

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1205 Session of 2006

INTRODUCED BY GREENLEAF, BOSCOLA, RAFFERTY, O'PAKE, RHOADES, KITCHEN, WASHINGTON, C. WILLIAMS, STACK AND ORIE, APRIL 27, 2006

SENATOR WENGER, APPROPRIATIONS, RE-REPORTED AS AMENDED, JUNE 19, 2006

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
2 Consolidated Statutes, providing for insurance proceeds
3 intercept; and further providing for State disbursement unit.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 23 of the Pennsylvania Consolidated
7 Statutes is amended by adding a section to read:

8 ~~§ 4308.1. Insurance proceeds intercept.~~ <—

9 ~~(a) Duty of insurers. Every insurer shall, within 30 days
10 prior to making any payment equal to or in excess of \$2,500 to
11 any claimant for personal injury or workers' compensation, make
12 inquiry with the department to determine whether the claimant is
13 an obligor who owes overdue support. Such inquiry may be made by
14 accessing the department's Internet website containing such
15 information, or by following the procedures established under an
16 automated data exchange agreement with the department.~~

17 ~~(b) Certification. Upon request of any insurer, the~~

1 ~~domestic relations section shall issue a written certification~~
2 ~~of the amount of overdue support owed by an obligor as of the~~
3 ~~date of the certification and shall note on the docket the date~~
4 ~~of the certification and the amount certified. Within 30 days~~
5 ~~after the date of issuance of the certification, the proceeds of~~
6 ~~any payment shall not be subject to any lien for overdue support~~
7 ~~in excess of the amount shown on the certification. The domestic~~
8 ~~relations section may charge a fee not to exceed the lesser of~~
9 ~~its estimated cost of producing the report or \$20 for the~~
10 ~~issuance of a certification or other written report of the~~
11 ~~overdue support obligations of an obligor. The domestic~~
12 ~~relations section or employees thereof shall not be liable for~~
13 ~~error in the certification of amounts of overdue support except~~
14 ~~as provided in 42 Pa.C.S. § 8550 (relating to willful~~
15 ~~misconduct).~~

16 ~~(c) Intercept of insurance proceeds. Notwithstanding any~~
17 ~~other provision of law, if the insurer determines that the~~
18 ~~claimant or payee is an obligor who owes overdue support, the~~
19 ~~insurer shall withhold from moneys due to that person the amount~~
20 ~~of overdue support and transmit such amount to the State~~
21 ~~disbursement unit for processing in accordance with the~~
22 ~~procedure established under section 4374 (relating to State~~
23 ~~disbursement unit). For purposes of this section, the phrase~~
24 ~~"moneys due" shall not include moneys for attorney fees, medical~~
25 ~~debts due physicians and hospitals, witness fees or court costs.~~
26 ~~The insurer shall provide written notice of the withholding to~~
27 ~~the claimant, the payee, his attorney, the domestic relations~~
28 ~~section and the department.~~

29 ~~(d) Appeal rights. The department shall either issue a~~
30 ~~notice or provide for the issuance of a notice by the domestic~~

1 ~~relations section advising the obligor and the obligee of~~
2 ~~receipt of any funds pursuant to this section and providing for~~
3 ~~a right of appeal. Any person aggrieved by an action taken under~~
4 ~~this section shall have a right to appeal. Any appeal taken from~~
5 ~~a notice issued by the domestic relations section shall be taken~~
6 ~~to the court having jurisdiction over the underlying support~~
7 ~~obligation. Any appeal from a notice issued by the department~~
8 ~~shall be taken to an independent hearing office designated by~~
9 ~~the department unless the appellant is challenging the validity~~
10 ~~or amount of the underlying support obligation, in which case~~
11 ~~the court having jurisdiction over the support obligation shall~~
12 ~~hear the appeal. If no appeal is filed within 30 days of the~~
13 ~~date of the notice issued under this subsection, the withholding~~
14 ~~shall be final and the State disbursement unit shall distribute~~
15 ~~the funds to the obligee in accordance with the law.~~

16 ~~(c) Immunity. The department, the domestic relations~~
17 ~~section and any insurer making a payment to the department~~
18 ~~pursuant to this section, as well as their officers, directors,~~
19 ~~attorneys, agents and employees, shall not be subject to civil~~
20 ~~or criminal liability for carrying out their duties under this~~
21 ~~subsection.~~

