

HOUSE BILL NO. 1371

Introduced by

Representatives C. Johnson, Adams, M. Johnson

Senators O. Larsen, Luick

1 A BILL ~~for an Act to amend and reenact sections 34-15-01 and 34-15-03, subsection 3 of~~
2 ~~section 34-15-04, and subsection 3 of section 34-15-05 of the North Dakota Century Code,~~
3 ~~relating to the new hire registry for child support; to provide a penalty; and to provide an~~
4 ~~effective date for an Act to create and enact a new section to chapter 34-15 of the North Dakota~~
5 ~~Century Code, relating to new hire reporting of independent contractors; and to provide an~~
6 ~~effective date.~~

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

8 ~~— **SECTION 1. AMENDMENT.** Section 34-15-01 of the North Dakota Century Code is~~
9 ~~amended and reenacted as follows:~~

10 ~~— **34-15-01. Definitions.**~~

11 ~~— As used in this chapter:~~

12 ~~— 1. "Contractor" means an individual hired to provide services for or on behalf of an~~
13 ~~employer in the course of the employer's trade or business, if the aggregate payment~~
14 ~~for the services is sufficient for the employer to be required to file an internal revenue~~
15 ~~service form 1099-MISC or substantially equivalent form and report the payment on~~
16 ~~the form as nonemployee compensation.~~

17 ~~— 2. "Date of hire" means the date services for remuneration were first performed by the~~
18 ~~employee or contractor.~~

19 ~~— 2.3. "Department" means the department of human services.~~

20 ~~— 3.4. "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~~

1 safety of the employee or compromise an ongoing investigation or intelligence-
2 mission.

3 ~~4.5.~~ "Employee newly hired" means an employee who ~~or contractor that~~ has not previously
4 been employed ~~or hired~~ by the employer or was previously employed ~~or hired~~ by that
5 employer but has been separated from such prior employment ~~arrangement~~ for at least
6 sixty consecutive days.

7 ~~5.6.~~ "Employer" means an entity or individual who:

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

11 ~~b.~~ ~~A person that hires a contractor.~~

12 ~~6.7.~~ "Labor organization" means an organization treated as a labor organization under
13 section 2(5) of the National Labor Relations Act, as amended [29 U.S.C. 152(5)], and
14 includes any entity, including a "hiring hall", which is used by the organization and an
15 employer to carry out requirements, described in section 8(f)(3) of the National Labor
16 Relations Act, as amended [29 U.S.C. 158(f)(3)], of an agreement between the
17 organization and the employer.

18 ~~SECTION 2. AMENDMENT.~~ Section 34-15-03 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 ~~34-15-03. Employer reporting.~~

21 ~~1.~~ Except as provided in subsections 2 and 3, each employer shall furnish to the
22 directory of new hires a report that contains the name, address, and social security
23 number of each employee ~~or contractor~~ newly hired for work within this state, the date
24 of hire, whether the employer offers health insurance to the employee ~~or contractor~~,
25 and the employer's name and address and the identifying number assigned under
26 section 6109 of the Internal Revenue Code of 1986, as amended [26 U.S.C. 6109], to
27 the employer.

28 ~~2.~~ An employer who ~~that~~ has employees who ~~or contractors that~~ are employed ~~or hired~~ in
29 two or more states, and who ~~which~~ transmits reports magnetically or electronically, may
30 designate one state in which the employer has employees ~~or contractors~~ and may
31 transmit a report conforming to subsection 1 to that state. An employer who ~~that~~ reports

1 pursuant to this subsection must~~shall~~ notify the secretary of the United States
2 department of health and human services, in writing, of the state so designated.

3 ~~3.~~ Any department, agency, or instrumentality of the United States shall transmit a report,
4 conforming to subsection 1, to the national directory of new hires established pursuant
5 to section 453 of the Social Security Act [42 U.S.C. 653].

6 ~~4.~~ a. Except as provided in subdivision b, a report required under this section must be
7 made no later than twenty days after the date the employer hires the employee or
8 contractor.

9 ~~b.~~ If the employer transmits reports magnetically or electronically, a report required
10 under this section may be made by two monthly transmissions, if necessary, not
11 less than twelve nor more than sixteen days apart.

12 ~~5.~~ An employer is not required to report a contractor under this section if the services are
13 provided in response to an emergency or if the services are not expected to be
14 provided on a recurring basis.

15 ~~**SECTION 3. AMENDMENT.** Subsection 3 of section 34-15-04 of the North Dakota Century~~
16 ~~Code is amended and reenacted as follows:~~

17 ~~3.~~ An employer that employs or hires more than twenty-four employees or contractors at
18 any time must~~shall~~ report new hires through an electronic method provided by the
19 department. An employer that does not comply with this subsection is deemed to have
20 failed to report new hires under section 34-15-05. The department may waive, upon a
21 showing of good cause, the requirement to report new hires electronically.

22 ~~**SECTION 4. AMENDMENT.** Subsection 3 of section 34-15-05 of the North Dakota Century~~
23 ~~Code is amended and reenacted as follows:~~

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

28 ~~**SECTION 5. EFFECTIVE DATE.** This Act becomes effective on January 1, 2020.~~

29 **SECTION 1.** A new section to chapter 34-15 of the North Dakota Century Code is created
30 and enacted as follows:

1 **Reporting of independent contractors.**

2 The provisions of this chapter apply to an independent contractor if the aggregate payment
3 for the services performed by the independent contractor is sufficient for the payor to be
4 required to file an internal revenue service form 1099 or substantially equivalent form and report
5 the payment on the form as nonemployee compensation.

6 **SECTION 2. EFFECTIVE DATE.** This Act becomes effective on January 1, 2020.