

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 538

Short Title: Child Support Collection Change.

(Public)

Sponsors: Senator Jordan.

Referred to: Judiciary II.

March 29, 1999

A BILL TO BE ENTITLED

1 AN ACT TO TRANSFER RESPONSIBILITY FOR COLLECTION OF ALL CHILD
2 SUPPORT PAYMENTS CURRENTLY COLLECTED BY THE CLERKS OF
3 SUPERIOR COURTS TO THE STATE CHILD SUPPORT COLLECTION AND
4 DISBURSEMENT UNIT.
5

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 15A-1344.1 reads as rewritten:

8 "**§ 15A-1344.1. Procedure to insure payment of child support.**

9 (a) When the court requires, as a condition of supervised or unsupervised
10 probation, that a defendant support his children, the court may order at any time that
11 support payments be made to the ~~clerk of court~~ State Child Support Collection and
12 Disbursement Unit for remittance to the party entitled to receive the payments. For child
13 support orders initially entered on or after January 1, 1994, the immediate income
14 withholding provisions of G.S. 110-136.5(c1) ~~shall~~ apply.

15 (b) After entry of such an order by the court, the clerk of court shall maintain
16 records listing the amount of payments, the date payments are required to be made, and
17 the names and addresses of the parties affected by the order.

18 (c) The parties affected by the order shall inform the clerk of court and the State
19 Child Support Collection and Disbursement Unit of any change of address or of other
20 condition that may affect the administration of the order. The court may provide in the

1 order that a defendant failing to inform the court and the State Child Support Collection
2 and Disbursement Unit of a change of address within reasonable period of time may be
3 held in violation of probation.

4 (d) When a defendant in a non-IV-D case, as defined in G.S. 110-129, fails to
5 make required payments of child support and is in arrears, upon notification by the State
6 Child Support Collection and Disbursement Unit the clerk of superior court may mail by
7 regular mail to the last known address of the defendant a notice of delinquency ~~which~~
8 ~~shall set that sets~~ out the amount of child support currently due and ~~which shall demand that~~
9 ~~demands~~ immediate payment of ~~said the~~ amount. Failure to receive the delinquency
10 notice ~~shall is not be~~ a defense in any probation violation hearing or other proceeding
11 thereafter. If the arrearage is not paid in full within 21 days after the mailing of the
12 delinquency notice, or is not paid within 30 days after the defendant becomes delinquent
13 if the clerk has elected not to send a delinquency notice, the clerk shall certify the amount
14 due to the district attorney and probation officer, who shall initiate proceedings for
15 revocation of probation pursuant to Article 82 of Chapter 15A or make a motion in the
16 criminal case for income withholding pursuant to G.S. 110-136.5 or both.

17 When a defendant in a IV-D case, as defined in G.S. 110-129, fails to make required
18 payments of child support and is in arrears, at the request of the IV-D obligee the clerk
19 shall certify the amount due to the district attorney and probation officer, who shall
20 initiate proceedings for revocation of probation pursuant to Article 82 of Chapter 15A or
21 make a motion in the criminal case for income withholding pursuant to G.S. 110-136.5 or
22 both."

23 Section 2. G.S. 50-13.4(d) reads as rewritten:

24 "(d) In non-IV-D cases, payments for the support of a minor child shall be ordered
25 to be paid to the person having custody of the child or any other proper person, agency,
26 organization or institution, or to the ~~court, State Child Support Collection and~~
27 Disbursement Unit, for the benefit of the child. In IV-D cases, payments for the support
28 of a minor child shall be ordered to be paid to the ~~court or other proper State agency~~ Child
29 Support Collection and Disbursement Unit for the benefit of the child."