22 ~~(f) Enforcement authority. Following notice and hearing,~~
23 ~~the department may administratively assess liability against an~~
24 ~~insurer that willfully fails to comply with its obligations~~
25 ~~under this section. Such liability shall be in the amount of~~
26 ~~money not withheld in accordance with this section plus a civil~~
27 ~~penalty in an amount not to exceed \$1,000 per violation.~~

28 ~~(g) Definitions. As used in this section, the following~~
29 ~~words and phrases shall have the meanings given to them in this~~
30 ~~subsection:~~

1 ~~"Insurer." A foreign or domestic insurance company,~~
2 ~~association or exchange holding a certificate of authority under~~
3 ~~the act of May 17, 1921 (P.L.682, No.284), known as The~~
4 ~~Insurance Company Law of 1921, and any other entity, including a~~
5 ~~self insurer, which makes payments for liability or injuries~~
6 ~~caused by another or similar entity which is authorized to do~~
7 ~~business in this Commonwealth.~~

8 ~~"Obligee." The term shall have the meaning provided in~~
9 ~~section 7101(b) (relating to short title of part and~~
10 ~~definitions).~~

11 ~~"Obligor." The term shall have the meaning provided in~~
12 ~~section 7101(b) (relating to short title of part and~~
13 ~~definitions).~~

14 ~~"Overdue support." The term shall have the meaning provided~~
15 ~~in section 4302 (relating to definitions).~~

16 § 4308.1. COLLECTION OF OVERDUE SUPPORT FROM MONETARY AWARDS. <—

17 (A) GENERAL RULE.--OVERDUE SUPPORT SHALL BE A LIEN BY
18 OPERATION OF LAW AGAINST THE NET PROCEEDS OF ANY MONETARY AWARD,
19 AS DEFINED HEREIN, OWED TO AN OBLIGOR, AND DISTRIBUTION OF ANY
20 SUCH AWARD SHALL BE STAYED IN AN AMOUNT EQUAL TO THE CHILD
21 SUPPORT LIEN PROVIDED FOR UNDER THIS SECTION PENDING PAYMENT OF
22 THE LIEN. EXCEPT AS PROVIDED IN SUBSECTION (C) OR (F), NOTHING
23 IN THIS SECTION SHALL PROVIDE A BASIS FOR A PAYING AGENT OR AN
24 INSURER TO DELAY PAYMENT OF A SETTLEMENT, VERDICT OR JUDGMENT.

25 (B) GENERAL PROCEDURE.--EXCEPT AS PROVIDED IN SUBSECTION
26 (F), BEFORE THE PREVAILING PARTY OR BENEFICIARY CAN RECEIVE THE
27 PROCEEDS OF A MONETARY AWARD, THE PREVAILING PARTY OR
28 BENEFICIARY SHALL PROVIDE HIS ATTORNEY WITH A STATEMENT MADE
29 SUBJECT TO 18 PA.C.S. § 4904 (RELATING TO UNSWORN FALSIFICATION
30 TO AUTHORITIES) THAT INCLUDES THE PREVAILING PARTY'S OR

1 BENEFICIARY'S FULL NAME, MAILING ADDRESS, DATE OF BIRTH, AND
2 SOCIAL SECURITY NUMBER. THE PREVAILING PARTY OR BENEFICIARY
3 SHALL ALSO PROVIDE HIS ATTORNEY WITH WRITTEN DOCUMENTATION OF
4 ARREARS FROM THE PENNSYLVANIA CHILD SUPPORT ENFORCEMENT SYSTEM
5 WEBSITE, OR IF NO ARREARS EXIST, WRITTEN DOCUMENTATION FROM THE
6 WEBSITE INDICATING NO ARREARS. THE ATTORNEY SHALL OBTAIN A COPY
7 OF THE PREVAILING PARTY OR BENEFICIARY'S STATEMENT AND A LIEN
8 REPORT FROM THE WEBSITE AT THE TIME OF THE DELIVERY OF THE
9 RELEASE; THE LIEN REPORT SHALL BE DATED WITHIN 20 DAYS OF THE
10 DATE OF THE DELIVERY OF THE RELEASE. IN THE EVENT THAT THERE ARE
11 ARREARS, THE ATTORNEY SHALL MAKE PAYMENT OF ANY LIEN TO THE
12 DEPARTMENT'S STATE DISBURSEMENT UNIT FROM THE NET PROCEEDS OF
13 ANY MONETARY AWARD.

