

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

H

1

HOUSE BILL 1375

Short Title: Child Support Reforms.

(Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary IV.

April 21, 2005

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE LAWS RELATING TO CHILD SUPPORT
3 ENFORCEMENT IN ORDER TO CLARIFY AND ENHANCE THOSE LAWS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 50-13.9 reads as rewritten:

6 "**§ 50-13.9. Procedure to insure payment of child support.**

7 (a) Upon its own motion or upon motion of either party, the court may order at
8 any time that support payments be made to the State Child Support Collection and
9 Disbursement Unit for remittance to the party entitled to receive the payments. For child
10 support orders initially entered on or after January 1, 1994, the immediate income
11 withholding provisions of G.S. 110-136.5(c1) apply.

12 (b) After entry of an order by the court under subsection (a) of this section, the
13 State Child Support Collection and Disbursement Unit shall transmit child support
14 payments that are made to it to the custodial parent or other party entitled to receive
15 them, unless a court order requires otherwise.

16 (b1) In a IV-D case:

17 (1) The designated child support enforcement agency shall have the sole
18 responsibility and authority for monitoring the obligor's compliance
19 with all child support orders in the case and for initiating any
20 enforcement procedures that it considers appropriate.

21 (2) The clerk of court shall maintain all official records in the case.

22 (3) The designated child support enforcement agency shall maintain any
23 other records needed to monitor the obligor's compliance with or to
24 enforce the child support orders in the case, including records showing
25 the amount of each payment of child support received from or on
26 behalf of the obligor, along with the dates on which each payment was
27 received. In any action establishing, enforcing, or modifying a child
28 support order, the payment records maintained by the designated child

1 support agency shall be admissible evidence, and the court shall permit
2 the designated representative to authenticate those records.

3 (b2) ~~In a non IV-D case:~~In a child support case not managed by the IV-D
4 program:

5 (1) ~~The clerk of court shall have the responsibility and authority for~~
6 ~~monitoring the obligor's compliance with all child support orders in the~~
7 ~~case and for initiating any enforcement procedures that it considers~~
8 ~~appropriate. The State Child Support Collection and Disbursement~~
9 ~~Unit shall notify the clerk of court of all payments made in non IV-D~~
10 ~~cases so that the clerk of court can initiate enforcement proceedings as~~
11 ~~provided in subsection (d) of this section.~~

12 (2) The clerk of court shall maintain all official records in the case.

13 (3) ~~The clerk of court shall maintain any other records needed to monitor~~
14 ~~the obligor's compliance with or to enforce the child support orders in~~
15 ~~the case, including records showing the amount of each payment of~~
16 ~~child support received from or on behalf of the obligor, along with the~~
17 ~~dates on which each payment was received.~~

18 (e) ~~In a non IV-D case, the parties affected by the order shall inform the clerk of~~
19 ~~court of any change of address or of other condition that may affect the administration~~
20 ~~of the order.~~~~In a IV-D case, the parties affected by the order shall inform the designated~~
21 ~~child support enforcement agency of any change of address or other condition that may~~
22 ~~affect the administration of the order. The court may provide in the order that a party~~
23 ~~failing to inform the court or, as appropriate, the designated child support enforcement~~
24 ~~agency, of a change of address within a reasonable period of time may be held in civil~~
25 ~~contempt.~~

26 (d) ~~In a non IV-D case, when the clerk of superior court is notified by the State~~
27 ~~Child Support Collection and Disbursement Unit that an obligor has failed to make a~~
28 ~~required payment of child support and is in arrears, the clerk of superior court shall mail~~
29 ~~by regular mail to the last known address of the obligor a notice of delinquency. The~~
30 ~~notice shall set out the amount of child support currently due and shall demand~~
31 ~~immediate payment of that amount. The notice shall also state that failure to make~~
32 ~~immediate payment will result in the issuance by the court of an enforcement order~~
33 ~~requiring the obligor to appear before a district court judge and show cause why the~~
34 ~~support obligation should not be enforced by income withholding, contempt of court,~~
35 ~~revocation of licensing privileges, or other appropriate means. Failure to receive the~~
36 ~~delinquency notice is not a defense in any subsequent proceeding. Sending the notice of~~
37 ~~delinquency is in the discretion of the clerk if the clerk has, during the previous 12~~
38 ~~months, sent a notice or notices of delinquency to the obligor for nonpayment, or if~~
39 ~~income withholding has been implemented against the obligor or the obligor has been~~
40 ~~previously found in contempt for nonpayment under the same child support order.~~

