

FIRST REGULAR SESSION

HOUSE BILL NO. 355

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DEMPSEY.

Read 1st time January 26, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0849L.011

AN ACT

To repeal sections 287.140, 430.225, 430.230, and 430.235, RSMo, and to enact in lieu thereof four new sections relating to health care liens, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 287.140, 430.225, 430.230, and 430.235, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 287.140, 430.225, 430.230,
3 and 430.235, to read as follows:

287.140. 1. In addition to all other compensation, the employee shall receive and the
2 employer shall provide such medical, surgical, chiropractic, and hospital treatment, including
3 nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or
4 disability, to cure and relieve from the effects of the injury. If the employee desires, [he] **the**
5 **employee** shall have the right to select his **or her** own physician, surgeon, or other such
6 requirement at [his] **the employee's** own expense. Where the requirements are furnished by a
7 public hospital or other institution, payment therefor shall be made to the proper authorities.
8 Regardless of whether the health care provider is selected by the employer or is selected by the
9 employee at the employee's expense, the health care provider shall have the affirmative duty to
10 communicate fully with the employee regarding the nature of the employee's injury and
11 recommended treatment exclusive of any evaluation for a permanent disability rating. Failure to
12 perform such duty to communicate shall constitute a disciplinary violation by the provider
13 subject to the provisions of chapter 620, RSMo. When an employee is required to submit to
14 medical examinations or necessary medical treatment at a place outside of the local or
15 metropolitan area from the place of injury or the place of [his] **the employee's** residence, the

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 employer or its insurer shall advance or reimburse the employee for all necessary and reasonable
17 expenses; except that an injured employee who resides outside the state of Missouri and who is
18 employed by an employer located in Missouri shall have the option of selecting the location of
19 services provided in this section either at a location within one hundred miles of the injured
20 employee's residence, place of injury or place of hire by the employer. The choice of provider
21 within the location selected shall continue to be made by the employer. In case of a medical
22 examination if a dispute arises as to what expenses shall be paid by the employer, the matter shall
23 be presented to the legal advisor, the administrative law judge or the commission, who shall set
24 the sum to be paid and same shall be paid by the employer prior to the medical examination. In
25 no event, however, shall the employer or its insurer be required to pay transportation costs for
26 a greater distance than two hundred fifty miles each way from place of treatment. In addition to
27 all other payments authorized or mandated under this subsection, when an employee who has
28 returned to full-time employment is required to submit to a medical examination for the purpose
29 of evaluating permanent disability, or to undergo physical rehabilitation, the employer or its
30 insurer shall pay a proportionate weekly compensation benefit based on the provisions of section
31 287.180 for such wages that are lost due to time spent undergoing such medical examinations
32 or physical rehabilitation, except that where the employee is undergoing physical rehabilitation,
33 such proportionate weekly compensation benefit payment shall be limited to a time period of no
34 more than twenty weeks. For purposes of this subsection only, "physical rehabilitation" shall
35 mean the restoration of the seriously injured person as soon as possible and as nearly as possible
36 to a condition of self-support and maintenance as an able-bodied worker. Determination as to
37 what care and restoration constitutes physical rehabilitation shall be the sole province of the
38 treating physician. Should the employer or its insurer contest the determination of the treating
39 physician, then the director shall review the case at question and issue [his] **the director's**
40 determination. Such determination by the director shall be appealable like any other finding of
41 the director or the division. Serious injury includes, but is not limited to, quadriplegia,
42 paraplegia, amputations of hand, arm, foot or leg, atrophy due to nerve injury or nonuse, and
43 back injuries not amenable alone to recognized medical and surgical procedures.

44 2. If it be shown to the division or the commission that the requirements are being
45 furnished in such manner that there is reasonable ground for believing that the life, health, or
46 recovery of the employee is endangered thereby, the division or the commission may order a
47 change in the physician, surgeon, hospital or other requirement.

