

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 517
HOUSE BILL 538

AN ACT TO PROVIDE FOR IMMEDIATE INCOME WITHHOLDING IN NON-IV-D CHILD SUPPORT CASES AS REQUIRED BY THE FEDERAL FAMILY SUPPORT ACT.

The General Assembly of North Carolina enacts:

Section 1. 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 in IV-D cases beginning October 1, 1989, shall include a provision ordering income withholding to take effect immediately. All child support orders, civil or criminal, initially entered in the State in non-IV-D cases on or after January 1, 1994, shall include a provision ordering income withholding to take effect immediately as provided in G.S. 110-136.5(c1), unless one of the exceptions specified in G.S. 110-136.5(c1) applies. A non-IV-D child support order that contains an income withholding requirement and a IV-D child support order shall:

- (1) Require the obligor to keep the clerk of court or IV-D agency informed of ~~his~~ the obligor's current residence and mailing address;
- (2) ~~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; 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~~ the obligor's disposable income;
- (4) Require the custodial party to keep the obligor informed of (i) the custodial party's disposable income and the amount and effective date of any substantial change in this disposable income and (ii) the current residence and mailing address of the 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~~ Require the obligor to keep the ~~IV-D agency initiating party~~ informed of the name and address of any payor of ~~his~~ the obligor's disposable income and of the amount and effective date of any substantial change in ~~his~~ this 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 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
 - b. The date on which the obligor or obligee requests withholding.
- (2) ~~In non-IV-D cases,~~ cases in which the child support order was entered prior to January 1, 1994, 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.
- (e) ~~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~~ this 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.

(5) For purposes of enforcing a petition under this subsection, jurisdiction is limited to the purposes of income withholding and Chapter 52A of the General Statutes shall not apply. Nothing in this subsection precludes any remedy otherwise available in a proceeding under Chapter 52A of the General Statutes.

(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~~ the Secretary's designee and the Administrative Office of the Courts. Forms and instructions shall be sent with each order or notice of withholding."

Sec. 2. G.S. 110-136.5 is amended by adding a new subsection to read:

"(c1) Immediate income withholding. In non-IV-D cases in which a child support order is initially entered on or after January 1, 1994, an obligor is subject to income withholding immediately upon entry of the order, unless either of the following applies:

a. One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding.

b. A written agreement is reached between the parties that provides for an alternative arrangement.

The term 'good cause' as used in this subsection includes a reasonable and workable plan for consistent and timely payments by some means other than income withholding. In considering whether a plan is reasonable, the court may consider the obligor's employment history and record of meeting financial obligations in a timely manner.

In entering an order for immediate income withholding under this subsection, the court shall follow the requirements and procedures as specified in other sections of this Article, including amount to be withheld, multiple withholdings, notice to payor, and termination of withholding."

Sec. 3. G.S. 14-322(e) reads as rewritten:

"(e) Upon conviction for an offense under this section, the court may make such order as will best provide for the support, as far as may be necessary, of the abandoned spouse or child, or both, from the property or labor of the defendant. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c). For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) shall apply."

Sec. 4. G.S. 15A-1344.1(a) reads as rewritten:

"(a) When the court requires, as a condition of supervised or unsupervised probation, that a defendant support his children, the court may order at any time that support payments be made to the clerk of court for remittance to the party entitled to receive the payments. For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) shall apply."

Sec. 5. G.S. 50-13.4 is amended by adding the following new subsection to read:

"(d1) For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) shall apply."

Sec. 6. 50-13.9(a) reads as rewritten:

"(a) Upon its own motion or upon motion of either party, the court may order at any time that support payments be made to the clerk of court for remittance to the party entitled to receive the payments. For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) shall apply."

Sec. 7. This act becomes effective January 1, 1994, and applies to all orders entered on or after that date.

In the General Assembly read three times and ratified this the 24th day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives