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HOUSE OF REPRESENTATIVES  
149th GENERAL ASSEMBLY

HOUSE BILL NO. 459

AN ACT TO AMEND TITLE 13 OF THE DELAWARE CODE RELATING TO CHILD SUPPORT LIENS ON  
INSURANCE CLAIM PAYMENTS.

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

1           Section 1. Amend § 2215, Title 13 of the Delaware Code by making deletions as shown by strike through and  
2     insertions as shown by underline as follows:

3           § 2215. Child support liens.

4           (a) A child support installment or payment ~~which that~~ is past due ~~shall, is,~~ as of the date on which it was due, be a  
5     lien in favor of the obligee in an amount sufficient to satisfy the arrearage, whether the amount due is a fixed sum or is  
6     accruing periodically. ~~Such~~ A child support lien ~~shall arise under this subsection arises~~ by operation of law, without the  
7     necessity of obtaining a judicial determination of the arrearage or an order creating the lien, and such lien ~~shall incorporate~~  
8     incorporates any unpaid child support ~~which shall accrue that accrues~~ while the lien is in effect.

9           (g) ~~Where~~ If an obligor has been ordered by the Court to pay child support and owes arrears or retroactive support  
10    in a case enforced by the Division of Child Support Services ~~pursuant to~~ under Title IV-D of the Social Security Act (42  
11    U.S.C. § 651 et seq.), the Director of the Division of Child Support Services may do one or more of the following:

12           (1) Cause a lien for arrears or retroactive support to be placed upon the obligor's distributive share of a  
13    decendent's estate by filing notice of a child support lien with the Register of Wills of the county in which the  
14    decendent's estate is being administered and by sending copies of the notice by certified or registered mail to the  
15    obligor and to the personal representative of the decendent. ~~The notice shall contain the obligor's name and address,~~  
16    ~~the obligor's Social Security number, if known, the name of the obligee and the amount of arrears or retroactive~~  
17    ~~support as of a specified date.~~ The lien ~~shall attach~~ attaches to the obligor's distributive share upon the filing of the  
18    notice of the lien with the Register of Wills. Thereafter, the personal representative of the decendent shall pay to the  
19    Director the lesser of the obligor's distributive share or the amount of arrears or retroactive support. If the personal  
20    representative fails to pay the Director in accordance with the lien, the personal representative ~~shall be~~ is liable on  
21    the personal representative's bond to the Director, as the payee of the child support ~~obligation;~~ obligation.

22 (2)a. Cause a lien for arrears or retroactive support to be placed upon any claim, counterclaim, cross-  
23 claim, action or suit, at law or in equity, of the obligor by ~~filing~~ doing either of the following:

24 1. Filing notice of a child support lien with the Prothonotary or clerk of the court in which the  
25 claim, counterclaim, ~~cross-claim~~ cross-claim, or other action or suit is pending and by sending a copy  
26 of the notice by certified or registered mail to the obligor. ~~The notice shall contain the obligor's name~~  
27 and address, the obligor's Social Security number, if known, the name of the obligee, and the amount  
28 of arrears or retroactive support as of a specified date. Upon the filing of the notice, the Prothonotary  
29 or clerk of the court shall mail a copy of the notice to the obligor and to all attorneys and insurance  
30 carriers of record, if known, each of whom ~~shall be~~ is deemed to have received the notice 5 days after  
31 the Prothonotary or clerk mailed the notice.

32 2. Submitting a claim to an insurance claim data collection organization under § 2215A of this  
33 title.

34 3. Providing claim data in response to a request for a data match before the distribution of funds  
35 under § 2215A of this title.

36 b. Any person, ~~firm~~ firm, or corporation, including an insurance carrier, making any payment or  
37 settlement in full or partial satisfaction of any claim, counterclaim, ~~cross-claim~~ cross-claim, or other  
38 action or suit after the receipt of the notice of lien ~~shall be~~ is liable to the Director, as payee of the child  
39 support order, in an amount equal to the lesser of the payment or settlement or the child support arrears or  
40 retroactive support; ~~and the support.~~ The Director may enforce the child support lien in an action in the  
41 Family Court against any person, ~~firm~~ firm, or corporation, including an insurance carrier, making the  
42 payment or ~~settlement~~; settlement.

43 (3)a. Cause a lien for arrears or retroactive support to be placed upon any demand or cause of action for  
44 negligence or personal injury of the obligor by ~~sending~~ doing either of the following:

45 1. Sending notice of a child support lien by certified or registered mail to the obligor, to the party  
46 or parties alleged to be liable to the obligor, if known, and to their attorneys of record, if known. ~~The~~  
47 notice shall contain the obligor's names and address, the obligor's Social Security number, if known,  
48 the name of the obligee, and the amount of arrears or retroactive support as of a specified date. The  
49 notice ~~shall~~ must also instruct the party to whom it is directed to deliver a copy of the notice to the  
50 party's insurance carrier, if any. The lien described in this paragraph ~~shall attach~~ attaches to any

51 payment or settlement, after deducting expenses of recovery and attorneys' fees, made more than 5  
52 days after the notice is mailed.

