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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 decedent's estate by filing notice of a child support lien with the Register of Wills of the county in which the
14 decedent'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 decedent. ~~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 decedent 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~~ 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.

80 b. The lien described in this paragraph ~~shall (g)(4) of this section~~ does not take priority over liens
81 created by § 2363 of Title 19. Any person, ~~firm~~ firm, or corporation, including an insurance carrier,
82 making any payment or settlement in full or partial satisfaction of any claim, counterclaim, ~~cross-claim~~
83 cross-claim, or other action or suit after the receipt of the notice of lien ~~shall be~~ is liable to the Director, as
84 payee of the child support order, in an amount equal to the lesser of the payment or settlement or the child
85 support arrears or retroactive support; ~~and the support.~~ The Director may enforce the child support lien in
86 an action in the Family Court against any person, ~~firm~~ firm, or corporation, including an insurance
87 carrier, making the payment or settlement. This paragraph ~~shall (g)(4) of this section~~ does not apply to
88 periodic workers' compensation payments from which child support is paid by income attachment under §
89 513(b) of this ~~title;~~ title.

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

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

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

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

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

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

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

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

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

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

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

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

125 (l) Except as provided in paragraph (l)(2) of this section, a child support lien ~~shall expire~~ expires upon the
126 termination of a current child support obligation and payment in full of any arrears and retroactive support, or upon release
127 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
128 Security Act (42 U.S.C. § 651 et seq.), or by the obligee in a non-IV-D case.

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

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

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

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

140 § 2215A . Child support liens on proceeds of insurance claims.

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

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

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

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

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

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

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

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

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

168 (d) A child support lien may be enforced as provided in this chapter or as otherwise provided by law. For purposes
169 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.