

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 778

Short Title: Child Support from Date of Filing.

(Public)

Sponsors: Senator Marvin.

Referred to: Judiciary II.

April 5, 1989

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT CHILD SUPPORT BE ORDERED RETROACTIVE
TO THE DATE OF FILING THE COMPLAINT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-13.4 reads as rewritten:

"§ 50-13.4. Action for support of minor child.

(a) Any parent, or any person, agency, organization or institution having custody of a minor child, or bringing an action or proceeding for the custody of such child, or a minor child by his guardian may institute an action for the support of such child as hereinafter provided.

(b) In the absence of pleading and proof that the circumstances otherwise warrant, the father and mother shall be primarily liable for the support of a minor child, and any other person, agency, organization or institution standing in loco parentis shall be secondarily liable for such support. Such other circumstances may include, but shall not be limited to, the relative ability of all the above-mentioned parties to provide support or the inability of one or more of them to provide support, and the needs and estate of the child. The judge may enter an order requiring any one or more of the above-mentioned parties to provide for the support of the child as may be appropriate in the particular case, and if appropriate the court may authorize the application of any separate estate of the child to his support. However, the judge may not order support to be paid by a person who is not the child's parent or an agency, organization or institution standing in loco parentis absent evidence and a finding that such person, agency, organization or institution has voluntarily assumed the obligation of support in writing. The preceding sentence shall not be construed to prevent any court from

1 ordering the support of a child by an agency of the State or county which agency may
2 be responsible under law for such support.

3 (c) Payments ordered for the support of a minor child shall be in such amount as
4 to meet the reasonable needs of the child for health, education, and maintenance, having
5 due regard to the estates, earnings, conditions, accustomed standard of living of the
6 child and the parties, the child care and homemaker contributions of each party, and
7 other facts of the particular case.

8 Payments ordered for child support shall be retroactive to the date of the filing of the
9 complaint. Payments ordered for the support of a child shall terminate when the child
10 reaches the age of 18 except:

11 (1) If the child is otherwise emancipated, payments shall terminate at that
12 time;

13 (2) If the child is still in primary or secondary school when he reaches age
14 18, the court in its discretion may order support payments to continue
15 until he graduates, otherwise ceases to attend school on a regular basis,
16 or reaches age 20, whichever comes first.

17 (c1) The Conference of Chief District Judges shall prescribe uniform statewide
18 advisory guidelines for the computation of child support obligations of each parent as
19 provided in Chapter 50 or elsewhere in the General Statutes.

20 Such advisory guidelines may provide for variation of the amount of support
21 recommended based on one or more of the following:

22 (1) The special needs of the child, including physical and emotional health
23 needs, educational needs, day-care costs, or needs related to the child's
24 age.

25 (2) Any shared physical custody arrangements or extended or unusual
26 visitation arrangements.

27 (3) A party's other support obligations to a current or former household,
28 including the payment of alimony.

29 (4) A party's extremely low or extremely high income, such that
30 application of the guidelines produces an amount that is clearly too
31 high in relation to the party's own needs or the child's needs.

32 (5) A party's intentional suppression or reduction of income, hidden
33 income, income that should be imputed to a party, or a party's
34 substantial assets.

35 (6) Any support that a party is providing or will be providing other than
36 by periodic money payments, such as lump sum payments, possession
37 of a residence, payment of a mortgage, payment of medical expenses,
38 or provision of health insurance coverage.

39 (7) A party's own special needs, such as unusual medical or other
40 necessary expenses.

41 (8) Any other factor the court finds to be just and proper.

42 Notwithstanding the foregoing, the court shall hear evidence and from the evidence
43 find the facts relating to the reasonable needs of the child for support and the relative
44 ability of each parent to pay support.

1 (d) Payments for the support of a minor child shall be ordered to be paid to the
2 person having custody of the child or any other proper person, agency, organization or
3 institution, or to the court, for the benefit of such child.

4 (e) Payment for the support of a minor child shall be paid by lump sum payment,
5 periodic payments, or by transfer of title or possession of personal property of any
6 interest therein, or a security interest in or possession of real property, as the court may
7 order. In every case in which payment for the support of a minor child is ordered and
8 alimony or alimony **pendente lite** is also ordered, the order shall separately state and
9 identify each allowance.

10 (f) Remedies for enforcement of support of minor children shall be available as
11 herein provided.

12 (1) The court may require the person ordered to make payments for the
13 support of a minor child to secure the same by means of a bond,
14 mortgage or deed of trust, or any other means ordinarily used to secure
15 an obligation to pay money or transfer property, or by requiring the
16 execution of an assignment of wages, salary or other income due or to
17 become due.

18 (2) If the court requires the transfer of real or personal property or an
19 interest therein as provided in subsection (e) as a part of an order for
20 payment of support for a minor child, or for the securing thereof, the
21 court may also enter an order which shall transfer title as provided in
22 G.S. 1A-1, Rule 70 and G.S. 1-228.

23 (3) The remedy of arrest and bail, as provided in Article 34 of Chapter 1
24 of the General Statutes, shall be available in actions for child-support
25 payments as in other cases.

26 (4) The remedies of attachment and garnishment, as provided in Article 35
27 of Chapter 1 of the General Statutes, shall be available in an action for
28 child-support payments as in other cases, and for such purposes the
29 child or person bringing an action for child support shall be deemed a
30 creditor of the defendant. Additionally, in accordance with the
31 provisions of G.S. 110-136, a continuing wage garnishment
32 proceeding for wages due or to become due may be instituted by
33 motion in the original child support proceeding or by independent
34 action through the filing of a petition.

35 (5) The remedy of injunction, as provided in Article 37 of Chapter 1 of the
36 General Statutes and G.S. 1A-1, Rule 65, shall be available in actions
37 for child support as in other cases.

38 (6) Receivers, as provided in Article 38 of Chapter 1 of the General
39 Statutes, may be appointed in action for child support as in other cases.

40 (7) A minor child or other person for whose benefit an order for the
41 payment of child support has been entered shall be a creditor within
42 the meaning of Article 3 of Chapter 39 of the General Statutes
43 pertaining to fraudulent conveyances.

1 (8) A judgment for child support shall not be a lien against real property
2 unless the judgment expressly so provides, sets out the amount of the
3 lien in a sum certain, and adequately describes the real property
4 affected; but past due periodic payments may by motion in the cause
5 or by a separate action be reduced to judgment which shall be a lien as
6 other judgments.

7 (9) An order for the periodic payments of child support is enforceable by
8 proceedings for civil contempt, and its disobedience may be punished
9 by proceedings for criminal contempt, as provided in Chapter 5A of
10 the General Statutes.

11 Notwithstanding the provisions of G.S. 1-294, an order for the
12 payment of child support which has been appealed to the appellate
13 division is enforceable in the trial court by proceedings for civil
14 contempt during the pendency of the appeal. Upon motion of an
15 aggrieved party, the court of the appellate division in which the appeal
16 is pending may stay any order for civil contempt entered for child
17 support until the appeal is decided, if justice requires.

18 (10) The remedies provided by Chapter 1 of the General Statutes, Article
19 28, Execution; Article 29B, Execution Sales; and Article 31,
20 Supplemental Proceedings, shall be available for the enforcement of
21 judgments for child support as in other cases, but amounts so payable
22 shall not constitute a debt as to which property is exempt from
23 execution as provided in Article 16 of Chapter 1C of the General
24 Statutes.

25 (11) The specific enumeration of remedies in this section shall not
26 constitute a bar to remedies otherwise available."

27 Sec. 2. This act shall become effective October 1, 1989, and shall apply to
28 actions filed on or after that date.