

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 601
SENATE BILL 511

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 Resources to administer a program of child support enforcement for a county or region of the State.
- (6) 'Disposable income' means any form of periodic payment to an individual, regardless of sources, including but not limited to wages, salary, commission, self-employment income, bonus pay, severance pay, sick pay, incentive pay, vacation pay, compensation as an independent contractor, worker's compensation, unemployment compensation benefits, disability, annuity, survivor's benefits, pension and retirement benefits, interest, dividends, rents, royalties, trust income and other similar payments, which remain after the deduction of amounts for federal, State, and local taxes, Social Security, and involuntary retirement contributions. However, Supplemental Security Income, Aid for Dependent Children, and other public assistance payments shall be excluded from disposable income. For employers,

disposable income means 'wage' as it is defined by G.S. 95-25.2 (16). Unemployment compensation benefits shall be treated as disposable income only for the purposes of income withholding under the provisions of G.S. 110-136.4, and the amount withheld shall not exceed twenty-five percent (25%) of the unemployment compensation benefits.

- (7) 'IV-D case' means a case in which services have been applied for or are being provided by a child support enforcement agency established pursuant to Title IV-D of the Social Security Act as amended and this Article.
- (8) 'Non-IV-D case' means any case, other than a IV-D case, in which child support is legally obligated to be paid.
- (9) 'Initiating party' means the party, the attorney for a party, a child support enforcement agency, or the clerk of superior court who initiates an action, proceeding, or procedure as allowed or required by law for the establishment or enforcement of a child support obligation.
- (10) 'Mistake of fact' means that the obligor:
 - (a) Is not in arrears in an amount equal to the support payable for one month; or
 - (b) Did not request that withholding begin, if withholding is pursuant to a purported request by the obligor for withholding; or
 - (c) Is not the person subject to the court order of support for the child named in the advance notice of ~~withholding~~; withholding; or
 - (d) Does not owe the amount of current support or arrearages specified in the advance notice or motion of withholding.
- (11) 'Obligee', in a IV-D case, means the child support enforcement agency, and in a non-IV-D case means the individual to whom a duty of support is owed or the individual's legal representative.
- (12) 'Obligor' means the individual who owes a duty to make child support payments under a court order.
- (13) 'Payor' means any payor, including any federal, State, or local governmental unit, of disposable income to an obligor. When the payor is an employer, payor means employer as is defined at 29 USC § 203(d) in the Fair Labor Standards Act."

Sec. 2. 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~~ accumulate; or upon request of the obligor; or upon the court's findings, pursuant to a motion or independent action filed by the obligee, that the obligor is or has been delinquent in making child support payments or has been erratic in making child support payments;
 - (2a) In IV-D cases, include a provision ordering income withholding to take effect immediately;
 - (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;~~ child, unless the court has determined that notice to the obligor is inappropriate because the obligor has made verbal or physical threats that constitute domestic violence under Chapter 50B of the General Statutes; 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 income and of the amount and effective date of any substantial change in his disposable income.
- (b) When obligor subject to withholding.
- (1) In IV-D cases in which a new or modified child support order is entered on or after October 1, 1989, an obligor is subject to income withholding immediately upon entry of the order. In IV-D cases in which the child support order was entered prior to October 1, 1989, ~~An~~ an obligor shall become subject to income withholding on the earliest of:
 - a. The date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month; or
 - ~~(2)~~ b. The date on which the obligor or obligee requests withholding.
 - (2) In non-IV-D cases, an obligor shall be subject to income withholding on the earliest of:
 - a. The date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month; or
 - b. The date on which the obligor requests withholding; or
 - c. The date on which the court determines, pursuant to a motion or independent action filed by the obligee under G.S. 110-136.5(a), that the obligor is or has been delinquent in making child support payments or has been erratic in making child support payments.

