

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 511

Short Title: IV-D Child Support/Withholding.

(Public)

Sponsors: Senators Marvin and Allran.

Referred to: Judiciary II.

March 20, 1989

A BILL TO BE ENTITLED

AN ACT TO REQUIRE IMMEDIATE INCOME WITHHOLDING IN TITLE IV-D CHILD SUPPORT CASES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 110-136.3 reads as rewritten:

**"§ 110-136.3. Income withholding procedures; applicability.**

(a) Required Contents of Support Orders. All child support orders, civil or criminal, entered or modified in the State beginning ~~October 1, 1986~~, October 1, 1989, shall:

- (1) Require the obligor to keep the clerk of court or IV-D agency informed of his current residence and mailing address;
- (2) ~~include~~ In non-IV-D cases, include a provision that an obligor will be subject to income withholding under a separate order if arrearages equal to the support payable for one month accumulate ~~or upon request of the obligor~~ obligor, and in non-IV-D cases, the court shall order income withholding to take effect immediately on all new or modified child support orders;
- (3) Require the obligor to cooperate fully with the initiating party in the verification of the amount of his disposable income;
- (4) Require the obligee or custodial party to keep the obligor informed of the current residence and mailing address of the child; and
- (5) If the case is a IV-D case, require the obligor to keep the IV-D agency informed of the name and address of any payor of his disposable

1 income and of the amount and effective date of any substantial change  
2 in his disposable income.

3 (b) When obligor subject to withholding. An obligor shall ~~become~~be subject to  
4 income withholding immediately upon the entry of a new or modified child support  
5 order in IV-D cases entered on or after October 1, 1989. In IV-D cases with orders  
6 prior to October 1, 1989, and non-IV-D cases, an obligor shall be subject to income  
7 withholding on the earliest of:

8 (1) The date on which the obligor fails to make legally obligated child  
9 support payments in an amount equal to the support payable for one  
10 month; or

11 (2) The date on which the obligor or obligee requests withholding.

12 (c) Applicability. Notwithstanding any other provision of law, the income  
13 withholding provisions of this Article shall apply to any civil or criminal child support  
14 order, entered or modified before, on, or after October 1, 1986. Immediate income  
15 withholding shall apply to those child support orders entered or modified on or after  
16 October 1, 1989, in IV-D cases only.

17 (d) Interstate cases. An interstate case is one in which a child support order of  
18 one state is to be enforced in another state.

19 (1) In interstate cases withholding provisions shall apply to a child support  
20 order of this or any other state. A petition addressed to this State to  
21 enforce a child support order of another state or a petition from an  
22 initiating party in this State addressed to another state to enforce a  
23 child support order entered in this State shall include:

- 24 a. A certified copy of the support order with all modifications,  
25 including any income withholding notice or order still in effect;
- 26 b. A copy of the income withholding law of the jurisdiction which  
27 issued the support order, provided that such jurisdiction has a  
28 withholding law;
- 29 c. A sworn statement of arrearages;
- 30 d. The name, address, and social security number of the obligor, if  
31 known;
- 32 e. The name and address of the obligor's employer or of any other  
33 source of income of the obligor derived in the state in which  
34 withholding is sought; and
- 35 f. The name and address of the agency or person to whom support  
36 payments collected by income withholding shall be transmitted.

37 For purposes of enforcing a petition under this subsection, jurisdiction is limited to the  
38 purposes of income withholding.

39 (2) The law of the state in which the support order was entered shall apply  
40 in determining when withholding shall be implemented and  
41 interpreting the child support order. The law and procedures of the  
42 state where the obligor is employed shall apply in all other respects.

1 (3) Except as otherwise provided by subdivision (2), income withholding  
2 initiated under this subsection is subject to all of the notice, hearing  
3 and other provisions of Chapter 110.

4 (4) In all interstate cases notices and orders to withhold shall be served  
5 upon the payor by a North Carolina agency or judicial officer. In all  
6 interstate non-IV-D cases, the advance notice to the obligor shall be  
7 served pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure.

8 (e) Procedures and regulations. Procedures, rules, regulations, forms, and  
9 instructions necessary to effect the income withholding provisions of this Article shall  
10 be established by the Secretary of the Department of Human Resources or his designee  
11 and the Administrative Office of the Courts. Forms and instructions shall be sent with  
12 each order or notice of withholding."

13 Sec. 2. G.S. 110-136.4 is amended by inserting a new subsection to read:

14 "(h1) Immediate income withholding. When a new or modified child support order  
15 is entered, the district court judge shall, after hearing evidence regarding the obligor's  
16 disposable income, place the obligor under an order for immediate income withholding.  
17 The IV-D agency shall serve the payor pursuant to G.S. 1A-1, Rule 4, Rules of Civil  
18 Procedure, with a notice of his obligation to withhold, and shall mail a copy of the  
19 notice to the obligor and file a copy with the clerk. If information is unavailable  
20 regarding an obligor's disposable income, or the obligor is unemployed, or an  
21 arrangement is reached between both parties that provides for an alternative  
22 arrangement, immediate income withholding shall not apply. This obligor, however, is  
23 subject to income withholding pursuant to G.S. 110-136.4(a)."

24 Sec. 3. G.S. 110-136.5 reads as rewritten:

25 **"§ 110-136.5. Implementation of withholding in non-IV-D cases.**

26 (a) Withholding Based on Arrearage. Notwithstanding any other provision of  
27 law, when an obligor is delinquent in an amount equal to the support payable for one  
28 month, the obligee may apply to the court, by motion or in an independent action, for an  
29 order for income withholding.