48 3. All fees and charges under this chapter shall be fair and reasonable, shall be subject
49 to regulation by the division or the commission, or the board of rehabilitation in rehabilitation
50 cases. A health care provider shall not charge a fee for treatment and care which is governed by
51 the provisions of this chapter greater than the usual and customary fee the provider receives for

52 the same treatment or service when the payor for such treatment or service is a private individual
53 or a private health insurance carrier. The division or the commission, or the board of
54 rehabilitation in rehabilitation cases, shall also have jurisdiction to hear and determine all
55 disputes as to such charges. A health care provider is bound by the determination upon the
56 reasonableness of health care bills.

57 4. The division shall, by regulation, establish methods to resolve disputes concerning the
58 reasonableness of medical charges, services, or aids. This regulation shall govern resolution of
59 disputes between employers and medical providers over fees charged, whether or not paid, and
60 shall be in lieu of any other administrative procedure under this chapter. The employee shall not
61 be a party to a dispute over medical charges, nor shall the employee's recovery in any way be
62 jeopardized because of such dispute.

63 5. No compensation shall be payable for the death or disability of an employee, if and
64 insofar as the death or disability may be caused, continued or aggravated by any unreasonable
65 refusal to submit to any medical or surgical treatment or operation, the risk of which is, in the
66 opinion of the division or the commission, inconsiderable in view of the seriousness of the
67 injury. If the employee dies as a result of an operation made necessary by the injury, the death
68 shall be deemed to be caused by the injury.

69 6. The testimony of any physician or chiropractic physician who treated the employee
70 shall be admissible in evidence in any proceedings for compensation under this chapter, subject
71 to all of the provisions of section 287.210.

72 7. Every hospital or other person furnishing the employee with medical aid shall permit
73 its record to be copied by and shall furnish full information to the division or the commission,
74 the employer, the employee or his dependents and any other party to any proceedings for
75 compensation under this chapter, and certified copies of the records shall be admissible in
76 evidence in any such proceedings.

77 8. The employer may be required by the division or the commission to furnish an injured
78 employee with artificial legs, arms, hands, surgical orthopedic joints, or eyes, or braces, as
79 needed, for life whenever the division or the commission shall find that the injured employee
80 may be partially or wholly relieved of the effects of a permanent injury by the use thereof. The
81 director of the division shall establish a procedure whereby a claim for compensation may be
82 reactivated after settlement of such claim is completed. The claim shall be reactivated only after
83 the claimant can show good cause for the reactivation of this claim and the claim shall be made
84 only for the payment of medical procedures involving life-threatening surgical procedures or if
85 the claimant requires the use of a new, or the modification, alteration or exchange of an existing,
86 prosthetic device. For the purpose of this subsection, "life threatening" shall mean a situation
87 or condition which, if not treated immediately, will likely result in the death of the injured

88 worker.

89 9. Nothing in this chapter shall prevent an employee being provided treatment for his
90 injuries by prayer or spiritual means if the employer does not object to the treatment.

91 10. The employer shall have the right to select the licensed treating physician, surgeon,
92 chiropractic physician, or other health care provider; provided, however, that such physicians,
93 surgeons or other health care providers shall offer only those services authorized within the scope
94 of their licenses. For the purpose of this subsection, subsection 2 of section 287.030 shall not
95 apply.

96 11. Any physician or other health care provider who orders, directs or refers a patient for
97 treatment, testing, therapy or rehabilitation at any institution or facility shall, at or prior to the
98 time of the referral, disclose in writing if such health care provider, any of [his] **the provider's**
99 partners or [his] **the provider's** employer has a financial interest in the institution or facility to
100 which the patient is being referred, to the following:

101 (1) The patient;

102 (2) The employer of the patient with workers' compensation liability for the injury or
103 disease being treated;

104 (3) The workers' compensation insurer of such employer; and

105 (4) The workers' compensation adjusting company for such insurer.

106 12. Violation of subsection 11 of this section is a class A misdemeanor.

107 13. (1) No hospital, physician or other health care provider, other than a hospital,
108 physician or health care provider selected by the employee at [his] **the employee's** own expense
109 pursuant to subsection 1 of this section, shall bill or attempt to collect any fee or any portion of
110 a fee for services rendered to an employee due to a work-related injury or report to any credit
111 reporting agency any failure of the employee to make such payment, when an injury covered by
112 this chapter has occurred and such hospital, physician or health care provider has received actual
113 notice given in writing by the employee, the employer or the employer's insurer. Actual notice
114 shall be deemed received by the hospital, physician or health care provider five days after
115 mailing by certified mail by the employer or insurer to the hospital, physician or health care
116 provider.

117 (2) The notice shall include:

118 (a) The name of the employer;

119 (b) The name of the insurer, if known;

120 (c) The name of the employee receiving the services;

121 (d) The general nature of the injury, if known; and

122 (e) Where a claim has been filed, the claim number, if known.

123 (3) When an injury is found to be noncompensable under this chapter, the hospital,

124 physician or other health care provider shall be entitled to pursue the employee for any unpaid
125 portion of the fee or other charges for [authorized] services provided to the employee. Any
126 applicable statute of limitations for an action for such fees or other charges shall be tolled from
127 the time notice is given to the division by a hospital, physician or other health care provider
128 pursuant to subdivision (6) of this subsection, until a determination of noncompensability in
129 regard to the injury which is the basis of such services is made, or in the event there is an appeal
130 to the labor and industrial relations commission, until a decision is rendered by that commission.

131 (4) If a hospital, physician or other health care provider or a debt collector on behalf of
132 such hospital, physician or other health care provider pursues any action to collect from an
133 employee after such notice is properly given, the employee shall have a cause of action against
134 the hospital, physician or other health care provider for actual damages sustained plus up to one
135 thousand dollars in additional damages, costs and reasonable attorney's fees.

136 (5) If an employer or insurer fails to make payment for [authorized] services provided
137 to the employee by a hospital, physician or other health care provider pursuant to this chapter,
138 the hospital, physician or other health care provider may proceed pursuant to subsection 4 of this
139 section with a dispute against the employer or insurer for any fees or other charges for services
140 provided.

141 (6) A hospital, physician or other health care provider [whose services have been
142 authorized in advance by the employer or insurer] may give notice to the division of any claim
143 for fees or other charges for services provided for a work-related injury that is covered by this
144 chapter, with copies of the notice to the employee, employer and the employer's insurer. Where
145 such notice has been filed, the administrative law judge [may] **shall** order direct payment from
146 the proceeds of any settlement or award to the hospital, physician or other health care provider
147 for such fees as are determined by the division. The notice shall be on a form prescribed by the
148 division.

430.225. 1. As used in sections 430.225 to 430.250, the following terms shall mean:

2 (1) "Claim", a claim of a patient for:

3 (a) Damages from a tort-feasor; or

4 (b) Benefits from an insurance carrier;

5 (2) "Clinic", a group practice of health practitioners or a sole practice of a health
6 practitioner who has incorporated his or her practice;

7 (3) "Health practitioner", a chiropractor licensed pursuant to chapter 331, RSMo, a
8 podiatrist licensed pursuant to chapter 330, RSMo, a dentist licensed pursuant to chapter 332,
9 RSMo, a physician or surgeon licensed pursuant to chapter 334, RSMo, or an optometrist
10 licensed pursuant to chapter 336, RSMo, while acting within the scope of their practice;

11 (4) "Insurance carrier", any person, firm, corporation, association or aggregation of

12 persons conducting an insurance business pursuant to chapter 375, 376, 377, 378, 379, 380, 381,
13 or 383, RSMo;

14 (5) "Other institution", a legal entity existing pursuant to the laws of this state which
15 delivers treatment, care or maintenance to patients who are sick or injured;

16 (6) "Patient", any person to whom a health practitioner, hospital, clinic or other
17 institution delivers treatment, care or maintenance for sickness or injury caused by a tort-feasor
18 from whom such person seeks damages or any insurance carrier which has insured such
19 tort-feasor.

