

## **CHAPTER 35-34 CHILD SUPPORT LIEN**

### **35-34-01. Definitions.**

For purposes of this chapter:

1. "Account" has the meaning provided in section 50-09-01.
2. "Child support" has the meaning provided in section 14-09-09.10.
3. "Child support agency" has the meaning provided in section 14-09-09.10.
4. "Financial institution" has the meaning provided in section 50-09-01.
5. "Obligee" has the meaning provided in section 14-09-09.10.
6. "Obligor" has the meaning provided in section 14-09-09.10.
7. "Past-due support" has the meaning provided in section 14-09-09.10.
8. "Vehicle" has the meaning provided in section 39-01-01.
9. "Vessel" has the meaning provided in section 20.1-01-02.

### **35-34-02. Lien for past-due child support.**

When an obligor owes past-due support, the child support agency may establish a lien on property of the obligor 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.

#### **35-34-02.1. Child support lien registry.**

The child support agency shall create a child support lien registry using an interactive website. The registry shall include a listing of any obligor who owes past-due support that is being enforced by the child support enforcement agency, the obligor's date of birth, and the amount of past-due support that is being enforced by the child support enforcement agency. The lien registry website must be available to the public and support a search by last name of the obligor and other information provided by the person using the website. Any real or titled personal property, except the homestead or other property that is exempt under section 28-22-02, of an obligor who is listed on the lien registry or which the obligor thereafter acquires in this state is subject to a lien. A lien under this section is perfected as of the date the lien is first listed on the child support lien registry, but is not effective against a good-faith purchaser of titled personal property unless the lien is recorded on that title. The child support agency must subordinate its lien under this section upon request of a third party if:

1. The request is accompanied by documentation from the lien registry website showing the child support lien balance as of the date the third party perfected its interest in the property, to the extent that the current balance of the child support lien exceeds the balance when the third party perfected its interest; or
2. The request is made within ninety days of the date the lien is first listed on the child support lien registry and the third party proves that it attempted to perfect an interest in the property prior to the creation of the child support lien.

#### **35-34-03. Vehicle lien.**

1. In the case of a vehicle, the child support agency may file a notice of lien with the director of the department of transportation. The notice must be in a form prescribed by the director and contain a description of the vehicle, the name and last-known address of the obligor, and any other information required by the director. 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 filing of the notice of lien in accordance with this section, the director shall demand in writing the surrender of the certificate of title from the obligor or a superior lienholder for the purpose of recording the lien on the certificate of title. Upon receipt of the certificate of title, the director shall record the fact of the lien and the identity of the lienholder on the certificate of title and deliver the certificate of title to the vehicle's

owner or, if a superior lienholder had possession of the certificate of title, to that superior lienholder. If the obligor or superior lienholder fails to surrender the certificate of title within fifteen days after the written demand by the director, the director shall notify the child support agency seeking the lien.

3. Upon receipt of notice from the director that the obligor or superior lienholder has not responded to the demand for surrender of a title certificate, the child support agency may obtain an order from a court of competent jurisdiction requiring the certificate of title to be delivered to the court so that a lien may be properly recorded.
4. No fee may be charged by the director for services provided under this section.
5. The director may determine a certificate of title to have been fraudulently procured if endorsed by a previous owner who, at the time the endorsement was made, was an obligor who owed past-due child support.

#### **35-34-04. Vessel lien.**

1. In the case of a vessel, the child support agency may establish a lien by filing electronically a notice of lien in the central indexing system if the value of the vessel is estimated to be at least twice the cost of establishing the lien. The notice must contain a description of the make, model designation, and serial number of the vessel, including its identification or registration number, if any, and the name, social security number, and last-known address of the obligor. 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 filing of the notice of lien in accordance with this section, the notice of lien must be indexed in the central indexing system and may be enforced and foreclosed in the same manner as a security agreement under the provisions of title 41.
3. The secretary of state shall remove and destroy the lien notification statement in the same manner as provided for other liens in section 11-18-14 for the recorder.
4. A lien under this section is perfected when notice of the lien is filed with the secretary of state.
5. The child support agency may file electronically an amendment to correct the spelling of the obligor's name, to correct the obligor's social security number, or to correct or change the address of the obligor.

#### **35-34-05. Account lien.**

1. In the case of an account maintained in a financial institution, the child support agency 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 child support agency 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 child support agency. 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.

**35-34-06. Lien on other personal property.**

1. In the case of untitled personal property other than a vessel or an account maintained in a financial institution, the child support agency may establish a lien on such personal property by filing electronically a notice of lien in the central indexing system or with a third party who is in possession of the personal property. The notice must particularly describe the property to be subjected to the lien and the name and last-known address of the obligor. 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. The information filed under this section must be included in the computerized central indexing system maintained by the secretary of state under section 54-09-09 and must be accessible to the public on the same terms and conditions that apply to access other statutory lien information maintained in the computerized central indexing system.
3. Upon filing of the notice of lien in accordance with this section, the lien attaches to and is perfected against all personal property described in the notice.

**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 child support agency 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 child support agency 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 child support agency, surrenders the property, complies with section 35-34-12, or otherwise acts in good faith to comply with the requirements in this chapter, discharges its obligation to the obligor with regard to the property and 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 child support agency, in addition to any other relief, may enforce a lien arising under this chapter by demanding in writing the surrender of the property, issuing an execution under chapter 28-21, or serving a deduction order under section 50-09-35. The child support agency also 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 child support agency from pursuit of any other means of enforcement available under state or federal law. A person in possession of, or obligated with respect to, property that is subject to a lien under this chapter is subject to the same duties and liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise.

**35-34-11. Persons aggrieved.**

Repealed by S.L. 2001, ch. 152, § 10.

**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.