

43-3328**Legislative intent.**

It is the intent of the Legislature to encourage the use of all proven techniques for the enforcement of support orders. It is also the intent of the Legislature to effectuate reasonable welfare reform and to comply with the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The Legislature finds and declares that a bank match system and the potential for an administrative attachment of personal assets of an obligor held by a payor or held by a financial institution is an effective tool for the collection of unpaid support from obligors who are not in compliance with support orders. It is the intent of the Legislature to encourage obligors to comply with their legal obligations and to add to the tools available for the enforcement of support orders by authorizing the Department of Health and Human Services and county attorneys or authorized attorneys to initiate bank match actions and administrative attachments as described in sections 43-3328 to 43-3339.

Source:

Laws 1997, LB 752, § 28.

43-3329**Terms, defined.**

For purposes of sections 43-3328 to 43-3339, the following definitions apply:

(1) Account means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account;

(2) Authorized attorney has the same meaning as found in section 43-1704;

(3) Child support has the same meaning as found in section 43-1705;

(4) Department means the Department of Health and Human Services;

(5) Director means the Director of Health and Human Services or his or her designee and, if the director designates, includes a county attorney or authorized attorney;

(6) Financial institution means every federal or state commercial or savings bank, including savings and loan associations and cooperative banks, federal or state chartered credit unions, benefit associations, insurance companies, safe

deposit companies, any money-market mutual fund as defined in section 851(a) of the Internal Revenue Code that seeks to maintain a constant net asset value of one dollar in accordance with 17 C.F.R. 270.2a-7, any broker, brokerage firm, trust company, or unit investment trust, or any other similar entity doing business or authorized to do business in the State of Nebraska;

(7) Match means a comparison by automated or other means by name and social security number of a list of obligors provided to a financial institution by the Department of Health and Human Services and a list of depositors of any financial institution;

(8) Medical support has the same meaning as found in section 43-512;

(9) Obligor means a person who owes a duty of support pursuant to a support order;

(10) Payor includes a person, partnership, limited partnership, limited liability partnership, limited liability company, corporation, or other entity doing business or authorized to do business in the State of Nebraska, including a financial institution, or a department or an agency of state, county, or city government;

(11) Spousal support has the same meaning as found in section 43-1715;

(12) Support in the definitions of child support, medical support, and spousal support means providing necessary shelter, food, clothing, care, medical support, medical attention, education expenses, or funeral expenses or any other reasonable and necessary expense and includes interest as provided by law; and

(13) Support order has the same meaning as found in section 43-1717.

Source:

Laws 1997, LB 752, § 29.

43-3330

Listing of obligors; financial institution; duties; confidentiality.

A financial institution shall receive from the department a listing of obligors to be used in matches within the financial institution's system. The listing from the department shall include the name and social security number or taxpayer identification number of each obligor to be used in matches within the financial institution's system. The financial

institution shall receive the listing within thirty days after the end of each calendar quarter subsequent to January 1, 1998, and shall match the listing to its records of accounts held in one or more individuals' names which are open accounts and such accounts closed within the preceding calendar quarter within thirty days after receiving the listing and provide the department with a match listing of all matches made within five working days of the match. The match listing from the financial institution shall include the name, address, and social security number or taxpayer identification number of each obligor matched. The financial institution shall also provide the names and addresses of all other owners of accounts in the match listing as reflected on a signature card or other similar document on file with the financial institution. The financial institution shall submit all match listings by disk, magnetic tape, or other medium approved by the department. Nothing in this section shall (1) require a financial institution to disclose the account number assigned to the account of any individual or (2) serve to encumber the ownership interest of any person in or impact any right of setoff against an account. The financial institution shall maintain the confidentiality of all records supplied and shall use the records only for the purposes of this section. To maintain the confidentiality of the listing and match listing, the department shall implement appropriate security provisions for the listing and match listing which are as stringent as those established under the Federal Tax Information Security Guidelines for federal, state, and local agencies.

Source:

Laws 1997, LB 752, § 30.

