

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 14-09 of the North Dakota
2 Century Code and a new section to chapter 35-34 of the North Dakota Century Code,
3 relating to child support enforcement; to amend and reenact sections 26.1-02-28, 34-15-01,
4 34-15-03, and 34-15-04, subsection 3 of section 34-15-05, sections 35-34-02, 35-34-03,
5 and 35-34-04, subsection 1 of section 35-34-06, and sections 35-34-09 and 35-34-10 of the
6 North Dakota Century Code, relating to child support enforcement; to provide for a
7 transition; and to provide an effective date.

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

9 **SECTION 1.** A new section to chapter 14-09 of the North Dakota Century Code is
10 crated and enacted as follows:

11 **Electronic remittal of funds withheld under an income withholding order.** An
12 income payer that employs more than twenty-four employees at any time and has received
13 an income withholding order under this chapter shall remit any withheld funds by an
14 electronic method approved by the child support agency. An income payer that does not
15 comply with this section is deemed to have failed to deliver income under section
16 14-09-09.3. The child support agency may waive, upon a showing of good cause, the
17 requirement to remit funds electronically.

18 **SECTION 2. AMENDMENT.** Section 26.1-02-28 of the North Dakota Century Code
19 is amended and reenacted as follows:

20 **26.1-02-28. Child support insurance data match.**

21 **1. As used in this section:**

22 **a. “Claimant” means a resident of this state over fourteen years of age who:**

23 **(1) is a beneficiary under a life insurance policy;**

- 1 (2) is an individual who brings a third party claim against an insured or under
2 an insurance policy for compensation under insurance coverage for
3 bodily injury or workers' compensation; or
4 (3) is an individual who brings a first party claim under an insurance policy
5 for uninsured or underinsured motorist benefits.
- 6 b. "Department" means the department of human services and any designee of
7 the department.
- 8 c. "Insurer" includes a government self-insurance pool and any designee of an
9 insurer or government self-insurance pool, but does not include any health
10 insurer participating in a data match under section 50-09-37.
- 11 d. "Personal information" means the name, address, and date of birth of a
12 person; the person's social security number, current motor vehicle operator's
13 license number issued to the claimant by the department of transportation
14 under title 39, or the last four digits of the person's social security number;
15 and any other relevant and available information regarding the person that is
16 requested by the department.
- 17 2. Before paying a claim to a claimant for a claim occurring in this state under a
18 contract of insurance issued in this state, an insurer or ~~government self-~~
19 ~~insurance pool~~ may exchange personal information about the claimant with the
20 department of human services or its designee. This section applies
21 notwithstanding any provision of law making the information confidential.
- 22 3. Any personal information that is exchanged under this section is confidential and
23 may only be used to establish or enforce a child support or medical support
24 obligation, or as otherwise permitted or required by law. To the extent feasible,
25 the department shall provide secure electronic processes for exchanging
26 personal information under this section. An insurer shall not be assessed any
27 fee by the department for exchanging claim information under this section.
- 28 4. An insurer that exchanges personal information with the department under
29 subsection two also shall provide the telephone number of a facsimile machine
30 or electronic mail address to which a lien or demand may be sent to the insurer
31 by the department under chapter 35-34.
- 32 5. Notwithstanding anything to the contrary in section 35-34-06, upon agreement of

1 the insurer and the department, if the department files a lien against a claim that
2 is identified under this section:

- 3 a. the department may delay sending the claimant a copy of the notice of the
4 lien until requested by the insurer or until a payment to the claimant is
5 delayed as a result of the lien, whichever occurs first; or
6 b. the insurer may provide the claimant with the copy of the notice of lien that is
7 required under section 35-34-06 no later than the date a payment to the
8 claimant is delayed as a result of the lien.

9 If a claimant's receipt of notice of a lien is delayed under this subsection, the time
10 for seeking a review of the lien under section 50-09-14 does not begin until the
11 date the notice is mailed or otherwise provided to the claimant.

12 6. A person is immune from suit or any liability under any federal or state law,
13 including chapter 12.1-13 or 44-04, for acting in good faith under this section.

14 The court shall award reasonable attorney's fees and costs against any person
15 that commences an action that is subsequently dismissed by reason of the
16 immunity granted by this section.

17 7. A government self-insurance pool that complies with this section is not subject to
18 subsection 1 of section 50-09-08.2.

19 8. Nothing in this section shall require an insurer to make a payment that is not
20 otherwise required under the contract of insurance.

21 **SECTION 3. AMENDMENT.** Subsection 2 of section 26.1-02-28 of the North
22 Dakota Century Code is amended and reenacted as follows:

- 23 2. Before paying a claim to a claimant for a claim occurring in this state under a
24 contract of insurance issued in this state, an insurer ~~may~~ shall exchange
25 personal information about the claimant with the department. The information
26 must be exchanged as soon as reasonably possible after the first submission of
27 the claim, but not less than ten days prior to making a payment to a claimant.

