

## **CHAPTER 50-09 AID TO DEPENDENT CHILDREN**

**50-09-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Account" means a demand deposit account, checking or negotiable withdrawal order account, share account, share draft account, savings account, time deposit account, securities account, money market mutual fund account, or any other account or arrangement that reflects an owner's share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, to the extent the owner is permitted to redeem the share or interest by an order for payment to a third party.
2. "Assistance" means money payments with respect to, or goods and services provided for dependent children, including payments for the care of unmarried mothers or fathers and their infants.
3. "Child support" has the meaning provided in section 14-09-09.10.
4. "County agency" means the county social service board in each of the counties of the state.
5. "Dependent child" means any needy child who is described in a state plan for aid and services to needy families submitted pursuant to title IV-A.
6. "Financial institution" means:
  - a. A depository institution, as defined in section 3(c) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)];
  - b. An institution-affiliated party, as defined in section 3(u) of the Federal Deposit Insurance Act [12 U.S.C. 1813(u)];
  - c. Any federal credit union or state credit union, as defined in section 101 of the Federal Credit Union Act [12 U.S.C. 1752], including an institution-affiliated party of such a credit union, as defined in section 206(r) of the Federal Credit Union Act [12 U.S.C. 1786(r)]; and
  - d. Any benefit association, insurance company, safe deposit company, securities intermediary, money market mutual fund, or similar entity authorized to do business in the state.
7. "Obligor" has the meaning provided in section 14-09-09.10.
8. "Past-due support" has the meaning provided in section 14-09-09.10.
9. "Secretary" means the secretary of the United States department of health and human services.
10. "Securities account" has the meaning provided in section 41-08-41.
11. "Securities intermediary" has the meaning provided in section 41-08-02, but does not include a clearing corporation.
12. "State agency" means the North Dakota department of human services.

13. "Title IV-A" means title IV-A of the Social Security Act, as adopted by title I of Pub. L. 104-193 [110 Stat. 2110 et seq.; 42 U.S.C. 601 et seq.].
14. "Title IV-B" means title IV-B of the Social Security Act [Pub. L. 90-248, title II, sec. 240(c); 81 Stat. 911; 42 U.S.C. 620 et seq.], as amended.
15. "Title IV-D" means title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.].
16. "Title IV-E" means title IV-E of the Social Security Act [Pub. L. 96-272, title I, sec. 101(a)(1); 94 Stat. 501; 42 U.S.C. 670 et seq.], as amended.
17. "Work activity" means any activity permitted or required to be treated as work for purposes of calculating a work participation rate.

**50-09-02. Duties of the state agency.** The state agency shall:

1. Take such action and adopt rules as may become necessary to entitle the state to receive funds from the federal government under title IV-A.
2. Supervise the administration of temporary assistance for needy families throughout the state of North Dakota.
3. Take such action, give such directions, and adopt rules as may be necessary or desirable to carry out the provisions of this chapter, including the adoption and application of suitable standards and procedure to ensure appropriate treatment of all applicants for temporary assistance for needy families.
4. Cooperate with the federal government in matters of mutual concern pertaining to temporary assistance for needy families, including the adoption of such methods of administration as are found by the state agency to be appropriate for the efficient operation of the plan for such assistance.
5. Provide such qualified employees and representatives as may be necessary.
6. Prescribe the form of and print and supply to the county agencies blanks for applications, reports, and such other forms as it may deem necessary and advisable.
7. Have authority to establish and maintain personnel standards on a merit basis for personnel employed by the state and the county public assistance agencies not covered by a statewide merit system.
8. Make such reports in such form and containing such information as the federal government from time to time may require.
9. Make any determinations respecting title IV-A not expressly reserved to the federal government under federal law.
10. Determine if the terms of any waiver of federal requirements, pertaining to the aid to families with dependent children program, submitted to the federal government before August 22, 1996, are consistent with the requirements of title IV-A.
11. Determine the expenditures that constitute qualified state expenditures for purposes of this chapter.
12. Determine the costs that constitute administrative costs for purposes of this chapter.

13. Determine in any case if assistance provided will be funded through qualified state expenditures, funds made available from the federal government under title IV-A, or a combination thereof.
14. Assist recipients of temporary assistance for needy families, in a form and manner determined appropriate by the state agency, but which need not be uniform among families or among counties.
15. Administer all funds appropriated or made available to it for the purpose of carrying out the provisions of this chapter.
16. Act as the official agency of the state in the administration of the child support enforcement program and medical support enforcement program in conformity with title IV-D. In administering the child support enforcement and medical support enforcement programs, the state agency may contract with any public or private agency or person to discharge the state agency's duties and must maintain an office in each of the eight planning regions of the state.
17. Take actions and adopt rules necessary to entitle the state to receive funds from the federal government under the child care and development block grant [42 U.S.C. 9858 et seq.], as amended.
18. Have authority to establish a program for families that include both a minor child and an incapacitated parent of that minor child, using no federal funds derived from temporary assistance for needy families block grant funds, which otherwise functions in substantially the form and manner of the temporary assistance for needy families program.
19. For purposes of section 674(e)(2) of the Social Security Act [42 U.S.C. 674(e)(2)], approve families, outside of the jurisdiction of the state of North Dakota, for placement of children for adoption.
20. Act as the official agency of the state in the administration of child and family services in conformity with title IV-B and to direct and supervise county administration of that program.
21. Act as the official agency of the state in the administration of federal payments for foster care and adoption assistance in conformity with title IV-E and to direct and supervise county administration of that program.
22. Provide, upon request and insofar as staff resources permit, technical assistance concerning the requirements of title IV-B and title IV-E to courts within this state, including tribal courts, and to state's attorneys and tribal prosecutors within this state.
23. Make training available to state's attorneys and assistant state's attorneys who are willing to collaborate with colleagues in other counties on petitions to terminate parental rights.

**50-09-02.1. State agency to submit plans - Administer programs under title IV-A and title IV-D - Establish data system - Provide capacity for electronic funds transfer.**

1. The state agency may submit state plans in forms that meet the requirements for such plans which are, or may be, imposed under title IV-A or title IV-D. The state agency may take actions reasonably necessary to conform the administration of programs under its supervision and direction to the requirements of title IV-A or title IV-D and the state plans submitted thereunder, including the issuance of policy manuals, forms, and program directives. The state agency may seek appropriate

waivers of the requirements of federal statutes or regulations as authorized by federal law.