43-3331

Financial institution; disclosure or release of information; immunity.

A financial institution is not liable under any state or local law to any individual or to the department for disclosure or release of information to the department for the purpose of establishing, modifying, or enforcing a support order or for any other action taken in good faith to comply with the requirements of section 43-3330. Sections 43-3328 to 43-3339 shall not be construed to make a financial institution responsible or liable to any extent for assuring that the department maintains the confidentiality of information disclosed under section 43-3330.

Source:

Laws 1997, LB 752, § 31.

43-3332

Financial institution; fees authorized.

A financial institution may charge a reasonable fee, not to exceed actual cost, to be paid by the department for the service of reporting matches as required by section 43-3330 and may charge a fee, not to exceed actual cost, to be paid by the department for the necessary upgrades to an existing system that are directly related to compliance with section 43-3330 and that have been approved by the department.

Source:

Laws 1997, LB 752, § 32.

43-3333

Seizure of obligor's property; notice of arrearage; contents; appeal.

(1) In a case which is receiving services under Title IV-D of the federal Social Security Act, as amended, when the director has made reasonable efforts to verify and has reason to believe payment on a support order is in arrears in an amount equal to the support due and payable for more than a three-month period of time or upon the request of the state agency of another state which administers Title IV-D of the federal Social Security Act, and therefor determines to seize an obligor's property, the director shall send written notice to the obligor by first-class mail to the last-known address of the obligor or to the last-known address of the obligor available to the court pursuant to section 42-364.13. For purposes of this section, reasonable efforts to verify means reviewing the case file and having written or oral communication with the clerk of the district court.

(2) The notice of arrearage shall:

(a) Specify the court or agency which issued the support order;

(b) Specify the arrearage under the support order which the obligor owes as of the date of the notice or other date certain;

(c) Specify that any enforcement action will incorporate any arrearage which may accrue in the future;

(d) State clearly, "Your property may be seized without further notice if you do not respond or clear up the arrearage";

and

(e) Specify that within twenty days after the notice is mailed, the obligor may request, in writing, a hearing to contest a mistake of fact. For purposes of this section, mistake of fact means an error in the amount of the arrearage or an error in the identity of the obligor.

(3) If the obligor files a written request for a hearing based upon a mistake of fact within twenty days after the notice is mailed, the department shall provide an opportunity for a hearing and shall stay enforcement action under sections 43-3333 to 43-3337 until the administrative appeal process is completed.

Source:

Laws 1997, LB 752, § 33.

43-3334

Order to withhold and deliver; when; contents; payor; duties; fee.

(1) The director may send a payor an order to withhold and deliver specifically identified property of any kind due, owing, or belonging to an obligor if (a) the director has reason to and does believe that there is in the possession of the payor property which is due, owing, or belonging to an obligor, (b) payment on a support order is in arrears, (c) the director sent a notice of arrearage to the obligor pursuant to section 43-3333 at least thirty days prior to sending the notice to withhold and deliver, and (d) no hearing was requested or after a hearing the department determined that an arrearage did exist or that there was no mistake of fact.

(2) The order to withhold and deliver shall state that notice has been mailed to the obligor in accordance with the requirements of subdivision (1)(c) of this section and that the obligor has not requested a hearing or, after a hearing, the department has determined that an arrearage exists or that there was no mistake of fact, the amount in arrears, the social security number of the obligor, the court or agency to which the property is to be delivered, instructions for transmitting the property, and information regarding the requirements found in subsection (3) of this section. The order shall include written questions regarding the property of every description, including whether or not any other person has an ownership interest in the property, and the credits of the obligor which are in the possession or under the control of the payor at the time the order is received.

(3) Upon receipt of an order to withhold and deliver, a payor shall:

(a) Hold property subject to the order to the extent of the amount of the arrearage stated in the order until the payor receives further notice from the director;

(b) Answer all of the questions asked of the payor in the order, supply the name and address of any person that has an ownership interest in the property sought to be reached, and return such information to the director within five business days after receiving the order; and

(c) Upon further notice from the director, deliver any property which may be subject to the order to the court or agency designated in the order or release such property or portion thereof.

