 (Source: P.A. 79-79.)

13 (820 ILCS 305/21) (from Ch. 48, par. 138.21)

14 Sec. 21. No payment, claim, award or decision under this
15 Act shall be assignable or subject to any lien, attachment or
16 garnishment, or be held liable in any way for any lien, debt,
17 penalty or damages, except: (1) the beneficiary or
18 beneficiaries of a deceased employee who was a member or
19 annuitant under Article 14 of the "Illinois Pension Code" may
20 assign any benefits payable under this Act to the State
21 Employees' Retirement System; and (2) a medical provider may
22 claim a lien under the Health Care Services Lien Act. The
23 compensation allowed by any award or decision of the Commission
24 shall be entitled to a preference over the unsecured debts of
25 the employer, wages excepted, contracted after the date of the

1 injury to an employee. A decision or award of the Commission
2 against an employer for compensation under this Act, or a
3 written agreement by an employer to pay such compensation
4 shall, upon the filing of a certified copy of the decision or
5 said agreement, as the case may be, with the recorder of the
6 county, constitute a lien upon all property of the employer
7 within the county, paramount to all other claims or liens,
8 except mortgages, trust deeds, or for wages or taxes. Such
9 liens may be enforced in the manner provided for the
10 foreclosure of mortgages under the laws of this State.

11 (Source: P.A. 83-358.)