

By Senator Peaden

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1 A bill to be entitled
2 An act relating to hospital liens; creating s. 768.82,
3 F.S.; providing that a hospital is entitled to a lien
4 on the recovery of damages from a tortfeasor who
5 caused or contributed to the illness or injury of a
6 patient; defining the term "patient"; specifying how
7 the amount of the lien is calculated; specifying
8 methods to resolve disputes between the hospital and
9 patient concerning the amount of the hospital's
10 charges and whether the amount of the patient's
11 attorney's fees and costs apportioned to the hospital
12 produce an inequitable result; specifying time periods
13 in which a hospital must assert and record a lien;
14 requiring a patient to send to the hospital a notice
15 of intent to seek damages against a tortfeasor;
16 requiring that a hospital cooperate with the patient
17 to provide information to prove the nature and extent
18 of the value of the hospital services provided;
19 allowing the failure of the hospital to provide such
20 information to be taken into consideration by a court
21 in determining the right to or amount of a lien or in
22 apportioning the patient's attorney's fees and costs
23 between the patient and the hospital; specifying the
24 effect of a release, satisfaction of judgment,
25 settlement, or settlement agreement with a tortfeasor;
26 providing that the act supersedes all laws and
27 preempts all local ordinances relating to hospital
28 liens; specifying the applicability of the act to
29 causes of actions for torts accruing before and after

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30 the effective date of the act; providing an effective
31 date.

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33 Be It Enacted by the Legislature of the State of Florida:

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35 Section 1. Section 768.82, Florida Statutes, is created to
36 read:

37 768.82 Hospital lien against recovery from tortfeasor.—

38 (1) ENTITLEMENT TO LIEN.—A hospital is entitled to a lien
39 upon the proceeds of any judgment, settlement, or settlement
40 agreement concerning the liability of a tortfeasor who caused or
41 contributed to an illness or injury of a patient in the amount
42 authorized by this section. As used in this section, the term
43 “patient” means the ill or injured person or his or her legal
44 representative.

45 (2) AMOUNT OF LIEN.—

46 (a) The amount of the lien shall be equal to the amount of
47 the reasonable charges due and owing to the hospital less:

48 1. The amount of any health insurance payment or other
49 reimbursement paid and any other obligation owed to the hospital
50 by a health care policy, plan, or program on behalf of the
51 patient.

52 2. The hospital’s pro rata share of the attorney’s fees and
53 costs incurred by the patient in the recovery of damages from
54 the tortfeasor.

55 a. If the patient recovers the full value of damages
56 sustained, the hospital’s pro rata share equals the percentage
57 that the amount of the attorney’s fees and costs bear to the
58 total recovery multiplied by the amount of the attorney’s fees

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59 and costs. The formula to calculate the pro rata share is
 60 illustrated mathematically as follows:

61
 62 hospital's pro rata share = (attorney's fees and costs/total
 63 recovery) x attorney's fees and costs

64
 65 b. If the patient does not or is unable to recover the full
 66 value of damages sustained, the hospitals pro rata share equals
 67 the percentage that the patient's recovery less attorney's fees
 68 and costs bears to the full value of the patient's damages
 69 multiplied by the amount of the attorney's fees and costs. The
 70 formula to calculate the pro rata share is illustrated
 71 mathematically as follows:

72
 73 hospital's pro rata share = ((patient's recovery - attorneys
 74 fees and costs)/full value of patient's damages) x attorney's
 75 fees and costs

76
 77 (b)1. The reasonable charges due and owing to the hospital
 78 may not include charges that the hospital would not be entitled
 79 to recover in a direct action against the patient.

80 2. If the hospital's charges are reduced as a result of an
 81 agreement or contract between the hospital and a third-party
 82 payor or state or federal law, the patient is entitled to pro
 83 rata reduction in any copayment charges billed to the patient by
 84 the hospital.

85 (3) DISPUTE RESOLUTION.—

86 (a) The hospital and the patient shall negotiate in good
 87 faith in an attempt to obtain an equitable resolution if the

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88 hospital and the patient disagree on:

89 1. The amount of the reasonable charges due and owing to
90 the hospital; or

91 2. Whether the patient's attorney's fees and costs
92 apportioned to the hospital pursuant to subsection (2) produce
93 an inequitable result.

94 (b) If the hospital and the patient fail to enter into an
95 agreement as the result of negotiations, a court may order
96 mediation of the disputed issues. If the hospital and the
97 patient fail to enter into an agreement as the result of
98 mediation, the court shall equitably distribute the proceeds of
99 the judgment or settlement, notwithstanding subsection (2).

100 (4) ATTACHEMENT AND WAIVER OF A LIEN.—A hospital may assert
101 a lien pursuant to this section at any time after it provides
102 services for which it is entitled by filing a verified written
103 claim with the clerk of the circuit court in the county in which
104 the hospital is located. However, a hospital waives any right to
105 assert a lien if it fails to record the lien within 30 days
106 after it receives a written notice of the patient's intent to
107 seek damages from a tortfeasor.

108 (5) NOTICE OF INTENT TO SEEK DAMAGES.—

109 (a) A patient shall send a written notice of the patient's
110 intent to seek damages from a tortfeasor to a hospital that
111 provided services subject to this section. The notice must be
112 sent by certified or registered mail. The notice also must state
113 that the hospital waives any right to a lien on the patient's
114 recovery unless the hospital, within 30 days after receiving the
115 notice, provides the patient or the patient's attorney with a
116 statement asserting the lien and setting forth the amount

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117 claimed to be due and records a lien.

118 (b) If the patient has filed suit against the tortfeasor at
119 the time the notice is sent, the patient must send a copy of the
120 complaint against the tortfeasor along with the notice.

121 (6) DUTY TO COOPERATE.—A hospital claiming a lien under
122 this section must cooperate with the patient by producing the
123 information that is reasonably necessary for the patient to
124 prove the nature and extent of the value of the hospital
125 services provided. Notwithstanding subsections (1) through (5),
126 the failure of the hospital to comply with this duty to
127 cooperate may be taken into account by the court in determining
128 the right to or amount of a lien or in apportioning the
129 patient's attorney's fees and costs between the patient and the
130 hospital.

131 (7) EFFECT OF A RELEASE, SATISFACTION OF JUDGMENT, OR
132 SETTLEMENT.—A release, satisfaction of judgment, settlement, or
133 settlement agreement with a tortfeasor is not valid against a
134 lien created pursuant to this section unless the hospital joins
135 therein. A hospital that joins in the execution of a release,
136 satisfaction of judgment, settlement, or settlement agreement
137 releases the patient from all liability to pay the charges due
138 and owing to the hospital.

139 Section 2. This act is a general revision of the subject of
140 the entitlement of a hospital to a lien against a recovery from
141 a tortfeasor who caused or contributed to the need of an ill or
142 injured person to receive services from the hospital. The
143 provisions of this act supersede all other laws and preempt any
144 local ordinances on that subject. However, notwithstanding the
145 foregoing, those laws or ordinances shall continue to apply to

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146 hospital liens asserted as the result of a cause of action
147 accruing against a tortfeasor before October 1, 2010.

148 Section 3. This act shall take effect October 1, 2010, and
149 applies to any hospital lien asserted as the result of a cause
150 of action accruing against a tortfeasor on or after that date.