

South Dakota Debt Collection Law

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This summary of South Dakota's collection law was prepared by Breit Law Office, P.C. The firm was founded by Donald H. Breit in 1975 and steadily grew into a leading collection practice in the state.. We have been a member of The National List of Attorneys since 1986. We are also members of [The National Association of Retail Collection Attorneys](#) (NARCA), the Minnesota State Bar Association, and the South Dakota State Bar and Second Circuit Bar Associations. Our office practices throughout the entire State of South Dakota and specializes in account collection and judgment enforcement. Our attorneys also provide the benefits of a full service law firm with emphasis in commercial law, real estate transactions, lien foreclosure, personal injury and criminal defense. Mr. Breit remains of counsel while his son, Robert J. Breit, focuses his practice on debt collection. The firm's other lawyers, Glenn J. Boomsma and David L. Edwards, contribute substantial experience in collection and commercial law.

The author, David L. Edwards, has more than an decade of experience representing clients in commercial litigation and business transactions in South Dakota. Mr. Edwards specializes in collection law, contract disputes, and a wide variety of commercial transactions. He is a member of the South Dakota State Bar Association, and is admitted to practice in South Dakota federal and bankruptcy courts.

Overview of South Dakota Debt Collection Law

A. Statutes of Limitations

In South Dakota, the statute of limitation for collection of an open account or breach of contract is six (6) years. South Dakota Codified Laws ([SDCL §15-2-13](#)). An action for a breach of contract on a sale of goods under the Uniform Commercial Code must be commenced within four (4) years. [SDCL §57A-2-725](#). These limitations pertain to secured or unsecured obligations, except real property foreclosures, which allow a longer limitation period.

B. Judgments

Upon docketing a judgment by the county clerk of courts, it becomes a lien on all real property owned by the judgment debtor or which he shall acquire (except the homestead exemption amount) in the county of docketing for a period of ten (10) years. [SDCL §15-16-7](#). South Dakota judgments are also easily transcribed to additional counties where the judgment debtor may own real or personal property. A judgment is enforceable for a period of ten (10) years and may be renewed for an addition period of ten

(10) years. [SDCL §§15-16-7;15-16-35](#). South Dakota also adheres to the Uniform Enforcement of Foreign Judgments Act to allow full faith and credit of federal and state court judgments arising in another jurisdiction. [SDCL Ch. 15-16A](#).

C. Bad Check Laws and Civil Penalties

A person who receives a dishonored check may bring an action under South Dakota statute. [SDCL Ch. 21-57](#). A prerequisite to bringing the action is to deliver a notice of dishonor to the maker by personal service or certified mail. If the check is not paid within 30 days after the notice of dishonor, then the maker is liable to the holder for an amount equal to three times the face amount of the check. Provided, however, that the minimum amount of liability is \$100.00 and the maximum liability is \$200.00. The holder may also recover a returned check fee, interest and court costs.

A maker of a dishonored check may also be subject to criminal prosecution. In this case, the holder may be awarded restitution in lieu of pursuing civil remedies.

D. Interest, Costs and Attorney's Fees

Pre-judgment interest is awardable at the contract rate, if so provided in the contract; otherwise it shall be awarded at the statutory rate. [SDCL §21-1-13.1](#). Post-judgment interest is payable on all judgments at the statutory rate. [SDCL §54-3-5.1](#). The statutory rate in South Dakota is currently 10 percent per annum. [SDCL §54-3-16\(2\)](#).

A judgment may also include approval of taxation of costs and disbursements. [SDCL §15-6-54\(d\)](#). An award of attorney's fees is allowed when there is a contractual agreement that the prevailing party is entitled to attorney's fees, or when there is a specific statute authorizing an award of attorney's fees. To obtain an award of attorneys' fees, the prevailing party must prove the basis of such award by a preponderance of the evidence. [Credit Collection Services, Inc. v. Pesicka, 721 NW2d 474, 476 \(SD 2006\)](#).

Post-judgment collection costs are also taxable, and may include costs such as garnishment disclosure fees and debtor exam witness subpoena fees.

E. Collection Remedies and General Practices

If the creditor has perfected a security interest in personal property of the debtor, it may utilize the expedited remedy of claim and delivery (replevin) or self-help repossession under the Uniform

Commercial Code. [SDCL Ch. 21-15; Ch. 57A-9](#). South Dakota also has a wide variety of lien remedies, such as mechanic's liens on personal or real property, and agricultural liens.

South Dakota also allows post-judgment discovery, such as post-judgment interrogatories and debtor's exams.

With regard to commercial and consumer collections, the South Dakota legislature has not enacted a state consumer protection act or a fair debt collection act. Accordingly, the rules of civil procedure and case law provide the legal guidelines for collections and there are generally no more stringent requirements than those set forth in the Fair Debt Collection Practices Act (FDCPA) or similar federal laws.