30 Section 3. G.S. 50-13.9(a) reads as rewritten:

31 "(a) Upon its own motion or upon motion of either party, the court may order at any
32 time that support payments be made to the ~~clerk of court~~ State Child Support Collection
33 and Disbursement Unit for remittance to the party entitled to receive the payments. For
34 child support orders initially entered on or after January 1, 1994, the immediate income
35 withholding provisions of G.S. 110-136.5(c1) ~~shall apply.~~"

36 Section 4. G.S. 50-13.9(b) reads as rewritten:

37 "(b) After entry of ~~such an~~ order by the ~~court, court~~ under subsection (a) of this
38 section, the clerk of superior court State Child Support Collection and Disbursement Unit
39 shall transmit child support payments that are made to ~~the clerk in IV-D cases to the~~
40 ~~Department of Health and Human Services for appropriate distribution. In all other cases, the~~
41 ~~clerk shall transmit the payments it~~ to the custodial parent or other party entitled to receive
42 them, unless a court order requires otherwise."

43 Section 5. G.S. 50-13.9(b2) reads as rewritten:

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

2 (1) The clerk of court shall have the responsibility and authority for
3 monitoring the obligor's compliance with all child support orders in the
4 case and for initiating any enforcement procedures that it considers
5 appropriate. The State Child Support Collection and Disbursement Unit
6 shall notify the clerk of court of all payments made in non-IV-D cases
7 so that the clerk of court can initiate enforcement proceedings as
8 provided in subsection (d) of this section.

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

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

15 Section 6. G.S. 50-13.9(d) reads as rewritten:

16 "(d) In a non-IV-D case, when the clerk of superior court is notified by the State
17 Child Support Collection and Disbursement Unit that an obligor fails-has failed to make a
18 required payment of child support and is in arrears, the clerk of superior court shall mail
19 by regular mail to the last known address of the obligor a notice of delinquency. The
20 notice shall set out the amount of child support currently due and shall demand
21 immediate payment of ~~said~~-that amount. The notice shall also state that failure to make
22 immediate payment will result in the issuance by the court of an enforcement order
23 requiring the obligor to appear before a district court judge and show cause why the
24 support obligation should not be enforced by income withholding, contempt of court,
25 revocation of licensing privileges, or other appropriate means. Failure to receive the
26 delinquency notice ~~shall~~-is not be a defense in any subsequent proceeding. Sending the
27 notice of delinquency ~~shall~~-be is in the discretion of the clerk if the clerk has, during the
28 previous 12 months, sent a notice or notices of delinquency to the obligor for
29 nonpayment, or if income withholding has been implemented against the obligor or the
30 obligor has been previously found in contempt for nonpayment under the same child
31 support order.

32 If the arrearage is not paid in full within 21 days after the mailing of the delinquency
33 notice, or without waiting the 21 days if the clerk has elected not to mail a delinquency
34 notice for any of the reasons provided ~~herein~~-in this subsection, the clerk shall cause an
35 enforcement order to be issued and shall issue a notice of hearing before a district court
36 judge. The enforcement order shall order the obligor to appear and show cause why ~~he~~
37 the obligor should not be subjected to income withholding or adjudged in contempt of
38 court, or both, and shall order the obligor to bring to the hearing records and information
39 relating to ~~his~~-the obligor's employment, ~~his~~-the obligor's licensing privileges, and the
40 amount and sources of ~~his~~-the obligor's disposable income. The enforcement order shall
41 state:

- 1 (1) That the obligor is under a court order to provide child support, the
2 name of each child for whose benefit support is due, and information
3 sufficient to identify the order;
- 4 (2) That the obligor is delinquent and the amount of overdue support;
- 5 (2a) That the court may order the revocation of some or all of the obligor's
6 licensing privileges if the obligor is delinquent in an amount equal to the
7 support due for one month;
- 8 (3) That the court may order income withholding if the obligor is delinquent
9 in an amount equal to the support due for one month;
- 10 (4) That income withholding, if implemented, will apply to the obligor's
11 current payors and all subsequent payors and will be continued until
12 terminated pursuant to G.S. 110-136.10;
- 13 (5) That failure to bring to the hearing records and information relating to
14 his employment and the amount and sources of his disposable income
15 will be grounds for contempt;
- 16 (6) That if income withholding is not an available or appropriate remedy,
17 the court may determine whether the obligor is in contempt or whether
18 any other enforcement remedy is appropriate.

