

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 164

Short Title: Collect Child Support 2.

(Public)

Sponsors: Representatives Gardner; Cansler and Nichols.

Referred to: Judiciary II, if favorable, Finance.

February 13, 1995

A BILL TO BE ENTITLED

AN ACT TO ENHANCE CHILD SUPPORT COLLECTION THROUGH EMPLOYER REPORTING OF NEW HIRES, HEALTH INSURANCE PREMIUM WITHHOLDING, AND OTHER INITIATIVES FOR COLLECTING OVERDUE CHILD SUPPORT.

The General Assembly of North Carolina enacts:

Section 1. Effective October 1, 1995, Chapter 110 of the General Statutes is amended by adding the following new section to read:

"§ 110-142. Duty of employers to report hiring or rehiring of persons.

(a) Every employer with five or more employees doing business in this State shall report to the Child Support Enforcement Program of the Department the following information:

(1) The hiring of any person who resides or works in this State to whom the employer anticipates paying earnings; and

(2) The hiring or return to work of any employee who was laid off, furloughed, separated, granted leave without pay, or terminated from employment.

(b) Employers are not required to report the hiring of any person who:

(1) Will be employed sporadically so that the employee will be paid for less than 350 hours during a continuous four-month period; or

1 (2) Will have gross earnings from the employer of less than three hundred
2 dollars (\$300.00) in every month.

3 (c) Employers may report the information by mailing the employee's copy of the
4 W-4 form or by other means mutually agreed to by the Secretary and the employer that
5 will result in timely reporting. Employers shall submit reports within seven days of the
6 hiring, rehiring, or return to work of the employee. The report shall contain:

7 (1) The employee's name, address, social security number, and date of
8 birth; and

9 (2) The employer's name, address, and employment security number or
10 unified business identifier number.

11 The Secretary may adopt rules to establish additional exceptions if needed to reduce
12 unnecessary or burdensome reporting.

13 (d) The Program shall retain the information on a particular employee only if the
14 Program is responsible for establishing, enforcing, or collecting a support obligation or
15 debt of that employee. If the employee does not owe such an obligation or a debt, the
16 Program shall not create a record regarding the employee and the information contained
17 in the notice from the employer shall be promptly destroyed."

18 Sec. 2. Effective October 1, 1995, Chapter 110 of the General Statutes is
19 amended by adding the following new section to read:

20 **"§ 110-143. Health insurance withholding order.**

21 (a) Issuance. The Department on its own behalf, on behalf of a custodial parent
22 who applies for the Department's support enforcement services, or on behalf of another
23 state's Title IV-D agency, may issue to a responsible parent's employer or other payor of
24 income a health insurance withholding order to enforce the responsible parent's
25 obligation to obtain or maintain health insurance coverage or other health care services
26 for the responsible parent's child or children. A health insurance withholding order must
27 be accompanied by:

28 (1) An employer notice of the order; and

29 (2) A sworn statement issued by the Secretary or the Secretary's
30 representative stating that the responsible parent is required by a court
31 order or duly acknowledged agreement of support to obtain or maintain
32 health insurance coverage or other health care services for the
33 dependent child or children named in the health insurance withholding
34 order and has failed to provide the Department with proof of coverage
35 required.

36 (b) Employer notice. A health insurance withholding order issued to an employer
37 shall contain notice of the employer's rights and obligations under this section.

38 (c) Duty to enroll. An employer or other payor of income served with a health
39 insurance withholding order shall enroll the employee's dependent child or children
40 named in the order as covered persons in a group health insurance plan or other similar
41 plan providing health care services or coverage offered by the employer, if the children
42 are eligible for the coverage under the employer's enrollment provisions, and shall deduct
43 any required premiums from the employee's earnings to pay for the insurance.

1 (d) Choice of plan. If more than one plan is offered by the employer, the employer
2 shall enroll qualified children prospectively in the insurance plan in which the employee
3 is enrolled or, if the employee is not enrolled, in the least costly plan otherwise available,
4 provided that the plan's services are available where the children reside. If the services of
5 the employee's plan or the least costly plan are not available where the children reside,
6 the employer shall enroll qualified children prospectively in the least costly plan that is
7 available where the children reside.

8 (e) Employer's answer. An employer shall respond to a health insurance
9 withholding order in writing within 30 days of service on the employer. The employer
10 shall advise the Department of the plan in which the children are enrolled or, if the
11 children are ineligible for any plan through the employer. The Department shall include
12 a printed answer form for the employer's use and shall include a form and a prepaid self-
13 addressed envelope with the health insurance withholding order.

14 (f) Mistake of fact; affirmative defenses. A responsible parent may claim a
15 mistake of fact or assert affirmative defenses to contest the issuance of a health insurance
16 withholding order. The Department shall adopt rules for reviewing claims of mistake of
17 fact and investigating affirmative defenses.

18 (g) Duration of order. A health insurance withholding order shall remain in effect
19 until:

20 (1) The responsible parent's employment is terminated; or

21 (2) The employer or other payor of earning is released from the order in
22 writing by the Department or release is ordered by a court of competent
23 jurisdiction.

24 (h) Change of plan. After it is initially determined in response to a health
25 insurance withholding order that a child is eligible for coverage, the employer must make
26 subsequent enrollment changes to include the child if the group health insurance plan is
27 changed, and shall notify the Department of the changes in coverage.

28 (i) Fee. An employer may charge the employee a processing fee not to exceed
29 one dollar (\$1.00) for each withholding and for each change in plan.

30 (j) Failure to comply. Wilfull failure of an employer or other payor of earnings to
31 comply with the requirements of a health insurance withholding order is a civil violation
32 for which the Department may recover a civil penalty of up to one thousand dollars
33 (\$1,000) in a civil action. Prior to bringing an action to recover the penalty authorized
34 under this subsection, the Department shall notify the employer by certified mail, return
35 receipt requested, that if the employer has not complied within 20 days of receipt of the
36 notice an action will be brought to recover the penalty.

37 (k) Priority of order. A health insurance withholding order has priority over any
38 previously filed attachment, execution, garnishment, or assignment of wages that is not
39 for the purpose of enforcing or paying a child support obligation.

40 (l) Employer protected. The Department shall defend and hold harmless any
41 employer or other payor of earnings who honors a health insurance withholding order.

42 (m) Immunity. An employer may not be held liable for medical expenses incurred
43 on behalf of a dependent child or children because of the employer's failure to enroll the

1 dependent child or children in a health insurance or health care plan after being ordered
2 to do so by the Department.

3 (n) Employee protected. An employer who discharges, refuses to employ, or takes
4 disciplinary action against a responsible parent, or who otherwise discriminates against
5 that parent because of the existence of a health insurance withholding order or because of
6 the obligation the order imposes upon the employer, is subject to a civil penalty of not
7 more than five thousand dollars (\$5,000) payable to the State, to be recovered in a civil
8 action. The employer shall also be subject to an action by the responsible parent for
9 compensatory and punitive damages, plus attorneys' fees and court costs.

10 (o) Service of process. A health insurance withholding order must be served on
11 the responsible parent's employer or other payor of earnings. Service may be by certified
12 mail, return receipt requested, by an authorized representative of the Department, or in
13 accordance with G.S. 1A-1, Rule 4, of the Rules of Civil Procedure. The Department
14 shall send a copy of the health insurance withholding order to the responsible parent at
15 the responsible parent's most recent address of record.

16 (p) Rules. The Department shall adopt rules to implement this section."

17 Sec. 3. This act is effective upon ratification.