

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 511

Judiciary II Committee Substitute Adopted 5/9/89

Short Title: IV-D Child Support/Withholding.

(Public)

Sponsors:

Referred to:

March 20, 1989

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

Section 1. G.S. 110-129 reads as rewritten:

§ 110-129. Definitions.

As used in this Article:

- (1) 'Court order' means any judgment or order of the courts of this State or of another state.
- (2) 'Dependent child' means any person under the age of 18 who is not otherwise emancipated, married or a member of the armed forces of the United States, or any person over the age of 18 for whom a court orders that support payments continue as provided in G.S. 50-13.4(c).
- (3) 'Responsible parent' means the natural or adoptive parent of a dependent child who has the legal duty to support said child and includes the father of an illegitimate child.
- (4) 'Program' means the Child Support Enforcement Program established and administered pursuant to the provisions of this Article and Title IV-D of the Social Security Act.
- (5) 'Designated representative' means any person or agency designated by a board of county commissioners or the Department of Human Resources to administer a program of child support enforcement for a county or region of the State.

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- 1 (6) 'Disposable income' means any form of periodic payment to an
2 individual, regardless of sources, including but not limited to wages,
3 salary, commission, self-employment income, bonus pay, severance
4 pay, sick pay, incentive pay, vacation pay, compensation as an
5 independent contractor, worker's compensation, unemployment
6 compensation benefits, disability, annuity, survivor's benefits, pension
7 and retirement benefits, interest, dividends, rents, royalties, trust
8 income and other similar payments, which remain after the deduction
9 of amounts for federal, State, and local taxes, Social Security, and
10 involuntary retirement contributions. However, Supplemental Security
11 Income, Aid for Dependent Children, and other public assistance
12 payments shall be excluded from disposable income. For employers,
13 disposable income means 'wage' as it is defined by G.S. 95-25.2 (16).
14 Unemployment compensation benefits shall be treated as disposable
15 income only for the purposes of income withholding under the
16 provisions of G.S. 110-136.4, and the amount withheld shall not
17 exceed twenty-five percent (25%) of the unemployment compensation
18 benefits.
- 19 (7) 'IV-D case' means a case in which services have been applied for or
20 are being provided by a child support enforcement agency established
21 pursuant to Title IV-D of the Social Security Act as amended and this
22 Article.
- 23 (8) 'Non-IV-D case' means any case, other than a IV-D case, in which
24 child support is legally obligated to be paid.
- 25 (9) 'Initiating party' means the party, the attorney for a party, a child
26 support enforcement agency, or the clerk of superior court who
27 initiates an action, proceeding, or procedure as allowed or required by
28 law for the establishment or enforcement of a child support obligation.
- 29 (10) 'Mistake of fact' means that the obligor:
30 (a) Is not in arrears in an amount equal to the support payable for
31 one month; or
32 (b) Did not request that withholding begin, if withholding is
33 pursuant to a purported request by the obligor for withholding;
34 or
35 (c) Is not the person subject to the court order of support for the
36 child named in the advance notice of ~~withholding~~-withholding;
37 or
38 (d) Does not owe the amount of current support or averages
39 specified in the advance notice or motion of withholding.
- 40 (11) 'Obligee', in a IV-D case, means the child support enforcement
41 agency, and in a non-IV-D case means the individual to whom a duty
42 of support is owed or the individual's legal representative.
- 43 (12) 'Obligor' means the individual who owes a duty to make child support
44 payments under a court order.

1 (13) 'Payor' means any payor, including any federal, State, or local
 2 governmental unit, of disposable income to an obligor. When the
 3 payor is an employer, payor means employer as is defined at 29 USC §
 4 203(d) in the Fair Labor Standards Act."

5 Sec. 2. G.S. 110-136.3 reads as rewritten:

6 **"§ 110-136.3. Income withholding procedures; applicability.**

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

10 (1) Require the obligor to keep the clerk of court or IV-D agency informed
 11 of his current residence and mailing address;

12 (2) In IV-D cases, include a provision that the court shall order income
 13 withholding to take effect immediately;

14 ~~(2)(3) Include~~ In non-IV-D cases, include a provision that an obligor will be
 15 subject to income withholding under a separate order if arrearages
 16 equal to the support payable for one month accumulate or upon request
 17 of the ~~obligor;~~ obligor, or upon the request of the obligee for good cause
 18 shown;

