

# The Vermont Statutes Online

## Title 33: Human Services

### Chapter 41: Office Of Child Support

#### **§ 4101. Office of Child Support; designation as IV-D agency; legislative purpose**

(a) The Office of Child Support in the Agency of Human Services shall be designated the IV-D agency for purposes of Title IV-D of the federal Social Security Act.

(b) The paramount interest of the State of Vermont is the welfare of its children. The establishment and enforcement of family support obligations is therefore an important function in this regard. The Office of Child Support in carrying out its responsibility shall be guided by the best interests of the child, but not the economic interests exclusively in an action for child support. (Added 1989, No. 221 (Adj. Sess.), § 13; amended 1993, No. 105, § 7.)

#### **§ 4102. Responsibilities**

(a) The Office of Child Support shall be accountable and responsible for the operation of the federal IV-D program and shall be responsible for formulating the State Child Support Enforcement Plan as required under Title IV-D of the federal Social Security Act.

(b) The Office of Child Support shall be responsible for the administration of the Registry established in section 4103 of this title.

(c) Upon application of the parent of a minor child, the Office of Child Support shall provide the following services:

- (1) location of absent parents;
- (2) financial assessment to determine a parent's ability to provide support;
- (3) determination of a parent's employment status;
- (4) enforcement of child support orders;
- (5) establishment of parentage;
- (6) any other services required to be provided under Title IV-D.

(d) The Office of Child Support shall provide appropriate instruction and supervision of its employees concerning legal ethics, family law, court procedure, child abuse, public benefit programs, and the dynamics of parent-child relationships.

(e) No employees may be assigned to a case before the Family Division of the Superior Court without the skill and professional qualifications commensurate with the complexity of the case. (Added 1989, No. 221 (Adj. Sess.), § 13; 1993, No. 105, § 8; amended 2009, No. 154 (Adj. Sess.), § 238.)

### **§ 4103. Registry**

(a) The Office of Child Support shall establish a registry for the following purposes:

(1) Processing child support collections and disbursements.

(2) Maintaining records necessary for the receipt and disbursement of child support, including information on support orders and support arrearages, with the date and amount due and the date and amount paid by the obligor and the date and amount disbursed; identifying information about both parents, including the name, address, Social Security number, and employment information; names and dates of birth of children.

(3) Providing a record of their support collections and disbursements to obligors and obligees.

(4) Notifying employers in cases involving wage withholding of the amounts to be withheld for support, the amount of income exempt from withholding, and the dates for beginning, reducing, increasing, and terminating withholding pursuant to the terms of the support order. The Office shall accommodate employer withholdings based upon the employer's payroll period and shall provide return envelopes to the employer for sending the payment to the Office.

(5) Maintaining and providing any other information as required by law.

(b) All orders for child support subject to wage withholding shall require that payment be made through the registry and shall be deemed IV-D cases. All orders for child support not subject to wage withholding made or modified on or after July 1, 1990 shall require that payment be made through the Registry as a IV-D case unless the parties have agreed that the obligor will pay the obligee directly.

(c) In the case where neither parent requests services under Title IV-D of the Social Security Act or where the case is not a IV-D case by operation of law, the Office of Child Support services may recover the administrative costs of processing payments through the Child Support Registry, not to exceed an administrative fee of \$5.00 per month. The Family Division of the Superior Court shall increase the monthly support obligation to take the administrative cost into account unless the

noncustodial parent is below the federal poverty level. The Office of Child Support services shall deduct the cost from the first payment received each month. Fees collected under this subsection shall be credited to a special fund and shall be available to the Office of Child Support services to offset the costs of its administrative services.

(d) An employer who is required to withhold wages for child support under Title 15B (UIFSA) may designate the Office of Child Support as its payment agent and forward withheld wages to the Office of Child Support instead of to the out-of-state jurisdiction provided that the payments are received by the Office within five working days after wages are withheld. (Added 1989, No. 221 (Adj. Sess.), § 13; amended 1995, No. 47, § 21; 1995, No. 186 (Adj. Sess.), § 15, eff. May 22, 1996; 1997, No. 11, § 2, eff. Jan. 1, 1998; 1997, No. 155 (Adj. Sess.), § 25; 2003, No. 159 (Adj. Sess.), § 11, eff. Sept. 1, 2004; 2009, No. 154 (Adj. Sess.), § 238; 2011, No. 32, § 3.)

