

# State of South Dakota

EIGHTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2011

805S0031

## HOUSE JUDICIARY ENGROSSED NO. **HB 1144** 2/9/2011

Introduced by: Representatives Hunt, Haggar, Hawley, Hubbel, Jensen, Kirkeby, Kirschman, Lucas, Moser, Novstrup (David), and Verchio and Senators Hansen (Tom), Begalka, Bradford, Kraus, Krebs, Lederman, and Nelson (Tom)

1 FOR AN ACT ENTITLED, An Act to create a statutory lien for certain health care providers.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. For the purposes of this Act, a health care provider is any health care professional  
4 licensed, certified, or otherwise regulated to perform specified health services and any clinic in  
5 which those services are provided.

6 Section 2. Each health care provider that furnishes services in the treatment of or in  
7 connection with an injury not covered by the Workers' Compensation Act, if the injured party  
8 asserts or maintains a claim against another for damages on account of the injury, has a lien  
9 upon that part going or belonging to the injured party of any recovery or sum had or collected  
10 or to be collected by the injured party, or by the injured party's heir or personal representative  
11 in case of the injured party's death, whether by judgment or by settlement or compromise to the  
12 amount of the reasonable and necessary charges of the health care provider for the treatment,  
13 care, and maintenance of the injured party up to the date of payment of the damages.

14 Section 3. The lien granted by this Act may not in any way prejudice or interfere with any



1 lien or contract that may be made by such injured party or any heir or personal representative  
2 of the injured party with any attorney for handling the claim on behalf of the injured party, any  
3 heir, or personal representative.

4 Section 4. Except as provided in section 3 of this Act, any lien perfected pursuant to chapter  
5 44-12 has priority for payment over any lien authorized by this Act.

6 Section 5. The lien set forth in section 2 of this Act may not be applied or considered valid  
7 against anyone coming under the Workers' Compensation Act in this state.

8 Section 6. No lien created by this Act is effective, however, unless a written notice  
9 containing the name and address of the injured party, the date of occurrence of the injury, the  
10 name and address of the health care provider, and the name of the person alleged to be liable to  
11 the injured party for the injuries received, is filed together with the post office receipt for such  
12 mailing in the office of the register of deeds of the county in which the health care services were  
13 provided, before the payment of any moneys to the injured party or the attorney or the legal  
14 representative of the injured party, as compensation for the injury.

15 Section 7. Each register of deeds shall maintain a lien docket in which, upon the filing of  
16 any lien claim pursuant to the provisions of this Act, the register of deeds shall enter the name  
17 and address of the injured person, the name of the person alleged to be liable for the injury, the  
18 date of occurrence of the injury, and the name and address of the health care provider making  
19 the claim. The register of deeds shall make a proper index of the claim in the name of the  
20 injured person and shall charge a fee in accordance with subdivision 7-9-15(3).

21 Section 8. The health care provider shall also mail by certified mail, postage prepaid, a copy  
22 of the notice required by section 6 of this Act with a statement of the date of filing of the notice  
23 to the person alleged to be liable to the injured party for the injury sustained before the payment  
24 of any moneys to the injured party or the attorney or the legal representative of the injured party

1 as compensation for the injury.

2 Section 9. The health care provider shall mail by certified mail, postage prepaid, a copy of  
3 the notice required by section 6 of this Act to any insurance carrier that has insured the person  
4 alleged to be liable against such liability. The person alleged to be liable to the injured person  
5 shall, upon request of the health care provider, disclose the name of the insurance carrier that  
6 has insured such person against such liability.

7 Section 10. Any person making any payment to the injured party or to the injured party's  
8 attorney, heir, or legal representative as compensation for the injury sustained, after the filing  
9 and mailing of the notice, without paying to the health care provider the amount of its lien or  
10 so much thereof as can be satisfied out of the moneys due under any final judgment or  
11 compromise or settlement agreement, after paying the amount of any prior lien, is liable, for a  
12 period of one year from the date of payment of moneys to the injured party or the injured party's  
13 heir, attorney, or legal representative, as provided in this section to the health care provider for  
14 the amount that the health care provider was entitled to receive as provided in this section. Any  
15 such health care provider may, within such period, enforce the lien by a suit at law against the  
16 person making such payment.

17 Section 11. For any lien acquired pursuant to this Act, the amount of the lien may not exceed  
18 the amount the health care provider is entitled to pursuant to any contract the health care  
19 provider may have with an insurance carrier. The limitations in subdivision 58-17C-14(2) apply  
20 to the amount of the lien.