53 2. Submitting a claim to an insurance claim data collection organization under § 2215A of this  
54 title.

55 3. Providing claim data in response to a request for a data match before the distribution of funds  
56 under § 2215A of this title.

57 b. Any person, firm or corporation, including an insurance carrier, making any payment or  
58 settlement in full or partial satisfaction of any claim, counterclaim, ~~cross-claim~~ cross-claim, or other  
59 action or suit after the receipt of the notice of lien shall be is liable to the Director, as payee of the child  
60 support order, in an amount equal to the lesser of the payment or settlement or the child support arrears or  
61 retroactive support; and the support. The Director may enforce the child support lien in an action in the  
62 Family Court against any person, ~~firm~~ firm, or corporation, including an insurance carrier, making the  
63 payment or ~~settlement;~~ settlement.

64 (4)a. Cause a lien for arrears or retroactive support to be placed upon any workers' compensation benefits  
65 payable to the obligor by by filing doing either of the following:

66 1. Filing notice of a child support lien with the Secretary of the Industrial Accident Board and by  
67 sending a copy of the notice by certified or registered mail to the obligor. ~~The notice shall contain the~~  
68 obligor's name and address, the obligor's Social Security number, if known, the name of the obligee,  
69 and the amount of arrears or retroactive support as of a specified date. Upon the filing of the notice,  
70 the Secretary of the Industrial Accident Board shall mail a copy of the notice to the obligor and to all  
71 attorneys and insurance carriers of record, each of whom shall be is deemed to have received the  
72 notice 5 days after the date of mailing by the Secretary. The lien described in this paragraph shall  
73 ~~attach~~ attaches to any Industrial Accident Board award or any payment or settlement, after deducting  
74 expenses or recovery and attorneys' fees, made more than 5 days after the Secretary of the Industrial  
75 Accident Board mailed the notice.

76 2. Submitting a claim to an insurance claim data collection organization under § 2215A of this  
77 title.

78 3. Providing claim data in response to a request for a data match before the distribution of funds  
79 under § 2215A of this title.

b. The lien described in this paragraph ~~shall (g)(4) of this section does~~ not take priority over liens created by § 2363 of Title 19. Any person, ~~firm~~ firm, or corporation, including an insurance carrier, making any payment or settlement in full or partial satisfaction of any claim, counterclaim, ~~cross-claim~~ cross-claim, or other action or suit after the receipt of the notice of lien ~~shall be~~ is liable to the Director, as payee of the child support order, in an amount equal to the lesser of the payment or settlement or the child support arrears or retroactive support; ~~and the support. The~~ Director may enforce the child support lien in an action in the Family Court against any person, ~~firm~~ firm, or corporation, including an insurance carrier, making the payment or settlement. This paragraph ~~shall (g)(4) of this section does~~ not apply to periodic workers' compensation payments from which child support is paid by income attachment under § 513(b) of this ~~title~~; title.

(5) Notwithstanding the provision of §§ 4733 and 4735 of Title 10 to the contrary, cause a lien for arrears or retroactive support to be perfected against real property by filing a child support lien notice with the Prothonotary in the county where the lien is sought to be filed. Upon the filing of the child support lien notice, the Prothonotary shall date and index the child support lien as a judgment and mail the obligor a copy of the notice by certified or registered mail. The filing of the child support lien notice ~~shall constitute~~ constitutes notice to all persons who are charged with notice of matters filed ~~in such office~~; with the Prothonotary.

(6) Cause a lien for arrears or retroactive support to be perfected against accounts held by a financial institution by serving a notice of child support lien and notice of levy on said institution. Within 20 days after the date it receives the notice, the institution shall satisfy the lien by paying the amount of the lien to the Director of the Division of Child Support Services, as payee of the child support order, with any goods, chattels, rights, credits, ~~money~~ money, or effects of the obligor in the institution's custody, possession, or ~~control~~; and control.

(7) Cause a lien for arrears or retroactive support to be perfected against designated nonexempt personal property of the obligor by filing a child support lien notice with the Prothonotary. The child support lien notice ~~shall~~ must describe the designated personal property against which it is perfected. Personal property subject to the child support lien ~~includes, but is not limited to,~~ includes lump sum payments from a state or local agency, ~~including, but not limited to,~~ including unemployment compensation and other benefits, and public and private retirement funds, subject to § 514 of the Retirement Income Security Act of 1974 [29 U.S.C. § 1144].

(h) For the purposes of this section, a child support lien notice must contain all of the following:

(1) The docket number or case number and identity of the court or administrative agency that entered the child support ~~order~~; order.

(2) The name, address and, if known, the social security number of the ~~obligor~~; obligor.

