

HOSPITAL AND HEALTH CARE PROVIDER LIEN

AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Allen M. Christensen

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Hospital Lien Law in Title 38, Liens.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ changes the name of the Hospital Lien Law to the Hospital and Health Care Provider Lien Law;
- ▶ adds health care provider under the same lien provisions as a hospital; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 38-7-1**, as last amended by Laws of Utah 1996, Chapter 167
- 38-7-2**, as last amended by Laws of Utah 1996, Chapter 167
- 38-7-2.5**, as last amended by Laws of Utah 2000, Chapter 252
- 38-7-3**, as enacted by Laws of Utah 1965, Chapter 75



28 38-7-4, as last amended by Laws of Utah 1996, Chapter 167

29 38-7-5, as enacted by Laws of Utah 1965, Chapter 75

30 38-7-7, as enacted by Laws of Utah 1965, Chapter 75

31 38-7-8, as enacted by Laws of Utah 1965, Chapter 75

32 38-12-102, as last amended by Laws of Utah 2005, Chapter 187

33 ENACTS:

34 38-7-1.5, Utah Code Annotated 1953



36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section 38-7-1 is amended to read:

38 **CHAPTER 7. HOSPITAL AND HEALTH CARE PROVIDER LIEN LAW**

39 **38-7-1. Lien of hospital or health care provider on judgment, settlement, or**
40 **compromise in certain accident cases authorized.**

41 (1) Every hospital or health care provider located within the state that furnishes
42 emergency, medical, or other service to a patient injured by reason of an accident not covered
43 by workmen's compensation is entitled to assert a lien upon that portion of the judgment,
44 settlement, or compromise going or belonging to such patient, or, in the case of death, to such
45 patient's heirs or personal representatives, less the amount paid by the patient, or on behalf of
46 such patient, by heirs or personal representatives for ~~[attorney's]~~ attorney fees, court costs, and
47 other necessary expenses incidental to obtaining the judgment, settlement, or compromise;
48 provided, that no reduction of the asserted lien amount other than the amount paid by the
49 patient, or such patient's heirs, or personal representatives for ~~[attorney's]~~ attorney fees, court
50 costs, and other necessary expenses incidental to litigation is allowed, unless otherwise agreed
51 to in writing by the lien claimant. The hospital or health care provider lien, however, shall not
52 apply to any judgment, settlement, or compromise where the amount is \$100 or less. This
53 subsection shall apply to any lien on file in the district court of the county on the effective date
54 of this act. Liens on file with the office of the county clerk shall be transferred to the respective
55 county district court on May 1, 1996.

56 (2) A hospital or health care provider lien may be filed upon damages recovered, or to
57 be recovered, either as a result of a judgment, or upon a contract of settlement or compromise,
58 for the amount of the reasonable, usual, and necessary hospital or health care provider charges

59 for treatment, care, and maintenance of the injured party in the hospital or health care provider
60 up to the date of payment of the damages.

61 Section 2. Section **38-7-1.5** is enacted to read:

62 **38-7-1.5. Definitions.**

63 As used in this chapter:

64 (1) "Health care provider" means a person licensed to provide health care under Title
65 58, Occupations and Professions.

66 (2) "Hospital" means a:

67 (a) "general acute hospital" as defined in Section 26-21-2; or

68 (b) "specialty hospital" as defined in Section 26-21-2.

69 Section 3. Section **38-7-2** is amended to read:

70 **38-7-2. Notice of lien required -- Filing with district court -- Mailing to injured**
71 **person, heirs, or legal representative, and insurance carrier.**

72 A hospital or health care provider lien upon damages recovered or to be recovered for
73 personal injuries or death shall be effective if:

74 (1) a verified written notice is filed in the district court of the county in which the
75 hospital or health care provider asserting the lien is located containing:

76 (a) an itemized statement of the services rendered to the injured person and the dates of
77 the services;

78 (b) the name and address of the hospital or health care provider making the claim;

79 (c) the name of the person, firm, or corporation alleged to be liable to the injured party
80 for the injuries and damages sustained; and

81 (d) the full name and address of the injured person;

82 (2) the hospital or health care provider sends by certified mail with return receipt
83 requested, prior to the payment of any money to the injured person or his attorney or heirs or
84 legal representatives as compensation for the injuries and/or damages sustained, a copy of the
85 written notice, together with a statement of the date of filing, to the person, firm, or corporation
86 alleged to be liable to the injured party for the injuries and/or damages sustained; and

87 (3) the hospital or health care provider mails a copy of the written notice by certified
88 mail with return receipt requested to the home office of any insurance carrier that has insured
89 the person, firm, or corporation against liability, if the name and address is known.

90 Section 4. Section 38-7-2.5 is amended to read:

91 **38-7-2.5. Failure to notify -- Effect -- Penalty.**

92 (1) (a) A person who fails to meet the notice requirements of Subsections 38-7-2(1)
93 and (2) is precluded from receiving an award of costs and [attorneys'] attorney fees from the
94 person against whom a notice of lien has been filed in an action to enforce the lien if costs and
95 [attorneys'] attorney fees are authorized by contract or statute.

96 (b) Subsection (1)(a) does not create a right to costs and [attorneys'] attorney fees.

97 (2) In addition to the penalties provided in Subsection (1)(a), a lien claimant who,
98 within 20 days from the date of receiving notice of noncompliance with the notice
99 requirements of Subsection 38-7-2(1) or (2), willfully refuses to release the notice of lien or
100 record the lien in compliance with Section 38-7-2 is liable to the person against whom the
101 notice of lien was filed for \$1,000 or for treble damages, whichever is greater.

