

**SENATE BILL 1205 (Act No. 109)<sup>1</sup>**

**By Scott B. Cooper, Esquire  
Schmidt Kramer P.C.  
209 State Street  
Harrisburg, PA 17101  
717-232-6300  
[scooper@srklaw.com](mailto:scooper@srklaw.com)  
[sbc@schmidtkramer.com](mailto:sbc@schmidtkramer.com)**

Senate Bill 1205 was first introduced (See initial introduced version at attachment 1) in the Senate on April 27, 2006. After an entire rewriting it was passed in the Senate on June 22, 2006 by a 50-0 unanimous vote and the House by a 198-0 unanimous vote on June 30, 2006 in its current form. (See passed law at attachment 2). Governor Rendell signed Senate Bill 1205 on July 7, 2006 and it became Act No. 109 of 2006. (See Bill History at attachment 3).

Pursuant to Pennsylvania law the Department of Public Welfare ("Department") collects past due child support. (See also Bill Summary from Legislative Staff at attachment 4). When a parent owes past due child support there is a lien created and the arrears

---

<sup>1</sup> This is simply an overview of the new law and will be supplemented by the telephone seminar. Also, it is not to be considered as legal advice or a final statement on the law since it has not been implemented as of yet.

are the property of the Department of Public Welfare. The Department has authority under 23 Pa.C.S.A. Section 4302 to seek reimbursement of the arrears from any form of income, including personal injury/tort awards. Under Section 4305(b) (10), the Domestic Relations Section of the Family Court has the authority to intercept and seize judgments and settlements. If the Department pursues the reimbursement claim in court it is represented by the District Attorney's office. The claim is then pursued on behalf of both the Department of Public Welfare and the family member owed the support.

Senate Bill 1205 (See Appendix 1) amends the Domestic Relations Code by adding Section 4308.1 and permits the Department of Public Welfare to intercept overdue child support from lump sum monetary awards or settlements paid by insurers and workers' compensation. The overdue child support now becomes a lien by operation of law against the net proceeds of any monetary award. However, the proceeds must be a net exceeding \$5,000 for the law to apply. The award must now be stayed in the amount

equal to the child support lien pending by payment of the lien. This also applies to monetary awards for workers' compensation.

If there is a dispute over the amount of support owed, the amount in dispute is placed in escrow with Pennsylvania State Disbursement Unit. There is a dispute resolution system which is implemented.

The attorney, insurer, or other paying agents have immunity from any civil, criminal or administrative remedies for making an erroneous distribution. Any party under the age of 12 is exempt from this law.

In order for an employer to be required to submit the payments electronically to DPW the employer must have 15 employees. Under the law, an employer who fails to comply with the provisions of the law can face a civil penalty of up to \$1,000 per violation.

Before distributing any monies, the attorney must be provided by the client with a statement including his or her name, address, date of birth and social security number with the amount of arrearages. If there are no arrearages then the attorney must confirm that no arrearages exist.

There are two (2) ways for an attorney or insurance company to determine if the recipient of the award owes overdue child support. Also, if there is lien search is must be dated within twenty (20) days of the delivery of the release.

They are:

1. A search can be conducted on the Child Support Section of the DPW website. This search is free and can be done 24 hours a day, 7 days a week. The web link is: [www.humanservices.state.pa.us/csww](http://www.humanservices.state.pa.us/csww)
2. Hiring a private judgment company for a nominal fee.

Also, an insurance company may utilize a DPW-approved clearinghouse which matches child support obligors against possible award or settlement recipients.

The law was signed by the Governor on July 7, 2006. Under its provisions it is effective sixty (60) days after being signed. Thus, the law will become effective on September 5, 2006.

## **PRACTICAL CONSIDERATIONS**

Obviously, new procedures must be instituted in the office and insurance company process. At the initial intake the attorney must ask about children and child support. Also, prior to commencing settlement negotiations it may be advisable to consult with the client to re-confirm the information. At settlement the client should probably sign a statement as part of the settlement sheet indicating that he or she does or does not owe child support and the amounts (if any) reflected on the distribution sheet.

The insurance company should probably advise a pro se injured victim to consult with a lawyer if it is determined that he or she owes child support before any negotiations are instituted. The Family court will also need to make sure as part of any settlement petitions for approval that Act 109 is complied with before any petitions are approved.

Other potential lien holders may also be impacted. In some circumstances there are ERISA, DPW or other asserted liens. Issues

will arise if they can be asserted and/or protected. Further, if your client receives a cash advance from a company that may not be recoverable.

## **ETHICAL CONSIDERATIONS**

The new law may create an ethical conflict for attorneys representing injured victims as well as insurance companies that are negotiating settlements with an injured person who is not represented.

From the attorney's standpoint he or she has an obligation to maximize and obtain adequate compensation on behalf of the injured person. But at the same time the new law may deplete the settlement proceeds. The question becomes: Should the repayment be considered in the settlement and how do you advise the client?

From the insurance company perspective the issue is trying to resolve the claim for the least amount of money as possible. One consideration is whether there is an obligation to advise and counsel the injured person about the fact that some or most of his or her money will need to go to pay a support order?