

North Dakota Century Code (N.D.C.C.)

Child Support Liens:

35-34-02. Lien for past-due child support. When an obligor is listed on the arrears registry as defined in section 14-09-09.10, the public authority may establish a lien on personal property as provided in this chapter. Except for liens under section 35-34-05, the amount of a lien under this chapter includes any past-due support that is owed when the lien is perfected and any past-due support that accrues after the lien is perfected.

35-34-05. Account lien.

1. In the case of an account maintained in a financial institution, the public authority may establish a lien on the account by serving a notice of lien upon the financial institution in the manner provided for service of a summons in a civil action or in any other manner agreed to by the financial institution. The notice must be in a form prescribed by the public authority and contain the name, social security number, or other taxpayer identification number and last-known address of the obligor, the amount of past-due support for which a lien is claimed, and any other information required by the public authority. The notice of lien must state that the child support obligation is past due and that a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last-known address.
2. Upon service of the notice of lien on a financial institution in accordance with this section, the lien attaches to accounts of the obligor maintained in the financial institution and freezes all subsequent withdrawals from the account except for funds in excess of the amount of past-due support for which a lien is claimed under this section and as provided in subsection 3.
3. Notwithstanding a freeze on an account under subsection 2, the financial institution may satisfy any right of setoff which exists in connection with an account, payment orders that were made by the obligor before the financial institution was served with notice of lien, or other obligations of the obligor based upon written agreements or instruments made or issued by the obligor before the financial institution was served with notice of lien.
4. A lien under this section is perfected when the financial institution is served with notice of the lien.

35-34-07. Priority of liens. A lien perfected under this chapter may not be subordinate to any other lien except a lien that was perfected before the child support lien was perfected. The public authority may, upon request of the obligor, subordinate the child support lien.

35-34-08. Satisfaction of lien. Upon payment of all past-due child support obligations, the public authority shall provide, within a reasonable time, an appropriate satisfaction or release of a lien arising under this chapter.

35-34-09. Immunity from liability. A person in possession of, or obligated with respect to, property, who, upon demand of the public authority, surrenders the property, complies with section 35-34-12, or otherwise acts in good faith to comply with the requirements in this chapter, is immune from suit or any liability under any federal or state law. The court shall award reasonable attorney's fees and costs against any person who commences an action that is subsequently dismissed by reason of the immunity granted by this section.

35-34-10. Action to enforce lien. In any case in which there has been a refusal or neglect to pay child support, the public authority, in addition to any other relief, may file an action in any court of competent jurisdiction to enforce a lien under this chapter. The filing of an action does not preclude the public authority from pursuit of any other means of enforcement available under state or federal law.

35-34-12. Full faith and credit. A lien arising in another state, under a law of that state implementing the provisions of 42 U.S.C. 666(a)(4)(A), is entitled to full faith and credit when the party seeking to enforce that lien records or serves the lien documents in the manner provided under this code. No judicial notice or hearing is required prior to recording or service of the lien documents.

Execution:

28-21-05.2. Department of human services may issue executions for child support arrearages.

1. Notwithstanding section 28-21-05, if the judgment debtor is listed on the arrears registry as defined in section 14-09-09.10, or if the judgment debtor meets criteria established by the secretary of the United States department of health and human services that apply when a financial institution is doing business in two or more states, the department of human services may issue an execution, against the property of the judgment debtor, to the sheriff of any county in which the property may be found.
2. A writ of execution issued by the department of human services must be issued as provided in section 28-21-06, except the past-due support need not be docketed and the writ may be issued in a form prescribed by the department of human services. A writ issued under this section must be accompanied by a copy of the payment records maintained under section 50-09-02.1 which has been certified under section 14-08.1-08.
3. A writ issued by the department of human services is returnable to the department.

50-09-35. Child support deduction order.

1. The state agency, directly or through agents or child support agencies, may issue an order requiring an income payer to deduct the amount identified in the order from the portion of any lump sum payment to an obligor that has been withheld under section 14-09-09.34.

