LIENS

CHAPTER 250

HOUSE BILL NO. 1328

(Representatives Steiner, Kingsbury, Owens)
(Senators Andrist, Sitte, Dotzenrod)

AN ACT to amend and reenact sections 35-17-04, 35-29-05, 35-30-02, 35-31-02, and 47-16-03 of the North Dakota Century Code, relating to the procedure for filing an agister's lien, the fees for filing federal tax liens, the procedure to file a processor's lien, the procedure to file an agricultural supplier's lien in the office of the secretary of state or a county recorder, and the procedure to file a landlord's lien in the office of a county recorder.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-17-04 of the North Dakota Century Code is amended and reenacted as follows:

35-17-04. Procedure to obtain lien - Statement filed - Contents - Waiver.

Any person entitled to an agister's lien, within ninety days after taking possession of the animal, may file in the office of the recorder in any county in this state or in the office of the secretary of state, a ~~verified~~ statement signed by the filer containing the following information:

1. The number of and a description of the animals subject to the lien and the legal description as to the location of the animals.

2. The name and address of the person for whom the animals are kept.

3. The name and address of the lienholder.

4. The price agreed upon for keeping the animals and, if no price was agreed upon, the reasonable value of the services.

5. The social security number or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of the person for whom the animals are kept.

The secretary of state shall prescribe one form that can be used to obtain a lien under this section or gain protection under the central notice system, or both. If the statement is not filed within ninety days as required by this section, the person entitled to the lien under section 35-17-03 waives the lien.

SECTION 2. AMENDMENT. Section 35-29-05 of the North Dakota Century Code is amended and reenacted as follows:

35-29-05. Fees.

1. The fee for filing and indexing each notice of lien is:

   a. For a lien on real estate, ~~five~~ten dollars, plus ~~two~~three dollars for the second and each succeeding page.

   b. For a lien on tangible and intangible personal property, ten dollars, plus five dollars to record if filed with a county recorder.

   c. For all other notices, including a certificate of discharge, nonattachment, or subordination, ten dollars, plus ten dollars if filed toward a lien on real estate with a county recorder.

   d. For a nonstandard statement when presented for filing, an additional fee of five dollars plus one dollar per page, and if filed on a real estate lien with a county recorder, an additional ten dollars plus three dollars for the second and each succeeding page.

   e. For ~~all other notices, including~~ a certificate of release ~~or nonattachment~~, five dollars, which must be paid at the time the lien is filed.

2. The officer may not file or record an instrument under this chapter unless the person offering the instrument for filing or recording has first paid the requisite filing or recording fee.

SECTION 3. AMENDMENT. Section 35-30-02 of the North Dakota Century Code is amended and reenacted as follows:

35-30-02. Procedure to obtain lien.

1. To obtain an agricultural processor's lien, the person entitled to the lien, within ninety days after the processing is completed, shall file a ~~verified~~ statement signed by the filer in the office of the recorder in any county in this state or in the office of the secretary of state. The statement must contain the following information:

   a. The name and address of the person for whom the processing was done.

   b. The name and address of the processor.

   c. A description of the crops or agricultural products and their amount, if known, subject to the lien together with a reasonable description, including the county as to the location where the crops or agricultural products were grown and the year the crop is to be harvested or was harvested.

   d. The price agreed upon for processing, or if no price was agreed upon, the reasonable value of the processing.

   e. The social security number or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of the person for whom the processing was done.

   f. A description of the processing services and the first date the services were furnished.

2. The secretary of state and the office of the recorder in any county in this state with which a ~~verified~~ statement signed by the filer under subsection 1 is submitted for filing shall reject the statement unless proof of mailing of notification of the lien to the debtor's last-known address by registered or certified mail with return receipt requested is filed with the statement.

3. The secretary of state shall prescribe one form that can be used to obtain a lien under this section or gain protection under the central notice system, or both. Before a processor's lien is filed, a billing statement for the services performed must include notice to the agricultural producer that if the amount due to the agricultural processor is not satisfied a lien may be filed.

SECTION 4. AMENDMENT. Section 35-31-02 of the North Dakota Century Code is amended and reenacted as follows:

35-31-02. Procedure to obtain lien.

To obtain an agricultural supplier's lien, except an agricultural supplier's lien for furnishing petroleum products, the person entitled to the lien, within one hundred twenty days after the supplies are furnished or the services performed, shall file a ~~verified~~ statement signed by the filer in the office of the recorder of any county in this state or in the office of the secretary of state. To obtain an agricultural supplier's lien for furnishing and delivering petroleum products, the person entitled to the lien, within one hundred fifty days after the petroleum products are furnished or delivered, shall file a ~~verified~~ statement signed by the filer in the office of the recorder of any county in the state or in the office of the secretary of state. The statement must contain the following information:

1. The name and address of the person to whom the supplies were furnished.

2. The name and address of the supplier.

3. A description of the crops, agricultural products, or livestock and their amount or number, if known, subject to the lien together with a reasonable description, including the county as to the location of the crops, agricultural products, or livestock and the year the crop is to be harvested or was harvested.