20 2. Clinics, health practitioners and other institutions, as defined in this section, shall have
21 the same rights granted to hospitals in sections 430.230 to 430.250.

22 3. If the liens of such health practitioners, hospitals, clinics or other institutions exceed
23 fifty percent of the amount due the patient, every health care practitioner, hospital, clinic or other
24 institution giving notice of its lien, as aforesaid, shall share in up to fifty percent of the net
25 proceeds due the patient, in the proportion that each claim bears to the total amount of all other
26 liens of health care practitioners, hospitals, clinics or other institutions. "Net proceeds", as used
27 in this section, means the amount remaining after the payment of contractual attorney fees, if any,
28 and other expenses of recovery.

29 4. In administering the lien of the health care provider, the insurance carrier [may] **shall**
30 pay the amount due secured by the lien of the health care provider directly[, if the claimant
31 authorizes it and does not challenge the amount of the customary charges or that the treatment
32 provided was for injuries caused by the tort-feasor.

33 5. Any health care provider electing to receive benefits hereunder releases the claimant
34 from further liability on the cost of the services and treatment provided to that point in time] **to**
35 **the health care provider.**

430.230. Every public hospital or clinic, and every privately maintained hospital, clinic
2 or other institution for the care of the sick, which is supported in whole or in part by charity,
3 located within the state of Missouri, or any such hospital duly incorporated under the laws of
4 Missouri providing for the incorporation of eleemosynary institutions, shall have a lien upon any
5 and all claims, counterclaims, demands, suits, or rights of action of any person admitted to any
6 hospital, clinic or other institution and receiving treatment, care or maintenance therein for any
7 cause including any personal injury sustained by such person as the result of the negligence or
8 wrongful act of another, which such injured person may have, assert or maintain against the
9 person or persons causing such injury for damages on account of such injury, for the cost of such
10 services, computed at reasonable rates [not to exceed twenty-five dollars per day] and the
11 reasonable cost of necessary X-ray, laboratory, operating room and medication service, as such
12 hospital, clinic, or other institution shall render such injured person on account of his conditions;

13 provided further, that the lien herein set forth shall not be applied or considered valid against
14 anyone coming under the workers' compensation law in this state.

430.235. Notwithstanding the provisions of section 430.230, every public hospital or
2 clinic **which is supported in whole or in part by charity**, and every privately maintained
3 hospital, clinic or other institution for the care of the sick, [which is supported in whole or in part
4 by charity, located within the state of Missouri,] or any such hospital duly incorporated under the
5 laws of Missouri providing for the incorporation of eleemosynary institutions, shall have a lien
6 upon any and all claims, counterclaims, demands, suits, or rights of action of:

7 (1) Any person admitted to any hospital, clinic or other institution and receiving
8 treatment, care or maintenance therein for any cause including any personal injury sustained by
9 such person [as the result of the negligence or wrongful act of another,] **receiving the treatment,**
10 **care, or maintenance; and**

11 (2) **Any person entitled to bring an action under sections 537.080 to 537.100, RSMo,**
12 **for the wrongful death of the person, receiving the treatment, care, or maintenance,** which
13 such [injured person] **persons** may have, assert or maintain against the person or persons causing
14 such injury **or wrongful death**, for damages on account of such injury **or wrongful death**, for
15 the cost of such services, computed at reasonable rates not to exceed the customary charges for
16 the services and the customary charges for necessary X-ray, laboratory, operating room and
17 medication services as such hospital, clinic or other institution shall render such injured person
18 on account of his **or her** conditions. The lien set forth in this section shall not be applied or
19 considered valid against anyone coming under the workers' compensation law in this state. The
20 lien set forth in this section shall be considered valid and may be applied against medical benefits
21 paid anyone under the provisions of chapter 208, RSMo, whether such benefits are paid from
22 state or federal funds, or a combination thereof.