2. The state agency shall establish a statewide automated data processing system designed to conform to requirements imposed by or under title IV-D. The state agency must make that system available for the use of clerks of court in carrying out their duties under section 14-09-08.1. The official records of the state regarding all child support amounts owed, collected, and distributed must be maintained in that system. Notwithstanding section 14-08.1-05, any record of a child support obligation that is currently being enforced in another jurisdiction and not by a child support agency, that is owed by an obligor who is deceased, or that is owed to a deceased obligee for whom disbursement of any collections could not occur under section 14-09-25, may be removed indefinitely from the statewide automated data processing system until a request is received from a party to the child support case to restore those records.
3. The statewide automated data processing system must provide capability for electronic funds transfer for the purpose of income withholding and interstate collections.

**50-09-02.2. Assistance for adopted children with special needs.** Assistance provided under this chapter or chapter 50-24.1 after adoption to a child with special needs must be provided without regard to the income or resources of the adopting parents. Except as provided in this section, such assistance continues until the adopted child becomes eighteen years of age, is emancipated, or dies; the adoption is terminated; or a determination of ineligibility is made by the county agency, whichever occurs earlier. If sufficient funds are available, the county agency may continue assistance for an adopted child until the child reaches twenty-one years of age if the agency determines that the adopted child is a student regularly attending a secondary, postsecondary, or career and technical education school in pursuance of a course of study leading to a diploma, degree, or gainful employment. Assistance provided to an adopted child must continue regardless of the residence of the adopting parents. A state or county agency may require, as a condition of receiving assistance under this chapter or chapter 50-24.1, that the adopting parents enter into a contract or agreement regarding the type of assistance to be received; the amount of assistance; the identity of the physical, mental, or emotional condition for which medical assistance is received; or any conditions for continued receipt of assistance. A child with special needs is a child legally available for adoptive placement whose custody has been awarded to the department or a county social service board and who is seven years of age or older; under eighteen years of age with a physical, emotional, or mental disability or has been diagnosed by a licensed physician to be at high risk for such a disability; a member of a minority; or a member of a sibling group.

**50-09-02.3. Department to apply for waiver.** Repealed by S.L. 1995, ch. 464, § 1.

**50-09-02.4. State case registry.**

1. The statewide automated data processing system established under section 50-09-02.1 must include a registry that contains records with respect to:
  - a. Each child support case in which services are being provided by the state agency under title IV-D; and
  - b. Each child support order established or modified in this state on or after October 1, 1998.
2. The case records must use standardized data elements for both parents and contain other information the secretary requires.
3. Each case record concerning a case with respect to which services are being provided by the state agency under title IV-D must:

- a. Include payment records consistent with the requirements of title IV-D, which include:
  - (1) The amount of current monthly or other periodic support owed under the order and other amounts, including arrearages, interest, late payment penalties, fees, and amounts determined under section 14-09-09.30, due or past due under the order;
  - (2) Any amount described in paragraph 1 that has been collected;
  - (3) The distribution of collected amounts;
  - (4) The birthdate and the social security number of any child for whom an order requires the provision of support; and
  - (5) The amount necessary to satisfy any lien imposed under chapter 35-34 or established as a judgment lien under section 14-08.1-05.
- b. Be established, maintained, updated, and monitored on the basis of:
  - (1) Information on administrative actions and administrative and judicial proceedings and orders relating to paternity and child support;
  - (2) Information obtained from comparison with federal, state, and local sources of information;
  - (3) Information on child support collections and distributions; and
  - (4) Any other relevant information.

**50-09-02.5. Required uses of statewide automated data processing system.** The statewide automated data processing system established under section 50-09-02.1 must, in accordance with requirements of title IV-D, and regulations, formats, and operating requirements of the secretary adopted thereunder:

1. Effective October 1, 1998, provide comparisons respecting:
  - a. Federal and state case registry information;
  - b. Federal and state parent locator information;
  - c. Information secured under this chapter, chapter 50-24.1, similar laws administered in other states, and such other programs designated by the secretary as necessary to perform state agency functions under title IV-D, and under the respective programs; and
  - d. Information gathered by other agencies of this state, agencies of other states, and interstate networks as necessary and appropriate to carry out state agency duties respecting title IV-D or to assist other states to carry out similar duties;
2. Effective October 1, 1998, be used by the state disbursement unit in the performance of functions including:
  - a. Timely transmission of orders and notices to income payers for the withholding of income using uniform formats prescribed by the secretary;
  - b. Ongoing monitoring to promptly identify failures to make timely payment of support;

- c. Automatic use of enforcement procedures if payments are not timely made; and
  - d. Be used, to the maximum extent feasible, to receive and disburse child support payments through electronic fund transfers; and
3. Be used, to the maximum extent feasible, to implement the expedited administrative procedures required by title IV-D.

**50-09-02.6. State agency to submit plans and administer programs under title IV-B and title IV-E - Make application for federal funds.**

1. The state agency may submit state plans in forms that meet the requirements for such plans which are, or may be, imposed under title IV-B or title IV-E. The state agency may take actions reasonably necessary to conform the administration of programs under its supervision and direction to the requirements of title IV-B or title IV-E and the state plans submitted thereunder, including the issuance of policy manuals, forms, and program directives. The state agency may seek appropriate waivers of the requirements of federal statutes or regulations as may be authorized by federal law.
2. The state agency may apply for additional or conditionally available funds, such as adoption incentive payments, as may be made available under title IV-B or title IV-E, and may take any action reasonably necessary to support an application.

**50-09-02.7. Child support arrears registry.** The state case registry maintained under section 50-09-02.4 must include a registry of any obligor who owes past-due support in an amount greater than two times the obligor's current or most recent monthly support obligation as defined in section 14-09-09.10 or two thousand dollars, whichever is less. As used in this chapter, "arrears registry" means the registry maintained under this section.

