

Senate Bill No. 505

(By Senators D. Hall, Ferns and Mullins)

[Introduced February 17, 2015; referred to the Committee on the Judiciary.]

9 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
10 designated §33-6-38, relating to creating the Physicians Lien Act; creating physician liens
11 on claims and causes of action by injured parties for payments made for the benefit of
12 insured persons arising under a contract of liability insurance; excluding from lien payments
13 made to injured persons under a policy or contract of group or individual accident and
14 sickness insurance and health insurance benefits; requiring release of physician records;
15 requiring adjudication of claims; establishing priority of lien; establishing liability on entities
16 that fail to pay or satisfy the lien; providing for attorneys' fees for cost of enforcing the lien;
17 and providing that if health care provider agrees to a negotiated reduction in fees in writing
18 and is paid that amount, the lien shall be satisfied.

19 *Be it enacted by the Legislature of West Virginia:*

20 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
21 section, designated §33-6-38, to read as follows:

1 **ARTICLE 6. THE INSURANCE POLICY.**

2 **§33-6-38. Physicians Lien Act.**

3 (a) *Creation of physicians lien.* -- Every licensed physician, including medical physicians,
4 osteopathic physicians, chiropractic physicians, podiatric physicians and physical therapists
5 practicing in this state who renders services by way of treatment to injured persons, except for
6 services covered by workers' compensation and rendered pursuant to article four, chapter twenty-
7 three of this code, have a lien upon all claims and causes of action for the amount of the physician's
8 reasonable charges up to the date of payment of the claims and causes of action. In order to enforce
9 the lien the licensed physician or therapist will serve on the injured person, the injured person's
10 attorney and the party against whom the claim or right of action exists or that persons liability
11 insurance company, a written notice containing the name and address of the injured person, the date
12 of the injury, the name and address of the licensed physician or therapist practicing in this state and
13 the name of the party alleged to be liable to make compensation to the injured person for the injuries
14 received. The notice may be served by registered or certified mail or in person.

15 (b) *Effect of lien.* -- The lien of the licensed physician or therapist practicing in this state
16 shall, from and after the time of service of the notice, attach to any verdict, judgment or order
17 secured in any suit or action by the injured party based on any negligent or wrongful act, and to any
18 money or property which may be recovered by compromise settlement, or paid in satisfaction of any
19 verdict or judgment resulting from any suit or action brought by the injured person. In case of death
20 of the injured person, the lien attaches to any money or property which may be recovered by
21 compromise settlement or paid in satisfaction of any verdict or judgment resulting from any suit or

1 action brought by the administrator of the estate of the injured person against any other person for
2 the recovery of damages on account of injuries.

3 (c) *Records of physician; examination by party to action.* -- Any party to a cause pending in
4 circuit court against whom a claim is asserted for damages resulting from bodily injury, upon request
5 in writing and upon presentation of a medical record release authorization or subpoena compliant
6 with the Health Insurance Portability and Accountability Act 1996 (HIPAA), is permitted to examine
7 the records of the physician or therapist in reference to the examination and treatment of the injured
8 person. Any physician or therapist claiming a lien under this section shall, within thirty days of
9 being so requested in writing by a party, and only after presentation of a HIPAA compliant medical
10 record release authorization or subpoena, furnish to the requesting party, or file with the clerk of the
11 court in which the cause is pending, a written statement of the nature and extent of the injuries
12 sustained by and the treatment given to the injured person by the physician or therapist and the
13 history, if any, as given by the injured person, as shown by the medical records and the manner in
14 which the injuries were received.

15 (d) *Records of physician; examination by party against whom a claim is asserted.* -- Any
16 party against whom a claim is asserted for damages resulting from injuries, upon request in writing
17 and upon presentation of a HIPAA compliant medical record release authorization, is permitted to
18 examine the records of the physician in reference to the examination and treatment of the injured
19 person. Any physician claiming a lien under this section shall, within thirty days of being so
20 requested in writing by the party, and only after presentation of a HIPAA compliant medical record
21 release authorization, furnish to the party, a written statement of the nature and extent of the injuries

1 sustained by and the treatment given to the injured person by the physician or therapist and the
2 history, if any, as given by the injured person, as shown by the medical records and the manner in
3 which the injuries were received.

4 (e) *Failure to furnish medical report; effect.* -- If a physician or therapist fails or refuses to
5 give or file a written statement in conformity with and as required by subsections (c) and (d) of this
6 section after being requested in writing in conformity with those subsections, the lien of the
7 physician immediately becomes null and void.

8 (f) *Adjudication of rights; priority of liens.* -- Upon petition filed by the injured person or
9 medical lien holder practicing in this state, the circuit court shall, on written notice to all interested
10 adverse parties, adjudicate the rights of all interested parties and enforce their liens.

11 (g) *Exclusion of health insurance benefits.* -- The lien created in this section attaches only
12 to payments made for the benefit of persons arising under a contract of insurance including all bodily
13 injury liability insurance, underinsured liability insurance, uninsured liability insurance and medical
14 payment insurance coverage and to payments made in a compromise settlement of any bodily injury
15 claim or cause of action or payments made to satisfy a verdict or judgment paid from any insurance
16 company, corporation or individual. The lien does not attach to payments made to injured persons
17 under a policy or contract of group or individual accident and sickness insurance including health
18 insurance benefits, paid under insurance contracts governed by articles fifteen, sixteen, sixteen-c,
19 twenty-a, twenty-four, twenty-five and twenty-five-a, chapter thirty-three of this code, or by any
20 contract of insurance of a self-insured health care fund.

21 (h) *Payment required.* -- Any insurance company, corporation or individual, including the

1 injured person's attorney, who fails to pay or satisfy any lien created in this section at the time the
2 bodily injury claim or cause of action is settled or a verdict or judgment is satisfied is liable to the
3 licensed physician or therapist for the full amount of the lien and for any attorney's fees spent by the
4 licensed physician or therapist to enforce his or her lien rights.

5 (i) *HIPAA Compliant Medical Records Release Authorization.* -- A HIPAA compliant
6 medical records release authorization for the purpose referred to in this section is a written medical
7 record release document that is compliant with 45 C.F.R. §§160-164 (2003) and the Health Insurance
8 Portability and Accountability Act 1996 and which is signed by the person or a legal representative
9 of the person whose protected health information is the subject of the request.

10 (j) *Reduction of fees.* – Nothing in this section may prohibit attorneys for an injured party or
11 insurance companies from negotiating with any healthcare provider covered under this section to
12 reduce the fees charged by such healthcare provider in order to settle the underlying cause of action.
13 If a healthcare provider agrees to a reduction in fees in writing as a result of such negotiation, any
14 lien granted pursuant to this section shall be satisfied upon paying the amount agreed to by the
15 healthcare provider.

NOTE: The purpose of this bill is to create the Physicians Lien Act that creates physician liens on claims and causes of action by injured parties for payments made for the benefit of persons insured under a contract of insurance but excluding from lien payments made to injured persons under a policy or contract of group or individual accident and sickness insurance and health insurance benefits. The bill requires the release of physician records if lien is asserted. It requires adjudication of the claims and establishes priority of lien. The bill provides for liability on entities that fail to pay or satisfy the lien, together with attorneys fees for cost of enforcing the lien. The bill also provides that if the healthcare provider agrees to a negotiated reduction in fees in writing and is paid that amount, the lien is satisfied.

This section is new; therefore, strike-throughs and underscoring have been omitted.