19 The enforcement order may be signed by the clerk or a district court judge, and shall be
20 served on the obligor pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure. The clerk
21 shall also notify the party to whom support is owed of the pending hearing. The clerk
22 may withdraw the order to the supporting party upon receipt of the delinquent payment.
23 On motion of the person to whom support is owed, with the approval of the district court
24 judge, if the district court judge finds it is in the best interest of the child, no enforcement
25 order shall be issued.

26 When the matter comes before the court, the court shall proceed as in the case of a
27 motion for income withholding under G.S. 110-136.5. If income withholding is not an
28 available or adequate remedy, the court may proceed with contempt, imposition of a lien,
29 or other available, appropriate enforcement remedies.

30 This subsection shall apply only to non-IV-D cases, except that the clerk shall issue
31 an enforcement order in a IV-D case when requested to do so by an IV-D obligee."

32 Section 7. G.S. 50-13.10(e) reads as rewritten:

33 "(e) When a child support payment ~~which that~~ is to be made to ~~a clerk of superior~~
34 ~~court~~ the State Child Support Collection and Disbursement Unit is not received by ~~the~~
35 ~~clerk~~ the Unit when due, the payment is not a past due child support payment for purposes
36 of this section, and no arrearage accrues, if the payment is actually made to and received
37 on time by the party entitled to receive it and ~~such that~~ receipt is evidenced by a canceled
38 check, money order, or contemporaneously executed and dated written receipt. Nothing
39 in this section shall affect the duties of the clerks or the State Child Support Collection
40 and Disbursement Unit under this Chapter or Chapter 110 of the General Statutes with
41 respect to payments not received by ~~them~~ the Unit on time, but the court, in any action to
42 enforce such a payment, may enter an order directing the clerk to enter the payment on

1 ~~his~~ the clerk's records as having been made on time, if the court finds that the payment
2 was in fact received by the party entitled to receive it as provided in this subsection."

3 Section 8. G.S. 110-136(d) reads as rewritten:

4 "(d) Upon receipt of an order of garnishment, the garnishee shall transmit without
5 delay to the ~~clerk of superior court~~ State Child Support Collection and Disbursement Unit
6 the amount ordered by the court to be garnished. These funds shall be disbursed to the
7 party designated by the court which in those cases of dependent children receiving public
8 assistance shall be the North Carolina Department of Health and Human Services."

9 Section 9. G.S. 110-136.5(b) reads as rewritten:

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

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

- 14 a. That the obligor is under a court order to provide child support,
15 and information sufficient to identify the order;
- 16 b. Whether the obligor is delinquent and the amount of any overdue
17 support;
- 18 c. The name of each child for whose benefit support is payable;
- 19 d. The name, location, and mailing address of the payor or payors
20 from whom the obligor receives disposable income and the
21 amount of the obligor's monthly disposable income from each
22 payor;
- 23 e. That the obligor understands that withholding, if implemented,
24 will apply to the obligor's current payors and all subsequent
25 payors and will be continued until terminated pursuant to G.S.
26 110-136.10; and
- 27 f. That the obligor understands that the amount withheld will
28 include an amount sufficient to pay current child support, an
29 additional amount toward liquidation of any arrearages, and a
30 two dollar (\$2.00) processing fee to be retained by the employer
31 for each withholding, but that the total amount withheld may not
32 exceed the following percent of disposable income:
- 33 1. Forty percent (40%) if there is only one order for
34 withholding;
- 35 2. Forty-five percent (45%) if there is more than one order
36 for withholding and the obligor is supporting other
37 dependent children or his or her spouse; or
- 38 3. Fifty percent (50%) if there is more than one order for
39 withholding and the obligor is not supporting other
40 dependent children or a spouse.