**50-09-03. Duties of county agency.** In the administration of assistance under this chapter, a county agency shall:

1. Administer the temporary assistance for needy families program in its county, subject to the rules of the state agency.
2. Report to the state agency at such times and in such manner and form as the state agency, from time to time, may direct.
3. Submit annually to the board of county commissioners of each county a budget containing an estimate and supporting data, setting forth the amount of money needed to carry out the provisions of this chapter.
4. Cooperate with juvenile courts and licensed children's agencies.
5. Administer child and family services under the direction and supervision of the state agency in conformity with title IV-B.
6. Administer federal payments for foster care and adoption assistance under the direction and supervision of the state agency in conformity with title IV-E.

**50-09-04. Preservation and protection of religious faith.** The county and state agencies shall preserve and protect the religious faith of children coming under their jurisdiction.

**50-09-05. Eligibility for assistance.** Repealed by S.L. 1975, ch. 447, § 5.

**50-09-06. Application for assistance.** Application for assistance under this chapter must be made to the county agency in the manner and form prescribed by the state agency. The

application must contain such information as the state agency may require, and the action of the state agency in approving and granting assistance or in disapproving and denying assistance is final and binding on the county agency.

**50-09-06.1. Assignment of support rights.** An application under this chapter is deemed to create and effect an assignment of all rights to support, which a family member or foster child may have or come to have, to the state agency. The assignment:

1. Is effective as to all current and accrued support obligations and periods of eligibility;
2. Is limited to the total cost of benefits provided to the family or foster child;
3. Terminates when eligibility ceases, except with respect to any support obligation unpaid at that time; and
4. Is not effective as to any child subject to a benefit cap imposed under section 50-09-29.

**50-09-06.2. State agency may compromise claims.** The state agency may compromise claims arising out of assignments made under sections 50-09-06 and 50-09-06.1, on such terms as it may deem just and appropriate. The state agency may not be compelled to compromise any claim.

**50-09-07. Investigation by county agency.** Whenever a county agency shall receive an application for assistance, or assistance has been granted, under this chapter, the agency promptly shall make an investigation and record of the circumstances of the applicant, or child, or both, in order to ascertain the facts supporting the application or the granting of assistance and shall obtain such other information as may be required by the rules and regulations of the state agency.

**50-09-08. Investigations - Power of county agencies, state agency, and employees.**

1. In the investigation of applications under the provisions of this chapter, the county agencies, the state agency, and the officials and employees of such agencies charged with the administration and enforcement of this chapter may:
  - a. Conduct examinations;
  - b. Require the attendance of witnesses and the production of books, records, and papers; and
  - c. Make application to the district court of the county to compel the attendance of witnesses and the production of books, records, and papers.
2. The state agency may request from other state, county, and local agencies information deemed necessary to carry out the child support enforcement program. All officers and employees of state, county, and local agencies shall cooperate with the state agency in locating absent parents of children to whom an obligation of support is owed or on whose behalf assistance is being provided and, on request, shall supply the state agency with available information relative to the location, income, social security number, and property holdings of the absent parent, notwithstanding any provision of law making that information confidential. Any person acting under the authority of the state agency who pursuant to this subsection obtains information from the office of the state tax commissioner, the confidentiality of which is protected by law, may not divulge such information except to the extent necessary for the administration of the child support enforcement program or when otherwise directed by judicial order or when otherwise provided by law.

3. The officers and employees designated by the county agencies or the state agency may administer oaths and affirmations.

**50-09-08.1. Stepfather's liability for dependent child.** Repealed by S.L. 1971, ch. 153, § 2.

**50-09-08.2. Power of state agency and employees and agents.**

1. In implementing programs under title IV-D, the state agency, and the officials, employees, and agents of the agency may:
  - a. Conduct examinations;
  - b. Require by subpoena the attendance of witnesses and the production of books, records, and papers;
  - c. Compensate witnesses and individuals producing books, records, including records maintained in automated data bases, and papers in amounts determined by the state agency, not to exceed actual reasonable costs incurred and not to include any costs incurred by a financial institution that has not entered into an agreement under subdivision h nor costs incurred by any person that reflects the difference between responding to a subpoena and providing information under subdivision g or k;
  - d. Impose a fiscal sanction of no more than twenty-five dollars for each day against a person who fails to attend as a witness or produce books, records, or papers;
  - e. Require genetic testing of appropriate individuals when necessary in disputed paternity cases, to determine the relationship of parent and child, and:
    - (1) Pay the costs of such testing, subject to recoupment from the alleged father if paternity is established; and
    - (2) Obtain additional testing in any case if an initial test result is contested, upon request and advance payment by the contestant;
  - f. Make application to the district court to compel participation in genetic testing, the attendance of witnesses, the production of books, records, and papers, and the payment of fiscal sanctions imposed under this section;
  - g. Notwithstanding any provision of this code making the records confidential, in addition to or in lieu of a subpoena, obtain access, including automated access in the case of records maintained in automated data bases, to:
    - (1) Records of other state and local government agencies, including:
      - (a) Vital statistics, including records of marriage, birth, and divorce;
      - (b) Local tax and revenue records, including information on residence address, employer, income, and assets;
      - (c) Records concerning real and titled personal property;
      - (d) Records of occupational and professional licenses and records concerning the ownership and control of corporations, partnerships, and other business entities;
      - (e) Employment security records;

- (f) Workforce safety and insurance records identifying the last-known address of a person who owes or who is owed support, the wage-loss benefits, permanent partial impairment benefits, death benefits, or additional benefits that person has received or is entitled to receive from the organization, and whether and where that person is currently employed;
  - (g) Records of all agencies administering public assistance programs;
  - (h) Records of the department of transportation, which access is not subject to the requirements in section 39-16-03;
  - (i) Corrections records;
  - (j) Law enforcement records; and
  - (k) Subject to an agreement with the state tax commissioner, state tax and revenue records, including information on residence address, employer, income, and assets; and
- (2) Certain information contained in records held by private entities with respect to individuals who owe or are owed child support, or against or with respect to whom a child support obligation is sought, subject to safeguards on privacy and information security, consisting of:
- (a) The names, addresses, social security numbers, and other requested relevant income or asset information of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records of public utilities, including cellular and wireless telephone service providers, and cable television companies, pursuant to an administrative subpoena if requested; and
  - (b) Information on assets and liabilities on those individuals held by financial institutions;
- h. Enter into agreements with financial institutions doing business in the state, and with the assistance, or through the agency, of the secretary, with financial institutions doing business in two or more states:
- (1) To develop and operate, in coordination with those financial institutions, a data match system, using automated data exchanges to the maximum extent feasible, in which each such financial institution is required to provide in each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such financial institution and who owes past-due support, as identified by the state agency by name and social security number or other taxpayer number; and
  - (2) Under which such financial institution, in response to a notice of lien or an execution, will encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a lien for unpaid child support;
- i. For purposes of locating parents or alleged parents of children receiving services under title IV-D, provide all federal and state agencies conducting activities under title IV-D with access to:

