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SESSION 1999

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HOUSE BILL 302
Committee Substitute Favorable 4/22/99
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Short Title: Enhance Child Support Enforce./AB.

(Public)

Sponsors:

Referred to:

March 4, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CHILD
3 SUPPORT ENFORCEMENT.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 110-132(a), as amended by Section 1 of S.L. 1998-17, reads as
6 rewritten:

7 "(a) In lieu of or in conclusion of any legal proceeding instituted to establish
8 paternity, the written acknowledgment of paternity executed by the putative father of the
9 dependent child when accompanied by a written affirmation of paternity executed and
10 sworn to by the mother of the dependent child shall constitute an admission of ~~paternity,~~
11 paternity and shall have the same legal effect as a judgment of paternity for the purpose
12 of establishing a child support obligation, subject to the right of either signatory to
13 rescind within the earlier of:

- 14 (1) 60 days of the date the document is executed, or
- 15 (2) The date of entry of an order establishing paternity or an order for the
16 payment of child support.

17 In order to rescind, a challenger must request the district court to order the rescision
18 and to include in the order specific findings of fact that the request for rescision was filed

1 with the clerk of court within 60 days of the signing of the document. The court must also
2 find that all parties, including the child support enforcement agency, if appropriate, have
3 been served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. In
4 the event the court orders rescision and the putative father is thereafter found not to be the
5 father of the child, then the clerk of court shall send a copy of the order of rescision to the
6 State Registrar of Vital Statistics. Upon receipt of an order of rescision, the State Registrar
7 shall remove the putative father's name from the birth certificate. In the event that the
8 putative father defaults or fails to present or prosecute the issue of paternity, the trial
9 court shall find the putative father to be the biological father as a matter of law.

10 After 60 days have elapsed, execution of the document may be challenged in court
11 only upon the basis of fraud, duress, mistake, or excusable neglect. The burden of proof
12 shall be on the challenging party, and the legal responsibilities, including child support
13 obligations, of any signatory arising from the executed documents may not be suspended
14 during the challenge except for good cause shown.

15 A written agreement to support the child by periodic payments, which may include
16 provision for reimbursement for medical expenses incident to the pregnancy and the birth
17 of the child, accrued maintenance and reasonable expense of prosecution of the paternity
18 action, when acknowledged as provided herein, filed with, and approved by a judge of
19 the district court at any time, shall have the same force and effect as an order of support
20 entered by that court, and shall be enforceable and subject to modification in the same
21 manner as is provided by law for orders of the court in such cases. The written
22 affirmation shall contain the social security number of the person executing the
23 affirmation, and the written acknowledgment shall contain the social security number of
24 the person executing the acknowledgment. Voluntary agreements to support shall contain
25 the social security number of each of the parties to the agreement. The written
26 affirmations, acknowledgments and agreements to support shall be sworn to before a
27 certifying officer or notary public or the equivalent or corresponding person of the state,
28 territory, or foreign country where the affirmation, acknowledgment, or agreement is
29 made, and shall be binding on the person executing the same whether the person is an
30 adult or a minor. The child support enforcement agency shall ensure that the mother and
31 putative father are given oral and written notice of the legal consequences and
32 responsibilities arising from the signing of an acknowledgement of paternity, and of any
33 alternatives to the execution of an acknowledgment or affirmation of paternity. The
34 mother shall not be excused from making the affirmation on the grounds that it may tend
35 to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act
36 involved in the conception of the child as to whose paternity she makes affirmation."

37 Section 2. G.S. 110-142.2(b), as amended by Section 1 of S.L. 1998-17, reads
38 as rewritten:

39 "(b) Upon finding that the individual has willfully failed to comply with the child
40 support order or with a subpoena issued pursuant to child support proceedings, and that
41 the obligor is at least 90 days in arrears, or upon a finding that an individual subject to a
42 subpoena issued pursuant to child support or paternity establishment proceedings has
43 failed to comply with the subpoena, the court may enter an order instituting the sanctions