#### **§ 4104. Support overpayment**

(a) If the Office of Child Support determines that it has received an overpayment from an employer within 30 days of the overpayment, the Office shall return the overpayment to the obligor within one working day.

(b) In cases where the Office of Child Support determines that it has received an overpayment after 30 days, it shall permit the obligor to reduce future support payments to offset the overpayment.

(c) The Office of Child Support may recover an overpayment from the obligee by deducting from future support payments if the obligee has failed to return the excess to the registry as required under 15 V.S.A. § 786.

(d) In no case shall application of this section reduce the amount of current support paid to the obligee by more than 10 percent. (Added 1989, No. 221 (Adj. Sess.), § 13.)

#### **§ 4105. Access to information; disclosure and confidentiality**

(a) The Office of Child Support may subpoena from any person or business any information needed to establish, modify, or enforce a child support or parental rights and responsibilities order. The subpoena shall be signed by the Director of the Office of Child Support or a designee of the Office of Child Support. It shall be attached to an affidavit which certifies that the person about whom information is sought is the parent of a child based on either a court order or a statutory presumption, that the Office of Child Support has been requested to provide financial information under

section 4102 of this title, and that the information sought is needed to establish, modify, or enforce a child support or parental rights and responsibilities order or to determine if such action is necessary.

(b) The Office of Child Support may request any information needed to establish, modify, or enforce a child support or parental rights and responsibilities order or to locate any person alleged to be a parent owing a duty of support from the records of all governmental officials, departments, and other governmental agencies of this State without a subpoena. The officials and employees of the departments and other agencies shall provide all such information requested. Only information directly bearing on the identity and whereabouts of parents or alleged parents or their assets or income may be requested, used, or transmitted by the Office of Child Support under this section. Any information provided by the Department of Taxes shall include information about assets held by or income attributable to the parent jointly with any other person.

(c) Except as otherwise provided in this chapter, 15 V.S.A. chapter 11, and Title 15B, information furnished the Office of Child Support shall be made available only to the person requesting services or to the person's attorney, the person to whom the information relates, and the Family Division of the Superior Court. Any other use of the information shall be prohibited. A person who violates this subsection shall be fined not more than \$500.00. Any individual aggrieved by a violation of this section may bring an action for civil damages, including punitive damages, equitable relief, including restraint of prohibited acts, restitution of wages or other benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.

(d) Any person objecting to a subpoena may request an administrative review of its issuance by the Office of Child Support or may request that the subpoena be modified or vacated pursuant to 3 V.S.A. § 809b. A request for review under this subsection shall be brought in the Family Division of the Superior Court. Failure to comply with a subpoena may result in enforcement pursuant to 3 V.S.A. § 809a.

(e) A public utility company as defined in 30 V.S.A. § 201(a), or a cable television company as defined in 30 V.S.A. § 501, when requested by the Office of Child Support, shall provide the address as it appears in its customer records of a parent or person named in the request. (Added 1989, No. 221 (Adj. Sess.), § 13; amended 1997, No. 63, § 24, eff. Sept. 1, 1997; 1997, No. 156 (Adj. Sess.), § 26, eff. April 29, 1998; 2009, No. 154 (Adj. Sess.), § 238; 2013, No. 131 (Adj. Sess.), § 67.)

## **§ 4106. Assignment of rights**

(a) When an assignment of the right to support is in effect pursuant to section 3902 of this title or pursuant to this section, or when payments are being made through the registry, the custodial parent shall be considered to have appointed the Director of the Office of Child Support as his or her attorney in fact to perform the specific act of endorsing over to the registry all drafts, checks, money orders, or other negotiable instruments for support of the child or to transfer any payments received by the registry to the registering tribunal of another state, as defined in 15B V.S.A. § 101(19), after a written request is received from the obligee or the other state on behalf of the obligee or under an assignment of rights.

(b) When an assignment is in effect, any amounts accrued under a support obligation as of the date of assignment, and any amount accruing while the assignment is in effect, shall be owing to and payable to the registry without further order of the Court.

(c) A person applying for IV-D services who is not receiving welfare assistance may assign support rights to the State, but such an assignment shall not be a condition of eligibility for IV-D services.

(d) Persons who have assigned their support rights to the State shall be informed of actions that will be taken on their behalf and shall be entitled to information concerning the progress or results of any such action. Thirty days prior to the initiation of any Court proceeding, the Office of Child Support shall give the assignor notice and provide the assignor the opportunity to timely raise claims, through the waiver process, that such actions would not be in the best interests of the children.

