

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 779

Short Title: Income Withholding/Regular Mail.

(Public)

Sponsors: Senator Marvin.

Referred to: Judiciary II.

April 5, 1989

A BILL TO BE ENTITLED

AN ACT TO REDUCE COSTS OF CHILD SUPPORT ENFORCEMENT BY
ALLOWING NOTICE BY REGULAR MAIL TO OBLIGORS OF SUBSEQUENT
INCOME WITHHOLDINGS FOR CHILD SUPPORT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 110-136.4 reads as rewritten:

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

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

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

- (1) Whether the proposed withholding is based on the obligor's failure to make legally obligated payments in an amount equal to the support payable for one month or on the obligor's request for withholding;
- (2) The amount of overdue support, the total amount to be withheld, and when the withholding will occur;
- (3) The name of each child for whose benefit the child support is due, and information sufficient to identify the court order under which the obligor has a duty to support the child;
- (4) The amount and sources of disposable income;

- 1 (5) That the withholding will apply to the obligor's wages or other sources
2 of disposable income from current payors and all subsequent payors
3 once the procedures under this section are invoked;
- 4 (6) An explanation of the obligor's rights and responsibilities pursuant to
5 this section;
- 6 (7) That withholding will be continued until terminated pursuant to G.S.
7 110-136.10.

8 (c) Contested withholding. The obligor may contest the withholding only on the
9 basis of a mistake of fact. To contest the withholding, the obligor must, within 10 days
10 of receipt of the advance notice of withholding, request a hearing in the county where
11 the support order was entered before the district court and give notice to the obligee
12 specifying the mistake of fact upon which the hearing request is based. If the asserted
13 mistake of fact can be resolved by agreement between the obligee and the obligor, no
14 hearing shall occur. Otherwise, a hearing shall be held and a determination made, within
15 30 days of the obligor's receipt of the advance notice of withholding, as to whether the
16 asserted mistake of fact is valid. No withholding shall occur pending the hearing
17 decision. The failure to hold a hearing within 30 days shall not invalidate an otherwise
18 properly entered order. If it is determined that a mistake of fact exists, no withholding
19 shall occur. Otherwise, within 45 days of the obligor's receipt of the advance notice of
20 withholding, the obligee shall serve the payor, pursuant to G.S. 1A-1, Rule 4, Rules of
21 Civil Procedure, with notice of his obligation to withhold, and shall mail a copy of such
22 notice to the obligor and file a copy with the clerk. In the event of appeal, withholding
23 shall not be stayed. If the appeal is concluded in favor of the obligor, the obligee shall
24 promptly repay sums wrongfully withheld and notify the payor to cease withholding.

25 (d) Uncontested withholding. If the obligor does not contest the withholding
26 within the 10-day response period, the obligee shall serve the payor, pursuant to G.S.
27 1A-1, Rule 4, Rules of Civil Procedure, with notice of his obligation to withhold, and
28 shall mail a copy of such notice to the obligor and file a copy with the clerk.

29 (e) Payment not a defense to withholding. The payment of overdue support shall
30 not be a basis for terminating or not implementing withholding.

31 (f) Multiple withholdings. The obligor must notify the obligee if the obligor is
32 currently subject to another withholding for child support. In the case of two or more
33 withholdings against one obligor, the obligee or obligees shall attempt to resolve any
34 conflict between the orders in a manner that is fair and equitable to all parties and within
35 the limits specified by G.S. 110-136.6. If the conflict cannot be so resolved, an injured
36 party, upon request, shall be granted a hearing in accordance with the procedure
37 specified in G.S. 110-136.4(c). The conflict between the withholding orders shall be
38 resolved in accordance with G.S. 110-136.7.

39 (f1) Subsequent payors. If the obligor changes employment or source of
40 disposable income, notice to subsequent payors of their obligation to withhold shall be
41 served as required by G.S. 1A-1, Rule 4, Rules of Civil Procedure. The obligee shall
42 also mail a copy of the notice to the obligor and file a copy with the clerk of court.

43 (g) Inability to implement withholding. When an obligor is subject to
44 withholding, but withholding under this section cannot be implemented because the

1 obligor's location is unknown, because the extent and source of his disposable income
2 cannot be determined, or for any other reason, the obligee shall either request the clerk
3 of superior court to initiate enforcement proceedings under G.S. 15A-1344.1(d) or G.S.
4 50-13.9(d) or take other appropriate available measures to enforce the support
5 obligation.