4. A description and value of the supplies and the first date furnished.

5. The social security number or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of the person to whom the supplies were furnished.

The secretary of state shall prescribe one form that can be used to obtain a lien under this section or gain protection under the central notice system, or both. Before a supplier's lien is filed, a billing statement for the supplies furnished must include notice to the agricultural producer that if the amount due to the agricultural supplier is not satisfied a lien may be filed.

SECTION 5. AMENDMENT. Section 47-16-03 of the North Dakota Century Code is amended and reenacted as follows:

47-16-03. Filing farm lease containing reservation of title to crop - Waiver of rights on failure to file.

1. When a lease of a farm contains a provision reserving title in the lessor to any part of the crops in excess of the rental share of the lessor until the stated conditions of the lease have been complied with by the lessee, such lease must be filed in the office of the recorder in the county in which the land described therein is located prior to July first in the year in which the crops are raised to render such reservation of title effective as to subsequent purchasers or encumbrancers of any part of the grain over and above the lessor's rental share produced upon the land.

2. The failure to file such lease or contract in accordance with this section constitutes a waiver by the lessor of all rights reserved by that person over and above that person's rental share in such crops as against any subsequent purchaser or encumbrancer of the lessee.

3. The secretary of state may prescribe a form which includes the pertinent information from the lease that may be filed in the central notice system. A lessor may file this form with the recorder and obtain the same rights under this section as if the lessor had filed the lease.

4. The fee required to file and index this notice of lease is:

   a. As provided in section 11-18-05 if the notice of lease is only a real estate recording;

   b. As provided in section 41-09-06 if the notice of lease is filed only to gain protection under the central notice system; or

   c. As provided in section 11-18-05, if the notice of lease is both a real estate recording and filed to gain protection under the central notice system. An additional fee may not be charged for the same statement to gain protection under the central notice system.

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 251

SENATE BILL NO. 2258

(Senators J. Lee, Dever)
(Representatives Devlin, Weisz)

AN ACT to create and enact a new section to chapter 14-09, two new subsections to section 26.1-02-28, and a new section to chapter 35-34 of the North Dakota Century Code, relating to child support enforcement; to amend and reenact sections 26.1-02-28, 34-15-03, 34-15-04, 35-34-02, 35-34-03, and 35-34-04, subsection 1 of section 35-34-06, and sections 35-34-09 and 35-34-10 of the North Dakota Century Code, relating to child support enforcement; to provide for transition; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Electronic remittal of funds withheld under an income withholding order.

An income payer that employs more than twenty-four employees at any time and has received more than four income withholding orders under this chapter shall remit any withheld funds by an electronic method approved by the child support agency. An income payer that employs more than twenty-four employees at any time and has received fewer than five income withholding orders under this chapter may choose to opt out of an electronic method approved by the child support agency only through a written request. An income payer that does not comply with this section is deemed to have failed to deliver income under section 14-09-09.3. The child support agency may waive, upon a showing of good cause, the requirement to remit funds electronically.

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

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

1. As used in this section:

   a. "Claimant" means a resident of this state over fourteen years of age who:

      (1) Is a beneficiary under a life insurance policy;

      (2) Is an individual who brings a third-party claim against an insured or under an insurance policy for compensation under insurance coverage for bodily injury or workers' compensation; or

      (3) Is an individual who brings a first-party claim under an insurance policy for uninsured or underinsured motorist benefits.

   b. "Department" means the department of human services and any designee of the department.

c. "Insurer" includes a government self-insurance pool and any designee of an insurer or government self-insurance pool, but does not include any health insurer participating in a data match under section 50-09-37.

d. "Personal information" means the name, address, and date of birth of a person; the person's social security number, current motor vehicle operator's license number issued to the claimant by the department of transportation under title 39, or the last four digits of the person's social security number; and any other relevant and available information regarding the person that is requested by the department.

2. Before paying a claim to a claimant for a claim occurring in this state under a contract of insurance issued in this state, an insurer ~~or government self-insurance pool~~ may exchange personal information about the claimant with the department ~~of human services or its designee~~. This section applies notwithstanding any provision of law making the information confidential.

3. Any personal information that is exchanged under this section is confidential and may only be used to establish or enforce a child support or medical support obligation, or as otherwise permitted or required by law. To the extent feasible, the department shall provide secure electronic processes for exchanging personal information under this section. An insurer shall not be assessed any fee by the department for exchanging claim information under this section.