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

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

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

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

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

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

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

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

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

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

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

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

- (1) 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)~~(2) Contents of advance notice. The advance notice to the obligor shall contain, at a minimum, the following information:
 - ~~(1)~~a. 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 or on the obligee's request for withholding;
 - ~~(2)~~b. The amount of overdue support, the total amount to be withheld, and when the withholding will occur;
 - ~~(3)~~c. 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)~~d. The amount and sources of disposable income;
 - ~~(5)~~e. That the withholding will apply to the obligor's wages or other sources of disposable income from current payors and all subsequent payors once the procedures under this section are invoked;
 - ~~(6)~~f. An explanation of the obligor's rights and responsibilities pursuant to this section;
 - ~~(7)~~g. That withholding will be continued until terminated pursuant to G.S. 110-136.10.
- ~~(e)~~(3) Contested withholding. The obligor may contest the withholding only on the basis of a mistake of ~~fact~~-fact, except that G.S. 110-129(10)(a) is not applicable if withholding is based on the obligor's or obligee's request for withholding. To contest the withholding, the obligor must, within 10 days of receipt of the advance notice of withholding, request a hearing in the county where the support order was entered before the district court and give notice to the obligee specifying the mistake of fact upon which the hearing request is based. If the asserted mistake of fact can be resolved by agreement between the obligee and the obligor, no hearing shall occur. Otherwise, a hearing shall be held and a determination made, within 30 days of the obligor's receipt of the advance notice of withholding, as to whether the asserted mistake of fact is valid. No withholding shall occur pending the hearing decision. The failure to hold a hearing within 30 days shall not invalidate an otherwise properly entered order. If it is determined that a mistake of fact exists, no withholding shall occur. Otherwise, within 45 days of the obligor's receipt of the advance notice of withholding, the obligee shall serve the payor, pursuant to G.S. 1A-1, Rule 4, Rules of Civil

Procedure, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. In the event of appeal, withholding shall not be stayed. If the appeal is concluded in favor of the obligor, the obligee shall promptly repay sums wrongfully withheld and notify the payor to cease withholding.

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. ~~That Whether~~ the obligor is under a court order to provide child support, and support and, if so, information sufficient to identify the order;
- b. ~~That the obligor is delinquent in an amount equal to the support payable for one month;~~ Either:
 1. That the obligor is currently delinquent in making child support payments; or
 2. That the obligor has been erratic in making child support payments;
- c. The amount of overdue support and the total amount sought to be withheld;
- d. The name of each child for whose benefit support is ~~due;~~ payable; and
- e. The name, location, and mailing address of the payor or payors from whom withholding is sought and the amount of the obligor's monthly disposable income from each payor.

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

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

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

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

- (1) A written request for withholding shall state:
 - a. That the obligor is under a court order to provide child support, and information sufficient to identify the order;
 - b. Whether the obligor is delinquent and the amount of any overdue support;
 - c. The name of each child for whose benefit support is payable;
 - d. The name, location, and mailing address of the payor or payors from whom the obligor receives disposable income and the amount of the obligor's monthly disposable income from each payor;
 - e. That the obligor understands that withholding, if implemented, will apply to the obligor's current payors and all subsequent payors and will be continued until terminated pursuant to G.S. 110-136.10; and
 - f. That the obligor understands that the amount withheld will include an amount sufficient to pay current child support, an additional amount toward liquidation of any arrearages, and a two dollar (\$2.00) processing fee to be retained by the employer for each withholding, but that the total amount withheld may not exceed the following percent of disposable income:
Forty percent (40%) if there is only one order for withholding;
Forty-five percent (45%) if there is more than one order for withholding and the obligor is supporting other dependent children or his or her spouse; or
Fifty percent (50%) if there is more than one order for withholding and the obligor is not supporting other dependent children or a spouse.
- (2) A written request for withholding shall be filed in the office of the clerk of superior court to which the obligor is directed to make child support payments. If the request states and the clerk verifies that the obligor is not delinquent, the court may enter an order for withholding without further notice or hearing. If the request states or the clerk finds that the obligor is delinquent, the matter shall be scheduled for hearing unless the obligor in writing waives his right to a hearing and consents to the entry of an order for withholding of an amount the court determines to be appropriate. The court may require a hearing in any case. Notice of any hearing under this subdivision shall be sent to the obligee.

(c) Order for withholding. If the district court judge finds after hearing evidence that the obligor, at the time of the filing of the motion or complaint was, or at the time of the hearing is, delinquent in child support payments ~~in an amount equal to the support~~

~~payable for one month~~ or that the obligor has been erratic in making child support payments in accordance with G.S. 110-136.5(a), or that the obligor has requested that income withholding ~~begin,~~ begin in accordance with G.S. 110-136.5(b), the court shall enter an order for income withholding, unless:

- (1) The obligor proves a mistake of ~~fact;~~ fact, except that G.S. 110-129(10)(a) is not applicable if withholding is based on the obligee's motion or independent action alleging that the obligor is delinquent or has been erratic in making child support payments; or
- (2) The court finds that the child support obligation can be enforced and the child's right to receive support can be ensured without entry of an order for income withholding; or
- (3) The court finds that the obligor has no disposable income subject to withholding or that withholding is not feasible for any other reason.

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

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

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

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

In the General Assembly read three times and ratified this the 11th day of July, 1989.