

South Carolina Divorce Laws

Title 20 Domestic Relations

Chapter 3 Divorce

§ 20-3-10. Grounds for divorce.

No divorce from the bonds of matrimony shall be granted except upon one or more of the following grounds, to wit:

- (1) Adultery;
- (2) Desertion for a period of one year;
- (3) Physical cruelty;
- (4) Habitual drunkenness; provided, that this ground shall be construed to include habitual drunkenness caused by the use of any narcotic drug; or
- (5) On the application of either party if and when the husband and wife have lived separate and apart without cohabitation for a period of one year. A plea of res judicata or of recrimination with respect to any other provision of this section shall not be a bar to either party obtaining a divorce on this ground.

§ 20-3-20. Effect of collusion.

If it shall appear to the satisfaction of the court that the parties to any divorce proceeding colluded or that the act complained of was done with the knowledge or assent of the plaintiff for the purpose of obtaining a divorce the court shall not grant such divorce.

§ 20-3-30. Residence requirement.

In order to institute an action for divorce from the bonds of matrimony the plaintiff must have resided in this State at least one year prior to the commencement of the action or, if the plaintiff is a nonresident, the defendant must have so resided in this State for this period; provided, that when both parties are residents of the State when the action is commenced, the plaintiff must have resided in this State only three months prior to commencement of the action. The terms 'residents' or 'resided' as used in this section as it applies to a plaintiff or defendant stationed in this State on active duty military service means a continuous presence in this State for the period required regardless of intent to permanently remain in South Carolina.

§ 20-3-40. Married person deemed of age.

Any married person shall, for the purpose of maintaining or defending an action for divorce and the settlement of property rights arising thereunder, be deemed of age.

§ 20-3-50. Jurisdiction of actions for divorce.

Actions for divorce from the bonds of matrimony shall, except as otherwise provided, be only in the equity jurisdiction of the court of common pleas.

§ 20-3-60. Venue.

Actions for divorce from the bonds of matrimony or for separate support and maintenance must be tried in the county (a) in which the defendant resides at the time of the commencement of the action, (b) in which the plaintiff resides if the defendant is a nonresident or after due diligence cannot be found, or (c) in which the parties last resided together as husband and wife unless the plaintiff is a nonresident, in which case it must be brought in the county in which the defendant resides.

§ 20-3-70. Service of summons on nonresident.

When the person on whom the service of the summons in an action for divorce from the bonds of matrimony is to be made cannot, after due diligence, be found within the State and that fact appears to the satisfaction of the court, or judge thereof, the clerk of the court of common pleas, the master or the probate judge of the county in which the cause is pending and it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made, such court, judge, clerk, master or judge of probate may grant an order that the service be made by the publication of the summons in the manner and with the effect provided in §§ 15-9-710 to 15-9-740. In lieu of publication of summons as provided in §§ 15-9-710 to 15-9-740 the plaintiff may cause such process to be served personally upon any nonresident and the service so made shall be sufficient.

§ 20-3-80. Required delays before reference and final decree; exceptions.

No reference shall be had before two months after the filing of the complaint in the office of the Clerk of Court, nor shall a final decree be granted before three months after such filing.

Provided, however, that when the plaintiff seeks a divorce on the grounds of desertion or separation for one year, the hearing may be held and the decree issued after the responsive pleadings have been filed or after the respondent has been adjudged to be in default whichever occurs sooner.

§ 20-3-90. Attempt at reconciliation.

In all cases referred to a master or special referee, such master or special referee shall, except in default cases, summon the party or parties within the jurisdiction of the court before him and shall in all cases make an earnest effort to bring about a reconciliation between the parties if they appear before him. No judgment of divorce shall be granted in such case unless the master or special referee to whom such cause may have been referred shall certify in his report or, if the cause has not been referred, unless the trial judge shall state in the decree that he has attempted to reconcile the parties to such action and that such efforts were unavailing.

§ 20-3-100. Attempt at reconciliation when one party is in armed forces overseas.

When either of the parties is a member of the armed forces and is serving without the continental limits of the United States, an affidavit by such party, taken before any officer of the armed forces authorized to administer an oath, to the

effect that, so far as he is concerned, a reconciliation is impossible shall be accepted by the court in lieu of the certification that an unsuccessful attempt to reconcile the parties has been made.

§ 20-3-110. Injunctions incident to divorce suits.

The court, pending the termination of the action or by final order, may restrain or enjoin either party to the cause from in any manner interposing any restraint upon the personal liberty of, or from harming, interfering with or molesting, the other party to the cause during the pendency of the suit or after final judgment. It may also, during the pendency of such action, restrain or enjoin any other person who is made a party to the action from doing or threatening to do any act calculated to prevent or interfere with a reconciliation of the husband and wife or other amicable adjustment of the action.

§ 20-3-120. Alimony and suit money.

In every divorce action from the bonds of matrimony either party may in his or her complaint or answer or by petition pray for the allowance to him or her of alimony and suit money and for the allowance of such alimony and suit money pendente lite. If such claim shall appear well-founded the court shall allow a reasonable sum therefor.

§ 20-3-125. Petition to enforce award of attorney fee.

Any attorney whose client has been awarded an attorney fee by the family court may petition the family court for the circuit in which the order was filed to enforce the payment of such fee.

§ 20-3-130. Award of alimony and other allowances.

(A) In proceedings for divorce from the bonds of matrimony, and in actions for separate maintenance and support, the court may grant alimony or separate maintenance and support in such amounts and for such term as the court considers appropriate as from the circumstances of the parties and the nature of case may be just, pendente lite, and permanently. No alimony may be awarded a spouse who commits adultery before the earliest of these two events: (1) the formal signing of a written property or marital settlement agreement or (2) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties.

(B) Alimony and separate maintenance and support awards may be granted pendente lite and permanently in such amounts and for periods of time subject to conditions as the court considers just including, but not limited to:

(1) Periodic alimony to be paid but terminating on the remarriage or continued cohabitation of the supported spouse or upon the death of either spouse (except as secured in subsection (D)) and terminable and modifiable based upon changed circumstances occurring in the future. The purpose of this form of support may include, but is not limited to, circumstances where the court finds it appropriate to order the payment of alimony on an ongoing basis where it is desirable to make a current determination and requirement for the ongoing support of a spouse to be reviewed and revised as circumstances may dictate in the future.

(2) Lump-sum alimony in a finite total sum to be paid in one installment, or periodically over a period of time, terminating only upon the death of the supported spouse, but not terminable or modifiable based upon remarriage or changed

circumstances in the future. The purpose of this form of support may include, but not be limited to, circumstances where the court finds alimony appropriate but determines that such an award be of a finite and nonmodifiable nature.

(3) Rehabilitative alimony in a finite sum to be paid in one installment or periodically, terminable upon the remarriage or continued cohabitation of the supported spouse, the death of either spouse (except as secured in subsection (D)) or the occurrence of a specific event to occur in the future, or modifiable based upon unforeseen events frustrating the good faith efforts of the supported spouse to become self-supporting or the ability of the supporting spouse to pay the rehabilitative alimony. The purpose of this form of support may include, but is not limited to, circumstances where the court finds it appropriate to provide for the rehabilitation of the supported spouse, but to provide modifiable ending dates coinciding with events considered appropriate by the court such as the completion of job training or education and the like, and to require rehabilitative efforts by the supported spouse.