2. The state agency, directly or through agents or child support agencies, may issue an order requiring a financial institution to deduct the amount identified in the order from any account of the obligor maintained in the financial institution.
3. The state agency shall serve the order on the income payer or financial institution in the manner provided for service of a summons in a civil action or in any other manner agreed to by the income payer or financial institution. The state agency shall serve a copy of the order upon the obligor by first-class mail to the obligor's last-known address, along with a notice of the obligor's right to claim that the property is exempt from legal process under section 28-22-02, the right to request an informal review by the state agency within ten days of the date of the notice, and the right of the obligor and any other aggrieved person to a review by a court under section 50-09-14. If an informal review is requested under this subsection, the time for requesting a review by a court under section 50-09-14 does not expire until thirty days after the informal review is completed.
4. The income payer or financial institution shall deduct the amount identified in the order or the balance of the account, whichever is less, and transmit the funds to the state disbursement unit within seven business days of the date the order is served.
5. An order issued under this section has priority over any other legal process against the same account, except to the extent necessary to satisfy any right of setoff which exists in connection with an account, payment orders that were made by the obligor before the financial institution was served with the order, or other obligations of the obligor based upon written agreements or instruments made or issued by the obligor before the financial institution was served with the order.
6. An income payer or financial institution may also withhold and retain an additional sum of three dollars from the obligor's account or from the amount retained under section 14-09-09.34 to cover expenses involved in transmitting payment.
7. An income payer or financial institution receiving an order under this section is subject to the same duties and liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise and is immune from suit or liability for complying with an order under this section.

Related Legislation:

50-09-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Account" means a demand deposit account, checking or negotiable withdrawal order account, share account, share draft account, savings account, time deposit account, securities account, money market mutual fund account, or any other account or arrangement that reflects an owner's share or similar equity interest issued by an entity that is

registered as an investment company under the federal investment company laws, to the extent the owner is permitted to redeem the share or interest by an order for payment to a third party.

7. "Financial institution" means:
 - a. A depository institution, as defined in section 3(c) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)];
 - b. An institution-affiliated party, as defined in section 3(u) of the Federal Deposit Insurance Act [12 U.S.C. 1813(u)];
 - c. Any federal credit union or state credit union, as defined in section 101 of the Federal Credit Union Act [12 U.S.C. 1752], including an institution-affiliated party of such a credit union, as defined in section 206(r) of the Federal Credit Union Act [12 U.S.C. 1786(r)]; and
 - d. Any benefit association, insurance company, safe deposit company, securities intermediary, money market mutual fund, or similar entity authorized to do business in the state.

50-09-02. Duties of the state agency. The state agency shall:

1. Take such action and adopt rules as may become necessary to entitle the state to receive funds from the federal government under title IV-A.
2. Supervise the administration of temporary assistance for needy families throughout the state of North Dakota.
3. Take such action, give such directions, and adopt rules as may be necessary or desirable to carry out the provisions of this chapter, including the adoption and application of suitable standards and procedure to ensure appropriate treatment of all applicants for temporary assistance for needy families.
4. Cooperate with the federal government in matters of mutual concern pertaining to temporary assistance for needy families, including the adoption of such methods of administration as are found by the state agency to be appropriate for the efficient operation of the plan for such assistance.
5. Provide such qualified employees and representatives as may be necessary.
6. Prescribe the form of and print and supply to the county agencies blanks for applications, reports, and such other forms as it may deem necessary and advisable.
7. Have authority to establish and maintain personnel standards on a merit basis for personnel employed by the state and the county public assistance agencies not covered by a statewide merit system.

8. Make such reports in such form and containing such information as the federal government from time to time may require.
9. Make any determinations respecting title IV-A not expressly reserved to the federal government under federal law.
10. Determine if the terms of any waiver of federal requirements, pertaining to the aid to families with dependent children program, submitted to the federal government before August 22, 1996, are consistent with the requirements of title IV-A.
11. Determine the expenditures that constitute qualified state expenditures for purposes of this chapter.
12. Determine the costs that constitute administrative costs for purposes of this chapter.
13. Determine in any case if assistance provided will be funded through qualified state expenditures, funds made available from the federal government under title IV-A, or a combination thereof.
14. Assist recipients of temporary assistance for needy families, in a form and manner determined appropriate by the state agency, but which need not be uniform among families or among counties.
15. Administer all funds appropriated or made available to it for the purpose of carrying out the provisions of this chapter.
16. Act as the official agency of the state in the administration of the child support enforcement program in conformity with title IV-D and to direct and supervise county administration of that program.
17. Take actions and adopt rules necessary to entitle the state to receive funds from the federal government under the child care and development block grant [42 U.S.C. 9858 et seq.], as amended.
18. Have authority to establish a program for families that include both a minor child and an incapacitated parent of that minor child, using no federal funds derived from temporary assistance for needy families block grant funds, which otherwise functions in substantially the form and manner of the temporary assistance for needy families program.
19. For purposes of section 674(e)(2) of the Social Security Act [42 U.S.C. 674(e)(2)], approve families, outside of the jurisdiction of the state of North Dakota, for placement of children for adoption.
20. Act as the official agency of the state in the administration of child and family services in conformity with title IV-B and to direct and supervise county administration of that program.

