

Senate Bill 306

By: Senators Hamrick of the 30th and Harp of the 29th

AS PASSED

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 44 of the Official Code of Georgia Annotated, relating to property, so as to
2 change provisions relating to duty of the clerk of superior court to record certain transactions
3 and duties as to lien book; to change notice and filing provisions with respect to certain liens;
4 to change a provision relating to the effect of release or covenant not to sue on hospitals and
5 other medical provider liens; to change a provision relating to the effect of this part on a
6 settlement or release entered into before entry into a hospital, nursing home, or traumatic
7 burn care medical facility; to provide for related matters; to repeal conflicting laws; and for
8 other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by
12 striking subparagraph (a)(1)(C) of Code Section 44-2-2, relating to the duty of the clerk of
13 the superior court to record certain transactions, and inserting in lieu thereof the following:

14 "(C) Liens of all kinds ~~except hospital liens~~; and"

15 style="text-align:center">**SECTION 2.**

16 Said title is further amended by striking Code Section 44-14-471, relating to filing of verified
17 statement, and inserting in lieu thereof the following:

18 "44-14-471.

19 (a) In order to perfect the lien provided for in Code Section 44-14-470, the operator of the
20 hospital, nursing home, physician practice, or provider of traumatic burn care medical
21 practice:

22 (1) Shall, not less than ~~30~~ 15 days prior to the date of filing the statement required under
23 paragraph (2) of this subsection, provide written notice to the patient and, to the best of
24 the claimant's knowledge, the persons, firms, corporations, and their insurers claimed by
25 the injured person or the legal representative of the injured person to be liable for

1 damages arising from the injuries and shall include in such notice a statement that the lien
 2 is not a lien against the patient or any other property or assets of the patient and is not
 3 evidence of the patient's failure to pay a debt. Such notice shall be sent to all such
 4 persons and entities by first-class and certified mail or statutory overnight delivery, return
 5 receipt requested; and

6 (2) ~~Shall file, no sooner than 30 days after the date of the written notice provided for in~~
 7 ~~this Code section,~~ in the office of the clerk of the superior court of the county in which
 8 the hospital, nursing home, physician practice, or provider of traumatic burn care medical
 9 practice is located and in the county wherein the patient resides, if a resident of this state,
 10 a verified statement setting forth the name and address of the patient as it appears on the
 11 records of the hospital, nursing home, physician practice, or provider of traumatic burn
 12 care medical practice; the name and location of the hospital, nursing home, physician
 13 practice, or provider of traumatic burn care medical practice and the name and address
 14 of the operator thereof; the dates of admission and discharge of the patient therefrom or
 15 with respect to a physician practice, the dates of treatment; and the amount claimed to be
 16 due for the hospital, nursing home, physician practice, or provider of traumatic burn care
 17 medical practice care, which statement must be filed within the following time period:

18 (A) If the statement is filed by a hospital, nursing home, or provider of traumatic burn
 19 care medical practice, then the statement shall be filed within 75 days after the person
 20 has been discharged from the facility; or

21 (B) If the statement is filed by a physician practice, then the statement shall be filed
 22 within 90 days after the person first sought treatment from the physician practice for the
 23 injury.

24 (b) The filing of the claim or lien shall be notice thereof to all persons, firms, or
 25 corporations liable for the damages, whether or not they received the written notice
 26 provided for in this Code section. The failure to perfect such lien by timely complying with
 27 the notice and filing provisions of paragraphs (1) and (2) of subsection (a) of this Code
 28 section in accordance with this Code section shall invalidate such lien, except as to any
 29 person, firm, or corporation liable for the damages, which receives prior to the date of any
 30 release, covenant not to bring an action, or settlement, actual notice of a notice and filed
 31 statement made under subsection (a) of this Code section, via hand delivery, certified mail,
 32 return receipt requested, or statutory overnight delivery with confirmation of receipt."

33 SECTION 3.

34 Said title is further amended by striking Code Section 44-14-472, relating to duties of the
 35 clerk of the superior court as to lien book, and inserting in lieu thereof the following:

1 "44-14-472.

