

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-176
HOUSE BILL 534

AN ACT TO ALLOW THE TRANSFER OF PROPERTY AND INCOME
WITHHOLDING TO ENFORCE SUPPORT ORDERS, AND THE AWARDING
OF ALIMONY, AS RECOMMENDED BY THE FAMILY LAW SECTION OF
THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

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

"(e) Payment for the support of a minor child shall be paid by lump sum payment, periodic payments, or by transfer of title or possession of personal property of any interest therein, or a security interest in or possession of real property, as the court may order. The court may order the transfer of title to real property solely owned by the obligor in payment of arrearages of child support so long as the net value of the interest in the property being transferred does not exceed the amount of the arrearage being satisfied. In every case in which payment for the support of a minor child is ordered and alimony or postseparation support is also ordered, the order shall separately state and identify each allowance."

Section 2. G.S. 50-16.7(a) reads as rewritten:

"(a) Alimony or postseparation support shall be paid by lump sum payment, periodic payments, income withholding, or by transfer of title or possession of personal property or any interest therein, or a security interest in or possession of real property, as the court may order. The court may order the transfer of title to real property solely owned by the obligor in payment of lump-sum payments of alimony or postseparation support or in payment of arrearages of alimony or postseparation support so long as the net value of the interest in the property being transferred does not exceed the amount of the arrearage being satisfied. In every case in which either alimony or postseparation support is allowed and provision is also made for support of minor children, the order shall separately state and identify each allowance."

Section 3. G.S. 50-16.7 is amended by adding the following new subsection to read:

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

Section 4. G.S. 110-136.3(b) is amended by adding a new subdivision to read:

- "(4) In the enforcement of alimony or postseparation support orders pursuant to G.S. 110-130.2, an obligor shall become subject to income withholding on the earlier of:
- a. The date on which the obligor fails to make legally obligated alimony or postseparation payments; or
 - b. The date on which the obligor or obligee requests withholding."

Section 5. G.S. 110-136.4(a)(2) reads as rewritten:

- "(2) Contents of advance notice. The advance notice to the obligor shall contain, at a minimum, the following information:
- a. Whether the proposed withholding is based on the obligor's failure to make legally obligated ~~payments in an amount equal to the support payable for one month,~~ child support, alimony or postseparation support payments on the obligor's request for withholding, on the obligee's request for withholding, or on the obligor's eligibility for withholding under G.S. 110-136.3(b)(3);
 - b. The amount of overdue child support, overdue alimony or postseparation support payments, the total amount to be withheld, and when the withholding will occur;
 - c. The name of each child or person for whose benefit the ~~child support is~~ support, alimony or postseparation support payments are due and information sufficient to identify the court order under which the obligor has a duty to support the ~~child;~~ child, spouse, or former spouse;
 - d. The amount and sources of disposable income;
 - e. That the withholding will apply to the obligor's wages or other sources of disposable income from current payors and all subsequent payors once the procedures under this section are invoked;
 - f. An explanation of the obligor's rights and responsibilities pursuant to this section;
 - g. That withholding will be continued until terminated pursuant to G.S. 110-136.10."

Section 6. G.S. 110-136.6 is amended by adding the following new subsection to read:

"(b1) When there is an order of income withholding for current or delinquent payments of alimony or postseparation support or for any portion of the payments, the total amount withheld under this Article and under G.S. 50-16.7 shall not exceed the amounts allowed under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. § 1673(b)."

Section 7. G.S. 110-136.8(b) reads as rewritten:

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

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

Section 8. G.S. 50-16.1A is amended by adding the following new subdivision to read:

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

Section 9. G.S. 110-129(11) reads as rewritten:

"(11) 'Obligee', in a IV-D case, means the child support enforcement agency, and in a non-IV-D case means the individual to whom a duty of ~~support~~ support, whether child support, alimony, or postseparation support, is owed or the individual's legal representative."

Section 10. G.S. 110-129(12) reads as rewritten:

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

Section 11. G.S. 50-16.3A(b) is amended by adding the following new subdivision to read:

"(16) The fact that income received by either party was previously considered by the court in determining the value of a marital or divisible asset in an equitable distribution of the parties' marital or divisible property."

Section 12. This act becomes effective January 1, 1999. Sections 1 through 10 of this act apply to actions pending on or after the effective date. Section 11 applies to actions filed on or after the effective date.

In the General Assembly read three times and ratified this the 30th day of September, 1998.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 3:10 p.m. this 8th day of October, 1998