(3) The name and address of the obligee, unless protected from disclosure by a court or administrative order or ~~finding, of the obligee~~; finding.

(4) The amount of arrears or retroactive support as of a specified ~~date~~; date.

(5) The name, address and phone number of the public entity or individual to contact for the obligor's current payment record and past-due ~~arrears~~; and arrears.

(6) The name and address of the person or agency to whom the payment of arrears and retroactive support ~~shall~~ must be made.

(j) The records of the Division of Child Support Services, including records transmitted electronically, ~~shall be~~ are presumptive evidence of the amount of any lien for arrears or retroactive support. Any person, ~~firm~~ firm, or corporation, including an insurance carrier or a financial institution, who has received notice of any child support lien shall determine from the Division of Child Support Services the amount of unpaid arrears or retroactive support owed by the obligor as of the date such party makes any payment to which a lien under this section attaches.

(k) The Division of Child Support Services may file notice of a lien or release of a lien or may transmit accounting information regarding an obligor's arrears and retroactive support by any means, including electronic means.

(l) Except as provided in paragraph (l)(2) of this section, a child support lien ~~shall expire~~ expires upon the termination of a current child support obligation and payment in full of any arrears and retroactive support, or upon release of the lien by the Division of Child Support Services in the case of an order being enforced under Title IV-D of the Social Security Act (42 U.S.C. § 651 et seq.), or by the obligee in a non-IV-D case.

(1) When all arrears and retroactive child support have been paid in full, the Division of Child Support Services, or the obligee in a non-IV-D case, shall enter satisfaction of such lien or judgment on the record in the office where the same is entered.

(2) The duration of a child support lien ~~shall be~~ is 10 years from the date on which the notice of lien is properly served on the holder of property; provided, however, that such lien may be renewed for another 10 years by complying with § 4711 of Title 10. Expiration of the child support lien ~~shall~~ does not terminate the underlying child support order or judgment or liquidate any past due support or retroactive support.

(n) The remedies provided in this section ~~shall be~~ are in addition to any other remedies for the enforcement of a support order.

Section 2. Amend Chapter 22, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2215A . Child support liens on proceeds of insurance claims.

(a) Before distributing any net proceeds of a settlement, judgment, or award under § 2215(g)(2) through (g)(4) of this title under a contract for insurance, every insurer authorized to transact business under Title 18 must do one of the following:

(1) Submit the required claim data maintained by the insurer or other paying agent directly to a child support data match program in hard copy or in an electronic medium.

(2) Authorize an insurance claim data collection organization, to which the insurer or other paying agent subscribes and submits the required claim data on at least a weekly basis, to do one of the following:

a. Receive or access a data file from the Division of Child Support Services and conduct a data match of all individuals who have a claim with the insurer or other paying agent and who are also obligors and submit the required claim data for each such resulting data match to the Division of Child Support Services.

b. Submit a data file to the Division of Child Support Services that contains the required claim data for each claim being maintained by the insurer or other paying agent for the Division of Child Support Services to conduct a data match.

(3) Receive or access a data file from the Division of Child Support Services and conduct a data match of all claimants who owe past due support and submit the required claim data for each such claimant back to the Division of Child Support Services.

(b) An attorney, insurer, or other paying agent may request written confirmation from Division of Child Support Services that a prevailing party is not an obligor. The Division of Child Support Services must provide the written confirmation within 30 days following receipt of the request.

(c)(1) An attorney, insurer, other paying agent, child support data match program, or insurance claim data collection organization acting in good faith in compliance with this section is immune from civil liability unless it is established that the attorney, insurer, other paying agent, child support data match program, or insurance claim data collection organization acted willfully, wantonly, recklessly, or by gross negligence.

(2) Nothing in this section may give rise to a claim or cause of action against an attorney, insurer, other paying agent, child support data match program, or insurance claim data collection organization by any person claiming to be an obligee.

(d) A child support lien may be enforced as provided in this chapter or as otherwise provided by law. For purposes of this section, a child support lien does not take priority over liens created by § 2363 of Title 19.

170           (e) Data obtained under to this section may be used only for the purpose of identifying obligors. If the Division of  
171   Child Support Services does not match data obtained under this section with an obligor, the Division of Child Support  
172   Services may not maintain that data and must immediately destroy that data.

173           (f) An insurance claim data collection organization, child support data match program, attorney, insurer or other  
174   paying agent that provides, attempts to provide, or in any way accesses data under to this section must implement and  
175   maintain reasonable procedures and practices to prevent the unauthorized acquisition, use, modification, disclosure, or  
176   destruction of personal information collected or maintained in the regular course of business as required by Chapter 12B of  
177   Title 6.

#### SYNOPSIS

        This Act requires insurers to check if an individual owes child support arrears before making a payment to the individual and permits the Division of Child Support Services to attach a lien to an insurance payment awarded pursuant to a settlement or award.

        This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.