(4) Reimbursement alimony to be paid in a finite sum, to be paid in one installment or periodically, terminable on the remarriage or continued cohabitation of the supported spouse, or upon the death of either spouse (except as secured in subsection (D)) but not terminable or modifiable based upon changed circumstances in the future. The purpose of this form of support may include, but is not limited to, circumstances where the court finds it necessary and desirable to reimburse the supported spouse from the future earnings of the payor spouse based upon circumstances or events that occurred during the marriage.

(5) Separate maintenance and support to be paid periodically, but terminating upon the continued cohabitation of the supported spouse, upon the divorce of the parties, or upon the death of either spouse (except as secured in subsection (D)) and terminable and modifiable based upon changed circumstances in the future. The purpose of this form of support may include, but is not limited to, circumstances where a divorce is not sought, but it is necessary to provide for support of the supported spouse by way of separate maintenance and support when the parties are living separate and apart.

(6) Such other form of spousal support, under terms and conditions as the court may consider just, as appropriate under the circumstances without limitation to grant more than one form of support.

For purposes of this subsection and unless otherwise agreed to in writing by the parties, "continued cohabitation" means the supported spouse resides with another person in a romantic relationship for a period of ninety or more consecutive days. The court may determine that a continued cohabitation exists if there is evidence that the supported spouse resides with another person in a romantic relationship for periods of less than ninety days and the two periodically separate in order to circumvent the ninety-day requirement.

(C) In making an award of alimony or separate maintenance and support, the court must consider and give weight in such proportion as it finds appropriate to all of the following factors:

(1) the duration of the marriage together with the ages of the parties at the time of the marriage and at the time of the divorce or separate maintenance action between the parties;

(2) the physical and emotional condition of each spouse;

(3) the educational background of each spouse, together with need of each spouse for additional training or education in order to achieve that spouse's income potential;

- (4) the employment history and earning potential of each spouse;
 - (5) the standard of living established during the marriage;
 - (6) the current and reasonably anticipated earnings of both spouses;
 - (7) the current and reasonably anticipated expenses and needs of both spouses;
 - (8) the marital and nonmarital properties of the parties, including those apportioned to him or her in the divorce or separate maintenance action;
 - (9) custody of the children, particularly where conditions or circumstances render it appropriate that the custodian not be required to seek employment outside the home, or where the employment must be of a limited nature;
 - (10) marital misconduct or fault of either or both parties, whether or not used as a basis for a divorce or separate maintenance decree if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage, except that no evidence of personal conduct which may otherwise be relevant and material for the purpose of this subsection may be considered with regard to this subsection if the conduct took place subsequent to the happening of the earliest of (a) the formal signing of a written property or marital settlement agreement or (b) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;
 - (11) the tax consequences to each party as a result of the particular form of support awarded;
 - (12) the existence and extent of any support obligation from a prior marriage or for any other reason of either party; and
 - (13) such other factors the court considers relevant.
- (D) In making an award of alimony or separate maintenance and support, the court may make provision for security for the payment of the support including, but not limited to, requiring the posting of money, property, and bonds and may require a spouse, with due consideration of the cost of premiums, insurance plans carried by the parties during marriage, insurability of the payor spouse, the probable economic condition of the supported spouse upon the death of the payor spouse, and any other factors the court may deem relevant, to carry and maintain life insurance so as to assure support of a spouse beyond the death of the payor spouse.
- (E) In making an award of alimony or separate maintenance and support, the court may order the direct payment to the supported spouse, or may require that the payments be made through the Family Court and allocate responsibility for the service fee in connection with the award. The court may require the payment of debts, obligations, and other matters on behalf of the supported spouse.
- (F) The court may elect and determine the intended tax effect of the alimony and separate maintenance and support as provided by the Internal Revenue Code and any corresponding state tax provisions. The Family Court may allocate the right to claim dependency exemptions pursuant to the Internal Revenue Code and under corresponding state tax provisions and to require the execution and delivery of all necessary documents and tax filings in connection with the exemption.

(G) The Family Court may review and approve all agreements which bear on the issue of alimony or separate maintenance and support, whether brought before the court in actions for divorce from the bonds of matrimony, separate maintenance and support actions, or in actions to approve agreement where the parties are living separate and apart. The failure to seek a divorce, separate maintenance, or a legal separation does not deprive the court of its authority and jurisdiction to approve and enforce the agreements. The parties may agree in writing if properly approved by the court to make the payment of alimony as set forth in items (1) through (6) of subsection (B) nonmodifiable and not subject to subsequent modification by the court.

(H) The court, from time to time after considering the financial resources and marital fault of both parties, may order one party to pay a reasonable amount to the other for attorney fees, expert fees, investigation fees, costs, and suit money incurred in maintaining an action for divorce from the bonds of matrimony, as well as in actions for separate maintenance and support, including sums for services rendered and costs incurred before the commencement of the proceeding and after entry of judgment, pendente lite and permanently.

§ 20-3-140. Allowance of alimony and suit money in suits for separate support and maintenance and similar actions.

In all actions for separate support and maintenance, legal separation, or other marital litigation between the parties, allowances of alimony and suit money and allowances of alimony and suit money pendente lite shall be made according to the principles controlling such allowance and actions for divorce a vinculo matrimonii.

§ 20-3-145. Attorney fee to constitute lien; payment to estate.

In any divorce action any attorney fee awarded by the court shall constitute a lien on any property owned by the person ordered to pay the attorney fee and such attorney fee shall be paid to the estate of the person entitled to receive it under the order if such person dies during the pendency of the divorce action.

§ 20-3-150. Segregation of allowance between spouse and children; effect of remarriage of spouse.

If the court awards the custody of the children to the spouse receiving alimony the court, by its decree, unless good cause to the contrary be shown, shall allocate any award for permanent alimony and support between the supported spouse and the children and upon the remarriage or continued cohabitation of the supported spouse the amount fixed in the decree for his or her support shall cease, and no further alimony payments may be required from the supporting spouse.

For purposes of this subsection and unless otherwise agreed to in writing by the parties, "continued cohabitation" means the supported spouse resides with another person in a romantic relationship for a period of ninety or more consecutive days. The court may determine that a continued cohabitation exists if there is evidence that the supported spouse resides with another person in a romantic relationship for periods of less than ninety days and the two periodically separate in order to circumvent the ninety-day requirement.

§ 20-3-160. Care, custody and maintenance of children.

In any action for divorce from the bonds of matrimony the court may at any stage of the cause, or from time to time after final judgment, make such orders touching the care, custody and maintenance of the children of the marriage and

what, if any, security shall be given for the same as from the circumstances of the parties and the nature of the case and the best spiritual as well as other interests of the children may be fit, equitable and just.

§ 20-3-170. Modification, confirmation or termination of alimony.

Whenever any husband or wife, pursuant to a judgment of divorce from the bonds of matrimony, has been required to make his or her spouse any periodic payments of alimony and the circumstances of the parties or the financial ability of the spouse making the periodic payments shall have changed since the rendition of such judgment, either party may apply to the court which rendered the judgment for an order and judgment decreasing or increasing the amount of such alimony payments or terminating such payments and the court, after giving both parties an opportunity to be heard and to introduce evidence relevant to the issue, shall make such order and judgment as justice and equity shall require, with due regard to the changed circumstances and the financial ability of the supporting spouse, decreasing or increasing or confirming the amount of alimony provided for in such original judgment or terminating such payments. Thereafter the supporting spouse shall pay and be liable to pay the amount of alimony payments directed in such order and judgment and no other or further amount and such original judgment, for the purpose of all actions or proceedings of every nature and wherever instituted, whether within or without this State, shall be deemed to be and shall be modified accordingly, subject in every case to a further proceeding or proceedings under the provisions of this section in relation to such modified judgment.

§ 20-3-180. Change of name after divorce or separation.