(4) An order to withhold and deliver shall have the same priority as a garnishment for the support of a person pursuant to subsection (4) of section 25-1056.

(5) If the payor is a financial institution, such financial institution may deduct and retain a processing fee from any amounts turned over to the department under this section. The processing fee shall not exceed ten dollars for each account turned over to the department.

Source:

Laws 1997, LB 752, § 34.

43-3335

Order to withhold and deliver; notice to obligor; contents; appeal.

(1) Within five days after the issuance of the order to withhold and deliver, the director shall send written notice to the obligor by first-class mail. The notice shall be dated and shall specify the payor to which an order to withhold and deliver was sent, the amount due, the steps to be followed to release the property, the time period in which to respond to such notice, and the court or agency of competent jurisdiction which issued the support order.

(2) The obligor may request a hearing to contest a mistake of fact by sending a written request to the director within seven days after the date of the notice. The department shall provide an opportunity for a hearing within ten days after receipt of the written request and shall stay enforcement actions under sections 43-3333 to 43-3337 until the administrative appeal process is completed.

Source:

Laws 1997, LB 752, § 35.

43-3336

Order to withhold and deliver; co-owner; notice; contents; appeal.

(1) If, after receiving the information from the payor in subdivision (3)(b) of section 43-3334, the director has knowledge that another person has an ownership interest or may claim an ownership interest in any property sought to be reached which is in the possession or under the control of the payor as the property of the obligor, the director shall send written notice to such person or persons by certified mail, return receipt requested. The notice shall be dated and shall specify why the order to withhold and deliver was issued, the payor to which the order to withhold and deliver was sent, and that the person has a right to request a hearing by the department within fifteen days after the date of the notice to establish that the property or any part thereof is not the property of the obligor. The department shall provide an opportunity for hearing to a person making such request and shall stay enforcement actions under sections 43-3333 to 43-3337 until the administrative appeal process is completed.

(2) Any person other than the obligor claiming an ownership interest in any property sought to be reached which is in the possession or under the control of the payor as the property of the obligor has a right to timely request a hearing by the department to establish that the property or any part thereof is not the property of the obligor. The department shall provide an opportunity for hearing to a person making such request and shall stay enforcement actions under sections 43-3333 to 43-3337 until the administrative appeal process is completed. If the property or any part of the property which is in the possession or under the control of the payor is not the property of the obligor, the payor is discharged as to that property which is not the obligor's.

Source:

Laws 1997, LB 752, § 36.

43-3337

Order to withhold and deliver; payor's liability.

(1) If a payor fails or refuses to withhold or deliver property subject to an order to withhold and deliver,

judgment may be entered by the court which issued or registered the support order for the amount of the arrearages stated in the order or the amount of the property or credits of the obligor in the possession or under the control of the payor at the time the order to withhold and deliver was received, whichever is less, unless the payor can show cause as to why the property was not withheld or delivered.

(2) Compliance with the order by the payor operates as a discharge of the payor's liability to the obligor or beneficiary as to the portion of the obligor's property withheld or delivered.

(3) A payor is not liable to any individual or to the department for responding to an order to withhold and deliver or for holding, refusing to release to the obligor, or delivering any property of an obligor in compliance with an order to withhold and deliver or for any other action taken in good faith to comply with the requirements of sections 43-3328 to 43-3339 regardless of whether such action was specifically authorized or described by such sections.

Source:

Laws 1997, LB 752, § 37.

43-3338

Judicial review.

Any person aggrieved by a determination of the department under sections 43-3328 to 43-3339, upon exhaustion of the procedures for administrative review provided in such sections, or the director may seek judicial review in the court in which the support order was issued or registered.

Source:

Laws 1997, LB 752, § 38.

43-3339

Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out sections 43-3328 to 43-3339.

Source:

Laws 1997, LB 752, § 39.