- (1) Records of the department of transportation; and
    - (2) Law enforcement records;
  - j. Notwithstanding any provision of law making the records confidential:
    - (1) Provide access to information identifying the amount of payment necessary to obtain the release of a lien taken by the state agency in any property to secure the payment of child support; and
    - (2) Upon payment of a sufficient amount, satisfy and release that lien; and
  - k. Upon agreement, exchange information, including social security numbers, with a person listed in subdivision g for the purpose of identifying individuals who owe or are owed child support, or against or with respect to whom a child support obligation is sought, and any income, assets, or liabilities of those individuals.
2. All information received under this section, if confidential under some other provision of law, is subject to the penalties under section 50-06-15 and is confidential, except that the information may be used in the administration of any program administered by or under the supervision and direction of the department and as specifically authorized by the rules of the department. Any information received under this section, if not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota in the possession of the person providing the information, is exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. Any person acting under the authority of the state agency who pursuant to this subsection obtains information from the office of the state tax commissioner, the confidentiality of which is protected by law, may not divulge such information except to the extent necessary for the administration of the child support enforcement program or when otherwise directed by judicial order or otherwise provided by law.
3.
  - a. As provided in title IV-D, a person is immune from suit or any liability under any federal or state law:
    - (1) For any disclosure of information, in any form, made under this section, to the state agency, a county agency, or an official, employee, or agent of either;
    - (2) For encumbering or surrendering any assets held by a financial institution in response to a notice of lien or an execution issued by the state agency as provided in section 28-21-05.2 and chapter 35-34; or
    - (3) For any other action taken in good faith to comply with the requirements of this section.
  - b. The court shall award reasonable attorney's fees and costs against any person who commences an action that is subsequently dismissed by reason of the immunity granted by this section.
4. The officers and employees designated by the county agencies or the state agency may administer oaths and affirmations.
5. All employing or contracting entities within this state, including for-profit, nonprofit, and governmental employers, shall provide information on the employment, compensation, and benefits of any individual employed by such entity as an employee or contractor within ten days of a request made under subsection 1 or made by the agency of any other jurisdiction charged with administration of

programs under title IV-D. An entity that receives a request for which a response is required by this section is subject to a fiscal sanction of twenty-five dollars for each day, beginning on the eleventh day after the request is made and not complied with.

**50-09-08.3. Administrative enforcement in interstate cases.** In acting as the official agency of the state in administering the child support program under title IV-D, the state agency, directly or through agents and county agencies:

1. Shall use high-volume automated administrative enforcement, to the same extent as used in intrastate cases, in response to a request made by another state to enforce a child support order, and shall promptly report the results of such enforcement procedure to the requesting state;
2. May transmit requests, by electronic or other means, to other states for assistance in cases involving enforcement of child support orders which include information provided and intended to enable the receiving state to compare information about the case to information in the data bases of the receiving state, and which constitute a certification:
  - a. Of the amount of arrearages, if any, under the child support order; and
  - b. That procedural due process requirements applicable to the case have been complied with;
3. In cases in which the state agency receives requests made by another state to enforce a child support order, shall not consider that matter a child support case transferred to this state, but may establish a corresponding case based on the other state's request for assistance; and
4. Shall maintain records of:
  - a. The number of requests for assistance made by other states;
  - b. The number of cases in which this state collected support in response to requests made by other states; and
  - c. The amount of support collected.

For purposes of this section, the term "high-volume automated administrative enforcement" means, in interstate cases, on request of another state, the identification, by this state, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in another state, and the seizure of such assets, by this state, through levy or other appropriate processes.

**50-09-08.4. Reporting arrearages to credit bureaus.**

1. In acting as the official agency of the state in administering the child support program under title IV-D, the state agency, directly or through agents and county agencies, subject to subsection 2, may report periodically to consumer reporting agencies the name of any obligor who owes past-due support and the amount of past-due support owed by the obligor.
2. The state agency may report under subsection 1 only after such an obligor has been provided notice and a reasonable opportunity to contest the accuracy of the statement of the name and amount of overdue support owed by the obligor.
3. For purposes of this section, "consumer reporting agency" means an agency that has furnished evidence, satisfactory to the department, that the agency is a

consumer reporting agency as defined in section 603(f) of the Fair Credit Reporting Act [15 U.S.C. 1681a(f)].

**50-09-08.5. Securing assets to satisfy child support.** In acting as the official agency of the state in administering the child support program under title IV-D, in cases in which there is past-due child support, the state agency may secure assets to satisfy any current support obligation and the past-due amount by issuing writs of execution under chapter 28-21 or domestic relations orders that comply with federal law regarding pensions. Those writs of execution or domestic relations orders may be used to secure or seize property including:

1. Periodic or lump sum payments from:
  - a. An agency administering unemployment compensation benefits, workforce safety and insurance benefits, or other benefits; and
  - b. Judgments, settlements, and gaming proceeds otherwise belonging to the obligor, or payable upon the obligor's demand;
2. Assets of the obligor held in financial institutions; and
3. Public and private retirement funds.

