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Ramone, Wilson; Sen. Simpson

HOUSE OF REPRESENTATIVES  
149th GENERAL ASSEMBLY

HOUSE BILL NO. 65

AN ACT TO AMEND TITLE 13 OF THE DELAWARE CODE RELATING TO CHILD SUPPORT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Add a new section to Title 13 of the Delaware Code by making deletions as shown by strikethrough and  
2 insertions as shown by underline as follows:

3 § 519. Collection of child support arrears and retroactive support from monetary awards.

4 (a) Definitions.

5 For purposes of this section:

6 (1) "Lien" means a child support lien that arises by operation of law pursuant to 13 Del C. § 2215.

7 (2) "Obligor" means a person, 18 years or older, to whom a duty of support has been determined to exist and who  
8 owes child support arrears or retroactive support in excess of \$1,000.

9 (3) "Obligee" means a person to whom support is owed.

10 (4) "SDU" means the state disbursement unit of the Division of Child Support Services (DCSS).

11 (5) "Monetary award" means any portion of a settlement paid as a lump sum negotiated in lieu of, or subsequent to  
12 the filing of a lawsuit, any civil judgment or verdict, or any civil arbitration award that is paid as a claim for negligence or  
13 personal injury or death under a property and casualty insurance policy, or paid as a workers' compensation or occupational  
14 disease award under a workers' compensation policy. The term includes self-insurers and also applies to property and  
15 casualty and workers' compensation policies which are issued by an insurer licensed or authorized to do business in the  
16 State. Any lump sum monetary award representative of payment for lost wages or lost earnings shall be subject to the  
17 Consumer Credit Protection Limits of 15 U.S.C.A § 1673. " Monetary award" shall not apply to periodic payments from  
18 which child support is paid by income attachment under § 513(b) of this title.

19 (6) Net Proceeds means monies in excess of the first \$1,000 payable to a prevailing party after deducting attorney  
20 fees and litigation expenses related to the claim, witness fees, court costs, documented unpaid medical expenses for medical  
21 treatment causally related to the claim, health care provider fees and any state or federal statutory lien for reimbursement  
22 directly or causally related to the claim and costs of recovery. The child support lien in this section shall not take priority

23 over liens created by § 2363 of Title 19 or any state or federal statutory lien for reimbursement directly or causally related  
24 to the claim and costs of recovery.

25 (b) There shall be a lien in favor of the obligee against the net proceeds of any monetary award due the obligor.  
26 Any lien in favor of the obligee under this section shall also be a lien in favor of the Director of DCSS who may enforce the  
27 lien in an action in Family Court against any person, firm, or corporation, including insurance companies responsible for  
28 payment of the lien.

29 (c) The prevailing party shall obtain written documentation from DCSS of the arrears or retroactive support owed  
30 or written documentation from DCSS that the prevailing party is not an obligor. The prevailing party shall submit the  
31 written documentation obtained from DCSS to his attorney, or if not represented by an attorney, to the insurer or other  
32 paying agent responsible for distribution of the net proceeds from the monetary award, 45 calendar days prior to settlement  
33 or distribution of the net proceeds.

34 (d) If the written documentation obtained from DCSS identifies the prevailing party as an obligor, the attorney  
35 representing the prevailing party or the insurer or other paying agent responsible for distribution of net proceeds from the  
36 monetary award shall first make payment to the SDU of the net proceeds up to the amount of child support arrears or  
37 retroactive support due. No distribution of the net proceeds shall occur without written documentation from DCSS of the  
38 arrears or retroactive support owed or written documentation from DCSS that the prevailing party is not an obligor.

39 (e) An attorney, insurer, or other paying agent may request written confirmation from DCSS that a prevailing party  
40 is not an obligor. DCSS shall provide written confirmation of the request within 10 business days following receipt of the  
41 request.

42 (f) An attorney shall not be required to challenge a lien based on documentation provided by DCSS unless retained  
43 by the prevailing party to do so.

44 (g) An attorney, insurer or other paying agent that, in good faith, makes distribution based on information provided  
45 by DCSS that the prevailing party is an obligor, shall be immune from any civil, criminal or administrative penalties for  
46 making the distribution. An attorney, insurer or other paying agent that, in good faith, fails to make a distribution based on  
47 information provided by DCSS that the prevailing party is not an obligor shall be immune from any civil, criminal or  
48 administrative penalties for not making the distribution. Nothing in this section shall give rise to a claim or cause of action  
49 against an attorney or an insurer or other paying agent by any person who asserts he is the intended obligee of the  
50 outstanding lien for child support.

51 (h) A child support lien may be enforced as provided in this chapter or as otherwise provided by law.

52 (i) The remedies provided by this chapter do not affect the availability of other remedies provided by law to  
53 enforce liens and judgments.

#### SYNOPSIS

In many circumstances persons who owe child support have received monetary awards in the form of a court settlement, verdict, judgment, or under a worker's compensation award. This Bill requires a prevailing litigant to advise his attorney or insurance carrier of any outstanding child support arrears owed and directs the attorney, insurance carrier or other paying agent to pay the proceeds up to the arrears owed to DCSS to satisfy any outstanding arrearages owed to the custodian. If child support arrears or retroactive support is owed, the lien, up to the amount of child support arrears or retroactive support owed, must first be paid before any funds (excluding the first \$1,000 of net proceeds) may be released to the prevailing party.