30 (1) The motion or complaint shall be verified and state, to the extent  
31 known:

- 32 a. That the obligor is under a court order to provide child support,  
33 and information sufficient to identify the order;
- 34 b. That the obligor is delinquent in an amount equal to the support  
35 payable for one month;
- 36 c. The amount of overdue support and the total amount sought to  
37 be withheld;
- 38 d. The name of each child for whose benefit support is due; and
- 39 e. The name, location, and mailing address of the payor or payors  
40 from whom withholding is sought and the amount of the  
41 obligor's monthly disposable income from each payor.

42 (2) The motion or complaint shall include or be accompanied by a notice  
43 to the obligor, stating:

- 1           a.     That withholding, if implemented, will apply to the obligor's  
2           current payors and all subsequent payors; and  
3           b.     That withholding, if implemented, will be continued until  
4           terminated pursuant to G.S. 110-136.10.

5 At any time the parties may agree to income withholding by consent order.

6     (b)    Withholding Based on Obligor's Request. The obligor may request at any  
7     time that income withholding be implemented. The request may be made either  
8     verbally in open court or by written request.

9           (1)   A written request for withholding shall state:

- 10          a.     That the obligor is under a court order to provide child support,  
11          and information sufficient to identify the order;  
12          b.     Whether the obligor is delinquent and the amount of any  
13          overdue support;  
14          c.     The name of each child for whose benefit support is payable;  
15          d.     The name, location, and mailing address of the payor or payors  
16          from whom the obligor receives disposable income and the  
17          amount of the obligor's monthly disposable income from each  
18          payor;  
19          e.     That the obligor understands that withholding, if implemented,  
20          will apply to the obligor's current payors and all subsequent  
21          payors and will be continued until terminated pursuant to G.S.  
22          110-136.10; and  
23          f.     That the obligor understands that the amount withheld will  
24          include an amount sufficient to pay current child support, an  
25          additional amount toward liquidation of any arrearages, and a  
26          two dollar (\$2.00) processing fee to be retained by the employer  
27          for each withholding, but that the total amount withheld may  
28          not exceed the following percent of disposable income:  
29          Forty percent (40%) if there is only one order for withholding;  
30          Forty-five percent (45%) if there is more than one order for  
31          withholding and the obligor is supporting other dependent  
32          children or his or her spouse; or  
33          Fifty percent (50%) if there is more than one order for  
34          withholding and the obligor is not supporting other dependent  
35          children or a spouse.

36           (2)   A written request for withholding shall be filed in the office of the  
37           clerk of superior court to which the obligor is directed to make child  
38           support payments. If the request states and the clerk verifies that the  
39           obligor is not delinquent, the court may enter an order for withholding  
40           without further notice or hearing. If the request states or the clerk  
41           finds that the obligor is delinquent, the matter shall be scheduled for  
42           hearing unless the obligor in writing waives his right to a hearing and  
43           consents to the entry of an order for withholding of an amount the  
44           court determines to be appropriate. The court may require a hearing in

1 any case. Notice of any hearing under this subdivision shall be sent to  
2 the obligee.

3 (b1) Withholding Based on Obligee's Request. The obligee may request at any  
4 time that income withholding be implemented. The request may be made either  
5 verbally in open court or by written request.

6 (1) A written request for withholding shall state:

7 a. That the obligor is under a court order to provide child support,  
8 and information sufficient to identify the order;

9 b. The name of each child for whose benefit support is payable;

10 c. Whether the obligor is delinquent in the child support or has  
11 been erratic in making child support payments and the amount  
12 of any overdue support;

13 d. Whether the obligor has made any threats, either verbal or  
14 physical, that may constitute domestic violence under Chapter  
15 50B of the General Statutes; and

16 e. The name, location, and mailing address of the payor or payors  
17 from whom the obligor receives disposable income and the  
18 amount of the obligor's monthly income from each payor.

19 (2) A written request for withholding shall include or be accompanied by a  
20 notice to the obligor, stating:

21 a. That withholding, if implemented, shall apply to the obligor's  
22 current payors and all subsequent payors; and

23 b. That withholding, if implemented, shall be continued until  
24 terminated pursuant to G.S. 110-136.10.

25 At any time the parties may agree to income withholding by consent order.

26 (c) Order for withholding. If the district court judge finds after hearing evidence  
27 that the obligor, at the time of the filing of the motion or complaint was, or at the time  
28 of the hearing is, delinquent in child support payments in an amount equal to the support  
29 payable for one month or that the obligor has requested that income withholding begin,  
30 the court shall enter an order for income withholding, unless:

31 (1) The obligor proves a mistake of fact; or

32 (2) The court finds that the child support obligation can be enforced and  
33 the child's right to receive support can be ensured without entry of an  
34 order for income withholding; or

35 (3) The court finds that the obligor has no disposable income subject to  
36 withholding or that withholding is not feasible for any other reason.

37 If the district court judge finds after hearing evidence based upon the obligee's request  
38 that the obligor has been erratic in making child support payments or has made threats,  
39 either verbal or physical, that may constitute domestic violence under Chapter 50B of  
40 the General Statutes, the court shall enter an order for income withholding.

41 If the obligor fails to respond or appear, the court shall hear evidence and enter an order  
42 as provided herein.

1 (d) Notice to payor and obligor. If an order for income withholding is entered, a  
2 notice of obligation to withhold shall be served by certified mail, return receipt  
3 requested, on the payor or payors and the obligor.

4 (e) Modification of withholding. When an order for withholding has been  
5 entered under this section, any party may file a motion seeking modification of the  
6 withholding based on changed circumstances. The clerk or the court on its own motion  
7 may initiate a hearing for modification when it appears that modification of the  
8 withholding is required or appropriate."

9 Sec. 4. This act shall become effective October 1, 1989, and applies to orders  
10 issued on or after that date.