**50-09-08.6. Suspension of occupational, professional, recreational, motor vehicle operator, and vehicle licenses and registrations for nonpayment of child support or failure to obey subpoena.**

1. As used in this section:
  - a. "License" means:
    - (1) Any certificate, permit, or license issued by an agency of the state or a political subdivision of the state which the obligor is required to obtain prior to engaging in the obligor's occupation or profession;
    - (2) Any certificate, permit, or license issued by an agency of the state which the obligor is required to obtain prior to engaging in a recreational activity; and
    - (3) Any operator's license or vehicle license or registration which the obligor is required to obtain prior to operating or owning a vehicle in this state. As used in this section, "vehicle" includes any motor vehicle as defined in section 39-01-01, aircraft, snowmobile, motorboat, or personal watercraft.
  - b. "Licensee" means a person who has applied for or currently possesses a license.
  - c. "Licensing authority" means an agency of the state or a political subdivision of the state that issues a license, including occupational or professional boards, the game and fish department, and the department of transportation.
  - d. "Restrict", as it relates to the operator's license of an obligor or a person who fails to comply with a subpoena, includes the authority of the state agency to authorize the issuance, upon request for good cause, of a restricted operator's license that is solely for the use of a motor vehicle during the licensee's normal working hours.
2. The state agency, directly or through agents and child support agencies, may withhold, restrict, or suspend one or more licenses issued to:

- a. A person who has failed, after receiving proper notice, to comply with a subpoena relating to a paternity or child support matter;
  - b. An obligor who is listed on the arrears registry; or
  - c. An obligor who is not in compliance with an existing payment plan that has been negotiated between the obligor and the state agency under this section or in exchange for the state agency refraining from taking an enforcement action against the obligor.
3. Before withholding, restricting, or suspending a license under subdivision a or b of subsection 2, the state agency shall send a notice to the licensee by first-class mail to the licensee's last-known address stating that the licensee has thirty days after the date of the notice to comply with the subpoena, satisfy the arrearage in full, or negotiate a payment plan with the state agency under this section. The notice must further state that the licensee may contest the action of the state agency by making a written request for a court hearing under subsection 5 within ten days of the date of the notice.
4. Upon notice to the licensee, the state agency may withhold, restrict, or suspend a license under subdivision c of subsection 2 at any time if the licensee fails to comply with a payment plan negotiated under this section. A copy of the state agency's order to withhold, restrict, or suspend a license must be sent to the licensee by first-class mail to the licensee's last-known address. The order must state that the licensee may contest the action of the state agency by making a written request for a court hearing under subsection 5 within ten days of the date of the order.
5. A request for a hearing under this section must be made to the court that issued or considered the child support order. If a child support order was issued by a court or administrative tribunal in another jurisdiction, the request may be made to any court of this state which has jurisdiction to enforce that order or, if no court of this state has jurisdiction to enforce that order, in any court of this state with jurisdiction over the licensee.
6. In a contest under this section, the court must affirm the action of the state agency to withhold, restrict, or suspend a license unless it finds that the licensee's delinquency or failure to comply with a subpoena, or an existing payment plan was not willful. Upon a showing by the state agency that the licensee has failed to comply with a subpoena, is listed on the arrears registry, or is not in compliance with an existing payment plan between the licensee and the state agency under this section, the licensee has the burden of proving that the delinquency or failure to comply was not willful.
7. The state agency shall notify the appropriate licensing authority that the state agency has withheld, restricted, or suspended a license under this section. A license that is withheld, restricted, or suspended by the state agency under this section may be reinstated only by the state agency after the licensee complies with the subpoena, satisfies the arrearage in full, or enters into a payment plan with the state agency under this section.
8. An obligor and the state agency may enter into a payment plan under which the obligor agrees to satisfy the obligor's total child support obligation, including arrears, within a period not to exceed ten years. A payment plan under this section must require the obligor to make an immediate payment to the state disbursement unit in an amount equal to five percent of the total arrears owed by the obligor or five hundred dollars, whichever is greater. The state agency may waive or reduce the immediate payment that is due under a payment plan if the obligor's current or most recent monthly support obligation is less than five hundred dollars. The state agency may require that a payment plan under this section include satisfaction of all

court-ordered child support obligations of the obligor. The obligor's current or most recent monthly support obligation under section 14-09-09.30 must be considered when determining the duration of a payment plan under this section and the payments due under the agreement. A payment plan under this section is not a modification of any child support obligation of the obligor and does not bar judicial review of a child support order under section 14-09-08.4 or other enforcement actions by the obligee or the state agency.

9. An action of the state agency to withhold, restrict, or suspend a license under this section may not be appealed to the state agency or to the licensing authority, including an appeal under chapter 28-32. Section 50-09-14 does not apply to actions taken by the state agency under this section.
10. Except for statistical purposes, an entry on the driving record or abstract of a restriction or suspension under this section after the restriction or suspension ceases may not be available to the public other than by order of a court of competent jurisdiction.
11. A licensing authority and any person acting on its behalf is not liable for any actions taken to withhold, restrict, or suspend a license under this section. This section does not limit the ability of a licensing authority to withhold, restrict, or suspend a license on any other grounds authorized by law.

**50-09-09. Award of assistance.** Upon completion of the investigation of an applicant for assistance under this chapter, the county agency shall determine, in accordance with the rules of the state agency:

1. If the applicant may be provided assistance under the provisions of this chapter;
2. The amount and type of any assistance the applicant may receive; and
3. The date upon which such assistance may begin.

In all cases, a statement of the findings of the county agency forthwith must be transmitted to the state agency.

**50-09-10. Amount of assistance - Consideration of stepfather's income.** Repealed by S.L. 1987, ch. 571, § 9.

**50-09-10.1. State agency authorized to make seasonal adjustments to payment levels.** Repealed by S.L. 1987, ch. 571, § 9.

**50-09-11. Redetermination of awards.** Repealed by S.L. 1987, ch. 571, § 9.

**50-09-12. Records - State agency to make rules governing - Use of by other agencies limited.** Repealed by S.L. 1987, ch. 571, § 9.

**50-09-13. Disclosure of information contained in records - Penalty.** Repealed by S.L. 1977, ch. 451, § 2.

**50-09-14. Appeal and hearing - Review of child support actions.**

1. An applicant for or recipient of temporary assistance for needy families under this chapter, aggrieved because of a county agency's decision or delay in making a decision, may appeal to the state agency in the manner prescribed by the state agency and must be afforded a reasonable notice and opportunity for a fair hearing by the state agency. The state agency, on its own motion, may review individual cases and make determinations which are binding upon the county agency. An applicant or recipient aggrieved by any such determination, upon request, must be

afforded reasonable notice and opportunity for a fair hearing by the state agency. All decisions of the state agency made on an appeal are final and are binding upon and must be complied with by the county agency.