1 as provided in subsection (a) of this section. If an individual is adjudicated to be in civil
2 or criminal contempt for a third or subsequent time for failure to comply with a child
3 support order, the court shall enter an order instituting any one or more of the sanctions,
4 if applicable, as provided in subsection (a) of this section. The court may stay the
5 effectiveness of the sanctions upon conditions requiring the obligor to make full payment
6 of the delinquency over time. Any court-ordered payment plan under this subsection
7 shall require the individual to extinguish the delinquency within a reasonable period of
8 time. In determining the amount to be applied to the delinquency, the court shall
9 consider the amount of the debt and the individual's financial ability to pay. The payment
10 shall not exceed the limits under G.S. 110-136.6(b). The individual shall make an
11 immediate initial payment representing at least five percent (5%) of the total delinquency
12 or five hundred dollars (\$500.00), whichever is less. Any ~~such~~ stay of an order under this
13 subsection shall also be conditioned upon the obligor's maintenance of current child
14 support. The court may stay the effectiveness of the sanctions against an individual
15 subject to a subpoena issued pursuant to child support or paternity establishment
16 proceedings upon a finding that the individual has complied with or is no longer subject
17 to the subpoena. Upon entry of an order pursuant to this section that is not stayed, the
18 individual shall surrender any licenses revoked by the court's order to the child support
19 enforcement agency and the agency shall forward a report to the appropriate licensing
20 authority within 30 days of the order."

21 Section 3. G.S. 50-13.4(c) reads as rewritten:

22 "(c) Payments ordered for the support of a minor child shall be in such amount as to
23 meet the reasonable needs of the child for health, education, and maintenance, having due
24 regard to the estates, earnings, conditions, accustomed standard of living of the child and
25 the parties, the child care and homemaker contributions of each party, and other facts of
26 the particular case. Payments ordered for the support of a minor child shall be on a
27 monthly basis, due and payable on the first day of each month. The requirement that
28 orders be established on a monthly basis does not affect the availability of garnishment of
29 disposable earnings based on an obligor's pay period.

30 The court shall determine the amount of child support payments by applying the
31 presumptive guidelines established pursuant to subsection (c1). However, upon request of
32 any party, the Court shall hear evidence, and from the evidence, find the facts relating to
33 the reasonable needs of the child for support and the relative ability of each parent to
34 provide support. If, after considering the evidence, the Court finds by the greater weight
35 of the evidence that the application of the guidelines would not meet or would exceed the
36 reasonable needs of the child considering the relative ability of each parent to provide
37 support or would be otherwise unjust or inappropriate the Court may vary from the
38 guidelines. If the court orders an amount other than the amount determined by application
39 of the presumptive guidelines, the court shall make findings of fact as to the criteria that
40 justify varying from the guidelines and the basis for the amount ordered.

41 Payments ordered for the support of a child shall terminate when the child reaches the
42 age of 18 except:

- 1 (1) If the child is otherwise emancipated, payments shall terminate at that
2 time;
- 3 (2) If the child is still in primary or secondary school when the child
4 reaches age 18, support payments shall continue until the child
5 graduates, otherwise ceases to attend school on a regular basis, fails to
6 make satisfactory academic progress towards graduation, or reaches age
7 20, whichever comes first, unless the court in its discretion orders that
8 payments cease at age 18 or prior to high school graduation.

9 In the case of graduation, or attaining age 20, payments shall terminate without order
10 by the court, subject to the right of the party receiving support to show, upon motion and
11 with notice to the opposing party, that the child has not graduated or attained the age of
12 20."

13 Section 4. G.S. 52C-5-501(a), as amended by Section 1 of S.L. 1998-17, reads
14 as rewritten:

15 "(a) An income-withholding order issued in another state may be sent to the person
16 or entity defined or identified as the obligor's employer under the income-withholding
17 provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable, without
18 first filing a petition or comparable pleading or registering the order with a tribunal of
19 this State. In the event that an obligor is receiving unemployment compensation benefits
20 from the North Carolina Employment Security Commission, in accordance with G.S. 96-
21 17, an income-withholding order issued in another state may be sent to the Employment
22 Security Commission without first filing a petition or comparable pleading or registering
23 the order with a tribunal of this State. Upon receipt of the order, the employer or the
24 Employment Security Commission shall:

- 25 (1) Treat an income-withholding order issued in another state which
26 appears regular on its face as if it had been issued by a tribunal of this
27 State;
- 28 (2) Immediately provide a copy of the order to the obligor; and
- 29 (3) Distribute the funds as directed in the withholding order. The
30 Employment Security Commission shall not withhold an amount to
31 exceed twenty-five percent (25%) of the unemployment compensation
32 benefits."