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

9 (i) Applicability of section. The provisions of this section apply to IV-D cases
10 only."

11 Sec. 2. G.S. 110-136.5 reads as rewritten:

12 **"§ 110-136.5. Implementation of withholding in non-IV-D cases.**

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

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

- 19 a. That the obligor is under a court order to provide child support,
20 and information sufficient to identify the order;
- 21 b. That the obligor is delinquent in an amount equal to the support
22 payable for one month;
- 23 c. The amount of overdue support and the total amount sought to
24 be withheld;
- 25 d. The name of each child for whose benefit support is due; and
- 26 e. The name, location, and mailing address of the payor or payors
27 from whom withholding is sought and the amount of the
28 obligor's monthly disposable income from each payor.

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

- 31 a. That withholding, if implemented, will apply to the obligor's
32 current payors and all subsequent payors; and
- 33 b. That withholding, if implemented, will be continued until
34 terminated pursuant to G.S. 110-136.10.

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

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

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

- 40 a. That the obligor is under a court order to provide child support,
41 and information sufficient to identify the order;
- 42 b. Whether the obligor is delinquent and the amount of any
43 overdue support;
- 44 c. The name of each child for whose benefit support is payable;

- 1 d. The name, location, and mailing address of the payor or payors
2 from whom the obligor receives disposable income and the
3 amount of the obligor's monthly disposable income from each
4 payor;
- 5 e. That the obligor understands that withholding, if implemented,
6 will apply to the obligor's current payors and all subsequent
7 payors and will be continued until terminated pursuant to G.S.
8 110-136.10; and
- 9 f. That the obligor understands that the amount withheld will
10 include an amount sufficient to pay current child support, an
11 additional amount toward liquidation of any arrearages, and a
12 two dollar (\$2.00) processing fee to be retained by the employer
13 for each withholding, but that the total amount withheld may
14 not exceed the following percent of disposable income:
15 forty percent (40%) if there is only one order for withholding;
16 forty-five percent (45%) if there is more than one order for
17 withholding and the obligor is supporting other dependent
18 children or his or her spouse; or
19 fifty percent (50%) if there is more than one order for
20 withholding and the obligor is not supporting other dependent
21 children or a spouse.
- 22 (2) A written request for withholding shall be filed in the office of the
23 clerk of superior court to which the obligor is directed to make child
24 support payments. If the request states and the clerk verifies that the
25 obligor is not delinquent, the court may enter an order for withholding
26 without further notice or hearing. If the request states or the clerk
27 finds that the obligor is delinquent, the matter shall be scheduled for
28 hearing unless the obligor in writing waives his right to a hearing and
29 consents to the entry of an order for withholding of an amount the
30 court determines to be appropriate. The court may require a hearing in
31 any case. Notice of any hearing under this subdivision shall be sent to
32 the obligee.
- 33 (c) Order for withholding. If the district court judge finds after hearing evidence
34 that the obligor, at the time of the filing of the motion or complaint was, or at the time
35 of the hearing is, delinquent in child support payments in an amount equal to the support
36 payable for one month or that the obligor has requested that income withholding begin,
37 the court shall enter an order for income withholding, unless:
- 38 (1) The obligor proves a mistake of fact; or
- 39 (2) The court finds that the child support obligation can be enforced and
40 the child's right to receive support can be ensured without entry of an
41 order for income withholding; or
- 42 (3) The court finds that the obligor has no disposable income subject to
43 withholding or that withholding is not feasible for any other reason.

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

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

6 (d1) Subsequent payors. If the obligor changes employment or source of
7 disposable income, notice to subsequent payors of their obligation to withhold shall be
8 served as required by G.S. 1A-1, Rule 4, Rules of Civil Procedure. The obligee shall
9 also mail a copy of the notice to the obligor and file a copy with the clerk of court.

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

15 Sec. 3. G.S. 110-136.8 reads as rewritten:

16 **"§ 110-136.8. Notice to payor; payor's responsibilities.**

17 (a) Contents of notice. Notice to a payor of his obligation to withhold shall
18 include information regarding the payor's rights and responsibilities, the amount of
19 disposable income attributable to that payor on which that withholding is based, the
20 penalties under this section, and the maximum percentages of disposable income that
21 may be withheld as provided in G.S. 110-136.6.