41 ~~If the arrearage is not paid in full within 21 days after the mailing of the delinquency~~
42 ~~notice, or without waiting the 21 days if the clerk has elected not to mail a delinquency~~
43 ~~notice for any of the reasons provided in this subsection, the clerk shall cause an~~
44 ~~enforcement order to be issued and shall issue a notice of hearing before a district court~~

1 judge. The enforcement order shall order the obligor to appear and show cause why the
2 obligor should not be subjected to income withholding or adjudged in contempt of
3 court, or both, and shall order the obligor to bring to the hearing records and
4 information relating to the obligor's employment, the obligor's licensing privileges, and
5 the amount and sources of the obligor's disposable income. The enforcement order shall
6 state:

- 7 (1) That the obligor is under a court order to provide child support, the
8 name of each child for whose benefit support is due, and information
9 sufficient to identify the order;
- 10 (2) That the obligor is delinquent and the amount of overdue support;
- 11 (2a) That the court may order the revocation of some or all of the obligor's
12 licensing privileges if the obligor is delinquent in an amount equal to
13 the support due for one month;
- 14 (3) That the court may order income withholding if the obligor is
15 delinquent in an amount equal to the support due for one month;
- 16 (4) That income withholding, if implemented, will apply to the obligor's
17 current payors and all subsequent payors and will be continued until
18 terminated pursuant to G.S. 110-136.10;
- 19 (5) That failure to bring to the hearing records and information relating to
20 his employment and the amount and sources of his disposable income
21 will be grounds for contempt;
- 22 (6) That if income withholding is not an available or appropriate remedy,
23 the court may determine whether the obligor is in contempt or whether
24 any other enforcement remedy is appropriate.

25 The enforcement order may be signed by the clerk or a district court judge, and shall be
26 served on the obligor pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure. The clerk
27 shall also notify the party to whom support is owed of the pending hearing. The clerk
28 may withdraw the order to the supporting party upon receipt of the delinquent payment.
29 On motion of the person to whom support is owed, with the approval of the district
30 court judge, if the district court judge finds it is in the best interest of the child, no
31 enforcement order shall be issued.

32 When the matter comes before the court, the court shall proceed as in the case of a
33 motion for income withholding under G.S. 110-136.5. If income withholding is not an
34 available or adequate remedy, the court may proceed with contempt, imposition of a
35 lien, or other available, appropriate enforcement remedies.

36 This subsection shall apply only to non IV-D cases, except that the clerk shall issue
37 an enforcement order in a IV-D case when requested to do so by an IV-D obligee.

38 The clerk or a district court judge may order the obligor to appear and show cause
39 why the obligor should not be subjected to income withholding or adjudged in contempt
40 of court, or both, and shall order the obligor to bring to the hearing records and
41 information relating to the obligor's employment, the obligor's licensing privileges, and
42 the amount and sources of the obligor's disposable income.

43 (e) ~~The clerk of court shall maintain and make available to the district court~~
44 ~~judge a list of attorneys who are willing to undertake representation, pursuant to this~~

1 section, of persons to whom child support is owed. No attorney shall be placed on such
2 list without his permission.

3 (f) ~~At least seven days prior to an enforcement hearing as set forth in subsection~~
4 ~~(d), the clerk must notify the district court judge of all cases to be heard for enforcement~~
5 ~~at the next term, and the judge shall appoint an attorney from the list described in~~
6 ~~subsection (e) to represent each party to whom support payments are owed if the judge~~
7 ~~deems it to be in the best interest of the child for whom support is being paid, unless:~~

8 (1) ~~The attorney of record for the party to whom support payments are~~
9 ~~owed has notified the clerk of court that he will appear for said party;~~

10 ~~or~~

11 (2) ~~The party to whom support payments are owed requests the judge not~~
12 ~~to appoint an attorney; or~~

13 (3) ~~An attorney for the enforcement of child support obligations pursuant~~
14 ~~to Title IV, Part D, of the Social Security Act as amended is available.~~

15 ~~The judge may order payment of reasonable attorney's fees as provided in~~
16 ~~G.S. 50-13.6.~~

17 (g) Nothing in this section shall preclude the independent initiation by a party of
18 proceedings for civil contempt or for income withholding."