The court, upon the granting of final judgment of divorce or an order of separate maintenance, may allow a party to resume a former surname or the surname of a former spouse.

§ 20-3-190. Divorced wife shall be barred of dower.

On the granting of any final decree of divorce, the wife shall thereafter be barred of dower in lands formerly owned, then owned, or thereafter acquired by her former husband.

§ 20-3-200. Divorce shall not render children illegitimate.

No judgment of divorce from the bonds of matrimony shall render illegitimate the children begotten of the marriage.

§ 20-3-210. Unlawful advertising for purpose of procuring divorce.

It shall be unlawful for any person to print, publish, distribute or circulate or cause to be printed, published, distributed or circulated any card, handbill, advertisement, printed paper, book, newspaper or notice of any kind offering or otherwise to advertise to procure, attempt to procure or aid in procuring any divorce either in this State or elsewhere. But this section shall not apply to the printing or publishing of any notice or advertisement required or authorized by the laws of this State.

Article 3 Uniform Divorce Recognition Act

§ 20-3-420. Nonresident divorce shall be void if parties were domiciled here.

A divorce from the bonds of matrimony obtained in another jurisdiction shall be of no force or effect in this State if both parties to the marriage were domiciled in this State at the time the proceeding for the divorce was commenced.

§ 20-3-430. Prima facie evidence of domicile.

Proof that a person obtaining a divorce from the bonds of matrimony in another jurisdiction was (a) domiciled in this State within twelve months prior to the commencement of the proceeding therefor and resumed residence in this State within eighteen months after the date of his departure therefrom or (b) at all times after his departure from this State and until his return maintained a place of residence within this State shall be prima facie evidence that the person was domiciled in this State when the divorce proceeding was commenced. But the provisions of this section shall not apply in cases of divorce when the decree of divorce was issued prior to June 3, 1950.

Article 6 Equitable Apportionment Of Marital Property

§ 20-7-471. Acquisition during marriage of special equity and ownership right in marital property.

During the marriage a spouse shall acquire, based upon the factors set out in § 20-7-472, a vested special equity and ownership right in the marital property as defined in § 20-7-473, which equity and ownership right are subject to apportionment between the spouses by the family courts of this State at the time marital litigation is filed or commenced as provided in § 20-7-472.

§ 20-7-472. Equitable apportionment of marital property; criteria; finality of order.

In a proceeding for divorce a vinculo matrimonii or separate support and maintenance, or in a proceeding for disposition of property following a prior decree of dissolution of a marriage by a court which lacked personal jurisdiction over an absent spouse or which lacked jurisdiction to dispose of the property, and in other marital litigation between the parties, the court shall make a final equitable apportionment between the parties of the parties' marital property upon request by either party in the pleadings.

In making apportionment, the court must give weight in such proportion as it finds appropriate to all of the following factors:

- (1) the duration of the marriage together with the ages of the parties at the time of the marriage and at the time of the divorce or separate maintenance or other marital action between the parties;
- (2) marital misconduct or fault of either or both parties, whether or not used as a basis for a divorce as such, if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage; provided, that no evidence of personal conduct which would otherwise be relevant and material for purposes of this subsection shall be considered with regard to this subsection if such conduct shall have taken place subsequent to the happening of the earliest of (a) entry of a pendente lite order in a divorce or separate maintenance action; (b) formal signing of a written property or marital settlement agreement; or (c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;
- (3) the value of the marital property, whether the property be within or without the State. The contribution of each spouse to the acquisition, preservation, depreciation, or appreciation in value of the marital property, including the

contribution of the spouse as homemaker; provided, that the court shall consider the quality of the contribution as well as its factual existence;

(4) the income of each spouse, the earning potential of each spouse, and the opportunity for future acquisition of capital assets;

(5) the health, both physical and emotional, of each spouse;

(6) the need of each spouse or either spouse for additional training or education in order to achieve that spouses's income potential;

(7) the nonmarital property of each spouse;

(8) the existence or nonexistence of vested retirement benefits for each or either spouse;

(9) whether separate maintenance or alimony has been awarded;

(10) the desirability of awarding the family home as part of equitable distribution or the right to live therein for reasonable periods to the spouse having custody of any children;

(11) the tax consequences to each or either party as a result of any particular form of equitable apportionment;

(12) the existence and extent of any support obligations, from a prior marriage or for any other reason or reasons, of either party;

(13) liens and any other encumbrances upon the marital property, which themselves must be equitably divided, or upon the separate property of either of the parties, and any other existing debts incurred by the parties or either of them during the course of the marriage;

(14) child custody arrangements and obligations at the time of the entry of the order; and

(15) such other relevant factors as the trial court shall expressly enumerate in its order.

The court's order as it affects distribution of marital property shall be a final order not subject to modification except by appeal or remand following proper appeal.

§ 20-7-473. Marital and nonmarital property; nonmarital property as not subject to judicial apportionment.

The term "marital property" as used in this article means all real and personal property which has been acquired by the parties during the marriage and which is owned as of the date of filing or commencement of marital litigation as provided in § 20-7-472 regardless of how legal title is held, except the following, which constitute nonmarital property:

(1) property acquired by either party by inheritance, devise, bequest, or gift from a party other than the spouse;

(2) property acquired by either party before the marriage and property acquired after the happening of the earliest of (a) entry of a pendente lite order in a divorce or separate maintenance action; (b) formal signing of a written property or marital settlement agreement; or (c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;

(3) property acquired by either party in exchange for property described in items (1) and (2) of this section;

(4) property excluded by written contract of the parties. "Written contract" includes any antenuptial agreement of the parties which must be considered presumptively fair and equitable so long as it was voluntarily executed with both parties separately represented by counsel and pursuant to the full financial disclosure to each other that is mandated by the rules of the family court as to income, debts, and assets;

(5) any increase in value in nonmarital property, except to the extent that the increase resulted directly or indirectly from efforts of the other spouse during marriage.

Interspousal gifts of property, including gifts of property from one spouse to the other made indirectly by way of a third party, are marital property which is subject to division.

The court does not have jurisdiction or authority to apportion nonmarital property.

§ 20-7-474. Determination of value of contributions.

In determining the value of contributions prior to making an equitable apportionment, the court:

(1) shall make findings of fact from credible evidence of the values of property and services, if any;

(2) is empowered to take judicial notice of official reports of the federal and state governments, including official bulletins, publications, and reports of general public interest where these reports are made and published by authority of law or have been adopted by state statute;

(3) has the authority to appoint experts as necessary for the purpose of valuation of property and contributions and to assess the cost against any or all parties to the action.

§ 20-7-475. Sequestration of party's property; disposition of sequestered property.

(1) At any stage of a proceeding under this article where it appears to the court that personal jurisdiction may not be obtained over an absent party or where a party refuses to comply with an order of the court, the court may, upon appropriate petition, order the sequestration of that party's real and personal property which is within this State. The court may also appoint a sequestrator and, by injunction or otherwise, authorize the sequestrator to take the property into possession and control. In the case of an absent party, the court may appoint the party residing in this State as sequestator.

(2) The property sequestered and the income from it may be applied in whole or in part, at the direction of the court and as justice may require, so as to achieve an equitable apportionment of property as set forth in this article.

(3) Additionally, the court, in its discretion, if the property and income from it which may be sequestered is insufficient to pay what is required, may, upon terms and conditions as it considers in the interests of justice, direct the mortgaging of or the public or private sale of a sufficient amount of the sequestered property to pay what is required.

(4) The family court in which the action is filed has jurisdiction and venue to sequester property located within this State.