(e) If arrearages accrue after support rights have been assigned and the obligor and obligee subsequently reunite, the Office of Child Support may not take any action to collect the support arrearages, unless the reunited family has a gross income equal to or greater than 225 percent of poverty, as defined by the U.S. Department of Health and Human Services.

(f) When an assignment is in effect, the State shall be guided by the best interests of the child for whose benefit the action is taken.

(1) The amount of child support indicated by the guidelines shall be presumed to be in the child's best interest, but other relevant information which is readily available, including information provided by the parents shall be considered together with the factors set out in 15 V.S.A. § 659.

(2) If, after reasonable inquiry into the circumstances of the family, it is determined by the Office of Child Support that an action would not be in the best interests of the affected child, a support action should not be undertaken. (Added 1989, No. 221 (Adj. Sess.), § 13; amended 1993, No. 105, § 9; 1997, No. 63, § 25, eff. Sept. 1, 1997.)

**§ 4107. Office of Child Support; access to motor vehicle information; criminal record information**

The Office of Child Support, for purposes of establishing and enforcing support and parental rights and responsibilities obligations, is designated as a law enforcement agency for the sole purpose of requesting and obtaining access to motor vehicle information and other information needed to identify or locate a person, including access to information maintained by the National Criminal Information Center. Such information shall only be used for collection of child support and is subject to the restrictions of section 4105(c) of this title. (Added 1995, No. 59, § 12; amended 1997, No. 63, § 26, eff. Sept. 1, 1997.)

**§ 4108. Grievance procedure**

(a) The Office of Child Support shall adopt rules in accordance with the procedures set forth in 3 V.S.A. chapter 25, the Administrative Procedure Act, to establish and implement a grievance procedure to contest decisions of the Office of Child Support.

(b) The Office of Child Support shall make widely available to the public information about its grievance procedure, including grievance forms, pamphlets explaining the procedure, and explanations of grievance rights.

(c) Upon issuing a wage withholding order, the Office of Child Support shall notify the obligor pursuant to 15 V.S.A. § 788 of the amount of the past due child support, the consequences of failing to meet a court-ordered child support obligation, and the procedure for contesting the Office's action under this section.

(d) All final decisions of the Office of Child Support are appealable de novo to the magistrate in the Family Division of the Superior Court.

(e) If the obligor contests the withholding within 21 days of the notice and is found not to be in arrears by more than one-twelfth of the annual support obligation on the date the notice is issued, the Office, within two business days, shall notify the employer to cease withholding. In addition, the Office shall pay to the obligor three times the amount erroneously withheld. (Added 1993, No. 105, § 10; amended 1997, No. 63, § 27, eff. Sept. 1, 1997; 2009, No. 146 (Adj. Sess.), § C17; 2009, No. 154 (Adj. Sess.), § 238.)

**§ 4109. Office of Child Support; use of federal parent locator service**

The Office of Child Support may use the services of the Federal Parent Locator Service. (Added 1993, No. 228 (Adj. Sess.), § 14.)

## § 4110. Employer obligations

(a) Where a parent is required by a Court or administrative order to provide health coverage for a child, and the parent is eligible for dependent health coverage, which is available through an employer doing business in this State, the employer is required:

(1) To enroll under dependent coverage any child who is otherwise eligible for coverage without regard to any enrollment season restrictions or any seasonal restrictions on switching from one plan to another upon application of either parent, by the State agency administering the Medicaid program, by any State agency administering health benefits or a health benefit plan for which Medicaid is a source of funding, or the Child Support Enforcement Program.

(2) Not to disenroll or eliminate coverage of any such child unless the employer is provided satisfactory written evidence that:

(A) the court order is no longer in effect;

(B) the child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment;

(C) the employer has eliminated dependent health coverage for all of its employees if allowed by law.

(3) To withhold from the employee's compensation the employee's share (if any) of premiums for health coverage and to pay this amount to the insurer. Any employer failing to withhold as required under this subdivision shall be liable for any premiums not withheld and paid over to the insurer.

(4) To send written notice to the insurer within 10 days of receipt of a notice under 15 V.S.A. § 663(d). The employer shall be liable for any child medical expenses that would have been covered under the employer's health plan had notice been given to the insurer according to this section.

(5) Notice to the employer under 15 V.S.A. § 663(d), if given by first class mail, postage prepaid, or by any other method showing actual receipt, shall be presumptive evidence of its receipt by the employer to whom it is addressed. Any period of time which is determined under this section by the giving of such notice shall commence to run from the date of mailing if the notice is mailed, or the date of actual receipt if another method of transmitting the notice is used.

