

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 534

Short Title: Support Orders Enforcement.

(Public)

Sponsors: Representatives Hackney; Russell, Baddour, and Alexander.

Referred to: Judiciary II.

March 18, 1997

A BILL TO BE ENTITLED

1 AN ACT REGARDING THE CONTRACTUAL OBLIGATIONS OF SPOUSES, THE
2 TRANSFER OF PROPERTY AND INCOME WITHHOLDING TO ENFORCE
3 SUPPORT ORDERS, AND THE AWARDED OF ALIMONY, AS
4 RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH
5 CAROLINA BAR ASSOCIATION.
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7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 52-2 reads as rewritten:

9 "**§ 52-2. Capacity to contract.**

10 (a) Subject to the provisions of G.S. 52-10 or 52-10.1, G.S. 39-7 and other
11 regulations and limitations now or hereafter prescribed by the General Assembly, every
12 married person is authorized to contract and deal so as to affect his or her real and
13 personal property in the same manner and with the same effect as if he or she were
14 unmarried.

15 (b) Except as otherwise provided by this section or by other State law, a spouse
16 shall not be responsible for the other spouse's contract liability to a third party, whether
17 the liability arose before or after the marriage. The doctrine of necessities as it existed at
18 common law, however, shall apply and shall apply equally to both spouses, except as
19 provided in subsection (c) of this section, but shall in no event create any liability
20 between the spouses as to each other.

1 (c) The doctrine of necessities shall not apply to either spouse when the spouses
2 are living separate and apart with the intent on behalf of one of them to cease marital
3 cohabitation, unless one of the following applies:

4 (1) The nondebtor spouse has willfully created the appearance of not being
5 separated and has requested that the creditor extend credit to the
6 estranged debtor spouse; or

7 (2) The debt is for medical expenses and the nondebtor spouse carries
8 medical insurance on the debtor spouse, provided that the nondebtor
9 spouse shall be liable only for the debt that is or will be discharged
10 under the terms of the medical insurance."

11 Section 2. G.S. 50-13.4(e) reads as rewritten:

12 "(e) Payment for the support of a minor child shall be paid by lump sum payment,
13 periodic payments, or by transfer of title or possession of personal property of any
14 interest therein, or a security interest in or possession of real property, as the court may
15 order. The court may order the transfer of title to real property in payment of arrearages
16 of child support. In every case in which payment for the support of a minor child is
17 ordered and alimony or postseparation support is also ordered, the order shall separately
18 state and identify each allowance."

19 Section 3. G.S. 50-16.7(a) reads as rewritten:

20 "(a) Alimony or postseparation support shall be paid by lump sum payment,
21 periodic payments, income withholding, or by transfer of title or possession of personal
22 property or any interest therein, or a security interest in or possession of real property, as
23 the court may order. The court may order the transfer of title to real property in payment
24 of lump-sum payments of alimony or postseparation support or in payment of arrearages
25 of alimony or postseparation support. In every case in which either alimony or
26 postseparation support is allowed and provision is also made for support of minor
27 children, the order shall separately state and identify each allowance."

28 Section 4. G.S. 50-16.7 is amended by adding the following new subsection to
29 read:

30 "(11) The dependent spouse may apply to the court for an order of income
31 withholding for current or delinquent payments of alimony or postseparation support or
32 for any portion of the payments. If the court orders income withholding, a notice of
33 obligation to withhold shall be served on the payor as required by G.S. 1A-1, Rule 4,
34 Rules of Civil Procedure. Copies of the notice shall be filed with the clerk of court and
35 served upon the supporting spouse by first-class mail."

36 Section 5. G.S. 110-136.6 is amended by adding the following new subsection
37 to read:

38 "(b1) When there is an order of income withholding for current or delinquent
39 payments of alimony or postseparation support or for any portion of the payments, the
40 total amount withheld under this Article and under G.S. 50-16.7 shall not exceed the
41 amounts allowed under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C.
42 § 1637(b)."

43 Section 6. G.S. 110-136.8(b) reads as rewritten:

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

- 3 (1) Withhold from the obligor's disposable income and, within 10 days of
4 the date the obligor is paid, send to the clerk of superior court specified
5 in the notice, the amount specified in the notice and the date the amount
6 was withheld, but in no event more than the amount allowed by G.S.
7 110-136.6; however, if a lesser amount of disposable income is
8 available for any pay period, the payor shall either: (a) compute and
9 send the appropriate amount to the clerk of court, using the percentages
10 as provided in G.S. 110-136.6, or (b) request the initiating party to
11 inform the payor of the proper amount to be withheld for that period;
- 12 (2) Continue withholding until further notice from the IV-D agency or the
13 clerk of superior court;
- 14 (3) Withhold for child support before withholding pursuant to any other
15 legal process under State law against the same disposable income;
- 16 (4) Begin withholding from the first payment due the obligor in the first pay
17 period that occurs 14 days following the date the notice of the obligation
18 to withhold was served on the payor;
- 19 (5) Promptly notify the obligee in a IV-D case, or the clerk of superior court
20 in a non-IV-D case, in writing:
- 21 a. ~~If there is more than one child support withholding for the obligor;~~
22 are one or more orders of child support withholding for the
23 obligor;
- 24 a1. If there are one or more orders of alimony or postseparation
25 support withholding for the obligor;
- 26 b. When the obligor terminates employment or otherwise ceases to
27 be entitled to disposable income from the payor, and provide the
28 obligor's last known address, and the name and address of his
29 new employer, if known;
- 30 c. Of the payor's inability to comply with the withholding for any
31 reason; and
- 32 (6) Cooperate fully with the initiating party in the verification of the amount
33 of the obligor's disposable income."

34 Section 7. G.S. 50-16.1A is amended by adding the following new subdivision
35 to read:

36 "(4a) 'Payor' means any payor, including any federal, State, or local
37 governmental unit, of disposable income to an obligor. When the
38 payor is an employer, payor means employer as defined under 20
39 U.S.C. § 203(d) of the Fair Labor Standards Act."

40 Section 8. G.S. 110-129(11) reads as rewritten:

41 "(11) 'Obligee', in a IV-D case, means the child support enforcement
42 agency, and in a non-IV-D case means the individual to whom a duty

1 of ~~support~~ support, whether child support, alimony, or postseparation
2 support, is owed or the individual's legal representative."

3 Section 9. G.S. 110-129(12) reads as rewritten:

4 "(12) 'Obligor' means the individual who owes a duty to make child support
5 payments or payments of alimony or postseparation support under a
6 court order."

7 Section 10. G.S. 50-16.3A(b) is amended by adding the following new
8 subdivision to read:

9 "(16) Income being received by either party that was previously considered
10 by the court in determining the value of a marital asset in an equitable
11 distribution of the parties' marital property."

12 Section 11. This act becomes effective October 1, 1997. Section 1 of this act
13 applies to contracts entered into and transactions occurring on and after that date.