22 (b) Payor's responsibilities. A payor who has been properly served with a notice
23 to withhold is required to:

24 (1) Withhold from the obligor's disposable income and, within 10 days of
25 the date the obligor is paid, send to the clerk of superior court specified
26 in the notice, the amount specified in the notice, but in no event more
27 than the amount allowed by G.S. 110-136.6; however, if a lesser
28 amount of disposable income is available for any pay period, the payor
29 shall either: (a) compute and send the appropriate amount to the clerk
30 of court, using the percentages as provided in G.S. 110-136.6, or (b)
31 request the initiating party to inform the payor of the proper amount to
32 be withheld for that period;

33 (2) Continue withholding until further notice from the IV-D agency or the
34 clerk of superior court;

35 (3) Withhold for child support before withholding pursuant to any other
36 legal process under State law against the same disposable income;

37 (4) Begin withholding from the first payment due the obligor in the first
38 pay period that occurs 14 days following the date the notice of the
39 obligation to withhold was served on the payor;

40 (5) Promptly notify the obligee in a IV-D case, or the clerk of superior
41 court in a non-IV-D case, in writing:

42 a. If there is more than one child support withholding for the
43 obligor;

- 1 b. When the obligor terminates employment or otherwise ceases to
2 be entitled to disposable income from the payor, and provide
3 the obligor's last known address, and the name and address of
4 his new employer, if known;
5 c. Of the payor's inability to comply with the withholding for any
6 reason; and
7 (6) Cooperate fully with the initiating party in the verification of the
8 amount of the obligor's disposable income.
- 9 (c) Change in obligor's employment. If the obligor changes employment within
10 the State when withholding is in effect, the requirement for withholding shall continue,
11 and
- 12 (1) In a IV-D case, the IV-D obligee shall make any necessary
13 adjustments to the withholding, notify the ~~obligor and his~~ new employer
14 in accordance with this section and mail a copy to the obligor, and file
15 a copy of the adjusted withholding with the clerk of superior court;
16 (2) In a non-IV-D case, the clerk shall serve a notice of obligation to
17 withhold according to the terms of the withholding order on the new
18 employer and ~~on the obligor~~ mail a copy to the obligor; if the obligor or
19 payor gives notice that an adjustment to the withholding order, other
20 than the change in payor, is needed, the matter shall be scheduled for
21 hearing before a child support hearing officer or district court judge
22 who shall make any necessary adjustments to the withholding.
- 23 (d) The payor may combine amounts withheld from obligors' disposable incomes
24 in a single payment to each clerk of superior court if the payor separately identifies by
25 name and case number the portion of the single payment attributable to each individual
26 obligor.
- 27 (e) Prohibited conduct by payor; civil penalty. Notwithstanding any other
28 provision of law, when a court finds, pursuant to a motion in the cause filed by the
29 initiating party joining the payor as a third party defendant, with 30 days notice to
30 answer the motion, that a payor has willfully refused to comply with the provisions of
31 this section, such payor shall be ordered to commence withholding and shall be held
32 liable to the initiating party for any amount which such payor should have withheld,
33 except that such payor shall not be required to vary the normal pay or disbursement
34 cycles in order to comply with these provisions.
- 35 A payor shall not discharge from employment, refuse to employ, or otherwise take
36 disciplinary action against any obligor solely because of the withholding. When a court
37 finds that a payor has taken any of these actions, the payor shall be liable for a civil
38 penalty to be paid to the county school fund. For a first offense, the civil penalty shall
39 be one hundred dollars (\$100.00). For second and third offenses, the civil penalty shall
40 be five hundred dollars (\$500.00) and one thousand dollars (\$1,000), respectively. Any
41 payor who violates any provision of this paragraph shall be liable in a civil action for
42 reasonable damages suffered by an obligor as a result of the violation, and an obligor
43 discharged or demoted in violation of this paragraph shall be entitled to be reinstated to

1 his former position. The statute of limitations for actions under this subsection shall be
2 one year pursuant to G.S. 1-54.

3 (f) Any payor who withholds the sum provided in any notice or order to the
4 payor shall not be liable for any penalties under this section."

5 Sec. 4. This act is effective upon ratification.