33 Section 5. G.S. 110-136.2(f) reads as rewritten:

34 "(f) In the absence of a voluntary assignment of unemployment compensation
35 benefits, the Department of Health and Human Services shall implement income
36 withholding as provided in this Article for IV-D cases. The amount withheld shall not
37 exceed twenty-five percent (25%) of the unemployment compensation benefits. Notice of
38 the requirement to withhold shall be served upon the Employment Security Commission
39 and payment shall be made by the Employment Security Commission directly to the
40 Department of Health and Human Services pursuant to G.S. ~~96-17~~-96-17 or to another
41 state under G.S. 52C-5-501. Except for the requirement to withhold from unemployment
42 compensation benefits and the forwarding of withheld funds to the Department of Health

1 and Human Services, ~~Services~~ or to another state under G.S. 52C-5-501, the Employment
2 Security Commission is exempt from the provisions of G.S. 110-136.8."

3 Section 6. The General Statutes are amended by adding a new section to read:
4 **"§ 110-139.3. High-volume, automated administrative enforcement in interstate**
5 **cases (AEI).**

6 Upon request of another state, the Department of Health and Human Services shall
7 use automated data processing to search State databases and determine if information is
8 available regarding a parent who owes a child support obligation and shall seize
9 identified assets using the same techniques as used in intrastate cases. Any request by
10 another state to enforce support orders shall certify the amount of each obligor's debt and
11 that appropriate due process requirements have been met by the requesting state with
12 respect to each obligor. The Department of Health and Human Services shall likewise
13 transmit to other states requests for assistance in enforcing support orders through high-
14 volume, automated administrative enforcement where appropriate."

15 Section 7. G.S. 108A-69, as amended by Section 1 of S.L. 1998-17, reads as
16 rewritten:

17 **"§ 108A-69. Employer obligations.**

18 (a) As used in this section and in G.S. 108A-70:

19 (1) 'Health benefit plan' means an accident and health insurance policy or
20 certificate; a nonprofit hospital or medical service corporation contract;
21 a health maintenance organization subscriber contract; a plan provided
22 by a multiple employer welfare arrangement; the Teachers' and State
23 Employees' Comprehensive Major Medical Plan under Chapter 135 of
24 the General Statutes; or a plan provided by another benefit arrangement.
25 'Health benefit plan' does not mean a Medicare supplement policy as
26 defined in G.S. 58-54-1(5).

27 (2) 'Health insurer' means any health insurance company subject to Articles
28 1 through 63 of Chapter 58 of the General Statutes, including a multiple
29 employee welfare arrangement, and any corporation subject to Articles
30 65 and 67 of Chapter 58 of the General Statutes; ~~and means a group~~
31 ~~health plan, as defined in Section 607(1) of the Employee Retirement~~
32 ~~Income Security Act of 1974.~~ 1974; and the Teachers' and State
33 Employees' Comprehensive Major Medical Plan under Chapter 135 of
34 the General Statutes.

35 (b) If a parent is required by a court or administrative order to provide health
36 benefit plan coverage for a child, and the parent is eligible for family health benefit plan
37 coverage through an ~~employer doing business in this State,~~ employer, the employer:

38 (1) Must allow the parent to enroll, under family coverage, the child if the
39 child would be otherwise eligible for coverage without regard to any
40 enrollment season restrictions.

41 (2) Must enroll the child under family coverage upon application of the
42 child's other parent or upon receipt of notice from the Department of
43 Health and Human Services in connection with its administration of the

1 Medical Assistance or Child Support Enforcement Program if the parent
2 is enrolled but fails to make application to obtain coverage for the child.