19 ~~(3)(4)~~ Require the obligor to cooperate fully with the initiating party in the
 20 verification of the amount of his disposable income;

21 ~~(4)(5)~~ Require the ~~obligee or~~ custodial party to keep the obligor informed of
 22 the current residence and mailing address of the ~~child;~~ child, unless the
 23 IV-D agency or the court has determined that notice to the obligor is
 24 inappropriate because the obligor has made verbal or physical threats
 25 that constitute domestic violence under Chapter 50B of the General
 26 Statutes; and

27 ~~(5)(6)~~ If the case is a IV-D case, require the obligor to keep the IV-D agency
 28 informed of the name and address of any payor of his disposable
 29 income and of the amount and effective date of any substantial change
 30 in his disposable income.

31 (b) When obligor subject to withholding.

32 (1) In IV-D cases, an obligor is subject to income withholding
 33 immediately upon the entry of a new or modified child support order
 34 in IV-D cases entered on or after October 1, 1989. In IV-D cases with
 35 orders prior to October 1, 1989, An an obligor shall become subject to
 36 income withholding on the earliest of:

37 ~~(4)(a)~~ The date on which the obligor fails to make legally obligated child
 38 support payments in an amount equal to the support payable for one
 39 month; or

40 ~~(2)(b)~~ The date on which the obligor or obligee requests withholding.

41 (2) In non-IV-D cases, an obligor shall be subject to income withholding
 42 on the earliest of:

- 1 (a) The date on which the obligor fails to make legally obligated
2 child support payments in an amount equal to the support
3 payable for one month; or
4 (b) The date on which the obligor request withholding; or
5 (c) The date the obligee requests withholding and makes a showing
6 to the court of the need for withholding, as provided in G.S.
7 110-136.5(c).

8 (c) Applicability. Notwithstanding any other provision of law, the income
9 withholding provisions of this Article shall apply to any civil or criminal child support
10 order, entered or modified before, on, or after October 1, 1986.

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

- 13 (1) In interstate cases withholding provisions shall apply to a child support
14 order of this or any other state. A petition addressed to this State to
15 enforce a child support order of another state or a petition from an
16 initiating party in this State addressed to another state to enforce a
17 child support order entered in this State shall include:
18 a. A certified copy of the support order with all modifications,
19 including any income withholding notice or order still in effect;
20 b. A copy of the income withholding law of the jurisdiction which
21 issued the support order, provided that such jurisdiction has a
22 withholding law;
23 c. A sworn statement of arrearages;
24 d. The name, address, and social security number of the obligor, if
25 known;
26 e. The name and address of the obligor's employer or of any other
27 source of income of the obligor derived in the state in which
28 withholding is sought; and
29 f. The name and address of the agency or person to whom support
30 payments collected by income withholding shall be transmitted.

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

- 33 (2) The law of the state in which the support order was entered shall apply
34 in determining when withholding shall be implemented and
35 interpreting the child support order. The law and procedures of the
36 state where the obligor is employed shall apply in all other respects.
37 (3) Except as otherwise provided by subdivision (2), income withholding
38 initiated under this subsection is subject to all of the notice, hearing
39 and other provisions of Chapter 110.
40 (4) In all interstate cases notices and orders to withhold shall be served
41 upon the payor by a North Carolina agency or judicial officer. In all
42 interstate non-IV-D cases, the advance notice to the obligor shall be
43 served pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure.

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

6 Sec. 3. G.S. 110-136.4 reads as rewritten:

7 **"§ 110-136.4. Implementation of withholding in IV-D cases.**

8 (a) Withholding based on average or obligor's request.

9 (1) Advance notice of withholding. When an obligor in a IV-D case
10 becomes subject to income withholding, the obligee shall, after
11 verifying the obligor's current employer or other payor, wages or other
12 disposable income, and mailing address, serve the obligor with
13 advance notice of withholding in accordance with G.S. 1A-1, Rule 4,
14 Rules of Civil Procedure.

