

SB0047



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB0047

Introduced 1/16/2013, by Sen. Michael W. Frerichs

SYNOPSIS AS INTRODUCED:

305 ILCS 5/11-22

from Ch. 23, par. 11-22

Amends the Illinois Public Aid Code. In regard to a claim, demand, or cause of action for injuries to an applicant for or recipient of certain financial aid and health care benefits programs, including the Covering ALL KIDS Health Insurance program and the Veterans' Health Insurance Program, provides that notice shall be served by certified mail or registered mail, or by facsimile or electronic messaging (rather than by certified mail or registered mail), upon the party or parties against whom the applicant or recipient has a claim, demand, or cause of action. Effective immediately.

LRB098 01531 KTG 31535 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning public aid.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Public Aid Code is amended by
5 changing Section 11-22 as follows:

6 (305 ILCS 5/11-22) (from Ch. 23, par. 11-22)

7 Sec. 11-22. Charge upon claims and causes of action for
8 injuries. The Illinois Department shall have a charge upon all
9 claims, demands and causes of action for injuries to an
10 applicant for or recipient of (i) financial aid under Articles
11 III, IV, and V, (ii) health care benefits provided under the
12 Covering ALL KIDS Health Insurance Act, or (iii) health care
13 benefits provided under the Veterans' Health Insurance Program
14 Act or the Veterans' Health Insurance Program Act of 2008 for
15 the total amount of medical assistance provided the recipient
16 from the time of injury to the date of recovery upon such
17 claim, demand or cause of action. In addition, if the applicant
18 or recipient was employable, as defined by the Department, at
19 the time of the injury, the Department shall also have a charge
20 upon any such claims, demands and causes of action for the
21 total amount of aid provided to the recipient and his
22 dependents, including all cash assistance and medical
23 assistance only to the extent includable in the claimant's

1 action, from the time of injury to the date of recovery upon
2 such claim, demand or cause of action. Any definition of
3 "employable" adopted by the Department shall apply only to
4 persons above the age of compulsory school attendance.

5 If the injured person was employable at the time of the
6 injury and is provided aid under Articles III, IV, or V and any
7 dependent or member of his family is provided aid under Article
8 VI, or vice versa, both the Illinois Department and the local
9 governmental unit shall have a charge upon such claims, demands
10 and causes of action for the aid provided to the injured person
11 and any dependent member of his family, including all cash
12 assistance, medical assistance and food stamps, from the time
13 of the injury to the date of recovery.

14 "Recipient", as used herein, means (i) in the case of
15 financial aid provided under this Code, the grantee of record
16 and any persons whose needs are included in the financial aid
17 provided to the grantee of record or otherwise met by grants
18 under the appropriate Article of this Code for which such
19 person is eligible, (ii) in the case of health care benefits
20 provided under the Covering ALL KIDS Health Insurance Act, the
21 child to whom those benefits are provided, and (iii) in the
22 case of health care benefits provided under the Veterans'
23 Health Insurance Program Act or the Veterans' Health Insurance
24 Program Act of 2008, the veteran to whom benefits are provided.

25 In each case, the notice shall be served by certified mail
26 or registered mail, or by facsimile or electronic messaging,

1 upon the party or parties against whom the applicant or
2 recipient has a claim, demand or cause of action. The notice
3 shall claim the charge and describe the interest the Illinois
4 Department, the local governmental unit, or the county, has in
5 the claim, demand, or cause of action. The charge shall attach
6 to any verdict or judgment entered and to any money or property
7 which may be recovered on account of such claim, demand, cause
8 of action or suit from and after the time of the service of the
9 notice.

10 On petition filed by the Illinois Department, or by the
11 local governmental unit or county if either is claiming a
12 charge, or by the recipient, or by the defendant, the court, on
13 written notice to all interested parties, may adjudicate the
14 rights of the parties and enforce the charge. The court may
15 approve the settlement of any claim, demand or cause of action
16 either before or after a verdict, and nothing in this Section
17 shall be construed as requiring the actual trial or final
18 adjudication of any claim, demand or cause of action upon which
19 the Illinois Department, the local governmental unit or county
20 has charge. The court may determine what portion of the
21 recovery shall be paid to the injured person and what portion
22 shall be paid to the Illinois Department, the local
23 governmental unit or county having a charge against the
24 recovery. In making this determination, the court shall conduct
25 an evidentiary hearing and shall consider competent evidence
26 pertaining to the following matters:

1 (1) the amount of the charge sought to be enforced
2 against the recovery when expressed as a percentage of the
3 gross amount of the recovery; the amount of the charge
4 sought to be enforced against the recovery when expressed
5 as a percentage of the amount obtained by subtracting from
6 the gross amount of the recovery the total attorney's fees
7 and other costs incurred by the recipient incident to the
8 recovery; and whether the Department, unit of local
9 government or county seeking to enforce the charge against
10 the recovery should as a matter of fairness and equity bear
11 its proportionate share of the fees and costs incurred to
12 generate the recovery from which the charge is sought to be
13 satisfied;

14 (2) the amount, if any, of the attorney's fees and
15 other costs incurred by the recipient incident to the
16 recovery and paid by the recipient up to the time of
17 recovery, and the amount of such fees and costs remaining
18 unpaid at the time of recovery;

19 (3) the total hospital, doctor and other medical
20 expenses incurred for care and treatment of the injury to
21 the date of recovery therefor, the portion of such expenses
22 theretofore paid by the recipient, by insurance provided by
23 the recipient, and by the Department, unit of local
24 government and county seeking to enforce a charge against
25 the recovery, and the amount of such previously incurred
26 expenses which remain unpaid at the time of recovery and by

1 whom such incurred, unpaid expenses are to be paid;

2 (4) whether the recovery represents less than
3 substantially full recompense for the injury and the
4 hospital, doctor and other medical expenses incurred to the
5 date of recovery for the care and treatment of the injury,
6 so that reduction of the charge sought to be enforced
7 against the recovery would not likely result in a double
8 recovery or unjust enrichment to the recipient;

9 (5) the age of the recipient and of persons dependent
10 for support upon the recipient, the nature and permanency
11 of the recipient's injuries as they affect not only the
12 future employability and education of the recipient but
13 also the reasonably necessary and foreseeable future
14 material, maintenance, medical, rehabilitative and
15 training needs of the recipient, the cost of such
16 reasonably necessary and foreseeable future needs, and the
17 resources available to meet such needs and pay such costs;

18 (6) the realistic ability of the recipient to repay in
19 whole or in part the charge sought to be enforced against
20 the recovery when judged in light of the factors enumerated
21 above.

22 The burden of producing evidence sufficient to support the
23 exercise by the court of its discretion to reduce the amount of
24 a proven charge sought to be enforced against the recovery
25 shall rest with the party seeking such reduction.

26 The court may reduce and apportion the Illinois

1 Department's lien proportionate to the recovery of the
2 claimant. The court may consider the nature and extent of the
3 injury, economic and noneconomic loss, settlement offers,
4 comparative negligence as it applies to the case at hand,
5 hospital costs, physician costs, and all other appropriate
6 costs. The Illinois Department shall pay its pro rata share of
7 the attorney fees based on the Illinois Department's lien as it
8 compares to the total settlement agreed upon. This Section
9 shall not affect the priority of an attorney's lien under the
10 Attorneys Lien Act. The charges of the Illinois Department
11 described in this Section, however, shall take priority over
12 all other liens and charges existing under the laws of the
13 State of Illinois with the exception of the attorney's lien
14 under said statute.

15 Whenever the Department or any unit of local government has
16 a statutory charge under this Section against a recovery for
17 damages incurred by a recipient because of its advancement of
18 any assistance, such charge shall not be satisfied out of any
19 recovery until the attorney's claim for fees is satisfied,
20 irrespective of whether or not an action based on recipient's
21 claim has been filed in court.

22 This Section shall be inapplicable to any claim, demand or
23 cause of action arising under (a) the Workers' Compensation Act
24 or the predecessor Workers' Compensation Act of June 28, 1913,
25 (b) the Workers' Occupational Diseases Act or the predecessor
26 Workers' Occupational Diseases Act of March 16, 1936; and (c)

1 the Wrongful Death Act.

2 (Source: P.A. 94-693, eff. 7-1-06; 94-816, eff. 5-30-06;

3 95-755, eff. 7-25-08.)

4 Section 99. Effective date. This Act takes effect upon

5 becoming law.