19 **SECTION 2.** G.S. 110-135 reads as rewritten:

20 "**§ 110-135. Debt to State created.**

21 Acceptance of public assistance by or on behalf of a dependent child creates a debt,
22 in the amount of public assistance paid, due and owing the State by the responsible
23 parent or parents of the child. Provided, however, that in those cases in which child
24 support was required to be paid incident to a court order during the time of receipt of
25 public assistance, the debt shall be limited to the amount specified in such court order.
26 This liability shall attach only to public assistance granted subsequent to June 30, 1975,
27 and only with respect to the period of time during which public assistance is granted,
28 and only if the responsible parent or parents were financially able to furnish support
29 during this period.

30 The United States, the State of North Carolina, and any county within the State
31 which has provided public assistance to or on behalf of a dependent child shall be
32 entitled to share in any sum collected under this section, and their proportionate parts of
33 such sum shall be determined in accordance with the matching formulas in use during
34 the period for which assistance was paid.

35 No action to collect such debt shall be commenced after the expiration of five years
36 subsequent to the receipt of the last grant of public assistance. The county attorney or an
37 attorney retained by the county and/or State shall represent the State in all proceedings
38 brought under this section.

39 A past-due public assistance debt as described in this section may be deemed
40 negotiable and subject to reduction if the public assistance debt is not less than fifteen
41 thousand dollars (\$15,000) and the responsible parent continues to be obligated to pay
42 current child support. Upon agreement between the State and the responsible parent, the
43 responsible parent shall pay all child support payments, including payments due on
44 child support arrears, entered by a valid court order for a 24-month period of time. Upon

1 the timely payment of each court-ordered child support obligation during the full
2 24-month period, including payments due on child support arrears, the State shall
3 reduce the responsible parent's public assistance debt by two-thirds. If the responsible
4 parent is late or defaults on any single payment during the 24-month period, no portion
5 of the public assistance debt shall be reduced. The responsible parent may attempt to
6 achieve 24 consecutive months of child support payments as often as possible in order
7 to reduce his or her public assistance debt. However, once the responsible parent's
8 public assistance debt has been reduced by two-thirds because of the successful
9 completion of this agreement, the responsible parent shall no longer be eligible for this
10 program. The reduction of public assistance debt as set forth in this section shall be in
11 addition to all other remedies available to the State for the retirement of the debt. This
12 program shall not prevent the State from taking any and all other measures available by
13 law.

14 Upon the termination of a child support obligation due to the death of the obligor,
15 the Department shall determine whether the obligor's estate contains sufficient assets to
16 satisfy any child support arrearages. If sufficient assets are available, the Department
17 shall attempt to collect the arrearage."

18 **SECTION 3.** G.S. 49-14(a) reads as rewritten:

19 "(a) The paternity of a child born out of wedlock may be established by civil
20 action at any time prior to such child's eighteenth birthday. A ~~certified~~ copy of a
21 certificate of birth of the child shall be attached to the complaint. The establishment of
22 paternity shall not have the effect of legitimation. The social security numbers, if
23 known, of the minor child's parents shall be placed in the record of the proceeding."

24 **SECTION 4.** G.S. 130A-101(f) reads as rewritten:

25 "(f) If the mother was unmarried at all times from date of conception through date
26 of birth, the name of the father shall not be entered on the certificate unless the child's
27 mother and father complete an affidavit acknowledging paternity which contains the
28 following:

- 29 (1) A sworn statement by the mother consenting to the assertion of
30 paternity by the father and declaring that the father is the child's
31 natural father;
- 32 (2) A sworn statement by the father declaring that he believes he is the
33 natural father of the child;
- 34 (3) Information explaining in plain language the effect of signing the
35 affidavit, including a statement of parental rights and responsibilities
36 and an acknowledgment of the receipt of this information; and
- 37 (4) The social security numbers of both parents.

38 The State Registrar, in consultation with the Child Support Enforcement Section of the
39 Division of Social Services, shall develop and disseminate a form affidavit for use in
40 compliance with this section, together with an information sheet that contains all the
41 information required to be disclosed by subdivision (3) of this subsection.

42 Upon the execution of the affidavit, the declaring father shall be listed as the father
43 on the birth ~~certificate and shall be presumed to be the natural father of the~~
44 ~~child,~~ certificate, subject to the declaring father's right to rescind under G.S. 110-132.