(5) The remedies in this section are cumulative to all other remedies which may be available to the parties.

§ 20-7-476. Orders to sell property or to execute and deliver deed, bill of sale, etc.; utilization of monetary awards and other means to achieve equity.

The court may direct a party to execute and deliver any deed, bill of sale, note, mortgage, or other document necessary to carry out its order of equitable apportionment. If a party so directed fails to comply, the court may direct the clerk of court in the county in which the property involved is situated to execute and deliver the document, and this performance by the clerk is as effective as the performance of the party would have been. The court in making an equitable apportionment may order the public or private sale of all or any portion of the marital property upon terms it determines.

The court may utilize any other reasonable means to achieve equity between the parties, which means are subject to and may not be inconsistent with the other provisions of this article and may include making a monetary award to achieve an equitable apportionment. Any monetary award made does not constitute a payment which is treated as ordinary income to the recipient under either the provisions of Chapter 7 of Title 12 or, to the extent lawful, under the United States Internal Revenue Code.

§ 20-7-477. Notice of pendency of proceedings; effect on spousal and third-party property rights; issuance and recordation of transcript of judgment.

In a proceeding under this article, either party may record a notice of the pendency of proceedings in the manner provided in civil actions generally, which has the same effect as a notice in civil actions. The rights and interests of each spouse in the other's property created by this article are not effective against third parties (1) with regard to any parcel of real property in which an interest under this article is claimed until a Notice of Pendency of Action is filed as provided in § 15-11-10 with the clerk of court of the county in which such parcel of real property is situated and (2) with regard to personal property, until the third party has received written notice from either spouse in a proceeding under this article that marital litigation has been filed. Prior rights and interests of third parties (1) in real property are not affected by filing a Notice of Pendency of Action and (2) in personal property are not affected by receipt of written notice of such a filing.

Upon entry of judgment against a party requiring payment of money or transfer of property, whether by interlocutory order or final decree, a party may apply to the court for issuance of a transcript of judgment in the form prescribed in Section 20-7-478. This transcript may be recorded in the office of the clerk of court of common pleas and indexed in the books of abstracts of judgments of any county of this State as provided by law.

After the order or decree has been duly recorded and indexed in the office of the clerk of court of common pleas, the order or decree has all force and effect of judgments of the courts of common pleas as provided by law, the recording and indexing constituting record notice to all persons of the order or decree recorded and indexed.

The recordation and filing of a transcript of judgment does not prevent the court from exercising any equitable or other presently existing power of enforcement of the order or decree which is within its jurisdiction.

The statutory lien created by Section 20-3-145 is not effective as against third parties unless this section has been complied with.

§ 20-7-840. Persons who may file petition for support.

Any interested persons may file a petition to the court requesting the court to order persons legally chargeable to provide support as required by law.

§ 20-7-850. Judge shall make reconciliation efforts; support order.

Except where the circumstances indicate it to be undesirable, in all cases where an application for support has been made, an effort should be made by the judge to restore harmonious relations between the husband and wife and to adjust the issues raised by the application through conciliation and agreement. Where an agreement for the support of the petitioner is brought about, it must be reduced to writing and submitted to the court for approval. Where possible, the court shall see both parties and shall inquire of each whether the agreement, which he must state to them, is what they have agreed to. If it is, and the court shall approve it, the court without further hearing may thereupon enter an order for the support of the petitioner by the respondent in accordance with such agreement, which shall be binding upon the respondent and shall in all respects be a valid order as though it had been made after process has been issued out of the court. The court record shall show that such order was made upon agreement.

§ 20-7-852. Child support proceedings; amount of award.

(A) In any proceeding for the award of child support, there is a rebuttable presumption that the amount of the award which would result from the application of the guidelines required under Section 43-5-580(b) is the correct amount of child support to be awarded. A different amount may be awarded upon a showing that application of the guidelines in a particular case would be unjust or inappropriate. When the court orders a child support award that varies significantly from the amount resulting from the application of the guidelines, the court shall make specific, written findings of those facts upon which it bases its conclusion supporting that award. Findings that rebut the guidelines must state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

(B) Application of these guidelines to an existing child support order, in and of itself, is not considered a change in circumstances for the modification of that existing order, except in a Title IV-D case.

(C) The court shall consider the following factors which may be possible reasons for deviation from the guidelines or may be used in determining whether a change in circumstances has occurred which would require a modification of an existing order:

- (1) educational expenses for the child or children or the spouse, to include those incurred for private, parochial, or trade schools, other secondary schools, or post-secondary education where there is tuition or related costs;
- (2) equitable distribution of property;

- (3) consumer debts;
 - (4) families with more than six children;
 - (5) unreimbursed extraordinary medical or dental expenses for the noncustodial or custodial parent;
 - (6) mandatory deduction of retirement pensions and union fees;
 - (7) support obligations for other dependents living with the noncustodial parent or noncourt ordered child support from another relationship;
 - (8) child-related unreimbursed extraordinary medical expenses;
 - (9) monthly fixed payments imposed by a court or operation of law;
 - (10) significant available income of the child or children;
 - (11) substantial disparity of income in which the noncustodial parent's income is significantly less than the custodial parent's income, thus making it financially impracticable to pay what the guidelines indicate the noncustodial parent should pay;
 - (12) alimony. Because of their unique nature, lump sum, rehabilitative, reimbursement, or any other alimony that the court may award, may be considered by the court as a possible reason for deviation from these guidelines;
 - (13) agreements reached between parties. The court may deviate from the guidelines based on an agreement between the parties if both parties are represented by counsel or if, upon a thorough examination of any party not represented by counsel, the court determines the party fully understands the agreement as to child support. The court still has the discretion and the independent duty to determine if the amount is reasonable and in the best interest of the child or children.
- (D) Pursuant to Section 43-5-580(b), the department shall promulgate regulations which establish child support guidelines as a rebuttable presumption. The department shall review these regulations at least once every four years to ensure that their application results in appropriate child support award amounts.

§ 20-7-853. Paternity determinations or child support provisions to set forth social security numbers or alien identification numbers of both parents.

An administrative or judicial order which includes a determination of paternity or a provision for child support shall set forth the social security numbers, or the alien identification numbers assigned to resident aliens who do not have social security numbers, of both parents.

§ 20-7-854. Information required in child support and paternity actions; notification of changes.

(A) An obligor and an obligee in a child support or paternity action, whether judicial or administrative, shall provide the following information to the tribunal:

- (1) residence address;
- (2) mailing address;
- (3) telephone number;
- (4) social security number or the alien identification number assigned to a resident alien who does not have a social security number;
- (5) driver's license number; and
- (6) name, address, and telephone number of employer.

The parties shall notify the tribunal of any changes to the above-referenced information within ten days of the effective date of the change. In subsequent support actions between the obligor and the obligee or their assignees, upon sufficient showing that diligent effort has been made to ascertain the location of the party, delivery by first-class mail of written notice to the obligor and the obligee at the residential or employer address most recently filed with the tribunal constitutes service of process.

(B) "Tribunal" is defined for purposes of this section as the family court or the Department of Social Services, Child Support Enforcement Division or its designee.

§ 20-7-855. Medical bills as prima facie evidence of costs incurred.

If copies of bills are furnished to the adverse party at least ten days before the date of an administrative or judicial hearing, the bills for testing for parentage and for prenatal and postnatal health care of the mother and child must be admitted as evidence without third party foundation testimony and are prima facie evidence of the amounts incurred for the services or for testing and that the amounts were reasonable, necessary, and customary.

Any individual or entity who prepares or submits falsified billing information shall be subject to the contempt powers of the court.

