

Sixty-second
Legislative Assembly
of North Dakota

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 35-34 of the North Dakota
2 Century Code, relating to a child support lien registry; to amend and reenact sections
3 35-34-02, 35-34-03, and 35-34-04, subsection 1 of section 35-34-06, and sections 35-34-09
4 and 35-34-10 of the North Dakota Century Code, relating to child support liens; to provide a
5 transition; and to provide an effective date.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 35-34-02 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **35-34-02. Lien for past-due child support.** When an obligor is listed on the
10 arrears registry as defined in section 14-09-09.10 owes past-due support, the child support
11 agency may establish a lien on ~~personal~~ property of the obligor as provided in this chapter.
12 Except for liens under section 35-34-05, the amount of a lien under this chapter includes
13 any past-due support that is owed when the lien is perfected and any past-due support that
14 accrues after the lien is perfected.

15 **SECTION 2.** A new section to chapter 35-34 of the North Dakota Century Code is
16 created and enacted as follows:

17 **Child support lien registry.** The child support agency shall create a child support
18 lien registry using an interactive website. The registry shall include a listing of any obligor
19 who owes past due support that is being enforced by the child support enforcement agency,
20 the obligor's date of birth, and the amount of past due support that is being enforced by the
21 child support enforcement agency. The lien registry website must be available to the public
22 and support a search by last name of the obligor and other information provided by the

1 person using the website. Any real or titled personal property, except the homestead or
2 other property that is exempt under section 28-22-02, of an obligor who is listed on the lien
3 registry or which the obligor thereafter acquires in this state is subject to a lien. A lien under
4 this section is perfected as of the date the lien is first listed on the child support lien registry,
5 but is not effective against a good-faith purchaser of titled personal property unless the lien
6 is recorded on that title. The child support agency must subordinate its lien under this
7 section upon request of a third party if:

- 8 a. the request is accompanied by documentation from the lien registry website
9 showing the child support lien balance as of the date the third party perfected its
10 interest in the property, to the extent that the current balance of the child support
11 lien exceeds the balance when the third party perfected its interest, or
12 b. the request is made within ninety days of the date the lien is first listed on the
13 child support lien registry and the third party proves that it attempted to perfect
14 an interest in the property prior to the creation of the child support lien.

15 **SECTION 3. AMENDMENT.** Section 35-34-03 of the North Dakota Century Code is
16 created and enacted as follows:

17 **35-34-03. Vehicle lien.**

- 18 1. In the case of a vehicle, the child support agency may ~~establish a lien by filing~~ file
19 a notice of lien with the director of the department of transportation. The notice
20 must be in a form prescribed by the director and contain a description of the
21 vehicle, the name and last-known address of the obligor, and any other
22 information required by the director. The notice of lien must state that the child
23 support obligation is past due and that a copy of the notice of lien has been
24 served on the obligor by first-class mail at the obligor's last-known address.
- 25 2. Upon filing of the notice of lien in accordance with this section, the director shall
26 demand in writing the surrender of the certificate of title from the obligor or a
27 superior lienholder for the purpose of recording the lien on the certificate of title.
28 Upon receipt of the certificate of title, the director shall record the fact of the lien
29 and the identity of the lienholder on the certificate of title and deliver the
30 certificate of title to the vehicle's owner or, if a superior lienholder had
31 possession of the certificate of title, to that superior lienholder. If the obligor or
32 superior lienholder fails to surrender the certificate of title within fifteen days after

1 the written demand by the director, the director shall notify the child support
2 agency seeking the lien.

3 3. Upon receipt of notice from the director that the obligor or superior lienholder has
4 not responded to the demand for surrender of a title certificate, the child support
5 agency may obtain an order from a court of competent jurisdiction requiring the
6 certificate of title to be delivered to the court so that a lien may be properly
7 recorded.

8 4. No fee may be charged for services provided under this section.

