

1 SENATE BILL NO. 168

2 INTRODUCED BY S. FITZPATRICK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LIEN LAW; REVISING ATTORNEY LIENS, INCLUDING
5 TRANSACTIONAL MATTERS FOR ATTORNEY LIENS; PROVIDING FOR CLIENT CONSENT AND
6 COMMUNICATION; AND AMENDING SECTION 37-61-420, MCA."

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8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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10 **Section 1.** Section 37-61-420, MCA, is amended to read:

11 **"37-61-420. Judgment lien for compensation.** (1) The compensation of an attorney and counselor
12 for services is governed by agreement, express or implied, which is not restrained by law.

13 (2) ~~From the commencement of an action or the service of an answer containing a counterclaim, the~~
14 ~~attorney who appears for a party has a lien upon the client's cause of action or counterclaim that attaches to a~~
15 ~~verdict, report, decision, or judgment in the client's favor and the proceeds of the action or counterclaim. The~~
16 ~~lien cannot be affected by any settlement between the parties before or after judgment.~~Once an attorney is
17 engaged by a client, the attorney who performs services, INCLUDING AN ATTORNEY WHO PERFORMS SERVICES AS A
18 THIRD-PARTY NEUTRAL, SUCH A MEDIATOR OR SETTLEMENT MASTER, has a lien on any subjects of the client's legal
19 matter that attaches to a settlement, decree, verdict, arbitration award, report, decision, contractual
20 consideration received by the client, or judgment in the client's favor.

21 (3) An attorney who performs services in a transactional matter has a lien that attaches to any
22 property that is the subject of the transaction.

23 (4) An attorney may assert an attorney lien on any property that is the subject of the client's legal
24 matter without breach of attorney-client privilege if the attorney acts in accordance with Rule 1.6 of the Montana
25 Rules of Professional Conduct.

26 (5) An attorney may not place a lien on property not involved in the legal matter for which the attorney
27 rendered services without consent of the client in writing and subscribed by the client.

28 (6) AN ATTORNEY LIEN DOES NOT ATTACH TO REAL PROPERTY UNTIL THE LIEN IS RECORDED WITH THE CLERK

1 AND RECORDER'S OFFICE IN THE COUNTY IN WHICH THE REAL PROPERTY IS SITUATED. THE RECORDED LIEN MUST
2 CONTAIN THE AMOUNT OF THE LIEN, THE NAME OF THE ATTORNEY ASSERTING THE LIEN, THE CLIENT AGAINST WHOM THE
3 LIEN IS ASSERTED, AND THE LEGAL DESCRIPTION OF THE PROPERTY AGAINST WHICH THE LIEN IS ASSERTED. THE LIEN
4 MUST BE MAILED TO THE CLIENT'S LAST KNOWN ADDRESS OR E-MAILED TO THE CLIENT'S LAST KNOWN E-MAIL ADDRESS.

5 (7) An attorney shall state to a client in an engagement agreement that if fees are unpaid an attorney
6 lien may be asserted, or the attorney shall communicate the assertion of a lien to the client at the client's last
7 known address or e-mail at the time of asserting the lien. Failure to communicate the lien to the client is not
8 grounds for voiding, dismissing, or invalidating the lien. A client's consent in writing to the assertion of a lien on
9 any property that is the subject of the client's legal matter is an irrebuttable presumption the attorney complied
10 with this subsection.

11 (8) FORECLOSURE OF THE LIEN PROVIDED FOR IN THIS SECTION IS GOVERNED BY 27-2-202(1).

12 (9) As used in this section, "client" includes a "former client" pursuant to the Montana Rules of
13 Professional Conduct."

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