14 (C) PRO SE ACTIONS.--IF THE PREVAILING PARTY OR BENEFICIARY
15 IS NOT REPRESENTED BY AN ATTORNEY, HE SHALL PROVIDE THE
16 STATEMENT AND WRITTEN DOCUMENTATION OF ARREARS OR NO ARREARS
17 PROVIDED BY SUBSECTION (B) OR (D), TO THE INSURER OR OTHER
18 PAYING AGENT RESPONSIBLE FOR DISTRIBUTION OF THE MONETARY AWARD
19 WHO SHALL MAKE PAYMENT OF ANY LIEN, OR DISPUTED LIEN AMOUNT, AS
20 DESCRIBED IN SUBSECTION (H), TO THE DEPARTMENT'S STATE
21 DISBURSEMENT UNIT FROM THE NET PROCEEDS OF ANY MONETARY AWARD.

22 (D) USE OF PRIVATE JUDGMENT SEARCH COMPANIES.--IN LIEU OF
23 RECEIVING THE STATEMENT AND WRITTEN DOCUMENTATION OF ARREARS OR
24 NO ARREARS PROVIDED IN SUBSECTIONS (B), (C) AND (F), AN ATTORNEY
25 OR INSURER MAY USE THE SERVICES OF A PRIVATE JUDGMENT SEARCH
26 COMPANY APPROVED BY THE DEPARTMENT, OR AN INSURER MAY USE THE
27 SERVICES OF THE CHILD SUPPORT ENFORCEMENT LIEN PROGRAM OPERATED
28 THROUGH A CENTRAL REPORTING AGENCY APPROVED BY THE DEPARTMENT.
29 AN ATTORNEY OR INSURER MAY DEDUCT THE FEE FOR SUCH A JUDGMENT
30 SEARCH FROM ANY PAYMENT TO THE PREVAILING PARTY OR BENEFICIARY.

1 (E) IMMUNITY.--AN ATTORNEY, INSURER OR OTHER PAYING AGENT
2 THAT MAKES DISTRIBUTION IN ACCORDANCE WITH A STATEMENT AND THE
3 WRITTEN DOCUMENTATION REQUIRED UNDER SUBSECTION (B), OR THE
4 REPORT OF AN APPROVED PRIVATE JUDGMENT SEARCH COMPANY UNDER
5 SUBSECTION (D), OR AN INSURER WHICH FURNISHES INFORMATION AND
6 TRANSMITS FUNDS UNDER THE CHILD SUPPORT ENFORCEMENT LIEN PROGRAM
7 OPERATED THROUGH A CENTRAL REPORTING AGENCY APPROVED BY THE
8 DEPARTMENT, SHALL BE IMMUNE FROM ANY CIVIL, CRIMINAL, OR
9 ADMINISTRATIVE PENALTIES FOR MAKING AN ERRONEOUS DISTRIBUTION.
10 NOTHING IN THIS SECTION SHALL GIVE RISE TO A CLAIM OR CAUSE OF
11 ACTION AGAINST AN ATTORNEY OR AN INSURER BY ANY PERSON WHO
12 ASSERTS HE IS THE INTENDED OBLIGEE OF THE OUTSTANDING LIEN FOR
13 CHILD SUPPORT.

