

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 511

Judiciary II Committee Substitute Adopted 5/9/89

House Committee Substitute Favorable 6/26/89

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 AND TO MAKE OTHER CHANGES RELATED TO INCOME WITHHOLDING PROCEDURES IN IV-D AND NON-IV-D 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

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

1 (12) 'Obligor' means the individual who owes a duty to make child support
2 payments under a court order.

3 (13) 'Payor' means any payor, including any federal, State, or local
4 governmental unit, of disposable income to an obligor. When the
5 payor is an employer, payor means employer as is defined at 29 USC §
6 203(d) in the Fair Labor Standards Act."

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

8 **"§ 110-136.3. Income withholding procedures; applicability.**

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

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

14 (2) ~~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~~ accumulate; or
17 upon request of the obligor; or upon the court's findings, pursuant to a
18 motion or independent action filed by the obligee, that the obligor is or
19 has been delinquent in making child support payments or has been
20 erratic in making child support payments;

21 (2a) In IV-D cases, include a provision ordering income withholding to
22 take effect immediately;

23 (3) Require the obligor to cooperate fully with the initiating party in the
24 verification of the amount of his disposable income;

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

31 (5) If the case is a IV-D case, require the obligor to keep the IV-D agency
32 informed of the name and address of any payor of his disposable
33 income and of the amount and effective date of any substantial change
34 in his disposable income.

35 (b) When obligor subject to withholding.

36 (1) In IV-D cases in which a new or modified child support order is
37 entered on or after October 1, 1989, an obligor is subject to income
38 withholding immediately upon entry of the order. In IV-D cases in
39 which the child support order was entered prior to October 1, 1989, An
40 an obligor shall become subject to income withholding on the earliest
41 of:

42 a. The date on which the obligor fails to make legally obligated
43 child support payments in an amount equal to the support
44 payable for one month; or

- 1 ~~(2)~~ b. The date on which the obligor or obligee requests withholding.
- 2 (2) In non-IV-D cases, an obligor shall be subject to income withholding
- 3 on the earliest of:
- 4 a. The date on which the obligor fails to make legally obligated
- 5 child support payments in an amount equal to the support
- 6 payable for one month; or
- 7 b. The date on which the obligor requests withholding; or
- 8 c. The date on which the court determines, pursuant to a motion or
- 9 independent action filed by the obligee under G.S. 110-
- 10 136.5(a), that the obligor is or has been delinquent in making
- 11 child support payments or has been erratic in making child
- 12 support payments.
- 13 (c) Applicability. Notwithstanding any other provision of law, the income
- 14 withholding provisions of this Article shall apply to any civil or criminal child support
- 15 order, entered or modified before, on, or after October 1, 1986.
- 16 (d) Interstate cases. An interstate case is one in which a child support order of
- 17 one state is to be enforced in another state.
- 18 (1) In interstate cases withholding provisions shall apply to a child support
- 19 order of this or any other state. A petition addressed to this State to
- 20 enforce a child support order of another state or a petition from an
- 21 initiating party in this State addressed to another state to enforce a
- 22 child support order entered in this State shall include:
- 23 a. A certified copy of the support order with all modifications,
- 24 including any income withholding notice or order still in effect;
- 25 b. A copy of the income withholding law of the jurisdiction which
- 26 issued the support order, provided that such jurisdiction has a
- 27 withholding law;
- 28 c. A sworn statement of arrearages;
- 29 d. The name, address, and social security number of the obligor, if
- 30 known;
- 31 e. The name and address of the obligor's employer or of any other
- 32 source of income of the obligor derived in the state in which
- 33 withholding is sought; and
- 34 f. The name and address of the agency or person to whom support
- 35 payments collected by income withholding shall be transmitted.
- 36 For purposes of enforcing a petition under this subsection, jurisdiction is limited to the
- 37 purposes of income withholding.
- 38 (2) The law of the state in which the support order was entered shall apply
- 39 in determining when withholding shall be implemented and
- 40 interpreting the child support order. The law and procedures of the
- 41 state where the obligor is employed shall apply in all other respects.
- 42 (3) Except as otherwise provided by subdivision (2), income withholding
- 43 initiated under this subsection is subject to all of the notice, hearing
- 44 and other provisions of Chapter 110.

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

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

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

11 **"§ 110-136.4. Implementation of withholding in IV-D cases.**

12 (a) Withholding based on arrearages or obligor's request.

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

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

21 (4) a. Whether the proposed withholding is based on the obligor's failure
 22 to make legally obligated payments in an amount equal to the support
 23 payable for one month or on the obligor's request for withholding or on
 24 the obligee's request for withholding;

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

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

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

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

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

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

38 (e) (3) Contested withholding. The obligor may contest the
 39 withholding only on the basis of a mistake of ~~fact~~-fact, except that
 40 G.S. 110-129(10)(a) is not applicable if withholding is based on the
 41 obligor's or obligee's request for withholding. To contest the
 42 withholding, the obligor must, within 10 days of receipt of the
 43 advance notice of withholding, request a hearing in the county where
 44 the support order was entered before the district court and give

1 notice to the obligee specifying the mistake of fact upon which the
2 hearing request is based. If the asserted mistake of fact can be
3 resolved by agreement between the obligee and the obligor, no
4 hearing shall occur. Otherwise, a hearing shall be held and a
5 determination made, within 30 days of the obligor's receipt of the
6 advance notice of withholding, as to whether the asserted mistake of
7 fact is valid. No withholding shall occur pending the hearing
8 decision. The failure to hold a hearing within 30 days shall not
9 invalidate an otherwise properly entered order. If it is determined
10 that a mistake of fact exists, no withholding shall occur. Otherwise,
11 within 45 days of the obligor's receipt of the advance notice of
12 withholding, the obligee shall serve the payor, pursuant to G.S. 1A-
13 1, Rule 4, Rules of Civil Procedure, with notice of his obligation to
14 withhold, and shall mail a copy of such notice to the obligor and file
15 a copy with the clerk. In the event of appeal, withholding shall not
16 be stayed. If the appeal is concluded in favor of the obligor, the
17 obligee shall promptly repay sums wrongfully withheld and notify
18 the payor to cease withholding.