15 (b) (2) Contents of advance notice. The advance notice to the
16 obligor shall contain, at a minimum, the following information:

17 (1) a. Whether the proposed withholding is based on the obligor's failure
18 to make legally obligated payments in an amount equal to the support
19 payable for one month or on the obligor's request for withholding;

20 (2) b. The amount of overdue support, the total amount to be withheld,
21 and when the withholding will occur;

22 (3) c. The name of each child for whose benefit the child support is due,
23 and information sufficient to identify the court order under which the
24 obligor has a duty to support the child;

25 (4) d. The amount and sources of disposable income;

26 (5) e. That the withholding will apply to the obligor's wages or other
27 sources of disposable income from current payors and all subsequent
28 payors once the procedures under this section are invoked;

29 (6) f. An explanation of the obligor's rights and responsibilities pursuant
30 to this section;

31 (7) g. That withholding will be continued until terminated pursuant to
32 G.S. 110-136.10.

33 (c) (3) Contested withholding. The obligor may contest the
34 withholding only on the basis of a mistake of fact. To contest the
35 withholding, the obligor must, within 10 days of receipt of the
36 advance notice of withholding, request a hearing in the county where
37 the support order was entered before the district court and give
38 notice to the obligee specifying the mistake of fact upon which the
39 hearing request is based. If the asserted mistake of fact can be
40 resolved by agreement between the obligee and the obligor, no
41 hearing shall occur. Otherwise, a hearing shall be held and a
42 determination made, within 30 days of the obligor's receipt of the
43 advance notice of withholding, as to whether the asserted mistake of
44 fact is valid. No withholding shall occur pending the hearing

1 decision. The failure to hold a hearing within 30 days shall not
2 invalidate an otherwise properly entered order. If it is determined
3 that a mistake of fact exists, no withholding shall occur. Otherwise,
4 within 45 days of the obligor's receipt of the advance notice of
5 withholding, the obligee shall serve the payor, pursuant to G.S. 1A-
6 1, Rule 4, Rules of Civil Procedure, with notice of his obligation to
7 withhold, and shall mail a copy of such notice to the obligor and file
8 a copy with the clerk. In the event of appeal, withholding shall not
9 be stayed. If the appeal is concluded in favor of the obligor, the
10 obligee shall promptly repay sums wrongfully withheld and notify
11 the payor to cease withholding.

12 (d) (4) Uncontested withholding. If the obligor does not contest the
13 withholding within the 10-day response period, the obligee shall
14 serve the payor, pursuant to G.S. 1A-1, Rule 4, Rules of Civil
15 Procedure, with notice of his obligation to withhold, and shall mail a
16 copy of such notice to the obligor and file a copy with the clerk.

17 (e) (5) Payment not a defense to withholding. The payment of
18 overdue support shall not be a basis for terminating or not
19 implementing withholding.

20 (6) Inability to implement withholding. When an obligor is subject to
21 withholding, but withholding under this section cannot be
22 implemented because the obligor's location is unknown, because the
23 extent and source of his disposable income cannot be determined, or
24 for any other reason, the obligee shall either request the clerk of
25 superior court to initiate enforcement proceedings under G.S. 15A-
26 1344.1(d) or G.S. 50-13.9(d) or take other appropriate available
27 measures to enforce the support obligation.

28 (b) Immediate income withholding. When a new or modified child support order
29 is entered, the district court judge shall, after hearing evidence regarding the obligor's
30 disposable income, place the obligor under an order for immediate income withholding.
31 The IV-D agency shall serve the payor pursuant to G.S. 1A-1, Rule 4, Rules of Civil
32 Procedure, with a notice of his obligation to withhold, and shall mail a copy of such
33 notice to the obligor and file a copy with the clerk. If information is unavailable
34 regarding an obligor's disposable income, or the obligor is unemployed, or an agreement
35 is reached between both parties which provides for an alternative arrangement,
36 immediate income withholding shall not apply. The obligor, however, is subject to
37 income withholding pursuant to G.S. 110-136.4(a).

38 (c) Subsequent payors. If the obligor changes employment or source of
39 disposable income, notice to subsequent payors of their obligation to withhold shall be
40 served as required by G.S. 1A-1, Rule 4, Rules of Civil Procedure. Copies of such
41 notice shall be filed with the clerk of court and served upon the obligor by first class
42 mail.

43 (f) (d) Multiple withholdings. The obligor must notify the obligee if the obligor
44 is currently subject to another withholding for child support. In the case of two or more

1 withholdings against one obligor, the obligee or obligees shall attempt to resolve any
2 conflict between the orders in a manner that is fair and equitable to all parties and within
3 the limits specified by G.S. 110-136.6. If the conflict cannot be so resolved, an injured
4 party, upon request, shall be granted a hearing in accordance with the procedure
5 specified in G.S. 110- 136.4(c). The conflict between the withholding orders shall be
6 resolved in accordance with G.S. 110-136.7.