4. An insurer that exchanges personal information with the department under subsection 2 also shall provide the telephone number of a facsimile machine or electronic mail address to which a lien or demand may be sent to the insurer by the department under chapter 35-34.

5. Notwithstanding anything to the contrary in section 35-34-06, upon agreement of the insurer and the department, if the department files a lien against a claim that is identified under this section:

a. The department may delay sending the claimant a copy of the notice of the lien until requested by the insurer or until a payment to the claimant is delayed as a result of the lien, whichever occurs first; or

b. The insurer may provide the claimant with the copy of the notice of lien that is required under section 35-34-06 no later than the date a payment to the claimant is delayed as a result of the lien.

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

6. A person is immune from suit or any liability under any federal or state law, including chapter 12.1-13 or 44-04, for acting in good faith under this section. The court shall award reasonable attorney's fees and costs against any person that commences an action that is subsequently dismissed by reason of the immunity granted by this section.

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

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

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

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

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

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

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

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

34-15-03. Employer reporting.

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

2. An employer who has employees who are employed in two or more states, and who transmits reports magnetically or electronically, may designate one state in which the employer has employees and may transmit a report conforming to subsection 1 to that state. An employer who reports pursuant to this subsection must notify the secretary of the United States department of health and human services, in writing, of the state so designated.

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

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

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

SECTION 6. AMENDMENT. Section 34-15-04 of the North Dakota Century Code is amended and reenacted as follows:

34-15-04. Reporting format.

1. Each employer report required by this chapter must be made on a W-4 form~~,~~ or~~, at the option of the employer,~~ an equivalent form prescribed by the state directory of new hires. ~~The~~

2. Except as provided in subsection 3, the report may be transmitted by first-class mail or by any magnetic or electronic means readable by the department, including facsimile transmission, electronic mail, modem transmission, or other means of electronic communication.

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

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

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

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

SECTION 8. A new section to chapter 35-34 of the North Dakota Century Code is created and enacted as follows:

Child support lien registry.

The child support agency shall create a child support lien registry using an interactive website. The registry shall include a listing of any obligor who owes past-due support that is being enforced by the child support enforcement agency, the obligor's date of birth, and the amount of past-due support that is being enforced by the child support enforcement agency. The lien registry website must be available to the public and support a search by last name of the obligor and other information provided by the person using the website. Any real or titled personal property, except the homestead or other property that is exempt under section 28-22-02, of an obligor who is listed on the lien registry or which the obligor thereafter acquires in this state is subject to a lien. A lien under this section is perfected as of the date the lien is first

listed on the child support lien registry, but is not effective against a good-faith purchaser of titled personal property unless the lien is recorded on that title. The child support agency must subordinate its lien under this section upon request of a third party if:

1. The request is accompanied by documentation from the lien registry website showing the child support lien balance as of the date the third party perfected its interest in the property, to the extent that the current balance of the child support lien exceeds the balance when the third party perfected its interest; or

2. The request is made within ninety days of the date the lien is first listed on the child support lien registry and the third party proves that it attempted to perfect an interest in the property prior to the creation of the child support lien.

SECTION 9. AMENDMENT. Section 35-34-03 of the North Dakota Century Code is amended and reenacted as follows:

35-34-03. Vehicle lien.

1. In the case of a vehicle, the child support agency may ~~establish a lien by filing~~file a notice of lien with the director of the department of transportation. The notice must be in a form prescribed by the director and contain a description of the vehicle, the name and last-known address of the obligor, and any other information required by the director. The notice of lien must state that the child support obligation is past due and that a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last-known address.

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

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

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

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

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

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

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

[89] **SECTION 10. AMENDMENT.** Section 35-34-04 of the North Dakota Century Code is amended and reenacted as follows:

35-34-04. Vessel lien.

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

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

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

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

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

SECTION 11. AMENDMENT. Subsection 1 of section 35-34-06 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 12. AMENDMENT. Section 35-34-09 of the North Dakota Century Code is amended and reenacted as follows:

---

[89] Section 35-34-04 was also amended by section 2 of Senate Bill No. 2249, chapter 456.

35-34-09. Immunity from liability.

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

SECTION 13. AMENDMENT. Section 35-34-10 of the North Dakota Century Code is amended and reenacted as follows:

35-34-10. Action to enforce lien.

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

SECTION 14. TRANSITION. The registry created in section 8 of this Act may include any lien under chapter 35-34 that exists on the effective date of section 8 of this Act. Any lien that is added to the lien registry under this section retains its original effective date and priority.

SECTION 15. EFFECTIVE DATE. Section 1 and sections 5 through 14 of this Act become effective on January 1, 2012. Sections 3 and 4 of this Act become effective on August 1, 2013.

Approved April 20, 2011
Filed April 20, 2011