§ 20-7-856. Distribution of fines.

Fines collected pursuant to Sections 20-7-9575, 43-5-595(C), and 43-5-598(G) must be distributed as follows:

- (1) The Department of Social Services shall pay to the federal government the federal share of the amount collected;
- (2) The Department of Social Services shall use the state share of the amount collected pursuant to subsection (1) in the administration of the child support enforcement program.

§ 20-7-860. Summons or rule to show cause concerning support; hearing.

The court shall in a proper case issue a summons or rule to show cause, requiring the respondent to appear at the court at a time and place named, to show cause why the order for support prayed for by the petition shall not be granted. A

summons or rule to show cause shall not be refused without giving the petitioner an opportunity to present witnesses and be heard by the court.

§ 20-7-862. Notice of hearing in child support and alimony arrearage cases.

(A) If pursuant to family court rule, the clerk of court issues a rule to show cause in a case of child support or periodic alimony arrearage, the clerk also shall provide written notice to the party owed the support or alimony. The notice to the party owed support or alimony must:

- (1) be provided by the court at least five days prior to the hearing;
- (2) be sent by first class delivery through the United States Postal Service and addressed to the party's last address on file with the court; and
- (3) include the date, time, and place the party in arrears has been ordered to appear.

(B) The mailing provided for in subsection (A) is considered sufficient notice of the hearing to the party owed the support or alimony.

(C) The clerk of court shall place in the case file a copy of the notice sent to the party owed support or alimony with the time and date stamped on the copy.

(D) This section does not apply to a rule to show cause in a case of child support or periodic alimony arrearage issued by a clerk of court pursuant to family court rule if the party owed the support or alimony is represented by the Department of Social Services.

§ 20-7-870. Authority to issue warrant upon refusal to obey court order for support.

Where a respondent shall neglect or refuse to obey an order for support or upon agreement signed by the respondent and approved by the court, and the court is satisfied thereof by competent proof, it may, with or without notice, issue a warrant to commit the respondent to jail until the order is obeyed or until the respondent is discharged by law.

§ 20-7-873. Noncustodial unemployed parent may be ordered to participate in departmental employment program.

Notwithstanding any other provision of law, a court or administrative order for child support or order for contempt for nonpayment of child support being enforced under Title IV-D of the Social Security Act may direct a noncustodial parent who is unemployed or underemployed and who is the parent of a child receiving Aid to Families with Dependent Children benefits to participate in an employment training program or public service employment. Upon failure of the noncustodial parent to comply with an order of contempt which directed the noncustodial parent to participate in the employment training program or public service employment, the Family Court, upon receiving an affidavit of noncompliance from the department, immediately may issue a bench warrant for the arrest of the noncustodial parent. The Department of Social Services shall promulgate regulations governing the eligibility criteria and implementation of these training programs and public service employment.

§ 20-7-880. Issuance and service of warrants of arrest; temporary ex parte orders.

When a petition is presented to the court and it shall appear:

- (1) That the summons or rule to show cause cannot be served; or
- (2) That the respondent has failed to obey the summons or rule to show cause; or
- (3) That the respondent is likely to leave the jurisdiction; or
- (4) That a summons or rule to show cause would be ineffectual; or
- (5) That the safety of the petitioner is endangered; or
- (6) That a respondent on bond or on probation has failed to appear, the court may issue a warrant, in the form prescribed in § 20-7-890, directing that the respondent be arrested and brought before the court. Warrants and other processes may be served by any peace officer, or by the probation counselor. The court shall make rules relative to the service of warrants. Warrants issued by the court shall be valid throughout the State. The judge may issue ex parte orders for temporary child support, temporary custody and restraining orders where conditions warrant.

§ 20-7-910. Bond for support in lieu of punishment.

If the defendant in any proceeding brought under the provisions of § 20-7-90, either before or after conviction, shall give bond, with one or more sureties approved by the clerk of the court, in the sum of not less than one hundred dollars nor more than three thousand dollars under such terms and conditions as the court in its discretion may deem wise and proper for the maintenance and support of the defendant's wife or minor unmarried child or children, he shall not be imprisoned or the fine imposed unless the condition of such bond is broken.

§ 20-7-920. Bond of respondent; conditions; failure to appear.

If the respondent be admitted to bond, the condition of the undertaking shall be for his future appearance according to the terms thereof, or in default of such appearance, that the surety will pay the clerk of court a specified sum as therein set forth. Instead of entering into such an undertaking a respondent may deposit money in an amount to be fixed by the court. If the respondent fails to appear in accordance with the terms of the undertaking, the court shall enter the fact of such nonappearance upon the record, and the undertaking for his appearance, or the money deposited in lieu thereof, shall be forfeited and upon order of the court the sum recovered shall be applied by the clerk of the court for the benefit of the petitioner. However, the court may, in its discretion, remit such forfeiture.

§ 20-7-930. Authority to place respondent on probation after refusing to obey court order for support.

In the case of a respondent who shall have neglected or refused to obey an order for support, the court may suspend sentence or the execution of the warrant, as the case may be, and place him or her on probation under such conditions as the court may determine. No person, however, shall be placed on probation unless an order to that effect is made by the court.

§ 20-7-933. Authority of Family Court to enforce decrees, judgments, or orders regarding child support; authority to hold arrearages in abeyance.

The family court has the authority to enforce the provisions of any decree, judgment, or order regarding child support of a court of this State, including cases with jurisdiction based on the revised Uniform Reciprocal Enforcement of Support Act, provided that personal jurisdiction has been properly established. This authority includes the right to modify any such decree, judgment, or order for child support as the court considers necessary upon a showing of changed circumstances. No such modification is effective as to any installment accruing prior to filing and service of the action for modification. Additionally, the family court has the right to hold any arrearage in child support in abeyance.

§ 20-7-934. Enforcement or modification of orders of other courts; transfer of cases.

Any family court has jurisdiction and authority to enforce or modify an order or decree of any other court respecting support of wife or children subject to the limitations contained in § 20-7-933, custody of children and visitation upon an order from the court of original jurisdiction, transferring jurisdiction to the family court. Petition may be made by either party to the original action to transfer the cause to the family court of the county where the other party resides, or petition may be made by the family court of the county to which transfer is sought, if it appears that the transfer will serve the ends of justice. The court of original jurisdiction may transfer the cause in its discretion.

§ 20-7-936. Grandparent responsibility for child support for minor's child.

When a child is born to parents, either or both of whom are unmarried and under eighteen years of age, the Child Support Enforcement Division of the State Department of Social Services may pursue support and maintenance of that child from one or both of the child's maternal and paternal grandparents as long as the parent of the child is under eighteen years of age.

§ 20-7-940. Support enforcement through license revocation; applicability to individual under order for child support.

In addition to other qualifications necessary for holding a license, an individual who is under an order for child support also is subject to the provisions of this part.

§ 20-7-941. Support enforcement through license revocation; definitions.

(A) As used in this part:

(1) "Arrearage" means the total amount overdue under an order of support.

(2) "Compliance with an order for support" means that pursuant to an order for support the person required to pay under the order is in arrears no more than five-hundred dollars and has paid the full child support obligation for the last two consecutive months.

(3) "Director" means the Director of the Child Support Enforcement Division of the State Department of Social Services or his designee.

(4) "Division" means the Child Support Enforcement Division of the State Department of Social Services.