3 (3) May not disenroll or eliminate coverage of the child unless:

4 a. The employer is provided satisfactory written evidence that:

- 5 1. The court or administrative order is no longer in effect; or
- 6 2. The child is or will be enrolled in comparable health
7 benefit plan coverage that will take effect not later than
8 the effective date of disenrollment; or

9 b. The employer has eliminated family health benefit plan coverage
10 for all of its employees.

11 (4) Must withhold from the employee's compensation the employee's share,
12 if any, of premiums for health benefit plan coverage, not to exceed the
13 maximum amount permitted to be withheld under section 303(b) of the
14 federal Consumer Credit Protection Act, as amended; and must pay this
15 amount to the health insurer; subject to regulations, if any, adopted by
16 the Secretary of the U.S. Department of Health and Human Services."

17 Section 8. G.S. 58-51-115(a) reads as rewritten:

18 "(a) As used in this section and in G.S. 58-51-120 and G.S. 58-51-125:

19 (1) 'Health benefit plan' means any accident and health insurance policy or
20 certificate; a nonprofit hospital or medical service corporation contract;
21 a health maintenance organization subscriber contract; a plan provided
22 by a multiple employer welfare arrangement; the Teachers' and State
23 Employees' Comprehensive Major Medical Plan under Chapter 135 of
24 the General Statutes; or a plan provided by another benefit arrangement.
25 'Health benefit plan' does not mean a Medicare supplement policy as
26 defined in G.S. 58-54-1(5).

27 (2) 'Health insurer' means any health insurance company subject to Articles
28 1 through 63 of this Chapter, including a multiple employee welfare
29 arrangement, and any corporation subject to Articles 65 and 67 of this
30 Chapter; ~~and means a group health plan, as defined in section 607(1) of~~
31 ~~the Employee Retirement Income Security Act of 1974-1974; and the~~
32 Teachers' and State Employees' Comprehensive Major Medical Plan
33 under Chapter 135 of the General Statutes."

34 Section 9. G.S. 15A-1344.1(a) reads as rewritten:

35 "(a) When the court requires, as a condition of supervised or unsupervised
36 probation, that a defendant support his children, the court may order at any time that
37 support payments be made to the clerk of court for remittance to the party entitled to
38 receive the payments. For child support orders initially entered on or after January 1,
39 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) ~~shall~~ apply. If
40 child support is to be paid through income withholding, the payments shall be made in
41 accordance with G.S. 110-139(f)."

42 Section 10. G.S. 50-13.9(b) reads as rewritten:

1 "(b) After entry of such an order by the court, the clerk of superior court shall
2 transmit child support payments that are made to the clerk in IV-D cases to the
3 Department of Health and Human Services for appropriate distribution. Pursuant to G.S.
4 110-139(f), amounts withheld by employers in IV-D and in non-IV-D cases shall be sent
5 directly from the employer to the State Child Support Collection and Disbursement Unit
6 for disbursement to the custodial parent or other party entitled to receive them, unless a
7 court order requires otherwise. In all other cases, non-IV-D cases in which wage
8 withholding is not in effect, the clerk shall transmit the payments to the custodial parent
9 or other party entitled to receive them, unless a court order requires otherwise."

10 Section 11. G.S. 50-13.9(b2) reads as rewritten:

11 "(b2) In a non-IV-D case:

12 (1) The clerk of court shall have the responsibility and authority for
13 monitoring the obligor's compliance with all child support orders in the
14 case and for initiating any enforcement procedures that it considers
15 appropriate. In non-IV-D cases subject to income withholding, the State
16 Child Support Collection and Disbursement Unit shall notify the clerk
17 of court of all payments made in non-IV-D income-withholding cases so
18 that the clerk of court can initiate enforcement proceedings as provided
19 in subsection (d) of this section.

20 (2) The clerk of court shall maintain all official records in the case.

21 (3) The clerk of court shall maintain any other records needed to monitor
22 the obligor's compliance with or to enforce the child support orders in
23 the case, including records showing the amount of each payment of
24 child support received from or on behalf of the obligor, along with the
25 dates on which each payment was received."

