

AMENDED IN ASSEMBLY JUNE 27, 2012

AMENDED IN SENATE MAY 15, 2012

AMENDED IN SENATE APRIL 30, 2012

SENATE BILL

No. 1528

Introduced by Senator Steinberg

February 24, 2012

An act to add Section 3284 to the Civil Code, *and to amend Sections 23004.1 and 23004.2 of the Government Code*, relating to ~~damages~~ *health services*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1528, as amended, Steinberg. ~~Damages: medical services. Health services.~~

Existing law establishes, as a general rule, that compensation is the relief or remedy provided by law for a violation of private rights. Existing law provides that a person suffering detriment from the unlawful act or omission of another may recover damages from the person at fault.

This bill would express the intent of the Legislature to establish a framework for compensating persons with injuries due to the fault of 3rd parties. The bill would also specify that when a person is compensated for an injury due to the fault of another, the lien rights and other rights of the parties provided in specified provisions shall be maintained.

Existing law provides procedures under which, in any case in which a 3rd person is liable to pay for health services provided by a county to an injured or diseased person, the county may recover from that 3rd person or be subrogated to any right or claim that the injured or

diseased person, including identified parties in interest, have against that 3rd person. Under these procedures, the county's right of action abates during the pendency of an action brought for damages against the 3rd person by the injured or diseased person and continues as a first lien against any judgment recovered by the injured or diseased person.

This bill would provide that the county's right of action would continue under this provision as a first lien against any judgment, settlement, compromise, arbitration award, mediation settlement, or other recovery for past medical expenses obtained by the injured or diseased person. The bill would make that lien subject to any liens for attorney's fees and costs incurred by the person or person's representative, estate, or survivors.

Existing law authorizes a county to compromise, or settle and execute a release of, any claim, as provided. Existing law also authorizes a county to waive that claim, as provided.

This bill would require specified factors to be considered when a county is requested to compromise or waive any claim, as provided.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3284 is added to the Civil Code, to read:
2 3284. (a) It is the intent of the Legislature to establish a
3 framework for compensating persons with injuries due to the fault
4 of third parties.

5 (b) When a person is compensated for an injury due to the fault
6 of another, the lien rights provided for in Sections 3040 and 3045.1
7 of this code and the rights of the parties under Section 3333.1 of
8 this code or of public entities under Section 985 of the Government
9 Code shall be maintained.

10 SEC. 2. Section 23004.1 of the Government Code is amended
11 to read:

12 23004.1. (a) Subject to the provisions of Section 23004.3, in
13 any case in which the county is authorized or required by law to
14 furnish hospital, medical, surgical, or dental care and treatment,
15 including prostheses and medical appliances, to a person who is
16 injured or suffers a disease, under circumstances creating a tort
17 liability upon some third person to pay damages therefor, the

1 county shall have a right to recover from ~~said~~ *that* third person the
2 reasonable value of the care and treatment so furnished or to be
3 furnished, or shall, as to this right, be subrogated to any right or
4 claim that the injured or diseased person, his *or her* guardian,
5 personal representative, estate, or survivors has against ~~such~~ *that*
6 third person to the extent of the reasonable value of the care and
7 treatment so furnished or to be furnished.

8 (b) The county may, to enforce ~~such~~ *rights established under*
9 *subdivision (a)*, institute and prosecute legal proceedings against
10 the third person who is liable for the injury or disease in the
11 appropriate court, either in its own name or in the name of the
12 injured person, his guardian, personal representative, estate, or
13 survivors. ~~Such~~ *This* action shall be commenced within the period
14 prescribed in Section 340 of the Code of Civil Procedure. In the
15 event that the injured person, his *or her* guardian, personal
16 representative, estate, survivors, or ~~either~~ *any* of them brings an
17 action for damages against the third person who is liable for the
18 injury or disease, the county's right of action shall abate during
19 the pendency of ~~such~~ *that* action, and continue as a first lien against
20 any judgment ~~recovered~~, *settlement, compromise, arbitration*
21 *award, mediation settlement, or other recovery for past medical*
22 *expenses obtained* by the injured or diseased person, his *or her*
23 guardian, personal representative, estate, or survivors, against the
24 third person who is liable for the injury or disease, to the extent
25 of the reasonable value of the care and treatment so furnished or
26 to be furnished. *Consistent with the common fund doctrine, the*
27 *lien is subject to any liens for attorney's fees and costs incurred*
28 *by the person or person's representative, estate, or survivors.*
29 ~~When~~ *If* the third person who is liable is insured, the county shall
30 notify the third person's insurer, when known to the county, in
31 writing of the lien within 30 days following the filing of the action
32 by the injured or diseased person, his *or her* guardian, personal
33 representative, estate, or survivors, against the third person who
34 is liable for the injury or disease; ~~provided, however, that~~. *However,*
35 *the failure to so notify the insurer shall not prejudice the claim or*
36 *cause of action of the injured or diseased person, his or her*
37 *guardian, personal representative, estate, or survivors, or the*
38 *county.*

39 SEC. 3. Section 23004.2 of the Government Code is amended
40 to read:

23004.2. (a) The county may (1) compromise, or settle and execute a release of, any claim which the county has by virtue of the rights established by Section 23004.1; or (2) waive any such claim, in whole or in part, for the convenience of the county, or if the governing body of the county determines that collection would result in undue hardship upon the person who suffered the injury or disease resulting in care or treatment described in Section 23004.1.

(b) If a request is made to compromise or waive any claim established by Section 23004.1, the following factors shall be considered:

(1) The total value of the damages suffered by the injured person or the survivors in comparison to the amount actually recovered by way of judgment, settlement, compromise, arbitration award, or mediation settlement.

(2) Other liens being asserted against the recovery that would reduce the final recovery to the person or survivors and whether or not other lienholders have agreed to compromise or waive their liens.

(3) Whether or not the claim established by Section 23004.1 would exceed 50 percent of the moneys ultimately recovered by the person or survivor under any final judgment, compromise, or settlement agreement after paying a prior lien.

(4) Any other factors that would be just, fair, and equitable to consider when presented with a request to compromise or waive a claim established by Section 23004.1.

~~(b)~~

(c) No action taken by the county in connection with the rights afforded under Section 23004.1 or this section shall be a bar to any action upon the claim or cause of action of the injured or diseased person, his or her guardian, personal representative, estate, or survivors against the third person who is liable for the injury or disease, or shall operate to deny to the injured person the recovery for that portion of his or her damage not covered hereunder.