14 (F) WORKERS' COMPENSATION AWARDS.--WITH RESPECT TO ANY
15 MONETARY AWARD ARISING UNDER THE ACT OF JUNE 2, 1915 (P.L.736,
16 NO.338), KNOWN AS THE WORKERS' COMPENSATION ACT, OR THE ACT OF
17 JUNE 21, 1939 (P.L.566, NO.284), KNOWN AS THE PENNSYLVANIA
18 OCCUPATIONAL DISEASE ACT, NO ORDER PROVIDING FOR A PAYMENT SHALL
19 BE ENTERED BY THE WORKERS' COMPENSATION JUDGE UNLESS THE
20 PREVAILING PARTY OR BENEFICIARY, WHO IS A CLAIMANT UNDER EITHER
21 OR BOTH OF THE ACTS, SHALL PROVIDE THE JUDGE WITH A STATEMENT
22 MADE SUBJECT TO 18 PA.C.S. § 4904 (RELATING TO UNSWORN
23 FALSIFICATION TO AUTHORITIES) THAT INCLUDES THE FULL NAME,
24 MAILING ADDRESS, DATE OF BIRTH AND SOCIAL SECURITY NUMBER FOR
25 THE PREVAILING PARTY OR BENEFICIARY WHO IS A CLAIMANT UNDER
26 EITHER OR BOTH ACTS. THE PREVAILING PARTY OR BENEFICIARY, WHO IS
27 A CLAIMANT UNDER EITHER OR BOTH OF THE ACTS SHALL ALSO PROVIDE
28 THE JUDGE WITH EITHER WRITTEN DOCUMENTATION OF ARREARS FROM THE
29 PENNSYLVANIA CHILD SUPPORT ENFORCEMENT SYSTEM WEBSITE, OR IF NO
30 ARREARS EXIST, WRITTEN DOCUMENTATION FROM THE WEBSITE INDICATING

1 NO ARREARS. THE JUDGE SHALL ORDER PAYMENT OF THE LIEN FOR
2 OVERDUE SUPPORT TO THE DEPARTMENT'S STATE DISBURSEMENT UNIT FROM
3 THE NET PROCEEDS DUE THE PREVAILING PARTY OR BENEFICIARY WHO IS
4 A CLAIMANT UNDER EITHER OR BOTH ACTS.

5 (G) EXCEPTION.--THIS SECTION SHALL NOT APPLY TO ANY MONETARY
6 AWARD DUE TO A PREVAILING PARTY OR BENEFICIARY UNDER 12 YEARS OF
7 AGE OR, IN THE CASE OF AN AWARD UNDER THE WORKERS' COMPENSATION
8 ACT OR THE PENNSYLVANIA OCCUPATIONAL DISEASE ACT, A CLAIMANT
9 UNDER 12 YEARS OF AGE.

10 (H) ESCROW.--IN THE EVENT THAT THERE IS A DISPUTE AS TO THE
11 AMOUNT OF ARREARS OWED BY THE PREVAILING PARTY, BENEFICIARY OR
12 CLAIMANT BASED ON A MISTAKE OF FACT, THE AMOUNT IN DISPUTE SHALL
13 BE PLACED IN ESCROW IN THE DEPARTMENT'S STATE DISBURSEMENT UNIT
14 BY THE PREVAILING PARTY'S OR BENEFICIARY'S ATTORNEY AND THE
15 ESCROWED FUNDS SHALL NOT BE DISTRIBUTED UNTIL THE DISPUTE IS
16 RESOLVED. IN SUCH EVENT, THE DISTRIBUTION OF THE REMAINING NET
17 PROCEEDS OF THE MONETARY AWARD SHALL NOT BE STAYED. A MISTAKE OF
18 FACT, AS USED IN THIS SUBSECTION, SHALL BE LIMITED TO ERRORS IN
19 THE AMOUNT OF ARREARAGE OR MISTAKEN IDENTITY. UPON RESOLUTION OF
20 THE DISPUTE, THE AMOUNT OF ARREARS SHALL BE PAID TO THE
21 DEPARTMENT'S STATE DISBURSEMENT UNIT.

22 (I) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
23 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
24 SUBSECTION:

25 "MONETARY AWARD." ANY PORTION OF A SETTLEMENT PAID AS A LUMP
26 SUM NEGOTIATED IN LIEU OF, OR SUBSEQUENT TO THE FILING OF A
27 LAWSUIT FOR, OR ANY CIVIL JUDGMENT OR CIVIL ARBITRATION AWARD
28 THAT IS PAID AS A THIRD PARTY CLAIM FOR BODILY INJURY OR DEATH
29 UNDER A PROPERTY AND CASUALTY INSURANCE POLICY, OR PAID AS A
30 WORKERS' COMPENSATION OR OCCUPATIONAL DISEASE ACT AWARD UNDER A