41 (2) A written request for withholding shall be filed in the office of the clerk
42 of superior court ~~to which the obligor is directed to make child support~~
43 ~~payments~~ of the court that entered the order for child support. If the

1 request states and the clerk verifies that the obligor is not delinquent, the
2 court may enter an order for withholding without further notice or
3 hearing. If the request states or the clerk finds that the obligor is
4 delinquent, the matter shall be scheduled for hearing unless the obligor
5 in writing waives his right to a hearing and consents to the entry of an
6 order for withholding of an amount the court determines to be
7 appropriate. The court may require a hearing in any case. Notice of any
8 hearing under this subdivision shall be sent to the obligee."

9 Section 10. G.S. 110-136.8(b) reads as rewritten:

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

12 (1) Withhold from the obligor's disposable income and, within 7 business
13 days of the date the obligor is paid, send to the ~~clerk of superior court or~~
14 ~~State collection and disbursement unit, as specified in the notice, State Child~~
15 ~~Support Collection and Disbursement Unit~~ the amount specified in the
16 notice and the date the amount was withheld, but in no event more than
17 the amount allowed by G.S. 110-136.6; however, if a lesser amount of
18 disposable income is available for any pay period, the payor shall either:

19 ~~(a)~~

20 a. ~~compute~~-Compute and send the appropriate amount to the ~~clerk of~~
21 ~~court, State Child Support Collection and Disbursement Unit~~
22 using the percentages as provided in G.S. ~~110-136.6, 110-136.6;~~
23 or ~~(b)~~

24 b. ~~request~~-Request the initiating party to inform the payor of the
25 proper amount to be withheld for that period;

26 (2) Continue withholding until further notice from the IV-D ~~agency, agency~~
27 ~~or the clerk of superior court, or the State collection and disbursement unit;~~
28 State Child Support Collection and Disbursement Unit;

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

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

34 (5) Promptly notify the obligee in a IV-D ~~case, case~~ or the ~~clerk of superior~~
35 ~~court or the State collection and disbursement unit~~-State Child Support
36 Collection and Disbursement Unit in a non-IV-D case, in writing:

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

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

41 b. When the obligor terminates employment or otherwise ceases to
42 be entitled to disposable income from the payor, and provide the

1 obligor's last known address, and the name and address of his
2 new employer, if known;

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

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

7 Section 11. G.S. 110-136.8(d) reads as rewritten:

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

13 Section 12. G.S. 110-136.9 reads as rewritten:

14 "**§ 110-136.9. Payment of withheld funds.**

15 In ~~IV-D all~~ cases, ~~when required by federal or State law or regulations or by court~~
16 ~~order, the clerk of superior court shall transmit payments received from payors to the~~
17 ~~Department of Health and Human Services for appropriate distribution. In all other cases,~~
18 ~~unless a court order requires otherwise, the clerk of superior court shall transmit the~~
19 ~~payments to the custodial parent.~~ the State Child Support Collection and Disbursement
20 Unit shall distribute payments received from payors to the appropriate recipient."

21 Section 13. G.S. 110-139(f) reads as rewritten:

22 "(f) There is established the State Child Support Collection and Disbursement Unit.
23 The duties of the Unit shall be the collection and disbursement of payments under support
24 orders for:

25 (1) ~~All IV-D cases, and~~

26 (2) ~~All non-IV-D cases in which the support order was initially issued in~~
27 ~~this State on or after January 1, 1994, and in which the income of the~~
28 ~~nonecustodial parent is subject to income withholding.~~

29 for all cases. The Department may administer and operate the Unit or may contract with
30 another State or private entity for the administration and operation of the Unit."

31 Section 14. This act becomes effective October 1, 1999.