2. Any person aggrieved by an action taken by the state agency or a child support agency under section 14-09-25, chapter 35-34, this chapter, or by the North Dakota lottery director under chapter 53-12.1 to establish or enforce a child support order may seek review of the action in the court of this state which issued or considered the child support order. If an order for child support was issued by a court or administrative tribunal in another jurisdiction, any person aggrieved by an action taken by the state agency or a child support agency under section 14-09-25, chapter 35-34, this chapter, or by the North Dakota lottery director under chapter 53-12.1 to enforce that order may seek review of the action in any court of this state which has jurisdiction to enforce that order, or if no court of this state has jurisdiction to enforce that order, in any court of this state with jurisdiction over the necessary parties. Any review sought under this subsection must be commenced within thirty days after the date of action for which review is sought. A person who has a right of review under this subsection may not seek review of the actions in a proceeding under chapter 28-32.

**50-09-15. Assistance for dependent children not assignable.** Repealed by S.L. 1987, ch. 386, § 2.

**50-09-15.1. Child support improvement account - Continuing appropriation.** The child support improvement account is established as a special account in the state treasury. Five percent of the total amount of child support incentive payments paid to the state by the office of child support enforcement of the United States department of health and human services must be deposited into the child support improvement account. The funds in the child support improvement account, the balance of the child support incentives account on July 1, 2005, and any matching federal funds received by the state agency are appropriated on a continuing basis for the sole purpose of producing increases in child support collections, federal child support incentives, or other revenue or savings to the state agency, or reductions in unpaid child support, that exceed the total amount of improvement funds expended. Improvement funds may be used to sponsor training and publications that promote child support enforcement activities. The state agency shall develop and maintain a business plan that defines the goals and objectives of the child support enforcement program, identifies methods to increase child support collections or reduce unpaid child support, and outlines the process for evaluating progress toward the goals and objectives in the business plan. The state agency must maintain a record of its use of improvement funds and the anticipated result from the use of the funds. Improvement funds may only be used for activities that are included in the business plan maintained under this section.

**50-09-16. Aid to dependent children fund - Receipts for moneys received.** Repealed by S.L. 1997, ch. 403, § 13 and S.L. 1997, ch. 404, § 78.

**50-09-17. Disbursements of aid to dependent children fund - How made - Payment of aid and expenses of state agency.** Repealed by S.L. 1997, ch. 403, § 13 and S.L. 1997, ch. 404, § 78.

**50-09-18. Persons handling money of fund bonded.** Repealed by S.L. 1997, ch. 403, § 13.

**50-09-19. Care of child in boarding home or child-placing agency - How paid.** Repealed by S.L. 1987, ch. 571, § 9.

**50-09-20. Appropriation of county funds.** Repealed by S.L. 1997, ch. 403, § 13 and S.L. 1997, ch. 404, § 79.

**50-09-20.1. Amounts state liable for - Reimbursement by state.** Repealed by S.L. 1997, ch. 403, § 13 and S.L. 1997, ch. 404, § 79.

**50-09-20.2. Amount state liable for - Prepayment by state.** Repealed by S.L. 1997, ch. 403, § 13.

**50-09-21. Amount county liable for - Reimbursement by county.** Repealed by S.L. 1997, ch. 403, § 13 and S.L. 1997, ch. 404, § 79.

**50-09-21.1. County share of foster care costs.**

1. For all periods after January 1, 1998, each county shall reimburse the state agency, upon claim being made therefor by the state agency, for that county's share of one-fourth of the amount expended in the state in excess of any amount provided by the federal government under title IV-E for payments on behalf of children approved and granted foster care for children or subsidized adoption, without regard to that child's eligibility for benefits under title IV-E.
2. Each county's share of all counties' shares must be calculated under a formula established by the state agency through consultation with county representatives. The formula must:
  - a. Include consideration of the most recent census data or official census estimates of the number of youth in each county;
  - b. Include consideration of recent expenditures for foster care for youth from each county; and
  - c. Be established by policy, and not by rule.

**50-09-22. Procedure for reimbursement.** Repealed by S.L. 1997, ch. 403, § 13 and S.L. 1997, ch. 404, § 79.

**50-09-23. Fraudulent acts - Penalty.** Repealed by S.L. 1975, ch. 106, § 673.

**50-09-24. Limitations of chapter.** All assistance awarded under this chapter must be deemed to be awarded and to be held subject to the provisions of any amending or repealing act which may be passed, and no recipient shall have any claim for compensation, or otherwise, because that recipient's assistance has been affected in any way by any amending or repealing act. Assistance provided under this chapter is not an entitlement. No person has a property interest in any assistance sought or provided under this chapter. This chapter may not be construed to require provision of assistance not required by federal law.

**50-09-25. Authority to adopt rules.** The state agency may adopt rules reasonable or necessary to carry out its responsibilities under this chapter.

**50-09-26. Transition to training, education, employment, and management program.** Repealed by S.L. 2001, ch. 418, § 6.

**50-09-27. Programs funded at state expense - Interpretation.**

1. The state shall bear the cost, in excess of the amount provided by the federal government, of:
  - a. Services provided under section 50-06-06.8 and this chapter as child care assistance;
  - b. Services provided under this chapter as employment and training programs; and
  - c. Temporary assistance for needy families benefits provided under this chapter.

2. This section does not grant any recipient of services, benefits, or supplements identified in subsection 1, any service, benefit, or supplement that a recipient could not claim in the absence of this section.

**50-09-28. Substitution of terms - Meaning of title IV-A.** Whenever the term "aid to families with dependent children", or any derivative of that term, appears in this code or the North Dakota Administrative Code, used in a context that refers to a period following the effective date of a state plan submitted under section 402 of the Social Security Act, as added by title I of Pub. L. 104-193; 110 Stat. 2110, the term "temporary assistance for needy families", or a derivative of that term, must be substituted therefor. The term "title IV-A of the Social Security Act", or any derivative of that term, whenever it appears in this code or the North Dakota Administrative Code, used in a context that refers to a period following the effective date of a state plan submitted under section 402 of the Social Security Act, as added by title I of Pub. L. 104-193; 110 Stat. 2110, refers to title IV-A of the Social Security Act, as amended by section 103 of Pub. L. 104-193; 110 Stat. 2112 et seq.