2 The clerk of the superior court shall endorse the date and hour of filing on the statement
 3 filed pursuant to Code Section 44-14-471; and, at the expense of the county, the clerk shall
 4 provide a lien book with a proper index in which the clerk shall enter the date and hour of
 5 the filing; the names and addresses of the hospital, nursing home, physician practice, or
 6 provider of traumatic burn care medical practice, the operators thereof, and the patient; and
 7 the amount claimed. ~~Notwithstanding the provisions in Code Section 44-2-2, a lien~~
 8 ~~provided for in Code Section 44-14-470 shall be filed in a separate docket from and shall~~
 9 ~~not be commingled with judgment liens, materialmen's liens, mechanics' liens, tax liens,~~
 10 ~~lis pendens notices, or any other liens that attach to the person or property of an individual.~~
 11 The information shall be recorded in the name of the patient. The clerk shall receive a fee
 12 as required by subparagraph (f)(1)(A) of Code Section 15-6-77 as his or her fee for such
 13 filing."

14 SECTION 4.

15 Said title is further amended by striking Code Section 44-14-473, relating to the effect of a
 16 covenant not to bring an action, and inserting in lieu thereof the following:

17 "44-14-473.

18 (a) No release of the cause or causes of action or of any judgment thereon or any covenant
 19 not to bring an action thereon shall be valid or effectual against the lien created by Code
 20 Section 44-14-470 unless the holder thereof shall join therein or execute a release of the
 21 lien; and the claimant or assignee of the lien may enforce the lien by an action against the
 22 person, firm, or corporation liable for the damages or such person, firm, or corporation's
 23 insurer. If the claimant prevails in the action, the court may allow reasonable attorney's
 24 fees. The action shall be commenced against the person liable for the damages or such
 25 person's insurer within one year after the date the liability is finally determined by a
 26 settlement, by a release, by a covenant not to bring an action, or by the judgment of a court
 27 of competent jurisdiction.

28 (b) No release or covenant not to bring an action which is made before or after the patient
 29 was discharged from the hospital, nursing home, ~~physician practice~~, or provider of
 30 traumatic burn care medical practice or, with respect to a physician practice, which is made
 31 after the patient first sought treatment from the physician practice for the injuries shall be
 32 effective against the lien perfected ~~in due time as provided in subsection (a) of this Code~~
 33 ~~section, regardless of whether the~~ in accordance with Code Section 44-4-471, if such lien
 34 is perfected prior to the date of the release, covenant not to bring an action, or settlement
 35 was made ~~prior to the time of the filing of the lien as specified in Code Sections 44-14-470~~
 36 ~~and 44-14-471~~ unless consented to by the lien claimant; provided, however, that any

1 person, firm, or corporation which consummates a settlement, release, or covenant not to
 2 bring an action with the person to whom hospital, nursing home, physician practice, or
 3 traumatic burn care medical practice care, treatment, or services were furnished and which
 4 first procures ~~therefrom~~ from the injured party an affidavit as prescribed in subsection (c)
 5 of this Code section shall not be bound or otherwise affected by the lien except as provided
 6 in subsection (c) of this Code section, regardless of when the settlement, release, or
 7 covenant not to bring an action was consummated.

8 (c) The affidavit shall affirm:

9 (1) That all hospital, nursing home, physician practice, or provider of traumatic burn care
 10 medical practice bills incurred for treatment for the injuries for which a settlement is
 11 made have been fully paid; and

12 (2) The county of residence of such affiant, if a resident of this state;
 13 provided, however, that the person taking the affidavit shall not be protected thereby where
 14 the affidavit alleges the county of the affiant's residence and the lien of the claimant is at
 15 such time on file in the office of the clerk of the superior court of the county and is
 16 recorded in the name of the patient as it appears in the affidavit."

17 SECTION 5.

18 Said title is further amended by striking Code Section 44-14-475, relating to the effect of this
 19 part on a settlement before entry into a hospital, nursing home, or traumatic burn care
 20 medical facility, and inserting in lieu thereof the following:

21 "44-14-475.

22 No settlement or release entered into or executed prior to the entry of the injured party into
 23 the hospital, nursing home, ~~physician practice~~, or facility which provides traumatic burn
 24 care medical practice or prior to the time the patient first sought treatment from the
 25 physician practice for the injuries shall be affected by or subject to the terms of this part."

26 SECTION 6.

27 All laws and parts of laws in conflict with this Act are repealed.