

**SUBJECT:** Allowing physician's liens for emergency hospital care services

**COMMITTEE:** Business and Industry — favorable, without amendment

**VOTE:** 7 ayes — Brimer, Dukes, Corte, J. Davis, Elkins, Solomons, Woolley  
0 nays  
2 absent — George, Giddings

**SENATE VOTE:** On final passage, March 14 — voice vote

**WITNESSES:** For — Dr. Peter McGanity, Texas Medical Association and Texas Orthopaedic Association  
Against — Bill Liebke, Texas Trial Lawyers Association

**BACKGROUND:** Under Property Code, ch. 55, a hospital has a lien on a cause of action or claim of an individual who received services from the hospital for injuries caused by an accident due to another person's negligence. The lien is for the amount of the hospital's charges for services provided to the injured person during the first 100 days of hospitalization, except that lien does not cover charges for operating costs that exceed certain cost limits established by federal regulations or charges for other services that exceed a reasonable and regular rate.

**DIGEST:** SB 583 would allow a hospital lien to include the amount of a physician's reasonable and necessary charges for emergency hospital care services provided to an injured person during the first seven days of hospitalization. At the physician's request, the hospital could secure and discharge a lien on the physician's behalf.

The lien would not cover the physician's charges for emergency services for which the physician accepted insurance benefits or payment under a private medical indemnity program, regardless of whether the benefits or payment equaled the full amount of the charges. The lien also would not cover the physician's charges for emergency services if the injured person was covered

under a private medical indemnity plan from which the physician was entitled to recover payment under an assignment of benefits or similar rights.

The bill would take effect September 1, 2001.

**SUPPORTERS  
SAY:**

SB 583 would put emergency care physicians on an equal footing with the hospital in obtaining payment for services rendered. Currently, a hospital can hold a lien for services provided during a patient's first 100 days of treatment. The lien entitles the hospital to be paid from court judgments or insurance settlements received by injured people. Emergency care physicians, however, have no such recourse, and the collection rate for their services is low.

Emergency care physicians would not receive a windfall from SB 583 because the lien would attach only to causes of actions or claims by people who were hurt by the negligence of a third party. Also, the emergency care physician could not secure a lien for costs of charges if the physician had accepted insurance benefits or payment under private medical plans or charges for which the physician could be paid under private medical plans.

SB 583 would enable those who actually treat injured patients to be paid for their services. If a hospital's and emergency care physician's bills for services are presented in a cause of action to determine the amount of the award or settlement, the physician should receive that money. Typically, the patient is awarded a settlement to cover costs of hospital services, physician services, lost wages, and other costs. The hospital can ensure that it receives payment first by placing a lien on the award. The remaining portion is paid to the injured person, who then has the option of deciding whether or not to pay the physician. If the injured person decides not to pay the physician, the physician goes unpaid.

To prevent competition between emergency care physicians and hospitals for filing liens, SB 583 would allow the physician to ask the hospital to act on the physician's behalf to secure and discharge the lien. SB 583 would avoid running up charges for chronic patients by limiting the amount of the lien to charges for the first seven days of hospitalization.

SB 583 also would decrease costs to the state for maintaining trauma centers by enhancing the recovery of fees for emergency care physicians' costs. If these costs are not paid by the injured people, taxpayers ultimately will pay them.

OPPONENTS  
SAY:

SB 583 would lead to further abuse of the lien system. For example, a hospital will not accept an injured person's insurance if the hospital knows there will be a lawsuit. The hospital then will place a lien on the cause of action and be paid more than it would receive from an insurance company. Hospitals negotiate with insurance providers to be paid a fixed rate. If a hospital is not satisfied with the rate, it will take the money paid by the insurance company but then file a lien on the patient's cause of action for the difference between what it was paid by the insurance company and what it thinks it should be paid. Under this bill, emergency care physicians would be able to participate in these same types of abuses.

SB 583 would lead to further exploitation of injured people. If an injured person has inadequate insurance, the hospital can place a lien on the person's cause of action against a third party. If doctors were allowed to attach a lien to the cause of action, they would be paid after the hospitals but before the injured person, leaving the victim with little if any money from the award or settlement. The liens of the hospital and emergency care physicians would eat up the money that should go to the injured person.

The bill could lead to disharmony between hospitals and emergency care physicians. It would not specify whose lien had priority if the hospital and doctor filed separate liens.

NOTES:

A bill in the 75th Legislature, HB 1171 by Alvarado, which would have allowed all health-care practitioners to obtain liens, was placed on the House General State Calender, but died there late in the session.