**50-09-29. Requirements for administration of temporary assistance for needy families.**

1. Except as provided in subsections 2, 3, and 4, the department of human services, in its administration of the temporary assistance for needy families program, shall:
  - a. Provide assistance to otherwise eligible women in the third trimester of a pregnancy;
  - b. Except as provided in subdivision c, afford eligible households benefits for no more than sixty months;
  - c. Exempt eligible households from the requirements of subdivision b due to mental or physical disability of a parent or child, mental or physical incapacity of a parent, or other hardship including a parent subject to domestic violence as defined in section 14-07.1-01;
  - d. Unless an exemption, exclusion, or disregard is required by law, count income and assets whenever actually available;
  - e. Except as provided in subdivision j, and as required to allow the state to receive funds from the federal government under title IV-A, provide no benefits to noncitizen immigrants who arrive in the United States after August 21, 1996;
  - f. Limit eligibility to households with total available assets, not otherwise exempted or excluded, of a value established by the department not to exceed five thousand dollars for a one-person household and eight thousand dollars for a household of two or more;
  - g. Exclude one motor vehicle of any value in determining eligibility;
  - h. Require work activities for all household members not specifically exempted by the department of human services for reasons such as mental or physical disability of a parent or child or mental or physical incapacity of a parent;
  - i. Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies and establish numerical goals for reducing the illegitimacy rate for the state for periods through calendar year 2005;
  - j. To the extent required to allow the state to receive funds from the federal government under title IV-A, provide benefits to otherwise eligible noncitizens who are lawfully present in the United States;

- k. Establish and enforce standards against program fraud and abuse;
  - l. Provide employment placement programs;
  - m. Consider implementing an electronic fund transfer system;
  - n. Exempt from assets and income the savings and proportionate matching funds in individual development accounts;
  - o. Determine the unemployment rate of adults living in a county that includes Indian reservation lands and a significant population of Indian individuals by using unemployment data provided by job service North Dakota;
  - p. When appropriate, require household members to complete high school;
  - q. To the extent required to allow the state to receive funds from the federal government under title IV-A, exempt single parents from required work activities;
  - r. Provide for sanctions, including termination of assistance to the household, if a household member fails to cooperate with work requirements;
  - s. Provide for sanctions, including termination of assistance to the household, if a household member fails, without good cause, to cooperate with child support activities;
  - t. Deny assistance with respect to a minor child absent from the household for more than one calendar month, except as specifically provided by the state agency for absences;
  - u. Require each household to participate in developing an individual responsibility plan and provide for sanctions, including termination of assistance to the household, if adult or minor household members age sixteen or older fail to cooperate in developing an individual responsibility plan;
  - v. Provide pre-pregnancy family planning services that are to be incorporated into the temporary assistance for needy families program assessment;
  - w. Except in cases of pregnancy resulting from rape or incest, not increase the assistance amount to recognize the increase in household size when a child is born to a household member who was a recipient of assistance under this chapter during the probable month of the child's conception;
  - x. Disregard earned income as an incentive allowance for no more than twelve months; and
  - y. Consider, and if determined appropriate, authorize demonstration projects in defined areas which may provide benefits and services that are not identical to benefits and services provided elsewhere.
2. If the secretary of the United States department of health and human services determines that funds otherwise available for the temporary assistance for needy families program in this state must be reduced or eliminated should the department of human services administer the program in accordance with any provision of subsection 1, the department of human services shall administer the program in a manner that avoids the reduction or loss.
  3. If the department of human services determines, subject to the approval of the legislative management, that there is insufficient worker opportunity, due to

increases in the unemployment rate, to participate in work activities, the department may administer the temporary assistance for needy families program in a manner different than provided in subsection 1.

4. If the department of human services determines, subject to the approval of the legislative management, that administration of the temporary assistance for needy families program, in the manner provided by subsection 1, causes otherwise eligible individuals to become a charge upon the counties under chapter 50-01, the department may administer the program in a manner that avoids that result.

**50-09-30. Child support agencies exempt from certain fees.** The recorder and secretary of state may not charge or collect any fee otherwise prescribed by law from a state or county agency engaged in the establishment of paternity or the establishment, modification, or enforcement of child support orders.

**50-09-31. Victims of domestic violence - Duties of state agency.**

1. The state agency shall:
  - a. Inform all temporary assistance for needy families applicants and recipients of the options available under the domestic violence option;
  - b. Screen all applicants to determine who are past or present victims of domestic violence or at risk of further domestic violence;
  - c. Refer these individuals to a local domestic violence sexual assault organization for safety planning and supportive services; and
  - d. Determine if good cause exists to waive work requirements or time limits on receipt of benefits for victims of domestic violence.
2. For purposes of this section:
  - a. "Domestic violence option" means the provision of title IV-A under which a state may elect to implement a special program to serve victims of domestic violence.
  - b. "Domestic violence sexual assault organization" has the meaning provided in section 14-07.1-01.
  - c. "Victims of domestic violence" means a person subject to domestic violence as defined in section 14-07.1-01.

**50-09-32. Disclosure of identity of child support obligors.**

1. To the extent permitted by federal law, the state agency may disclose information to the public about a parent whose location is unknown or about an obligor who is listed on the arrears registry and owes past-due child support in an amount greater than ten thousand dollars, including the person's name, last-known address, date of birth, occupation, photograph, amount of child support owed, the number and ages of the children for whom support is owed, and any other information that would assist in locating the person.
2. Prior to disclosing information about an obligor under this section, the state agency shall send to each obligor whose name will be released a notice by regular mail to the obligor's last-known address. The notice must contain the information the state agency plans to release and give the obligor thirty days to object to the accuracy of the information. The notice must state that the obligor may avoid public disclosure of the information under this section if the obligor provides the state agency with the

obligor's current address and employer and makes a child support payment in an amount equal to the amount of child support the obligor is required to pay each month under section 14-09-09.30. Information regarding an obligor who owes any past-due support may be disclosed if at any time after receiving a notice under this subsection the obligor fails to make a required child support payment in an amount determined under section 14-09-09.30.