26 Section 11.1. G.S. 110-36.3 is amended by adding a new section to read:

27 "(d1) Employment Verifications. – For the purpose of establishing or modifying a
28 child support order, the amount of the obligor's gross income may be established by a
29 written statement signed by the obligor's employer or the employer's designee or an
30 Employee Verification form produced by the Automated Collections Tracking System
31 that has been completed and signed by the obligor's employer or the employer's designee.
32 A written statement signed by the employer of the obligor or the employer's designee that
33 sets forth an obligor's gross income, as well as, an Employee Verification form signed by
34 the obligor's employer or the employer's designee shall be admissible evidence in any
35 action establishing or modifying a child support order."

36 Section 12. G.S. 110-136.8(b), as amended by Section 1 of S.L. 1998-17 and
37 Section 7 of S.L. 1998-176, reads as rewritten:

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

40 (1) Withhold from the obligor's disposable income and, within 7 business
41 days of the date the obligor is paid, send to the ~~clerk of superior court or~~
42 ~~State collection and disbursement unit,~~ Child Support Collection and
43 Disbursement Unit, as specified in the notice, the amount specified in

1 the notice and the date the amount was withheld, but in no event more
2 than the amount allowed by G.S. 110-136.6; however, if a lesser amount
3 of disposable income is available for any pay period, the payor shall
4 either: (a) compute and send the appropriate amount to the ~~clerk of court,~~
5 State Child Support Collection and Disbursement Unit, using the
6 percentages as provided in G.S. 110-136.6, or (b) request the initiating
7 party to inform the payor of the proper amount to be withheld for that
8 period;

9 (2) Continue withholding until further notice from the IV-D agency, the
10 clerk of superior court, or the State collection and disbursement unit;

11 (3) Withhold for child support before withholding pursuant to any other
12 legal process under State law against the same disposable income;

13 (4) Begin withholding from the first payment due the obligor in the first pay
14 period that occurs 14 days following the date the notice of the obligation
15 to withhold was served on the payor;

16 (5) Promptly notify the obligee in a IV-D case, or the clerk of superior court
17 or the State collection and disbursement unit in a non-IV-D case, in
18 writing:

19 a. If there are one or more orders of child support withholding for
20 the obligor;

21 a1. If there are one or more orders of alimony or postseparation
22 support withholding for the obligor;

23 b. When the obligor terminates employment or otherwise ceases to
24 be entitled to disposable income from the payor, and provide the
25 obligor's last known address, and the name and address of his
26 new employer, if known;

27 c. Of the payor's inability to comply with the withholding for any
28 reason; and

29 (6) Cooperate fully with the initiating party in the verification of the amount
30 of the obligor's disposable income."

31 Section 13. G.S. 110-136.8(d) reads as rewritten:

32 "(d) The payor may combine amounts withheld from obligors' disposable incomes
33 in a single payment to ~~each clerk of superior court~~ the State Child Support Collection and
34 Disbursement Unit if the payor separately identifies by name and case number the portion
35 of the single payment attributable to each individual obligor and the date that each
36 payment was withheld from the obligor's disposable income."

37 Section 14. G.S. 110-136.9 reads as rewritten:

38 "**§ 110-136.9. Payment of withheld funds.**

39 In IV-D ~~cases,~~ cases and in non-IV-D cases in which the support order was initially
40 issued in this State on or after January 1, 1994, and in which the income of the
41 noncustodial parent is subject to income withholding, when required by federal or State
42 law or regulations or by court order, the ~~clerk of superior court~~ State Child Support
43 Collection and Disbursement Unit shall ~~transmit~~ distribute payments received from payors

1 ~~to the Department of Health and Human Services for appropriate distribution payors.~~ In all
2 other cases, unless a court order requires otherwise, the clerk of superior court shall
3 transmit the payments to the custodial parent."

4 Section 15. This act becomes effective October 1, 1999. The mandatory
5 sanctions under G.S. 110-142.2(b), as amended by Section 2 of this act, apply when an
6 obligor is adjudicated to be in civil or criminal contempt for a third or subsequent time
7 after this act becomes effective.