7 ~~(g) Inability to implement withholding. When an obligor is subject to~~
8 ~~withholding, but withholding under this section cannot be implemented because the~~
9 ~~obligor's location is unknown, because the extent and source of his disposable income~~
10 ~~cannot be determined, or for any other reason, the obligee shall either request the clerk~~
11 ~~of superior court to initiate enforcement proceedings under G.S. 15A-1344.1(d) or G.S.~~
12 ~~50-13.9(d) or take other appropriate available measures to enforce the support~~
13 ~~obligation.~~

14 ~~(h)~~ (e) Modification of withholding. When an order for withholding has been
15 entered under this section, the obligee may modify the withholding based on changed
16 circumstances. The obligee shall proceed as is provided in this section.

17 ~~(i)~~ (f) Applicability of section. The provisions of this section apply to IV-D cases
18 only."

19 Sec. 4. G.S. 110-136.5 reads as rewritten:

20 "**§ 110-136.5. Implementation of withholding in non-IV-D cases.**

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

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

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

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

- 39 a. That withholding, if implemented, will apply to the obligor's
40 current payors and all subsequent payors; and
- 41 b. That withholding, if implemented, will be continued until
42 terminated pursuant to G.S. 110-136.10.

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

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

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

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

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

42 (c) Withholding Based on Obligee's Request. The obligee may request at any
43 time that income withholding be implemented.

44 (1) A request for withholding shall include the following:

- 1 a. The information sufficient to identify the order if a court order
2 to provide child support has previously been issued;
3 b. The name of each child for whose benefit support is payable;
4 c. The grounds for the request for withholding are:
5 i. The obligor is currently delinquent in making child
6 support payments and the amount of the delinquency; or
7 ii. The obligor has been erratic in making child support
8 payments; and
9 d. The name, location, and mailing address of the payor or payors
10 from whom the obligor receives disposable income and the
11 amount of the obligor's monthly income from each payor.
- 12 (2) A request for withholding shall include or be accompanied by a notice
13 to the obligor, stating:
14 a. That withholding, if implemented, shall apply to the obligor's
15 current payors and all subsequent payors; and
16 b. That withholding, if implemented, shall be continued until
17 terminated pursuant to G.S. 110-136.10.
- 18 (3) At any time the parties may agree to income withholding by consent
19 order.
- 20 (e) (d) Order for withholding. If the district court judge finds after hearing
21 evidence that the obligor, at the time of the filing of the motion or complaint was, or at
22 the time of the hearing is, delinquent in child support payments in an amount equal to
23 the support payable for one month in accordance with G.S. 110-136.5(a); or that the
24 obligor has requested that income withholding ~~begin,~~ begin in accordance with G.S.
25 110-136.5(b); or that the obligee has requested income withholding and has shown
26 sufficient grounds in accordance with G.S. 110-136.5(c); the court shall enter an order
27 for income withholding, unless:
- 28 (1) The obligor proves a mistake of ~~fact;~~ fact except that G.S. 110-
29 129(10)(a) and (b) are not applicable when the request is based on the
30 obligee's request under G.S. 110-136.5(c); or
31 (2) The court finds that the child support obligation can be enforced and
32 the child's right to receive support can be ensured without entry of an
33 order for income withholding; or
34 (3) The court finds that the obligor has no disposable income subject to
35 withholding or that withholding is not feasible for any other reason.
- 36 If the obligor fails to respond or appear, the court shall hear evidence and enter an order
37 as provided herein.
- 38 ~~(d)~~ (e) Notice to payor and obligor. If an order for income withholding is entered,
39 a notice of obligation to withhold shall be served ~~by certified mail, return receipt requested,~~
40 ~~on the payor or payors and the obligor.~~ on the payor as required by G.S. 1A-1, Rule 4,
41 Rules of Civil Procedure. Copies of such notice shall be filed with the clerk of court
42 and served upon the obligor by first class mail.
- 43 ~~(e)~~ (f) Modification of withholding. When an order for withholding has been
44 entered under this section, any party may file a motion seeking modification of the

1 withholding based on changed circumstances. The clerk or the court on its own motion
2 may initiate a hearing for modification when it appears that modification of the
3 withholding is required or appropriate."

4 Sec. 5. This act shall become effective October 1, 1989, and applies to orders
5 issued on or after that date.