(5) "License" means:

(a) a certificate, license, credential, permit, registration, or any other authorization issued by a licensing entity that allows an individual or is required of an individual to engage in a business, occupation, or profession and includes, but is not limited to, a medical license, teaching certificate, commission and certificate of training from the South Carolina Criminal Justice Academy for a sworn law enforcement officer, and a hunting, fishing, or trapping license for commercial use and the privilege to hunt, fish, or trap or hold a hunting, fishing, or trapping license for commercial use;

(b) a driver's license and includes, but is not limited to, a beginner's or instruction permit, a restricted driver's license, a motorcycle driver's license, or a commercial driver's license;

(c) a hunting, fishing, or trapping license for recreational purposes and the privilege to hunt, fish, or trap or hold a hunting, fishing, or trapping license for recreational purposes;

(d) a watercraft registration.

"License" does not include the authority to practice law; however, the Supreme Court may consider as an additional ground for the discipline of members of the bar the wilful violation of a court order including an order for child support. The department has grounds to file a grievance with the Supreme Court if a licensed attorney is in wilful violation of a court order for child support.

(6) "Licensee" means an individual holding a license issued by a licensing entity.

(7) "Licensing entity" or "entity" means, for the purposes of issuing or revoking a license, a state, county, or municipal agency, board, department, office, or commission that issues a license.

(8) "Order for support" means an order being enforced by the division under Title IV-D of the Social Security Act and which provides for periodic payments of funds for the support of a child or maintenance of a spouse or former spouse and support of a child, whether temporary or final and includes, but is not limited to, an order for reimbursement for public assistance or an order for making periodic payments on a support arrearage.

§ 20-7-942. Revocation of license where licensee out of compliance with support order; exceptions.

If a licensee is out of compliance with an order for support, the licensee's license must be revoked unless within forty-five days of receiving notice that the licensee is out of compliance with the order, the licensee has paid the arrearage owing under the order or has signed a consent agreement with the division establishing a schedule for payment of the arrearage.

§ 20-7-943. Obtaining information on licensees to establish, enforce, and collect support obligations.

The division shall obtain information on licensees pursuant to Section 20-7-944 for the purposes of establishing, enforcing, and collecting support obligations.

§ 20-7-945. Out of compliance determination; review and negotiation of payment schedule having force of judgment; notice and revocation of license.

(A) The division shall review the information received pursuant to Section 20-7-944 and determine if a licensee is out of compliance with an order for support. If a licensee is out of compliance with the order for support, the division shall notify the licensee that forty-five days after the licensee receives the notice of being out of compliance with the order, the licensing entity will be notified to revoke the licensee's license unless the licensee pays the arrearage owing under the order or signs a consent agreement establishing a schedule for the payment of the arrearage.

(B) Upon receiving the notice provided for in subsection (A), the licensee may:

(1) request a review with the division; however, issues the licensee may raise at the review are limited to whether the licensee is the individual required to pay under the order for support and whether the licensee is out of compliance with the order of support; or

(2) request to participate in negotiations with the division for the purpose of establishing a payment schedule for the arrearage.

(C) The division director or the division director's designees are authorized to and upon request of a licensee shall negotiate with a licensee to establish a payment schedule for the arrearage. Payments made under the payment schedule are in addition to the licensee's ongoing obligation under the order for support.

(D) Upon the division and the licensee reaching an agreement on a schedule for payment of the arrearage, the director shall file an agreement and order pursuant to Section 20-7-9525(A) and (B) with the family court in the county in which the order for support was issued. The clerk shall stamp the date of receipt of the agreement and order and shall file it under the docket number of the order of support. The agreement and order shall have all the force, effect, and remedies of an order of the court including, but not limited to, wage assignment and contempt of court.

(E) If the licensee and the division do not reach an agreement establishing a schedule for payment of the arrearage, the licensee may petition the court to establish a payment schedule. However, this action does not stay the license revocation procedures.

(F) The notification given a licensee that the licensee's license will be revoked in forty-five days clearly must state the remedies and procedures available to a licensee under this section.

(G) If at the end of the forty-five days the licensee still has an arrearage owing under the order for support or the licensee has not signed a consent agreement establishing a payment schedule for the arrearage, the division shall notify the licensing entity to revoke the licensee's license. A license only may be reinstated if the division notifies the licensing entity that the licensee no longer has an arrearage or that the licensee has signed a consent agreement.

(H) Review with the division under this section is the licensee's sole remedy to prevent revocation of his or her license. The licensee has no right to appeal the revocation with the licensing entity.

(I) If a licensee under a consent order entered into pursuant to this section, for the payment of an arrearage subsequently is out of compliance with an order for support, the division immediately may notify the licensing entity to

revoke the license and the procedures provided for under subsection (B) do not apply; however the appeal provisions of subsection (H) apply. If upon revocation of the license the licensee subsequently enters into a consent agreement or the licensee otherwise informs the department of compliance, the department shall notify the licensing entity within fourteen days of the determination of compliance and the license must be reissued.

(J) Notice required to the licensee under this section must be deposited in the United States mail with postage prepaid and addressed to the licensee at the last known address. The giving of the notice is considered complete ten days after the deposit of the notice. A certificate that the notice was sent in accordance with this part creates a presumption that the notice requirements have been met even if the notice has not been received by the licensee.

(K) Nothing in this section prohibits a licensee from filing a petition for a modification of a support order or for any other applicable relief. However, no such petition stays the license revocation procedure.

(L) If a license is revoked under this section, the licensing entity is not required to refund any fees paid by a licensee in connection with obtaining or renewing a license, and any fee required to be paid to the licensing entity for reinstatement after a license revocation applies. The division will indemnify the applicable licensing entity from any consequences that may result from the revocation of the licensee's license.

§ 20-7-946. Support enforcement through license revocation; disclosure of information provided to licensing entity.

(A) Information provided to a licensing entity pursuant to this section is subject to disclosure in accordance with the Freedom of Information Act.

(B) A person who releases information received by a licensing entity pursuant to this section, except as authorized by this section or another provision of law, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Subarticle 6 Income Withholding

§ 20-7-1230. Withholding by employer for health coverage premiums.

If a court order requires a parent to provide and maintain health coverage for a child and the parent is eligible for family health coverage through an employer, the order shall include a provision directing the employer to withhold from money, income, or periodic earnings due the parent an amount which is sufficient to provide for premiums for the health coverage offered through the employer unless:

(1) the court finds that under regulations promulgated by the Secretary of the Department of Health and Human Services, circumstances exist warranting withholding less than the employee's share of the premiums; or

(2) the amount withheld exceeds the maximum amount permitted to be withheld under the federal Consumer Credit Protection Act.

Income withholding takes effect immediately upon completion of enrollment requirements.

§ 20-7-1240. Withholding of income or tax refunds to reimburse Medicaid expenditures on behalf of child; priority.

To the extent necessary to reimburse the state agency administering the Medicaid program for expenditures on behalf of a child, the agency may petition the court seeking withholding of employment income or state tax refunds from a person who:

- (1) is required by a court order to provide and maintain health coverage for a child who is eligible for medical assistance under a State Plan for Medical Assistance pursuant to Title XIX of the Social Security Act;
- (2) has received payment from a third party for the costs of health care items or services; and
- (3) has not used the payment to reimburse, as appropriate, either the other parent or guardian of the child or the provider of the items or services.

Claims for current or past due child support take priority over claims filed pursuant to this section.

§ 20-7-1250. Priority of orders of income withholding; mistake of fact only ground for contesting order to provide health coverage.

(A) A court order which requires income withholding pursuant to this part of Subarticle 6 has priority over all other legal processes under state law against money, income, or periodic earnings of the noncustodial parent except an order of income withholding for child support.

