

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 538
Committee Substitute Favorable 5/4/93

Short Title: Non-IV-D Income Withholding.

(Public)

Sponsors:

Referred to:

March 25, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR IMMEDIATE INCOME WITHHOLDING IN NON-IV-
3 D CHILD SUPPORT CASES, AS REQUIRED BY THE FAMILY SUPPORT
4 ACT.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 110-136.3 reads as rewritten:

7 "**§ 110-136.3. Income withholding procedures; applicability.**

8 (a) Required Contents of Support Orders. All child support orders, civil or
9 criminal, entered or modified in the State in IV-D cases beginning October 1, 1989, and
10 all child support orders, civil or criminal, entered or modified in the State in non-IV-D
11 cases beginning January 1, 1994, shall:

12 (1) Require the obligor to keep the clerk of court or IV-D agency informed
13 of ~~his~~ the obligor's current residence and mailing address;

14 (2) ~~In non-IV-D cases, include a provision that an obligor will be subject~~
15 ~~to income withholding under a separate order if arrearages equal to the~~
16 ~~support payable for one month accumulate; or upon request of the~~
17 ~~obligor; or upon the court's findings, pursuant to a motion or~~
18 ~~independent action filed by the obligee, that the obligor is or has been~~
19 ~~delinquent in making child support payments or has been erratic in~~
20 ~~making child support payments;~~

21 (2a) ~~In IV-D cases, include~~ Include a provision ordering income
22 withholding to take effect immediately;

- 1 (3) Require the obligor to cooperate fully with the initiating party in the
2 verification of the amount of ~~his~~ the obligor's disposable income;
- 3 (4) Require the custodial party to keep the obligor informed of the current
4 residence and mailing address of the child, unless the court has
5 determined that notice to the obligor is inappropriate because the
6 obligor has made verbal or physical threats that constitute domestic
7 violence under Chapter 50B of the General Statutes; and
- 8 (5) ~~If the case is a IV-D case, require~~ Require the obligor to keep the ~~IV-D~~
9 ~~agency~~ initiating party informed of the name and address of any payor
10 of ~~his~~ the obligor's disposable income and of the amount and effective
11 date of any substantial change in ~~his~~ this disposable income.
- 12 (b) When obligor subject to withholding.
- 13 (1) In IV-D cases in which a new or modified child support order is
14 entered on or after October 1, 1989, an obligor is subject to income
15 withholding immediately upon entry of the order. In IV-D cases in
16 which the child support order was entered prior to October 1, 1989, an
17 obligor shall become subject to income withholding on the earliest of:
- 18 a. The date on which the obligor fails to make legally obligated
19 child support payments in an amount equal to the support
20 payable for one month; or
- 21 b. The date on which the obligor or obligee requests withholding.
- 22 (2) ~~In non-IV-D cases, cases in which the child support order was entered~~
23 prior to January 1, 1994, an obligor shall be subject to income
24 withholding on the earliest of:
- 25 a. The date on which the obligor fails to make legally obligated
26 child support payments in an amount equal to the support
27 payable for one month; or
- 28 b. The date on which the obligor requests withholding; or
- 29 c. The date on which the court determines, pursuant to a motion or
30 independent action filed by the obligee under G.S. 110-
31 136.5(a), that the obligor is or has been delinquent in making
32 child support payments or has been erratic in making child
33 support payments.
- 34 (2a) In non-IV-D cases in which a new or modified child support order is
35 entered on or after January 1, 1994, an obligor is subject to income
36 withholding immediately upon entry of the order, unless:
- 37 a. One of the parties demonstrates, and the court finds, that there
38 is good cause not to require immediate income withholding; or
- 39 b. A written agreement is reached between the parties that
40 provides for an alternative arrangement.
- 41 (c) Applicability. Notwithstanding any other provision of law, the income
42 withholding provisions of this Article shall apply to any IV-D civil or criminal child
43 support order, entered or modified before, on, or after October 1, ~~1986~~ 1986 and to any

1 non-IV-D civil or criminal child support order, entered or modified before, on, or after
2 January 1, 1993.

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

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

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

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

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

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

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

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

41 (e) Procedures and regulations. Procedures, rules, regulations, forms, and
42 instructions necessary to effect the income withholding provisions of this Article shall
43 be established by the Secretary of the Department of Human Resources or ~~his~~ the

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

3 Sec. 2. G.S. 110-136.5 reads as rewritten:

4 **"§ 110-136.5. Implementation of withholding in non-IV-D cases.**

5 (a) Withholding Based on Delinquent or Erratic Payments. Notwithstanding any
6 other provision of law, when an obligor is delinquent in making child support payments
7 or has been erratic in making child support payments, the obligee may apply to the
8 court, by motion or in an independent action, for an order for income withholding.

