

COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at the Second Regular and First Extraordinary Sessions of the Sixty-Eighth General Assembly of the State of Colorado 2012 and Constitutional and Statutory amendments approved at the General Election on November 6, 2012 ***

TITLE 26. HUMAN SERVICES CODE
ARTICLE 13. CHILD SUPPORT ENFORCEMENT ACT

C.R.S. 26-13-128 (2012)

26-13-128. Agreements with financial institutions - data match system - limited liability - definitions

- (1) The general assembly authorizes the state department, or its agent, to design and implement a program pursuant to this section. The state department, or its agent, and financial institutions doing business in the state shall enter into agreements to effectuate the purpose of this section. The executive director may request and shall receive from such financial institutions or any state entity, such as a department, board, or agency of the state or any of its political subdivisions, the information and action described in this section.
- (2) (a) The purpose of the program authorized by this section shall be to develop and operate, in coordination with such financial institutions and state entities, a data match system, using automated data exchanges, to the maximum extent feasible.
- (b) The data match required by paragraph (a) of this subsection (2) shall be conducted quarterly.
- (c) The state department shall provide to the financial institutions or any state entity the name, record address, and social security number of any person who owes past-due child support, as identified by the state.
- (d) The agreement required pursuant to subsection (1) of this section shall provide that the data match be performed by the financial institution or state entity within forty-five days after the receipt of the informational electronic or magnetic data. The agreement shall also provide that the data be returned in electronic or magnetic form within three business days after the match is conducted. The financial institution or state entity shall include information concerning all accounts where a data match occurs, including but not limited to information regarding account numbers, account types, joint accounts, partnership accounts, sole proprietorship accounts, custodial accounts, and commercial accounts. The child support enforcement agency shall make a reasonable effort to accommodate those financial institutions upon which the requirements of this subsection (2) would pose a hardship.
- (e) The financial institution or state entity, in response to a notice of lien or levy from the state department, shall encumber or surrender assets, except for custodial accounts created pursuant to the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S., funds in escrow and trust accounts of moneys held in trust for a third party, held by such institution or entity on behalf of any obligor parent who is subject to a child support lien, subject to any right of setoff the financial institution may have against such assets. Before the financial institution surrenders any assets of the obligor parent to the state department, the financial institution may apply, at the sole discretion of the financial institution, any assets held by the financial institution on behalf of the obligor parent against the balance of any amounts owed by the obligor parent to the financial institution, regardless of whether the obligor parent is in default under any agreement with the financial institution or whether any payments are currently due to the financial institution. Service of a notice of lien or levy pursuant to this subsection (2) shall be made by United States first class mail and, in addition, may be made by United States registered or certified mail, return receipt requested, the cost for which may be withheld by the financial institution or state entity from the account of the obligor parent.
- (3) Notwithstanding any other provision of federal or state law, a financial institution or state entity shall not be liable under any federal, state, or local law to any person for any disclosure of information to the state department for the purpose of establishing, modifying, or enforcing a child support obligation of an individual, or for encumbering, holding, refusing to release to the obligor, surrendering, or transferring any assets held by such financial institution or state entity in response to a notice of lien or levy issued by the state department or for any other action taken in good faith to comply with the requirements of this section regardless of whether such action was specifically authorized or described by this section. A financial institution shall not be required to give notice to an account holder or customer of the financial institution concerning whom the financial institution has provided information or taken any action pursuant to this section. The financial institution shall not be liable for the failure to provide such notice.
- (4) The state department shall assure, through rules of the state board, that there are appropriate procedures to be followed by the state department or the delegate child support enforcement unit with respect to certain special types of financial institution accounts, including but not limited to joint, partnership, sole proprietorship, custodial, and commercial accounts, which rules shall identify factors the delegate child support enforcement unit shall consider in determining whether to attach the account or any portion of such account. Such rules shall specifically provide that custodial accounts created pursuant to the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S., and trust accounts of moneys held in trust for a third party shall not be attached, encumbered, or surrendered for purposes of enforcing support.
- (5) The state department, after obtaining a financial record of an individual from a financial institution pursuant to this section, may disclose such financial record only for the purpose of and to the extent necessary to establish,

modify, or enforce a child support obligation of such individual. If a state officer, employee, or authorized agent of the state knowingly, or by reason of negligence, discloses a financial record of an individual in violation of this subsection (5), such individual may bring a civil action for damages against the officer, employee, or authorized agent of the state pursuant to 42 U.S.C. sec. 669A (c).

(6) A financial institution shall be entitled to a reasonable fee in the amount of five cents per name per quarter, not to exceed its costs, for fulfilling the requirements of subsection (2) of this section.

(7) For purposes of this section:

(a) (I) "Account" includes:

(A) A deposit account;

(B) A demand deposit account;

(C) A checking account;

(D) A negotiable withdrawal order account;

(E) A savings account;

(F) A certificate of deposit;

(G) A passbook account;

(H) A time and term deposit account;

(I) A share account;

(J) A share draft account;

(K) A share certificate of deposit;

(L) A money market share account;

(M) A money market mutual fund account;

(N) A "N.O.W." account; or

(O) A similar account.

(II) "Account" shall also include:

(A) An interest in a mutual fund, a brokerage account, a fixed-rate annuity, a variable-rate annuity, a whole life insurance product, a universal life insurance product, a variable universal life insurance product, a fiduciary account, a trust account, or similar account;

(B) The securities of or issued by an investment company registered under the federal "Investment Company Act of 1940", a unit investment trust, a real estate investment trust, a commodity pool operator, a future commission merchant, or an introducing broker registered under the federal "Commodity Exchange Act", a general or limited partnership, or a similar entity; and

(C) Property, including funds held in or payable from any pension or retirement plan or deferred compensation plan, including a plan in which the debtor has received benefits or payments, has the present right to receive benefits or payments, or has the right to receive benefits or payments in the future and including a pension or plan that qualifies under the federal "Employee Retirement Income Security Act of 1974" as an employee pension benefit plan as defined in 29 U.S.C. sec. 1002, any individual retirement account, as defined in 26 U.S.C. sec. 408, and any plan as defined in 26 U.S.C. sec. 410 and as these plans may be amended from time to time, or any similar plan under state or local law.

(b) "Financial Institution" includes:

(I) A state or nationally chartered bank, an industrial bank, a bank and trust company, a trust company, a savings and loan association, a savings bank, a credit union;

(II) An investment company registered under the federal "Investment Company Act of 1940", a securities dealer, a commodity pool operator, a future commission merchant, or an introducing broker registered under the federal "Commodity Exchange Act", or other legal entity engaged in the business of buying or selling securities;

(III) A benefit association, a life insurance company, a safe deposit company, or a state repository of moneys held for individuals; and

(IV) Any similar entity doing business in this state.

(c) "Financial record" has the meaning given such term in section 1101 of the federal "Right to Financial Privacy Act

of 1978", 12 U.S.C. sec. 3401.

HISTORY: Source: L. 97: Entire section added, p. 1304, § 43, effective July 1.L. 98: (2) amended, p. 1414, § 82, effective February 1, 1999.L. 2000: (1), (2), (4), and (6) amended, p. 1713, § 10, effective July 1.L. 2004: (2) amended, p. 389, § 9, effective July 1.L. 2012: (1) and (2) amended, (SB 12-042), ch. 30, p. 121, § 2, effective March 19.

Cross references: For the legislative declaration contained in the 1997 act enacting this section, see section 1 of chapter 236, Session Laws of Colorado 1997.