(B) A person under a court order to provide and maintain health care coverage as of July 1, 1994, is subject to the income withholding for health coverage provisions of this part of Subarticle 6. The only ground to contest an order of income withholding for health coverage is a mistake of fact. If the person contests the withholding because of a mistake of fact, the court shall provide the person an opportunity to present his or her case. The court shall determine whether to order withholding and shall notify the person of the determination and, if appropriate, the time period in which withholding will commence.

§ 20-7-1270. Action against employee because of withholding order for health care coverage prohibited.

An employer is prohibited from discharging, refusing to employ, or taking other disciplinary action against a person because of an income withholding order for health coverage. The person has the burden of proving that income withholding for health coverage was the sole reason for the employer's action.

§ 20-7-1295. Unpaid child support obligations; lien in favor of obligee; recordation and registration; filing notice of lien; expiration of lien; neglect or refusal to pay amount due; levy.

(A) A child support obligation which is unpaid in an amount equal to or greater than one thousand dollars, as of the date on which it was due, is a lien in favor of the obligee in an amount sufficient to satisfy unpaid child support, whether the amount due is a fixed sum or is accruing periodically. An amount of restitution established by the Department of Social Services, Child Support Enforcement Division, or its designee (division) or the family court is due and payable as of the date the amount is established. The lien shall incorporate any unpaid child support which may accrue in the future and

does not terminate except as provided in subsection (D). Upon recordation or registration in accordance with subsection (C), the lien shall encumber all tangible and intangible property, whether real or personal, and an interest in property, whether legal or equitable, belonging to the obligor. An interest in property acquired by the obligor after the child support lien arises is subject to the lien, subject to the limitations provided in subsections (C) and (D).

(B) When the division determines that child support is unpaid in an amount equal to or greater than one thousand dollars, it shall send written notice to the obligor by first-class mail to the obligor's last known address, as filed with the tribunal pursuant to Section 20-7-854. The notice shall specify the amount unpaid as of the date of the notice or other date certain and the right of the obligor to request an administrative review by filing a written request with the division within thirty days of the date of the notice. If the obligor files a timely written request for an administrative review, the division shall conduct the review within thirty days of receiving the request.

(C) The division shall file notice of a lien with respect to real property with the register of deeds for any county in the State where the obligor owns property. The social security number, or the alien identification number assigned to a resident alien who does not have a social security number, of the obligor must be noted on the notice of the lien. The filing operates to perfect a lien when recorded, as to any interest in real property owned by the obligor that is located in the county where the lien is recorded. Liens created under this section must be maintained by the register of deeds of each county of the State, in accordance with established local procedures for recordation. If the obligor subsequently acquires an interest in real property, the lien is perfected upon the recording of the instrument by which the interest is obtained in the register of deeds where the notice of the lien was filed within six years prior thereto. A child support lien is perfected as to real property when both the notice thereof and a deed or other instrument in the name of the obligor are on file in the register of deeds for the county where the obligor owns property without respect to whether the lien or the deed or other instrument was recorded first.

The division also shall file notice of a child support lien, with the social security number, or the alien identification number assigned to a resident alien who does not have a social security number, of the obligor on the notice, with respect to personal property with the Department of Natural Resources, a county, or other office or agency responsible for the filing or recording of liens. The filing of a notice of a lien or of a waiver or release of a lien must be received and registered or recorded without payment of a fee. The division may file notice of a lien or waiver or release of a lien or may transmit information to or receive information from any registry of deeds or other office or agency responsible for the filing or recording of liens by any means, including electronic means. Any lien placed against a vehicle with a title issued by the Department of Motor Vehicles is not perfected until notation of the lien is recorded on the vehicle's title by the Department of Motor Vehicles. No fee is required to reissue this title. The perfected lien is not subordinate to a recorded lien except a lien that has been perfected before the date on which the child support lien was perfected. The division, upon request of the obligor, may subordinate the child support lien to a subsequently perfected mortgage. To assist in the collection of a debt by the division, the division may disclose the name of an obligor against whom a lien has arisen and other identifying information including the existence of the lien and the amount of the outstanding obligation.

(D) The lien expires upon termination of a current child support obligation and payment in full of unpaid child support or upon release of the lien by the division. In any event, a lien under this section expires six years from the date on which the lien was first perfected. The lien may be extended for additional periods of six years each by recording, during the fifth year of the lien, a further notice of the lien, as provided in subsection (C), without affecting the priority of the lien. Expiration of the lien does not terminate the underlying order or judgment of child support. The division may issue a full or partial waiver of a lien imposed under this section. The waiver or release is conclusive evidence that the lien upon the property covered by the waiver or release is extinguished.

(E) If an obligor against whom a lien has arisen and has been perfected under subsection (C) neglects or refuses to pay the sum due after the expiration of the thirty-day notice period specified in subsection (B), the division may collect the unpaid child support and levy upon all property as provided in this section. For the purposes of this section, 'levy' includes the power of distraint and seizure by any means. A person in possession of property upon which a lien having priority under subsection (C) has been perfected, upon demand, shall surrender the property to the division as pursuant to this section. Financial institutions which hold assets of an obligor, after proper identification and notification by the division, shall encumber or surrender deposits, credits, or other personal property held by the institution on behalf of an obligor who is subject to a child support lien, pursuant to Section 43-5-596. Financial institutions are allowed to either submit account information directly to the State where it is matched against the parent data base, or financial institutions may request a file and complete the comparison and submit it directly to the State. The social security number must be used for the matching process and not the full name of the person who maintains an account with that entity. A levy on property held by an organization with respect to a life insurance or endowment contract, without necessity for the surrender of the contract document, constitutes a demand by the division for payment of the amount of the lien and the exercise of the right of the obligor to the advance of the amount. The organization shall pay the amount ninety days after service of the notice of levy. The levy is considered satisfied if the organization pays over to the division the full amount which the obligor could have had advanced to him, if the amount does not exceed the amount of the lien. Whenever any property upon which levy has been made is not sufficient to satisfy the claim of the state for which levy is made, the division thereafter, as often as may be necessary, proceed to levy, without further notice, upon any other property of the obligor subject to levy upon first perfecting its lien as provided in subsection (C), until the amount due from the obligor and the expenses are fully paid. With respect to a seizure or levy of real property or tangible personal property, the sheriff shall proceed in the manner prescribed by Sections 15-39-610, et seq., insofar as these sections are not inconsistent with this section. The division has rights to property remaining after satisfying superior perfected liens, as provided in subsection (C).

(F) Upon demand by the division, a person who fails or refuses to surrender property subject to levy pursuant to this section is liable in his own person and estate to the State in a sum equal to the value of the property not so surrendered but not exceeding the amount of the lien, and the costs at the rate established by Section 23-19-10.

(G) A person in possession of, or obligated with respect to, property who, upon demand by the division, surrenders the property or discharges the obligations to the division or who pays a liability under this section, must be discharged from any obligation or liability to the obligor arising from the surrender or payment. A levy on an organization with respect to a life insurance or endowment contract which is satisfied pursuant to this section, discharges the organization from any obligation or liability to any beneficiary arising from the surrender or payment.

(H) The division shall send timely written notice to the obligor by first-class mail of any action taken to perfect a lien, execute a levy, or seize any property. The notice shall specify the amount due, the steps to be followed to release the property so placed under lien, levied, or seized, and the time period within which to respond to the notice and shall include the name of the court or administrative agency of competent jurisdiction which entered the child support order.

(I) A person aggrieved by a determination of the division pursuant to subsection (B), upon exhaustion of the procedures for administrative review, may seek judicial review in the court where the order or judgment was issued or registered. Commencement of the review shall not stay enforcement of child support. The court may review the proceedings taken by the division pursuant to this section and may correct any mistakes of fact; however, the court may not reduce or retroactively modify child support arrears.

(J) A child support enforcement agency in a jurisdiction outside this State may request the division to enforce a child support order issued by a court or administrative agency in another jurisdiction or a lien arising under the law of another jurisdiction. The order or lien must be accorded full faith and credit and the order or lien must be enforced as if the order was issued or the lien arose in South Carolina, without the necessity of registering the order with the court.

(K) The division is authorized to promulgate rules and regulations, if necessary, to implement the provision of this section.

§ 20-7-1316. Recording of arrearages as judgment; effect of lien.

When a delinquency occurs as defined in § 20-7-1315, the obligor must be given notice pursuant to § 20-7-1315(C) of the proposed lien. Where no petition to stay service is timely filed or where no relief is granted to the obligor pursuant to § 20-7-1315(D), the arrearage may be recorded or provided for in § 20-7-1315(E) in the appropriate index in the office of the Clerk of Court or Register of Deeds. Upon recordation the arrearage has the same force and effect as a judgment and it is cumulative to the extent of any and all past due support, until the arrearage is paid in full. The judgment may be recorded in any county in which the obligor resides or in which he owns real property by the filing of a transcript of judgment in that county. A lien imposed pursuant to this section is not dischargeable in bankruptcy.

§ 20-7-1320. Order to withhold income earned in another jurisdiction.

On behalf of any obligee for whom the clerk of court is already providing services, or on application of a resident of this State, an obligee or obligor of a support order issued by this State, or an agency to whom the obligee has assigned support rights, the clerk of court shall promptly request the agency of another jurisdiction in which the obligor of a support order derives income to enter the order for the purpose of obtaining income withholding against the income. The clerk of court shall compile and transmit promptly to the agency of the other jurisdiction all documentation required to enter a support order for this purpose. The clerk of court also shall transmit immediately to the agency of the other jurisdiction a certified copy of any subsequent modifications of the support order. If the clerk of court receives notice that the obligor is contesting income withholding in another jurisdiction, it shall immediately notify the individual obligee of the date, time, and place of the hearings and of the obligee's right to attend.

§ 20-7-1321. Order to withhold income earned in South Carolina; required documentation; cure of defects; effect of order.

(a) Upon receiving a support order of another jurisdiction with the documentation specified in subsection (b) of this section from an agency of another jurisdiction an obligee, an obligor, or an attorney for either, the clerk of court shall enter this order.

(b) The following documentation is required for the entry of a support order of another jurisdiction:

(1) a certified copy of the support order with all modifications;

(2) a certified copy of an income withholding order, if any, still in effect;

(3) a copy of the portion of the income withholding statute of the jurisdiction which issued the support order which states the requirements for obtaining income withholding under the law of that jurisdiction;

(4) a sworn statement of the obligee or certified statement of the agency of the arrearages and the assignment of support rights, if any;

(5) a statement of:

(a) the name, address, and social security number of the obligor, if known;

(b) the name and address of the obligor's employer or of any other source of income of the obligor derived in this State against which income withholding is sought;

(c) the name and address of the agency or person to whom support payments collected by income withholding must be transmitted.

(c) If the documentation received by the clerk of court under subsection (a) of this section does not conform to the requirements of subsection (b) of this section, the clerk of court shall remedy any defect which it can without the assistance of the requesting agency or person. If the clerk of court is unable to make such corrections, the requesting agency, or person, shall immediately be notified of the necessary additions or corrections. The clerk of court shall accept the documentation required by subsections (a) and (b) of this section even if it is not in the usual form required by state or local rules, so long as the substantive requirements of these subsections are met.

(d) A support order entered under subsection (a) of this section is enforceable by income withholding against income derived in this State in the manner and with the effect as set forth in §§ 20-7-1322 through 20-7-1329 and § 20-7-1315. Entry of the order does not confer jurisdiction on the courts of this State for any purpose other than income withholding.

§ 20-7-1322. Service of notice of delinquency; obligor's right to hearing.

(a) On the date a support order is entered pursuant to § 20-7-1321, the clerk of court shall serve upon the obligor, in accordance with subsection (C), § 20-7-1315, a verified notice of delinquency. The notice shall also advise the obligor that the income withholding was requested on the basis of a support order of another jurisdiction.

(b) If the obligor seeks a hearing to contest the proposed income withholding the clerk of court shall immediately notify the requesting agency and the Department of Social Services when the request for withholding was from an agency, the obligee, obligor, or an attorney for either of the date, time, and place of the hearing and of the obligee's right to attend the hearing.

§ 20-7-1323. Hearing; presumptions; obligor's defenses; evidence of witnesses in other state.

(a) At any hearing contesting proposed income withholding based on a support order entered under § 20-7-1321, the entered order, accompanying sworn or certified statement, and a certified copy of an order for withholding, if any, still in effect constitutes prima facie proof, without further proof or foundation, that the support order is valid, that the amount of current support payments and arrearages is as stated, and that the obligee is entitled to income withholding under the law of the jurisdiction which issued the support order.

(b) Once a prima facie case is established, the grounds that may be raised by an obligor to contest the withholding are limited to dispute concerning the identity of the obligor or the existence or amount of the arrearage. The burden is on the obligor to establish these defenses. The burden is on the obligor to establish these defenses.

(c) If the obligor presents evidence which constitutes a full or partial defense, the court shall, on the request of the obligee, continue the case to permit further evidence relative to the defense to be adduced by either party but if the obligor acknowledges liability sufficient to entitle the obligee to income withholding, the court shall require income withholding for the payment of current support payments under the support order and of so much of any arrearage as is not in dispute, while continuing the case with respect to those matters still in dispute. The court shall determine those matters still in dispute as soon as possible, and if appropriate shall modify the withholding order to conform to that resolution but may not modify the underlying support order.

(d) In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses in another state, including the parties and any of the children, by deposition, by written discovery, by photographic discovery such as videotaped depositions, or by personal appearance before the court by telephone or photographic means. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony must be taken.

(e) A court of this State may request the appropriate court or agency of another state to hold a hearing to adduce evidence, to permit a deposition to be taken before the court or agency, to order a party to produce or give evidence under other procedures of that state, and to forward to the court of this State certified copies of the evidence adduced in compliance with the request.

(f) Upon request of a court or agency of another state the family courts of this State may order a person in this State to appear at a hearing or deposition before the court to adduce evidence or to produce or give evidence under other procedures available in this State. A certified copy of the evidence adduced, such as a transcript or videotape, must be forwarded by the clerk of the court to the requesting court or agency.

(g) A person within this State may voluntarily testify by statement or affidavit in this State for use in a proceeding to obtain income withholding outside this State.

§ 20-7-1324. Issuance of order to withhold income; notice to obligee.

If the obligor does not request a hearing in the time provided, or if a hearing is held and it is determined that the obligee has or is entitled to income withholding under the local law of the jurisdiction which issued the support order, the clerk of court shall issue a notice to withhold under subsection (E) of § 20-7-1315. The clerk of court shall notify the requesting agency or person of the date upon which withholding must begin.

§ 20-7-1328. Voluntary income withholding.

Any person who is the obligor on a support order of another jurisdiction may obtain voluntary income withholding by filing with the clerk of court a request for withholding and a certified copy of the support order of a sister state. The clerk of court shall issue a notice to withhold under subsection (2) of subsection (E) of § 20-7-1315. Payment must be made to the clerk of court.

Note: Laws may have changed since our last update. For the latest information on these divorce laws, speak to a local divorce lawyer in the state.