28 This section applies notwithstanding any provision of law making the information
29 confidential.

30 **SECTION 4.** Two new subsections to section 26.1-02-28 of the North Dakota
31 Century Code are created and enacted as follows:

32 A claimant who refuses to provide to an insurer the personal information that the

1 insurer is required to exchange with the department under this section may not
2 receive payment on the claim and may not pursue a suit against the insured or
3 the insurer in this state for the amount of the claim until the information is
4 provided.

5
6 An individual who willfully fails to comply with this section is subject to the same
7 liabilities as an income payer under section 14-09-09.3 unless the context
8 indicates otherwise.

9 **SECTION 5. AMENDMENT.** Section 34-15-01 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **34-15-01. Definitions.** As used in this chapter:

12 1. "Contractor" means an individual, or organization owned exclusively by an
13 individual, who is hired to provide services for or on behalf of an employer in the
14 course of the employer's trade or business, if the aggregate payment for the
15 services is sufficient for the employer to be required to file an internal revenue
16 service form 1099-MISC or substantially equivalent form.

17 2. "Department" means the department of human services.

18 ~~2.3.~~ "Employee" means an individual who would be determined to be an employee
19 under chapter 24 of the Internal Revenue Code of 1986, as amended [26
20 U.S.C. 3401 et seq.], but does not include an employee of a federal or state
21 agency performing intelligence or counterintelligence functions, if the head of
22 the agency has determined that reporting under this chapter, with respect to that
23 employee, could endanger the safety of the employee or compromise an
24 ongoing investigation or intelligence mission.

25 ~~3.4.~~ "Employer" means ~~an entity or individual:~~

26 a. A person who would be determined to be an employer under section 3401(d)
27 of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3401(d)], and
28 includes any governmental entity and any labor organization; or

29 b. A person who hires a contractor.

30 ~~4.5.~~ "Labor organization" means an organization treated as a labor organization
31 under section 2(5) of the National Labor Relations Act, as amended [29 U.S.C.
32 152(5)], and includes any entity, including a "hiring hall", which is used by the

1 organization and an employer to carry out requirements, described in section
2 8(f)(3) of the National Labor Relations Act, as amended [29 U.S.C. 158(f)(3)], of
3 an agreement between the organization and the employer.

4 **SECTION 6. AMENDMENT.** Section 34-15-03 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **34-15-03. Employer reporting.**

- 7 1. Except as provided in subsections 2 and 3, each employer shall furnish to the
8 directory of new hires a report that contains the name, address, and social
9 security number of each employee or contractor newly hired for work within this
10 state, whether the employer offers health insurance, and the employer's name
11 and address and the identifying number assigned under section 6109 of the
12 Internal Revenue Code of 1986, as amended [26 U.S.C. 6109], to the employer.
- 13 2. An employer who has employees or contractors who are employed or hired in
14 two or more states, and who transmits reports magnetically or electronically,
15 may designate one state in which the employer has employees or contractors
16 and may transmit a report conforming to subsection 1 to that state. An employer
17 who reports pursuant to this subsection must notify the secretary of the United
18 States department of health and human services, in writing, of the state so
19 designated.
- 20 3. Any department, agency, or instrumentality of the United States shall transmit a
21 report, conforming to subsection 1, to the national directory of new hires
22 established pursuant to section 453 of the Social Security Act [42 U.S.C. 653].
- 23 4. a. Except as provided in subdivision b, a report required under this section must
24 be made no later than twenty days after the date the employer hires the
25 employee or contractor.
26 b. If the employer transmits reports magnetically or electronically, a report
27 required under this section may be made by two monthly transmissions, if
28 necessary, not less than twelve nor more than sixteen days apart.
- 29 5. An employer is not required to report a contractor under this section if the
30 services are provided in response to an emergency or if the services are not
31 expected to be provided on a recurring basis.

32 **SECTION 7. AMENDMENT.** Section 34-15-04 of the North Dakota Century Code is

1 amended and reenacted as follows:

2 **34-15-04. Reporting format.**

- 3 1. Each employer report required by this chapter must be made on a ~~W-4 form, or,~~
4 ~~at the option of the employer, an equivalent~~ form prescribed by the state
5 directory of new hires.
- 6 2. ~~The~~ Except as provided in subsection 3, the report may be transmitted by first-
7 class mail or by any magnetic or electronic means readable by the department,
8 including facsimile transmission, electronic mail, modem transmission, or other
9 means of electronic communication.
- 10 3. An employer that employs more than twenty-four employees at any time must
11 report new hires through an electronic method approved by the department. An
12 employer that does not comply with this subsection is deemed to have failed to
13 report new hires under section 34-15-05. The department may waive, upon a
14 showing of good cause, the requirement to report new hires electronically.

15 **SECTION 8. AMENDMENT.** Subsection 3 of section 34-15-05 of the North Dakota
16 Century Code is amended and reenacted as follows:

- 17 3. An employer who, by agreement between the employer and employee or
18 contractor, fails to file a timely, complete, and correct report required under this
19 chapter or files a false or incomplete report is liable for a civil money penalty of
20 two hundred fifty dollars for each failure to report or each false or incomplete
21 report.