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

24 (e) (5) Payment not a defense to withholding. The payment of
25 overdue support shall not be a basis for terminating or not
26 implementing withholding.

27 (6) Inability to implement withholding. When an obligor is subject to
28 withholding, but withholding under this section cannot be
29 implemented because the obligor's location is unknown, because the
30 extent and source of his disposable income cannot be determined, or
31 for any other reason, the obligee shall either request the clerk of
32 superior court to initiate enforcement proceedings under G.S. 15A-
33 1344.1(d) or G.S. 50-13.9(d) or take other appropriate available
34 measures to enforce the support obligation.

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

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

6 (⊕) (d) Multiple withholdings. The obligor must notify the obligee if the obligor
7 is currently subject to another withholding for child support. In the case of two or more
8 withholdings against one obligor, the obligee or obligees shall attempt to resolve any
9 conflict between the orders in a manner that is fair and equitable to all parties and within
10 the limits specified by G.S. 110-136.6. If the conflict cannot be so resolved, an injured
11 party, upon request, shall be granted a hearing in accordance with the procedure
12 specified in G.S. 110-136.4(c). The conflict between the withholding orders shall be
13 resolved in accordance with G.S. 110-136.7.

14 (g) ~~Inability to implement withholding. When an obligor is subject to~~
15 ~~withholding, but withholding under this section cannot be implemented because the~~
16 ~~obligor's location is unknown, because the extent and source of his disposable income~~
17 ~~cannot be determined, or for any other reason, the obligee shall either request the clerk~~
18 ~~of superior court to initiate enforcement proceedings under G.S. 15A-1344.1(d) or G.S.~~
19 ~~50-13.9(d) or take other appropriate available measures to enforce the support~~
20 ~~obligation.~~

21 (⊕) (e) Modification of withholding. When an order for withholding has been
22 entered under this section, the obligee may modify the withholding based on changed
23 circumstances. The obligee shall proceed as is provided in this section.

24 (⊕) (f) Applicability of section. The provisions of this section apply to IV-D cases
25 only."

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

27 "**§ 110-136.5. Implementation of withholding in non-IV-D cases.**

28 (a) Withholding Based on ~~Arrearage~~Delinquent or Erratic Payments.
29 Notwithstanding any other provision of law, when an obligor is delinquent in ~~an amount~~
30 equal to the support payable for one month, making child support payments or has been
31 erratic in making child support payments, the obligee may apply to the court, by motion
32 or in an independent action, for an order for income withholding.

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

35 a. ~~That Whether~~ the obligor is under a court order to provide child
36 support, and support and, if so, information sufficient to identify
37 the order;

38 b. ~~That the obligor is delinquent in an amount equal to the support~~
39 payable for one month; Either:

40 1. That the obligor is currently delinquent in making child
41 support payments; or

42 2. That the obligor has been erratic in making child support
43 payments;

- 1 c. The amount of overdue support and the total amount sought to
2 be withheld;
3 d. The name of each child for whose benefit support is ~~due~~
4 payable; and
5 e. The name, location, and mailing address of the payor or payors
6 from whom withholding is sought and the amount of the
7 obligor's monthly disposable income from each payor.

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

- 10 a. That withholding, if implemented, will apply to the obligor's
11 current payors and all subsequent payors; and
12 b. That withholding, if implemented, will be continued until
13 terminated pursuant to G.S. 110-136.10.

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

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

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

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

1 (2) A written request for withholding shall be filed in the office of the
2 clerk of superior court to which the obligor is directed to make child
3 support payments. If the request states and the clerk verifies that the
4 obligor is not delinquent, the court may enter an order for withholding
5 without further notice or hearing. If the request states or the clerk
6 finds that the obligor is delinquent, the matter shall be scheduled for
7 hearing unless the obligor in writing waives his right to a hearing and
8 consents to the entry of an order for withholding of an amount the
9 court determines to be appropriate. The court may require a hearing in
10 any case. Notice of any hearing under this subdivision shall be sent to
11 the obligee.

12 (c) Order for withholding. If the district court judge finds after hearing evidence
13 that the obligor, at the time of the filing of the motion or complaint was, or at the time
14 of the hearing is, delinquent in child support payments ~~in an amount equal to the support~~
15 ~~payable for one month~~ or that the obligor has been erratic in making child support
16 payments in accordance with G.S. 110-136.5(a), or that the obligor has requested that
17 income withholding begin, begin in accordance with G.S. 110-136.5(b), the court shall
18 enter an order for income withholding, unless:

19 (1) The obligor proves a mistake of ~~fact; fact,~~ except that G.S. 110-
20 129(10)(a) is not applicable if withholding is based on the obligee's
21 motion or independent action alleging that the obligor is delinquent or
22 has been erratic in making child support payments; or

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

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

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

30 (d) Notice to payor and obligor. If an order for income withholding is entered, a
31 notice of obligation to withhold shall be served ~~by certified mail, return receipt requested,~~
32 ~~on the payor or payors and the obligor.~~ on the payor as required by G.S. 1A-1, Rule 4,
33 Rules of Civil Procedure. Copies of such notice shall be filed with the clerk of court
34 and served upon the obligor by first class mail.

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

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