SHORT TITLE: Liens; creating a pharmacist's lien; providing for liability of certain persons after settlement of certain claims with certain entities; changing requirements for contents and mailing of notice of physician's and pharmacist's liens; effective date.

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

SENATE BILL NO. 1023 By: Henry

AS INTRODUCED

An Act relating to liens; amending 42 O.S. 1991, Section 46, as amended by Section 2, Chapter 202, O.S.L. 1994 (42 O.S. Supp. 1995, Section 46), which relates to physicians' liens; creating a pharmacist's lien; clarifying and conforming language; providing for liability of certain entities after settlement of certain claims with certain persons; changing requirements for contents and mailing of notice of physician's and pharmacist's liens; modifying language; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 42 O.S. 1991, Section 46, as amended by Section 2, Chapter 202, O.S.L. 1994 (42 O.S. Supp. 1995, Section 46), is amended to read as follows:

Section 46. A. Every physician or pharmacist who performs medical or pharmaceutical services for any person injured as a result of the negligence or act of another~~,~~ shall, if a claim is asserted or maintained by or on behalf of the injured person ~~asserts or maintains a claim~~ against ~~such~~ any other person, firm, corporation, or other legal entity for damages on account of ~~such~~ the injuries, have a lien for the amount due for ~~such~~ medical or pharmaceutical services upon ~~that part going or belonging to the injured person of~~ any ~~recovery or sum had or~~ monies collected or to be collected by the injured person, or by ~~his~~ the injured person's heirs, personal representative, or next of kin in the event of ~~his~~ the injured person's death, whether by judgment, settlement, or compromise. ~~Such~~ This lien shall be inferior to any lien or claim

of any attorney handling the claim for or on behalf of the injured person. The lien shall not be applied or considered valid against any claim for amounts due pursuant to the provisions of Title 85 of the Oklahoma Statutes. If a person, firm, corporation, or other legal entity against whom a claim is asserted or maintained by or on behalf of an injured person should settle or compromise a claim, or pay a judgment, wherein is involved a lien of any physician or pharmacist, without first satisfying the lien, the person, firm, corporation, or other legal entity shall thereupon become liable to the physician or pharmacist for the full amount of the lien.

B. In addition to the lien provided for in subsection A of this section, every physician or pharmacist who performs medical or pharmaceutical services for any person injured as a result of the negligence or act of another~~,~~ shall have, if a claim is asserted or maintained by or on behalf of the injured person ~~asserts or maintains a claim~~ against an insurer, a lien for the amount due for ~~such~~ the medical or pharmaceutical services upon any monies payable by the insurer to the injured person, or to the injured person's heirs, personal representative, or next of kin in the event of the injured person's death. If an insurer against whom a claim is asserted or maintained by or on behalf of an injured person should settle or compromise a claim, or pay a judgment, wherein is involved a lien of any physician or pharmacist, without first satisfying the lien, the insurer shall thereupon become liable to the physician for the full amount of the lien.

C. No lien ~~which is~~ provided for in this section shall be effective unless, before the payment of any monies to the injured person~~,~~ or ~~his~~ the injured person's attorney, or ~~legal~~ to the injured person's heirs, personal representative, or next of kin in

the event of the injured person's death, as compensation for ~~such~~ the injuries or death:

1. A written notice ~~is sent setting forth an itemized statement of the amount claimed, identifying the insurance policy or policies against which the lien is asserted, if any, and containing the name and address of the physician claiming the lien, the injured person, and the person, firm, or corporation against whom the claim is made,~~ containing the information required by this paragraph is filed on the mechanic's and materialman's lien docket in the office of the county clerk of the county ~~where~~ in which the principal office of the physician or pharmacist is located. The notice shall contain:

a. the date of the accident,

b. an itemized statement of the amount claimed,

c. the name and address of the injured person,

d. the name and address of the physician or pharmacist claiming the lien,

e. the name and address of the person, firm, corporation, or other legal entity against whom the claim is asserted or maintained, and

f. the name and address of the insurer, if any, against whom the claim is asserted or maintained; and

2. The physician or pharmacist sends, by ~~registered or~~ certified mail, postage prepaid, return receipt requested, a copy of ~~such~~ the notice ~~with a statement of~~ reflecting the date of filing thereof to ~~the person, firm, or corporation against whom the claim is made and to the injured person. The physician shall also send a copy of the notice to the attorney for the injured person, if the name and address of such attorney is known to the physician~~:

a. the injured person, or the injured person's personal representative in the event of the injured person's death,

b. the attorney for the injured person, or the attorney for the injured person's representative in the event of the injured person's death, if the name and address of the attorney is known to the physician or pharmacist or can, with reasonable diligence, be ascertained as of the date the notice of lien is filed,

c. the person, firm, corporation, or other legal entity against whom the claim is asserted or maintained,

d. the attorney for the person, firm, corporation, or other legal entity against whom the claim is asserted or maintained, if the name and address of the attorney is known to the physician or pharmacist or can, with reasonable diligence, be ascertained as of the date the notice of lien is filed,

e. the insurer, if any, against whom the claim is asserted or maintained, and

f. the attorney for the insurer, if any, against whom the claim is asserted or maintained, if the name and address of the attorney is known to the physician or pharmacist or can, with reasonable diligence, be ascertained as of the date the notice of lien is filed.

D. The liens provided for in this section may be enforced by civil action in the district court of the county ~~where~~ in which the lien was filed. ~~Such an~~ This action shall be brought within one (1) year after the physician or pharmacist becomes aware of final

judgment, settlement, or compromise of the claim asserted or maintained by or on behalf of the injured person. The practice, ~~pleading~~ pleadings, and proceedings in the action shall conform to the rules prescribed by the Oklahoma Pleading Code to the extent applicable.

SECTION 2. This act shall become effective November 1, 1996.

45-2-1906 KSM