In South Dakota, there is no special licensing or bonding requirement to practice in debt collection.

F. Garnishment Procedures

Any debt reduced to a final judgment can be enforced through garnishment. Generally, the garnishment procedure is the means by which a creditor is permitted to attempt to satisfy the judgment through property, normally wages or bank account balances. Prejudgment garnishment (a writ of attachment) is also allowed, but it is an extreme remedy available in cases such as where a debtor is likely to conceal or remove specific property from the jurisdiction. [SDCL Ch. 21-17A](#).

Generally, South Dakota's garnishment law is more restrictive to creditors garnishing wages than the Federal law. South Dakota makes available a maximum of not more than 20 percent of the debtor's disposable income, while Federal law permits garnishment of non-exempt wages at 25 percent. South Dakota also has a higher standard exemption than the Federal law. South Dakota's basic earnings exemption is 40 times the Federal Minimum Wage for one week, while the Federal statute is 30 times the Federal Minimum Wage for one week. [SDCL §21-18-51](#).

A garnishment summons, affidavit and garnishment disclosure may be served upon the garnishee by certified mail or in the same manner as a summons and complaint. [SDCL 21-18-7](#). A creditor is entitled to a 120-day continuing lien on wages of the judgment debtor. [SDCL 21-18-14.1](#). The garnishee will hold the garnished wages or monies until the judgment creditor applies for and serves an order for release of funds, at which time all held funds shall be turned over to the creditor. The continuing lien on wages may be renewed for another 120-day period upon serving the garnishee with another garnishment disclosure form.

The judgment debtor is allowed 5 days after service, or 8 days if served by certified mail, in which to claim exemptions allowed by law, in addition to his absolute exemptions, and his failure to make such claim will be deemed a waiver of such additional exemptions. [SDCL §21-19-3](#).

In the event the garnishee fails to respond within 30 days, then a supplemental judgment against the garnishee may be obtained. [SDCL §21-18-39](#).

G. Case Filing Fees and Related Expenses

A civil case filing fee in any South Dakota county circuit court is \$70.00. Any amount in controversy may be filed in Circuit Court. However, creditors collecting \$12,000 or less have the option of filing in Small Claims Court. The filing fee in Small Claims Court is subject to a graduated scale, with the highest fee being \$35.98 for cases seeking between \$4,000 and \$12,000. There is no right to appeal a small claims matter to either Circuit Court or the South Dakota Supreme Court. However, defendants have the right to remove the small claims action to Circuit Court.

In a circuit court case, a summons and complaint may be served by the county sheriff or by a private process server. The service fees will vary but are typically between \$30.00 and \$50.00. In a small claims case, the clerk or court serves the Notice of Small Claims by mail.

Upon obtaining a judgment the County Clerk will issue a writ of execution for a fee of \$5.00, and the sheriff's related execution fee is \$35.00. The sheriff will also charge a small percentage fee for the amounts successfully levied and delivered to the judgment creditor.

In garnishment proceedings, the garnishee is required to receive the sum of \$15.00 for the purpose of reimbursing the garnishee for the expense of preparing the garnishment disclosure form. This fee may be included as a portion of the creditor's costs and added to the total judgment that the creditor is trying to collect.

H. Noteworthy Collection Opinions and Laws

As referenced above, attorney's fees may be awarded to the creditor when there is a contractual agreement that the prevailing party is entitled to attorney's fees, or when there is a specific statute authorizing an award of attorney's fees. [Credit Collection Services, Inc. v. Pesicka, 721 NW2d 474, 476 \(SD 2006\)](#).

The South Dakota Supreme Court also issued an important opinion with regard to a "non-waiver of default" provision after a debtor and creditor participated in a course of performance where late payments

were accepted. The Court held that even where the contract contains a “non-waiver of default” provision, the repeated acceptance of late payments by a creditor who has the contractual right to repossess collateral imposes a duty on the creditor to notify the debtor that strict compliance with the contract terms will be required before the creditor can lawfully repossess the collateral. [Moe v. John Deere, 516 NW2d 332 \(SD 1994\)](#). Accordingly, a creditor should always comply with a contract’s notice of default and/or cure provisions before taking any collection action.

South Dakota is among a minority of states that impose sales tax on attorney’s fees. Sales tax must be collected on any fee, whether on an hourly or contingency fee basis. The fee includes both the state sales tax plus the appropriate municipal sales tax. South Dakota state sales tax is currently 4 percent. Municipal tax is currently 2 percent in most cities, but it may vary from city to city.

Please be advised that this is not intended as legal advice. Changes to laws, statutes, regulations and costs can and do occur. We recommend that you contact an attorney for advice specific to your legal matters and your state.

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