1 WORKERS' COMPENSATION POLICY. THE TERM INCLUDES SELF-INSURERS
2 AND ALSO APPLIES TO PROPERTY AND CASUALTY AND WORKERS
3 COMPENSATION OR OCCUPATIONAL DISEASE ACT POLICIES WHICH ARE
4 ISSUED BY AN INSURER LICENSED OR AUTHORIZED TO DO BUSINESS IN
5 THIS COMMONWEALTH. THE TERM DOES NOT INCLUDE A LUMP SUM PAYABLE
6 THROUGH A STRUCTURED SETTLEMENT ANNUITY. THE TERM SHALL APPLY
7 ONLY TO THOSE SETTLEMENTS, JUDGMENTS, CIVIL ARBITRATIONS,
8 WORKERS' COMPENSATION ACT OR THE PENNSYLVANIA OCCUPATIONAL
9 DISEASE ACT AWARDS WHICH ARE ASSERTED AND RESOLVED IN THIS
10 COMMONWEALTH.

11 "NET PROCEEDS." MONEYS IN EXCESS OF \$5,000 PAYABLE TO A
12 PREVAILING PARTY OR BENEFICIARY, OR IN THE CASE OF AN AWARD
13 UNDER THE WORKERS' COMPENSATION ACT OR THE PENNSYLVANIA
14 OCCUPATIONAL DISEASE ACT, THE CLAIMANT, AFTER PAYMENT OF
15 ATTORNEY FEES, WITNESS FEES, COURT COSTS, REASONABLE LITIGATION
16 EXPENSES, DOCUMENTED UNPAID EXPENSES INCURRED FOR MEDICAL
17 TREATMENT CAUSALLY RELATED TO THE CLAIM, ANY WORKERS'
18 COMPENSATION OR OCCUPATIONAL DISEASE INDEMNITY OR MEDICAL
19 PAYMENT, AND PAYMENTS TO THE MEDICAL ASSISTANCE PROGRAM UNDER
20 SECTIONS 1409 AND 1412 OF THE ACT OF JUNE 13, 1967 (P.L.31,
21 NO.21), KNOWN AS THE PUBLIC WELFARE CODE.

22 "OBLIGEE." THE TERM SHALL HAVE THE MEANING PROVIDED UNDER
23 SECTION 7101(B) (RELATING TO SHORT TITLE OF PART AND
24 DEFINITIONS).

25 "OBLIGOR." THE TERM SHALL HAVE THE MEANING PROVIDED UNDER
26 SECTION 7101(B).

27 "OVERDUE SUPPORT." THE TERM SHALL HAVE THE MEANING PROVIDED
28 UNDER SECTION 4302 (RELATING TO DEFINITIONS).

29 Section 2. Section 4374(b) of Title 23 is amended and the
30 section is amended by adding a subsection to read:

1 § 4374. State disbursement unit.

2 * * *

3 (b) [Disbursements] Collections and disbursements.--The
4 department may require that such collections and disbursements
5 of support as the department may specify, including those
6 related to persons not receiving public assistance, be processed
7 through the State disbursement unit.

8 (1) The State disbursement unit shall use automated
9 procedures, electronic processes and computer technology to
10 the maximum extent feasible, efficient and economical for the
11 collection and disbursement of support payments.

12 (2) If an employer is ordered to withhold income from
13 more than one obligor to pay child support and employs ten 15 ←
14 or more persons, the employer shall make payments to the
15 State disbursement unit through electronic payment methods.

16 (3) If an employer has a history of two or more checks
17 returned for nonsufficient funds, the employer shall make
18 payments to the State disbursement unit through electronic
19 funds transfer.

20 (4) An employer that is not required to make payments to
21 the State disbursement unit in accordance with this
22 subsection may voluntarily remit support payments through
23 electronic funds transfer to the State disbursement unit.

24 (b.1) Penalty.--The department may impose a civil penalty of
25 up to \$1,000 per violation, following notice and hearing, upon
26 an employer who willfully fails to comply with the electronic
27 funds transfer payment provisions of this section.

28 * * *

29 Section 3. This act shall take effect ~~immediately~~ IN 60 ←
30 DAYS.