

Introduced by

Senators J. Lee, Dever

Representatives Devlin, Weisz

1 A BILL for an Act to create and enact a new section to chapter 14-09, two new subsections to  
2 section 26.1-02-28, 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, and  
5 35-34-04, subsection 1 of section 35-34-06, and sections 35-34-09 and 35-34-10 of the North  
6 Dakota Century Code, relating to child support enforcement; to provide for transition; and to  
7 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 created  
10 and enacted as follows:

11 **Electronic remittal of funds withheld under an income withholding order.**

12 An income payer that employs more than twenty-four employees at any time and has  
13 received 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 comply  
15 with this section is deemed to have failed to deliver income under section 14-09-09.3. The child  
16 support agency may waive, upon a showing of good cause, the requirement to remit funds  
17 electronically.

18 **SECTION 2. AMENDMENT.** Section 26.1-02-28 of the North Dakota Century Code is  
19 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 bodily  
3                             injury or workers' compensation; or
- 4                   (3) Is an individual who brings a first-party claim under an insurance policy for  
5                             uninsured or underinsured motorist benefits.
- 6           b. "Department" means the department of human services and any designee of the  
7                             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 person;  
12                            the person's social security number, current motor vehicle operator's license  
13                            number issued to the claimant by the department of transportation under title 39,  
14                            or the last four digits of the person's social security number; and any other  
15                            relevant and available information regarding the person that is requested by the  
16                            department.
- 17       2. Before paying a claim to a claimant for a claim occurring in this state under a contract  
18                            of insurance issued in this state, an insurer ~~or government self-insurance pool~~ may  
19                            exchange ~~personal~~ information about the claimant with the department of human  
20                            services ~~or its designee~~. This section applies notwithstanding any provision of law  
21                            making the information confidential.
- 22       3. Any personal information that is exchanged under this section is confidential and may  
23                            only be used to establish or enforce a child support or medical support obligation, or  
24                            as otherwise permitted or required by law. To the extent feasible, the department shall  
25                            provide secure electronic processes for exchanging personal information under this  
26                            section. An insurer shall not be assessed any fee by the department for exchanging  
27                            claim information under this section.
- 28       4. An insurer that exchanges personal information with the department under  
29                            subsection 2 also shall provide the telephone number of a facsimile machine or  
30                            electronic mail address to which a lien or demand may be sent to the insurer by the  
31                            department under chapter 35-34.

- 1        5. Notwithstanding anything to the contrary in section 35-34-06, upon agreement of the  
2        insurer and the department, if the department files a lien against a claim that is  
3        identified under this section:
- 4        a. The department may delay sending the claimant a copy of the notice of the lien  
5        until requested by the insurer or until a payment to the claimant is delayed as a  
6        result of the lien, whichever occurs first; or
- 7        b. The insurer may provide the claimant with the copy of the notice of lien that is  
8        required under section 35-34-06 no later than the date a payment to the claimant  
9        is delayed as a result of the lien.
- 10       If a claimant's receipt of notice of a lien is delayed under this subsection, the time for  
11       seeking a review of the lien under section 50-09-14 does not begin until the date the  
12       notice is mailed or otherwise provided to the claimant.
- 13       6. A person is immune from suit or any liability under any federal or state law, including  
14       chapter 12.1-13 or 44-04, for acting in good faith under this section. The court shall  
15       award reasonable attorney's fees and costs against any person that commences an  
16       action that is subsequently dismissed by reason of the immunity granted by this  
17       section.
- 18       7. A government self-insurance pool that complies with this section is not subject to  
19       subsection 1 of section 50-09-08.2.
- 20       8. Nothing in this section shall require an insurer to make a payment that is not otherwise  
21       required under the contract of insurance.

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

- 24       2. Before paying a claim to a claimant for a claim occurring in this state under a contract  
25       of insurance issued in this state, an insurer ~~or government self-insurance pool~~  
26       ~~may~~ shall exchange personal information about the claimant with the department of  
27       ~~human services or its designee.~~ The information must be exchanged as soon as  
28       reasonably possible after the first submission of the claim, but not less than ten days  
29       prior to making a payment to a claimant. This section applies notwithstanding any  
30       provision of law making the information confidential.

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

3           A claimant who refuses to provide to an insurer the personal information that the  
4           insurer is required to exchange with the department under this section may not receive  
5           payment on the claim and may not pursue a suit against the insured or the insurer in  
6           this state for the amount of the claim until the information is provided.

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

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

12       **34-15-01. Definitions.**

13       As used in this chapter:

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

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

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

27       ~~3.4.~~ "Employer" means ~~an entity or individual:~~

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

1            b. A person who hires a contractor.