1 The executed affidavit shall be filed with the registrar along with the birth certificate. A
2 In the event paternity is properly placed at issue, a certified copy of the affidavit shall be
3 admissible in any action to establish paternity. The surname of the child shall be
4 determined by the mother, except if the father's name is entered on the certificate, the
5 mother and father shall agree upon the child's surname. If there is no agreement, the
6 child's surname shall be the same as that of the mother.

7 The execution and filing of this affidavit with the registrar does not affect rights of
8 inheritance unless the affidavit is also filed with the clerk of court in accordance with
9 G.S. 29-19(b)(2)."

10 **SECTION 5.** G.S. 110-139.2(b1) reads as rewritten:

11 "(b1) The Department of Health and Human Services Child Support Enforcement
12 Agency may notify any financial institution doing business in this State that an obligor
13 who maintains an identified account with the financial institution has a ~~delinquent~~ child
14 support obligation that may be eligible for levy on the account in an amount that
15 satisfies some or all of the ~~delinquency~~ amount of unpaid support owed. In order to be
16 able to attach a lien on and levy an obligor's account, the ~~obligor's child support~~
17 ~~obligation~~ amount of unpaid support owed shall be ~~in arrears in~~ an amount not less than
18 the amount of support owed for six months or one thousand dollars (\$1,000), whichever
19 is less.

20 Upon certification of the ~~arrears amount~~ amount of unpaid support owed in
21 accordance with G.S. 44-86(c), the Child Support Agency shall serve or cause to be
22 served upon the ~~obligor~~ obligor, and when the matched account is owned jointly, any
23 other nonliable owner of the account, and the financial institution a notice as provided
24 by this subsection. ~~The notice shall be served in any manner provided in Rule 4 of the~~
25 ~~North Carolina Rules of Civil Procedure, except that a notice may be served on a~~
26 ~~financial institution in any other manner that the financial institution has agreed to in~~
27 ~~writing at any time prior to the time the notice is sent.~~ The notice shall include the name
28 of the obligor, the financial institution where the account is located, the account number
29 of the account to be levied to satisfy the lien, the certified ~~arrears amount,~~ amount of
30 unpaid support, information for the obligor or account owner on how to remove the lien
31 or contest the lien in order to avoid the levy, and a copy of the applicable law,
32 G.S. 110-139.2. The notice shall be served on the obligor, and any nonliable account
33 owner, in any manner provided in Rule 4 of the North Carolina Rules of Civil
34 Procedure. The financial institution shall be served notice in accordance with Rule 5 of
35 the North Carolina Rules of Civil Procedure. Upon service of the notice, the financial
36 institution shall proceed in the following manner:

- 37 (1) Immediately attach a lien to the identified account.
- 38 (2) Notify the Child Support Agency of the balance of the account and
39 date of the lien or that the account does not meet the requirement for
40 levy under this subsection.

41 In order for an obligor or account owner to contest the lien, within 10 days after the
42 obligor or account owner is served with the notice, the obligor or account owner shall
43 send written notice of the basis of the ~~obligor's~~ contest to the Child Support Agency and
44 shall request a hearing before the district court in the county where the support order

1 was entered. ~~The lien may be contested~~ obligor account holder may contest the lien only
2 on the basis that the ~~arrearage amount owed~~ is an amount less than the amount of
3 support owed for six months, or is less than one thousand dollars (\$1,000), whichever is
4 less, or the ~~obligor contesting party~~ is not the person subject to the court order of
5 support. The district court may assess court costs against the nonprevailing party. If no
6 response is received from the obligor or account owner within 10 days of the service of
7 the notice, the Child Support Agency shall notify the financial institution to submit
8 payment, up to the total amount of the child support arrears, if available. This amount is
9 to be applied to the debt of the ~~delinquent~~ obligor.

10 A financial institution shall not be liable to any person for complying in good faith
11 with this subsection. The remedy set forth in this section shall be in addition to all other
12 remedies available to the State for the reduction of the obligor's child support arrears.
13 This remedy shall not prevent the State from taking any and all other concurrent
14 measures available by law.

15 This levy procedure is to be available for direct use by all states' child support
16 programs to financial institutions in this ~~State~~. State without involvement of the
17 Department."

18 **SECTION 6.** This act is effective 90 days after it becomes law.