(6) For purposes of this section, "dependent coverage" shall have the same meaning as in 8 V.S.A. § 4100b(a)(3).

(b) Effective October 1, 1998, all employers in the State of Vermont shall report all new hires to the Department of Labor, and reported information will be shared with the Office of Child Support for the purpose of expediting compliance with court ordered wage withholding orders, and location of payers or parents with an obligation to provide parental contact. The Department of Labor may use the information to assist with the administration of the Unemployment Insurance Program.

(1) Employers shall report new hires within 10 calendar days of the first date of employment for a new employee.

(2) Employers shall report the following data elements to the Department of Labor: newly hired employee's name, address, first date of employment, Social Security number, and the employer's name, address, and federal identification number.

(3) Employers shall report the required new hire data elements electronically, when practicable, or on a form supplied or approved by the Department of Labor. Forms may be transmitted by fax transmission, first class mail, magnetic tape, electronically, or inputting data elements via the telephone.

(4) If the failure to report is the result of collusion between employer and employee, the employer shall be liable to the obligee in the amount of the wages required to be withheld but not more than \$500.00.

(c) As used in this section:

(1) "Employee":

(A) means an individual who is an employee within the meaning of chapter 24 of the Internal Revenue Code of 1986; and

(B) does not include an employee of a federal or State agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting pursuant to this section with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(2) "Employer" has the meaning given such term in Section 3401(d) of the Internal Revenue Code of 1986 and includes any governmental entity and any labor organization.

(3) "First date of employment" is the first day services are performed for compensation as a new hire.

(4) "New hire" means an employee who:

(A) has not previously been employed by the employer; or

(B) was previously employed by the employer but has been separated from that employment for at least 60 consecutive days. (Added 1993, No. 231 (Adj. Sess.), § 6; amended 1995, No. 43, §§ 3, 4, eff. April 17, 1995; 1997, No. 63, § 28, eff. Sept. 1, 1997; 2005, No. 103 (Adj. Sess.), § 3, eff. April 5, 2006; 2009, No. 146 (Adj. Sess.), § C18; 2011, No. 162 (Adj. Sess.), § E.401.10.)

**§ 4111. Access to financial records of deposit accounts of individuals who owe overdue child support**

(a) As used in this section:

(1) "Depositor" means an owner of an account in a financial institution and includes a "share account holder" of a credit union.

(2) "Financial institution" means a trust company, savings bank, industrial bank, commercial bank, savings and loan association, or credit union organized under the laws of this State or authorized to do business in this State.

(3) "Match" means an automated comparison by name, Social Security number, and, if available, date of birth of a list of obligors provided to a financial institution by the Office and a list of depositors of a financial institution.

(4) "Obligor" means a person who owes child support.

(5) "Office" means the Office of Child Support.

(6) "Overdue support" means a debt of one-quarter of the annual support obligation or more for maintenance and support of a child or children and the obligor had prior notice of the debt and a prior opportunity to contest the amount owed. "Overdue support" includes spousal support or alimony being collected in conjunction with child support.

(b) Upon written request from the Director of the Office of Child Support and provided the institution has the technological capacity to perform a match, a financial institution shall perform a match of obligors who owe overdue child support. The Office shall make its computerized information necessary for a match available in a form that is compatible with the technology used by the financial institution that will perform the search. A financial institution shall not be required to perform a match under this section more often than once every quarter.

(c) After completing a match requested under subsection (b) of this section, a financial institution shall notify the Office of Child Support. The notification shall contain the following information, if available to the financial institution through its matching procedure, for each account identified:

(1) the full name, date of birth, and address of the obligor;

(2) the Social Security number of the obligor;

(3) the obligor's account number; and

(4) the amount of deposits contained in the obligor's account.

(d) A financial institution shall send a match list compiled under this section to the Office at the address designated by the Office.

(e) The financial institution shall not provide notice in any form to a depositor contained in a match list submitted to the Office under subsection (d) of this section. Failure to provide notice to a depositor shall not constitute a violation of the financial institution's duty of good faith to its customers.

(f) A financial institution may charge the Office a fee for services provided under this section provided that the fee shall not exceed the actual costs incurred by the financial institution.

(g) The information provided by the Office to a financial institution under this section shall be confidential and shall be used only for the purpose of carrying out the requirements of this section. (Added 2013, No. 131 (Adj. Sess.), § 68, eff. May 20, 2014.)