102 (3) Failure to meet the notice requirements of Subsections 38-7-2(1) and (2) does not:

103 (a) invalidate any lien arising at common law or in equity or by any statute of this state;

104 or

105 (b) affect the rules of priority provided in Title 70A, Chapter 9a, Uniform Commercial
106 Code -- Secured Transactions.

107 Section 5. Section 38-7-3 is amended to read:

108 **38-7-3. Parties or insurance carrier making payment liable for satisfaction of lien**
109 **-- Enforcement of lien.**

110 (1) Any person, firm or corporation, including an insurance carrier, making any
111 payment to a patient or to his attorney, heirs or legal representative as compensation for the
112 injuries and/or damages sustained, after the filing and, if applicable, receipt of written notice of
113 the lien, as aforesaid, and without paying the hospital or health care provider asserting the lien
114 the amount of its lien or that portion of the lien which can be satisfied out of the money due
115 under any final judgment or contract of compromise or settlement, less payment of the amount
116 of any prior liens, shall be liable to the hospital or health care provider for the amount that the
117 hospital or health care provider was entitled to receive.

118 (2) Liability of the person, firm or corporation for the satisfaction of the hospital or
119 health care provider lien shall continue for a period of one year from and after the date of any
120 payment of any money to the patient, his heirs or legal representatives as damages or under a

121 contract of compromise or settlement. Any hospital or health care provider may enforce its lien
122 by a suit at law against the person, firm or corporation making the payment. In the event of a
123 suit to enforce a lien the hospital or health care provider may recover a reasonable [~~attorney's~~
124 ~~fee~~] attorney fees and the costs of filing and recording the lien.

125 Section 6. Section **38-7-4** is amended to read:

126 **38-7-4. Hospital or health care provider lien docket provided by district court --**
127 **Contents.**

128 Every district court shall, at the expense of the county, provide and maintain a suitable
129 bound book to be called the hospital or health care provider lien docket, and in which shall be
130 entered any hospital or health care provider lien claim filed. The district court shall enter the
131 name of the injured person, the name of the person, firm, or corporation alleged to be liable for
132 the injuries and damages, the date and place of the accident, and the name of the hospital or
133 health care provider or other institution making the claim. The district court shall also maintain
134 a proper index of the hospital or health care provider lien docket under the name of the injured
135 person.

136 Section 7. Section **38-7-5** is amended to read:

137 **38-7-5. Release of lien by hospital or health care provider -- Execution and filing.**

138 The hospital or health care provider shall, upon receipt of payment of the lien or the
139 portion recoverable under the lien, execute and file, at the expense of the hospital or health care
140 provider, a release of lien.

141 Section 8. Section **38-7-7** is amended to read:

142 **38-7-7. Interest of hospital or health care provider in claim settlement limited.**

143 Nothing in this [~~act~~] chapter shall be construed to permit any hospital or health care
144 provider to be a party to or to have any interest in the amount or manner of any settlement of
145 any claim on which a lien has been filed other than the lien rights as provided in this [~~act~~]
146 chapter.

147 Section 9. Section **38-7-8** is amended to read:

148 **38-7-8. Title.**

149 This [~~act may be~~] chapter is known as the "Hospital and Health Care Provider Lien
150 Law."

151 Section 10. Section **38-12-102** is amended to read:

152 **38-12-102. Notice requirements for lien filings -- Exceptions.**

153 (1) A lien claimant or the lien claimant's agent shall send by certified mail a written
154 copy of the notice of lien to the last-known address of the person against whom the notice of
155 lien is filed no later than 30 days after the day on which a lien claimant or the lien claimant's
156 authorized agent files a notice of lien meeting the requirements of Subsection (2):

157 (a) for recordation with:

158 (i) a county recorder;

159 (ii) a county clerk; or

160 (iii) a clerk of the court; or

161 (b) in the case of a lien on an aircraft under Section 38-13-201, with the Federal
162 Aviation Administration.

163 (2) The notice of lien described in Subsection (1) shall contain the following
164 information:

165 (a) the name and address of the person against whom the lien is filed;

166 (b) (i) a statement that certain property owned by the person against whom the lien is
167 filed is subject to a lien;

168 (ii) the amount of the judgment, settlement, or compromise if the lien is based on a
169 charge against or interest in a judgment, settlement, or compromise; or

170 (iii) the amount of state taxes owed;

171 (c) the article number contained on the certified mail receipt;

172 (d) the date the notice of lien was filed; and

173 (e) the name and address of the lien claimant.

174 (3) The notice requirements of Subsections (1) and (2) do not apply to:

175 (a) a mechanics' lien as provided in [~~Title 38,~~] Chapter 1, Mechanics' Liens;

176 (b) a lessors' lien as provided in [~~Title 38,~~] Chapter 3, Lessors' Liens;

177 (c) a federal tax lien as provided in [~~Title 38,~~] Chapter 6, Federal Tax Liens;

178 (d) a hospital lien as provided in [~~Title 38,~~] Chapter 7, Hospital and Health Care
179 Provider Lien Law;

180 (e) a self-service storage facilities lien as provided in [~~Title 38,~~] Chapter 8,
181 Self-Service Storage Facilities;

182 (f) an oil, gas, or mining lien as provided in [~~Title 38,~~] Chapter 10, Oil, Gas, and

183 Mining Liens;
184 (g) a claim against the Residence Lien Recovery Fund as provided in [~~Title 38,~~
185 Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;
186 (h) a trust deed;
187 (i) a mortgage;
188 (j) any interests subject to a security agreement as defined in Section 70A-9a-102;
189 (k) any other liens subject to the same or stricter notice requirements than those
190 imposed by Subsections (1) and (2); or
191 (l) a court judgment or abstract of a court judgment presented for recording in the
192 office of a county recorder.

Legislative Review Note
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Office of Legislative Research and General Counsel