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

- 11 a. Whether the obligor is under a court order to provide child
12 support and, if so, information sufficient to identify the order;
13 b. Either:
14 1. That the obligor is currently delinquent in making child
15 support payments; or
16 2. That the obligor has been erratic in making child support
17 payments;
18 c. The amount of overdue support and the total amount sought to
19 be withheld;
20 d. The name of each child for whose benefit support is payable;
21 and
22 e. The name, location, and mailing address of the payor or payors
23 from whom withholding is sought and the amount of the
24 obligor's monthly disposable income from each payor.

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

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

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

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

36 (1) A written request for withholding shall state:

- 37 a. That the obligor is under a court order to provide child support,
38 and information sufficient to identify the order;
39 b. Whether the obligor is delinquent and the amount of any
40 overdue support;
41 c. The name of each child for whose benefit support is payable;
42 d. The name, location, and mailing address of the payor or payors
43 from whom the obligor receives disposable income and the

- 1 amount of the obligor's monthly disposable income from each
2 payor;
- 3 e. That the obligor understands that withholding, if implemented,
4 will apply to the obligor's current payors and all subsequent
5 payors and will be continued until terminated pursuant to G.S.
6 110-136.10; and
- 7 f. That the obligor understands that the amount withheld will
8 include an amount sufficient to pay current child support, an
9 additional amount toward liquidation of any arrearages, and a
10 two dollar (\$2.00) processing fee to be retained by the employer
11 for each withholding, but that the total amount withheld may
12 not exceed the following percent of disposable income:
13 Forty percent (40%) if there is only one order for withholding;
14 Forty-five percent (45%) if there is more than one order for
15 withholding and the obligor is supporting other dependent
16 children or ~~his or her~~ a spouse; or
17 Fifty percent (50%) if there is more than one order for
18 withholding and the obligor is not supporting other dependent
19 children or a spouse.
- 20 (2) A written request for withholding shall be filed in the office of the
21 clerk of superior court to which the obligor is directed to make child
22 support payments. If the request states and the clerk verifies that the
23 obligor is not delinquent, the court may enter an order for withholding
24 without further notice or hearing. If the request states or the clerk
25 finds that the obligor is delinquent, the matter shall be scheduled for
26 hearing unless the obligor in writing waives ~~his~~ the right to a hearing
27 and consents to the entry of an order for withholding of an amount the
28 court determines to be appropriate. The court may require a hearing in
29 any case. Notice of any hearing under this subdivision shall be sent to
30 the obligee.
- 31 (c) Order for withholding. If the district court judge finds after hearing evidence
32 that the obligor, at the time of the filing of the motion or complaint was, or at the time
33 of the hearing is, delinquent in child support payments or that the obligor has been
34 erratic in making child support payments in accordance with G.S. 110-136.5(a), or that
35 the obligor has requested that income withholding begin in accordance with G.S. 110-
36 136.5(b), the court shall enter an order for income withholding, unless:
- 37 (1) The obligor proves a mistake of fact, except that G.S. 110-129(10)(a)
38 is not applicable if withholding is based on the obligee's motion or
39 independent action alleging that the obligor is delinquent or has been
40 erratic in making child support payments; or
- 41 (2) The court finds that the child support obligation can be enforced and
42 the child's right to receive support can be ensured without entry of an
43 order for income withholding; or

1 (3) The court finds that the obligor has no disposable income subject to
2 withholding or that withholding is not feasible for any other reason.
3 If the obligor fails to respond or appear, the court shall hear evidence and enter an order
4 as provided herein.

5 (c1) Immediate income withholding. When a new or modified child support order
6 is entered, the district court judge shall, after hearing evidence regarding the obligor's
7 disposable income, place the obligor under an order for immediate income withholding,
8 unless:

9 (1) One of the parties demonstrates, and the court finds, that there is good
10 cause not to require immediate income withholding; or

11 (2) A written agreement is reached between the parties that provides for an
12 alternative arrangement.

13 When ordered, immediate income withholding shall not apply if information is
14 unavailable regarding an obligor's disposable income or if the obligor is unemployed.

15 When immediate income withholding is not ordered or does not apply, the obligor
16 shall be subject to income withholding pursuant to G.S. 110-136.5(a), (b), and (c).

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

21 (d1) Subsequent payors. If the obligor changes employment or source of
22 disposable income, notice to subsequent payors of their obligation to withhold shall be
23 served as required by G.S. 1A-1, Rule 4, Rules of Civil Procedure. Copies of this notice
24 shall be filed with the clerk of court and served upon the obligor by first-class mail.

25 (d2) Multiple withholdings. The obligor shall notify the initiating party if the
26 obligor is subject to another withholding for child support. In the case of two or more
27 withholdings against one obligor, the obligee or obligees shall attempt to resolve any
28 conflict between the orders in a manner that is fair and equitable to all parties and within
29 the limits specified by G.S. 110-136.6. If the conflict cannot be so resolved, an injured
30 party, on request, shall be granted a hearing in accordance with the procedure specified
31 in G.S. 110-136.5(a). The conflict between the withholding orders shall be resolved in
32 accordance with G.S. 110-136.7.

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

38 Sec. 3. This act becomes effective January 1, 1994, and applies to all orders
39 entered on and after that date.