3. The state agency shall obtain the written consent of the obligee before disclosing information regarding an obligor under subsection 1.
4. The state agency must develop and maintain a list of the names, addresses, and amounts of past-due support owed by obligors who have been found in contempt of court in this state for failure to comply with a child support order or who have been found guilty of willful failure to pay child support under section 12.1-37-01. Notwithstanding subsections 2 and 3, to the extent permitted by federal law, the state agency must release the list upon request under section 44-04-18. The state agency may remove from the list any obligor who no longer owes past-due support, any obligor who is deceased or whose obligation is being enforced in another jurisdiction, or any obligor whose conviction under section 12.1-37-01 has been expunged.
5. The state agency, its employees and agents, and any person publishing information that is disclosed under this section is immune from any civil or criminal liability resulting from the disclosure of information under this section.

**50-09-33. Continuing appropriation - Cooperative agreements for child support enforcement services.** All federal funds and other income generated by the state agency under a cooperative agreement with an Indian tribe for child support enforcement services are appropriated on a continuing basis for the sole purpose of hiring additional staff and payment of other expenses as necessary to carry out the state agency's duties under the agreements.

**50-09-34. Administration of child support enforcement activities.** Repealed by S.L. 2007, ch. 417, § 15.

**50-09-35. Child support deduction order.**

1. The state agency, directly or through agents, may issue an order requiring an income payer to deduct the amount identified in the order from the portion of any lump sum payment to an obligor that has been withheld under section 14-09-09.34.
2. The state agency, directly or through agents, may issue an order requiring a financial institution to deduct the amount identified in the order from any account of the obligor maintained in the financial institution.
3. The state agency shall serve the order on the income payer or financial institution in the manner provided for service of a summons in a civil action or in any other manner agreed to by the income payer or financial institution. The state agency shall serve a copy of the order upon the obligor by first-class mail to the obligor's last-known address, along with a notice of the obligor's right to claim that the property is exempt from legal process under section 28-22-02, the right to request an informal review by the state agency within ten days of the date of the notice, and the right of the obligor and any other aggrieved person to a review by a court under section 50-09-14. If an informal review is requested under this subsection, the time for requesting a review by a court under section 50-09-14 does not expire until thirty days after the informal review is completed.
4. The income payer or financial institution shall deduct the amount identified in the order or the balance of the account, whichever is less, and transmit the funds to the state disbursement unit within seven business days of the date the order is served.

5. An order issued under this section has priority over any other legal process against the same account, except to the extent necessary to satisfy any right of setoff which exists in connection with an account, payment orders that were made by the obligor before the financial institution was served with the order, or other obligations of the obligor based upon written agreements or instruments made or issued by the obligor before the financial institution was served with the order.
6. An income payer or financial institution may also withhold and retain an additional sum of three dollars from the obligor's account or from the amount retained under section 14-09-09.34 to cover expenses involved in transmitting payment.
7. An income payer or financial institution receiving an order under this section is subject to the same duties and liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise and is immune from suit or liability for complying with an order under this section.

**50-09-36. (Effective through June 30, 2010) Protest period.** Except as authorized by the obligor, the state agency shall hold any funds collected under section 28-21-05.2 or 50-09-35 and may not disburse the funds as a collection of child support until the time has expired for requesting a review by a court under section 50-09-14 or the conclusion of the review, whichever is later. Interest does not accrue under section 28-20-34 after the funds are received by the state agency.

**(Effective after June 30, 2010) Protest period.** Except as authorized by the obligor, the state agency shall hold any funds collected under section 28-21-05.2, 50-09-35, or 50-09-40 and may not disburse the funds as a collection of child support until the time has expired for requesting a review by a court under section 50-09-14 or the conclusion of the review, whichever is later. Interest does not accrue under section 28-20-34 after the funds are received by the state agency.

**50-09-37. Health insurance data match.** An insurer as defined in section 26.1-36.5-01 shall exchange health insurance information with the state agency for the purpose of establishing or enforcing a medical support obligation. An insurer shall provide the health insurance information required in this section to the state agency or its agent not more frequently than twelve times in a year. The insurer shall provide the information required in this section at no cost if the information is in a readily available structure or format. If the state agency requests the information in a structure or format that is not readily available, the insurer may charge a reasonable fee for providing the information, not to exceed the actual cost of providing the information. The state agency and its agents may not use or disclose any information provided by the insurer under this section except to establish or enforce a child support or medical support obligation, or as otherwise permitted or required by law. An insurer may not be held liable for the release of health insurance information to the state agency or its agents under this section.

**50-09-38. Transition assistance for child care.** The state agency shall establish a program of transition assistance to pay a portion of the cost of child care for families that lose eligibility, and remain ineligible, for benefits under section 50-09-29 due to earnings from employment. This program must:

1. Provide benefits for up to the six months following the loss of benefits under section 50-09-29;
2. Be paid directly to recipients using a debit card; and
3. Meet all requirements to be considered "assistance" for purposes of title 45, Code of Federal Regulations, part 260, section 31, or any substantially similar federal regulation that may replace title 45, Code of Federal Regulations, part 260, section 31.

**50-09-39. Employment of special assistant attorneys general.** The state agency may employ attorneys to carry out its duties in administering the child support enforcement and medical support enforcement programs. Any attorney who represents the state agency under this chapter must be a special assistant attorney general appointed by the attorney general under section 54-12-08. The salary and expenses of each special assistant attorney general must be paid by the state agency. An appointment under this section is revocable at the pleasure of the attorney general.

**50-09-40. (Effective July 1, 2010) Report of gambling winnings.** Before a gaming operator makes a payment of winnings for which the gaming operator is required to file an internal revenue service form W-2G or substantially equivalent form, the gaming operator shall obtain the name, address, and social security number of the winner and submit the information to the state agency through a secure interactive website that is maintained by the state agency. If the state agency replies to the gaming operator that the winner does not owe past-due support or if the gaming operator is unable to receive information from the state agency after attempting in good faith to do so, the gaming operator may make the payment to the winner. If the state agency replies that the winner owes past-due support, the reply must include the amount of past-due support owed by the winner and the location of the office with which the winner may file a protest under section 50-09-14. The gaming operator shall withhold from the payment to the winner an amount equal to the total winnings or the amount of past-due support, whichever is less. Within seven business days after withholding the payment, the gaming operator shall send the amount withheld to the state disbursement unit, along with the name, address, and social security number of the winner. The gaming operator may withhold and retain an additional sum of three dollars from the winner to cover expenses involved in sending the payment. A gaming operator that withholds funds under this section is subject to the same duties and liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise and is immune from suit or liability for complying with this section.