21. Act as the official agency of the state in the administration of federal payments for foster care and adoption assistance in conformity with title IV-E and to direct and supervise county administration of that program.
22. Provide, upon request and insofar as staff resources permit, technical assistance concerning the requirements of title IV-B and title IV-E to courts within this state, including tribal courts, and to state's attorneys and tribal prosecutors within this state.
23. Make training available to state's attorneys and assistant state's attorneys who are willing to collaborate with colleagues in other counties on petitions to terminate parental rights.

50-09-02.1. State agency to submit plans - Administer programs under title IV-A and title IV-D - Establish data system - Provide capacity for electronic funds transfer.

1. The state agency may submit state plans in forms that meet the requirements for such plans which are, or may be, imposed under title IV-A or title IV-D. The state agency may take actions reasonably necessary to conform the administration of programs under its supervision and direction to the requirements of title IV-A or title IV-D and the state plans submitted thereunder, including the issuance of policy manuals, forms, and program directives. The state agency may seek appropriate waivers of the requirements of federal statutes or regulations as authorized by federal law.

50-09-08.2. Power of state agency, child support agency, and employees and agents.

1. In implementing programs under title IV-D, the state agency, the child support agencies, and the officials, employees, and agents of such agencies may:
 - a. Conduct examinations;
 - b. Require by subpoena the attendance of witnesses and the production of books, records, and papers;
 - c. Compensate witnesses and individuals producing books, records, including records maintained in automated data bases, and papers in amounts determined by the state agency, not to exceed actual reasonable costs incurred;
 - d. Impose a fiscal sanction of no more than twenty-five dollars for each day against a person who fails to attend as a witness or produce books, records, or papers;
 - e. Require genetic testing of appropriate individuals when necessary in disputed paternity cases, to determine the relationship of parent and child, and:

- (1) Pay the costs of such testing, subject to recoupment from the alleged father if paternity is established; and
 - (2) Obtain additional testing in any case if an initial test result is contested, upon request and advance payment by the contestant;
- f. Make application to the district court to compel participation in genetic testing, the attendance of witnesses, the production of books, records, and papers, and the payment of fiscal sanctions imposed under this section;
- g. Notwithstanding any provision of law making the records confidential, obtain access, including automated access in the case of records maintained in automated data bases, to:
- (1) Records of other state and local government agencies, including:
 - (a) Vital statistics, including records of marriage, birth, and divorce;
 - (b) Local tax and revenue records, including information on residence address, employer, income, and assets;
 - (c) Records concerning real and titled personal property;
 - (d) Records of occupational and professional licenses and records concerning the ownership and control of corporations, partnerships, and other business entities;
 - (e) Employment security records;
 - (f) Workforce safety and insurance records identifying the last-known address of a person who owes or who is owed support, the wage-loss benefits, permanent partial impairment benefits, death benefits, or additional benefits that person has received or is entitled to receive from the organization, and whether and where that person is currently employed;
 - (g) Records of all agencies administering public assistance programs;
 - (h) Records of the department of transportation;
 - (i) Corrections records;

- (j) Law enforcement records; and
 - (k) Subject to an agreement with the state tax commissioner, state tax and revenue records, including information on residence address, employer, income, and assets; and
- (2) Certain records held by private entities with respect to individuals who owe or are owed child support, or against or with respect to whom a child support obligation is sought, consisting of:
 - (a) The names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records of public utilities and cable television companies; and
 - (b) Information on assets and liabilities on those individuals held by financial institutions;
- h. Enter into agreements with financial institutions doing business in the state, and with the assistance, or through the agency, of the secretary, with financial institutions doing business in two or more states:
 - (1) To develop and operate, in coordination with those financial institutions, a data match system, using automated data exchanges to the maximum extent feasible, in which each such financial institution is required to provide in each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such financial institution and who owes past-due support, as identified by the state agency by name and social security number or other taxpayer number; and
 - (2) Under which such financial institution, in response to a notice of lien or an execution, will encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a lien for unpaid child support;
- i. For purposes of locating parents or alleged parents of children receiving services under title IV-D, provide all federal and state agencies conducting activities under title IV-D with access to:
 - (1) Records of the department of transportation; and
 - (2) Law enforcement records; and