2        4-5. "Labor organization" means an organization treated as a labor organization under  
3            section 2(5) of the National Labor Relations Act, as amended [29 U.S.C. 152(5)], and  
4            includes any entity, including a "hiring hall", which is used by the organization and an  
5            employer to carry out requirements, described in section 8(f)(3) of the National Labor  
6            Relations Act, as amended [29 U.S.C. 158(f)(3)], of an agreement between the  
7            organization and the employer.

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

10        **34-15-03. Employer reporting.**

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

- 1        5. An employer is not required to report a contractor under this section if the services are  
2                    provided in response to an emergency or if the services are not expected to be  
3                    provided on a recurring basis.

4        **SECTION 7. AMENDMENT.** Section 34-15-04 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6        **34-15-04. Reporting format.**

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

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

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

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

27        **35-34-02. Lien for past-due child support.**

28        ~~When an obligor is listed on the arrears registry as defined in section 14-09-09.10~~ owes  
29 past-due support, the child support agency may establish a lien on ~~personal~~ property of the  
30 obligor as provided in this chapter. Except for liens under section 35-34-05, the amount of a lien

1 under this chapter includes any past-due support that is owed when the lien is perfected and  
2 any past-due support that accrues after the lien is perfected.

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

5 **Child support lien registry.**

6 The child support agency shall create a child support lien registry using an interactive  
7 website. The registry shall include a listing of any obligor who owes past-due support that is  
8 being enforced by the child support enforcement agency, the obligor's date of birth, and the  
9 amount of past-due support that is being enforced by the child support enforcement agency.  
10 The lien registry website must be available to the public and support a search by last name of  
11 the obligor and other information provided by the person using the website. Any real or titled  
12 personal property, except the homestead or other property that is exempt under section  
13 28-22-02, of an obligor who is listed on the lien registry or which the obligor thereafter acquires  
14 in this state is subject to a lien. A lien under this section is perfected as of the date the lien is  
15 first listed on the child support lien registry, but is not effective against a good-faith purchaser of  
16 titled personal property unless the lien is recorded on that title. The child support agency must  
17 subordinate its lien under this section upon request of a third party if:

- 18 1. The request is accompanied by documentation from the lien registry website showing  
19 the child support lien balance as of the date the third party perfected its interest in the  
20 property, to the extent that the current balance of the child support lien exceeds the  
21 balance when the third party perfected its interest; or  
22 2. The request is made within ninety days of the date the lien is first listed on the child  
23 support lien registry and the third party proves that it attempted to perfect an interest in  
24 the property prior to the creation of the child support lien.

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

27 **35-34-03. Vehicle lien.**

- 28 1. In the case of a vehicle, the child support agency may ~~establish a lien by filing~~file a  
29 notice of lien with the director of the department of transportation. The notice must be  
30 in a form prescribed by the director and contain a description of the vehicle, the name  
31 and last-known address of the obligor, and any other information required by the

1 director. The notice of lien must state that the child support obligation is past due and  
2 that a copy of the notice of lien has been served on the obligor by first-class mail at the  
3 obligor's last-known address.

4 2. Upon filing of the notice of lien in accordance with this section, the director shall  
5 demand in writing the surrender of the certificate of title from the obligor or a superior  
6 lienholder for the purpose of recording the lien on the certificate of title. Upon receipt of  
7 the certificate of title, the director shall record the fact of the lien and the identity of the  
8 lienholder on the certificate of title and deliver the certificate of title to the vehicle's  
9 owner or, if a superior lienholder had possession of the certificate of title, to that  
10 superior lienholder. If the obligor or superior lienholder fails to surrender the certificate  
11 of title within fifteen days after the written demand by the director, the director shall  
12 notify the child support agency seeking the lien.

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

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

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

20 a. ~~Was~~, an obligor who owed past-due child support; ~~and~~

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

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

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

26 **35-34-04. Vessel lien.**

27 1. In the case of a vessel, the child support agency may ~~establish a lien by filing~~file a  
28 notice of lien with the secretary of state if the value of the vessel is estimated to be at  
29 least twice the cost of establishing the lien. The notice must contain a description of  
30 the make, model designation, and serial number of the vessel, including its  
31 identification or registration number, if any, and the name, social security number, and

1 last-known address of the obligor. The notice of lien must state that the child support  
2 obligation is past due and that a copy of the notice of lien has been served on the  
3 obligor by first-class mail at the obligor's last-known address.

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

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

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

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

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

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

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

28 **35-34-09. Immunity from liability.**

29 A person in possession of, or obligated with respect to, property, who, upon demand of the  
30 child support agency, surrenders the property, complies with section 35-34-12, or otherwise acts  
31 in good faith to comply with the requirements in this chapter, discharges its obligation to the

1 obligor with regard to the property and is immune from suit or any liability under any federal or  
2 state law. The court shall award reasonable attorney's fees and costs against any person who  
3 commences an action that is subsequently dismissed by reason of the immunity granted by this  
4 section.

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

7 **35-34-10. Action to enforce lien.**

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

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

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