22 **SECTION 9. AMENDMENT.** Section 35-34-02 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **35-34-02. Lien for past-due child support.** When an obligor ~~is listed on the~~
25 ~~arrears registry as defined in section 14-09-09.10~~ owes past-due support, the child support
26 agency may establish a lien on ~~personal~~ property of the obligor as provided in this chapter.
27 Except for liens under section 35-34-05, the amount of a lien under this chapter includes
28 any past-due support that is owed when the lien is perfected and any past-due support that
29 accrues after the lien is perfected.

30 **SECTION 10.** A new section to chapter 35-34 of the North Dakota Century Code is
31 created and enacted as follows:

32 **Child support lien registry.** The child support agency shall create a child support

1 lien registry using an interactive website. The registry shall include a listing of any obligor
2 who owes past due support that is being enforced by the child support enforcement agency,
3 the obligor's date of birth, and the amount of past due support that is being enforced by the
4 child support enforcement agency. The lien registry website must be available to the public
5 and support a search by last name of the obligor and other information provided by the
6 person using the website. Any real or titled personal property, except the homestead or
7 other property that is exempt under section 28-22-02, of an obligor who is listed on the lien
8 registry or which the obligor thereafter acquires in this state is subject to a lien. A lien under
9 this section is perfected as of the date the lien is first listed on the child support lien registry,
10 but is not effective against a good-faith purchaser of titled personal property unless the lien
11 is recorded on that title. The child support agency must subordinate its lien under this
12 section upon request of a third party if:

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

20 **SECTION 11. AMENDMENT.** Section 35-34-03 of the North Dakota Century Code
21 is amended and reenacted as follows:

22 **35-34-03. Vehicle lien.**

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

1 Upon receipt of the certificate of title, the director shall record the fact of the lien
2 and the identity of the lienholder on the certificate of title and deliver the
3 certificate of title to the vehicle's owner or, if a superior lienholder had
4 possession of the certificate of title, to that superior lienholder. If the obligor or
5 superior lienholder fails to surrender the certificate of title within fifteen days
6 after the written demand by the director, the director shall notify the child
7 support agency seeking the lien.

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

13 4. No fee may be charged by the director for services provided under this section.

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

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

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

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

22 **SECTION 12. AMENDMENT.** Section 35-34-04 of the North Dakota Century Code
23 is amended and reenacted as follows:

24 **35-34-04. Vessel lien.**

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

1 last-known address.

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

6 3. The secretary of state shall remove and destroy the lien notification statement in
7 the same manner as provided for other liens in section 11-18-14 for the
8 recorder.

9 4. ~~A lien under this section is perfected when notice of the lien is filed with the~~
10 ~~secretary of state.~~

11 ~~5.~~ The child support agency may file an amendment to correct the social security
12 number of the obligor, to correct the spelling of the obligor's name, or to correct
13 or change the address of the obligor.

14 **SECTION 13. AMENDMENT.** Subsection 1 of section 35-34-06 of the North
15 Dakota Century Code is amended and reenacted as follows:

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

26 **SECTION 14. AMENDMENT.** Section 35-34-09 of the North Dakota Century Code
27 is amended and reenacted as follows:

28 **35-34-09. Immunity from liability.** A person in possession of, or obligated with
29 respect to, property, who, upon demand of the child support agency, surrenders the
30 property, complies with section 35-34-12, or otherwise acts in good faith to comply with the
31 requirements in this chapter, discharges its obligation to the obligor with regard to the
32 property and is immune from suit or any liability under any federal or state law. The court

1 shall award reasonable attorney's fees and costs against any person who commences an
2 action that is subsequently dismissed by reason of the immunity granted by this section

3 **SECTION 15. AMENDMENT.** Section 35-34-10 of the North Dakota Century Code
4 is amended and reenacted as follows:

5 **35-34-10. Action to enforce lien.** In any case in which there has been a refusal or
6 neglect to pay child support, the child support agency, in addition to any other relief, may
7 enforce a lien arising under this chapter by demanding in writing the surrender of the
8 property, issuing an execution under chapter 28-21, or serving a deduction order under
9 section 50-09-35. The child support agency also may file an action in any court of
10 competent jurisdiction to enforce a lien under this chapter. The filing of an action does not
11 preclude the child support agency from pursuit of any other means of enforcement available
12 under state or federal law. A person in possession of, or obligated with respect to, property
13 that is subject to a lien under this chapter is subject to the same duties and liabilities as an
14 income payer under section 14-09-09.3 unless the context indicates otherwise.

15 **SECTION 16. TRANSITION.** The registry created in Section 10 of this Act may
16 include any lien under chapter 35-34 that exists on the effective date of Section 10. Any lien
17 that is added to the lien registry under this section retains its original effective date and
18 priority.

19 **SECTION 17. EFFECTIVE DATE.** Section 1 and sections 5 through 16 of this Act
20 become effective on January 1, 2012. Sections 3 and 4 of this Act becomes effective on
21 August 1, 2013.