9 5. The director may determine a certificate of title to have been fraudulently
10 procured if endorsed by a previous owner who, at the time the endorsement was
11 made:

12 a. ~~Was was an obligor who owed past-due child support; and~~

13 b. ~~Had been served with a copy of a notice of lien filed under this section with
14 respect to the vehicle described on that certificate of title.~~

15 ~~6. A lien under this section is perfected when the lien is recorded on the certificate
16 of title.~~

17 **SECTION 4. AMENDMENT.** Section 35-34-04 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **35-34-04. Vessel lien.**

20 1. In the case of a vessel, the child support agency may ~~establish a lien by filing~~ file
21 a notice of lien with the secretary of state if the value of the vessel is estimated to
22 be at least twice the cost of establishing the lien. The notice must contain a
23 description of the make, model designation, and serial number of the vessel,
24 including its identification or registration number, if any, and the name, social
25 security number, and last-known address of the obligor. The notice of lien must
26 state that the child support obligation is past due and that a copy of the notice of
27 lien has been served on the obligor by first-class mail at the obligor's last-known
28 address.

29 2. Upon filing of the notice of lien in accordance with this section, the notice of lien
30 must be indexed by the secretary of state in the central indexing system and may
31 be enforced and foreclosed in the same manner as a security agreement under
32 the provisions of title 41.

- 1 3. The secretary of state shall remove and destroy the lien notification statement in
2 the same manner as provided for other liens in section 11-18-14 for the recorder.
- 3 4. ~~A lien under this section is perfected when notice of the lien is filed with the~~
4 ~~secretary of state.~~
- 5 ~~5.~~ The child support agency may file an amendment to correct the social security
6 number of the obligor, to correct the spelling of the obligor's name, or to correct
7 or change the address of the obligor.

8 **SECTION 5. AMENDMENT.** Subsection 1 of section 35-34-06 of the North Dakota
9 Century Code is amended and reenacted as follows:

- 10 1. In the case of untitled personal property ~~that does not consist of a vehicle, a~~
11 ~~vessel, or other than~~ an account maintained in a financial institution, the child
12 support agency may establish a lien on such personal property by filing a notice
13 of lien with the office of the recorder in the county in which the personal property
14 may be found, with the secretary of state, or with a third party who is in
15 possession of the personal property. The notice must particularly describe the
16 property to be subjected to the lien and the name and last-known address of the
17 obligor. The notice of lien must state that the child support obligation is past due
18 and that a copy of the notice of lien has been served on the obligor by first-class
19 mail at the obligor's last-known address.

20 **SECTION 6. AMENDMENT.** Section 35-34-09 of the North Dakota Century Code is
21 amended and reenacted as follows:

- 22 **35-34-09. Immunity from liability.** A person in possession of, or obligated with
23 respect to, property, who, upon demand of the child support agency, surrenders the
24 property, complies with section 35-34-12, or otherwise acts in good faith to comply with the
25 requirements in this chapter, discharges its obligation to the obligor with regard to the
26 property and is immune from suit or any liability under any federal or state law. The court
27 shall award reasonable attorney's fees and costs against any person who commences an
28 action that is subsequently dismissed by reason of the immunity granted by this section

29 **SECTION 7. AMENDMENT.** Section 35-34-10 of the North Dakota Century Code is
30 amended and reenacted as follows:

- 31 **35-34-10. Action to enforce lien.** In any case in which there has been a refusal or
32 neglect to pay child support, the child support agency, in addition to any other relief, may

1 enforce a lien arising under this chapter by demanding in writing the surrender of the
2 property, issuing an execution under chapter 28-21, or serving a deduction order under
3 section 50-09-35. The child support agency also may file an action in any court of
4 competent jurisdiction to enforce a lien under this chapter. The filing of an action does not
5 preclude the child support agency from pursuit of any other means of enforcement available
6 under state or federal law. A person in possession of, or obligated with respect to, property
7 that is subject to a lien under this chapter is subject to the same duties and liabilities as an
8 income payer under section 14-09-09.3 unless the context indicates otherwise.

9 **SECTION 8. TRANSITION.** The registry created in Section 4 of this Act may
10 include any lien under chapter 35-34 that exists on the effective date of this act. Any lien
11 that is added to the lien registry under this section retains its original effective date and
12 priority.

13 **SECTION 9. EFFECTIVE DATE.** This Act becomes effective on January 1, 2012.