- j. Notwithstanding any provision of law making the records confidential:
 - (1) Provide access to information identifying the amount of payment necessary to obtain the release of a lien taken by the state agency in any property to secure the payment of child support; and
 - (2) Upon payment of a sufficient amount, satisfy and release that lien.
- 2. All information received under this section, if confidential under some other provision of law, is subject to the penalties under section 50-06-15 and is confidential, except that the information may be used in the administration of any program administered by or under the supervision and direction of the department and as specifically authorized by the rules of the department. Any information received under this section, if not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota in the possession of the person providing the information, is exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. Any person acting under the authority of the state agency who pursuant to this subsection obtains information from the office of the state tax commissioner, the confidentiality of which is protected by law, may not divulge such information except to the extent necessary for the administration of the child support enforcement program or when otherwise directed by judicial order or otherwise provided by law.
- 3. a. As provided in title IV-D, a person is immune from suit or any liability under any federal or state law:
 - (1) For any disclosure of information, in any form, made under this section, to the state agency, a county agency, or an official, employee, or agent of either;
 - (2) For encumbering or surrendering any assets held by a financial institution in response to a notice of lien or an execution issued by the state agency as provided in section 28-21-05.2 and chapter 35-34; or
 - (3) For any other action taken in good faith to comply with the requirements of this section.
- b. The court shall award reasonable attorney's fees and costs against any person who commences an action that is subsequently dismissed by reason of the immunity granted by this section.
- 4. The officers and employees designated by the county agencies or the state agency may administer oaths and affirmations.

5. All employing or contracting entities within this state, including for-profit, nonprofit, and governmental employers, shall provide information on the employment, compensation, and benefits of any individual employed by such entity as an employee or contractor within ten days of a request made under subsection 1 or made by the agency of any other state charged with administration of programs under title IV-D. An entity that receives a request for which a response is required by this section is subject to a fiscal sanction of twenty-five dollars for each day, beginning on the eleventh day after the request is made and not complied with.

50-09-08.3. Administrative enforcement in interstate cases. In acting as the official agency of the state in administering the child support program under title IV-D, the state agency, directly or through agents and county agencies:

1. Shall use high-volume automated administrative enforcement, to the same extent as used in intrastate cases, in response to a request made by another state to enforce a child support order, and shall promptly report the results of such enforcement procedure to the requesting state;
2. May transmit requests, by electronic or other means, to other states for assistance in cases involving enforcement of child support orders which include information provided and intended to enable the receiving state to compare information about the case to information in the data bases of the receiving state, and which constitute a certification:
 - a. Of the amount of arrearages, if any, under the child support order; and
 - b. That procedural due process requirements applicable to the case have been complied with;
3. In cases in which the state agency receives requests made by another state to enforce a child support order, shall not consider that matter a child support case transferred to this state; and
4. Shall maintain records of:
 - a. The number of requests for assistance made by other states;
 - b. The number of cases in which this state collected support in response to requests made by other states; and
 - c. The amount of support collected.

For purposes of this section, the term "high-volume automated administrative enforcement" means, in interstate cases, on request of another state, the identification, by this state, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in another state, and the seizure of such assets, by this state, through levy or other appropriate processes.

50-09-08.5. Securing assets to satisfy child support. In acting as the official agency of the state in administering the child support program under title IV-D, in cases in which there is past-due child support, the state agency may secure assets to satisfy any current support obligation and the past-due amount by issuing writs of execution under chapter 28-21 or domestic relations orders that comply with federal law regarding pensions. Those writs of execution or domestic relations orders may be used to secure or seize property including:

1. Periodic or lump sum payments from:
 - a. An agency administering unemployment compensation benefits, workforce safety and insurance benefits, or other benefits; and
 - b. Judgments, settlements, and gaming proceeds otherwise belonging to the obligor, or payable upon the obligor's demand;
2. Assets of the obligor held in financial institutions; and
3. Public and private retirement funds.