

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 949
SENATE BILL 303

AN ACT TO AMEND THE GENERAL STATUTES TO ESTABLISH
PROCEDURES FOR WITHHOLDING FROM WAGES AND OTHER INCOME
IN CHILD SUPPORT CASES AS REQUIRED BY FEDERAL LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 110-129 is amended by adding the following new subdivisions at the end of the section to read:

"(6) 'Disposable income' means any form of periodic payment to an individual, regardless of sources, including but not limited to wages, salary, commission, self-employment income, bonus pay, severance pay, sick pay, incentive pay, vacation pay, compensation as an independent contractor, worker's compensation, disability, annuity, survivor's benefits, pension and retirement benefits, interest, dividends, rents, royalties, trust income and other similar payments, which remain after the deduction of amounts for federal, State, and local taxes, Social Security, and involuntary retirement contributions. However, Supplemental Security Income, Aid for Dependent Children, and other public assistance payments shall be excluded from disposable income. For employers, disposable income means 'wage' as it is defined by G.S. 95-25.2(16).

(7) 'IV-D case' means a case in which services have been applied for or are being provided by a child support enforcement agency established pursuant to Title IV-D of the Social Security Act as amended and this Article.

(8) 'Non-IV-D case' means any case, other than a IV-D case, in which child support is legally obligated to be paid.

(9) 'Initiating party' means the party, the attorney for a party, a child support enforcement agency, or the clerk of superior court who initiates an action, proceeding, or procedure as allowed or required by law for the establishment or enforcement of a child support obligation.

(10) 'Mistake of fact' means that the obligor:

- (a) is not in arrears in an amount equal to the support payable for one month; or
- (b) did not request that withholding begin, if withholding is pursuant to a purported request by the obligor for withholding; or
- (c) is not the person subject to the court order of support for the child named in the advance notice of withholding.

(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 is owed or the individual's legal representative.

- (12) 'Obligor' means the individual who owes a duty to make child support payments under a court order.
- (13) '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 is defined at 29 USC § 203(d) in the Fair Labor Standards Act."

Sec. 2. Article 9 of Chapter 110 of the General Statutes is amended by adding new sections following G.S. 110- 136.2 to read:

"§ 110-136.3. Income withholding procedures; applicability. – (a) Required contents of support orders. All child support orders, civil or criminal, entered or modified in the State beginning October 1, 1986, shall:

- (1) require the obligor to keep the clerk of court or IV-D agency informed of his current residence and mailing address and of the name and address of any payor of his disposable income and of the amount and effective date of any substantial change in his disposable income, and
- (2) provide for implementation of income withholding procedures as provided in this Article.

(b) When obligor subject to withholding. An obligor shall become subject to income withholding on the earliest of:

- (1) the date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month; or
- (2) the date on which the obligor requests withholding.

(c) Applicability. Notwithstanding any other provision of law, the income withholding provisions of this Article shall apply to any civil or criminal child support order, entered or modified before, on, or after October 1, 1986.

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

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

- a A certified copy of the support order with all modifications, including any income withholding notice or order still in effect;
- b. A copy of the income withholding law of the jurisdiction which issued the support order, provided that such jurisdiction has a withholding law;
- c. A sworn statement of arrearages;
- d. The name, address, and social security number of the obligor, if known;

- e. The name and address of the obligor's employer or of any other source of income of the obligor derived in the state in which withholding is sought; and
- f. The name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.

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

- (2) The law of the state in which the support order was entered shall apply in determining when withholding shall be implemented and interpreting the child support order. The law and procedures of the state where the obligor is employed shall apply in all other respects.
- (3) Except as otherwise provided by subdivision (2), income withholding initiated under this subsection is subject to all of the notice, hearing and other provisions of Chapter 110.
- (4) In all interstate cases notices and orders to withhold shall be served upon the payor by a North Carolina agency or judicial officer. In all interstate non-IV-D cases, the advance notice to the obligor shall be served pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure.

(e) Procedures and regulations. Procedures, rules, regulations, forms, and instructions necessary to effect the income withholding provisions of this Article shall be established by the Secretary of the Department of Human Resources or his designee and the Administrative Office of the Courts. Forms and instructions shall be sent with each order or notice of withholding.

"§ 110-136.4. Implementation of withholding in IV-D cases. – (a) Advance notice of withholding. When an obligor in a IV-D case becomes subject to income withholding, the obligee shall, after verifying the obligor's current employer or other payor, wages or other disposable income, and mailing address, serve the obligor with advance notice of withholding in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.

(b) Contents of advance notice. The advance notice to the obligor shall contain, at a minimum, the following information:

- (1) 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 or on the obligor's request for withholding;
- (2) the amount of overdue support, the total amount to be withheld, and when the withholding will occur;
- (3) the name of each child for whose benefit the child support is due, and information sufficient to identify the court order under which the obligor has a duty to support the child;
- (4) the amount and sources of disposable income;
- (5) 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;
- (6) an explanation of the obligor's rights and responsibilities pursuant to this section;

(7) that withholding will be continued until terminated pursuant to G.S. 110-136.10.

(c) Contested withholding. The obligor may contest the withholding only on the basis of a mistake of fact. To contest the withholding, the obligor must, within 10 days of receipt of the advance notice of withholding, request a hearing in the county where the support order was entered before the district court and give notice to the obligee specifying the mistake of fact upon which the hearing request is based. If the asserted mistake of fact can be resolved by agreement between the obligee and the obligor, no hearing shall occur. Otherwise, a hearing shall be held and a determination made, within 30 days of the obligor's receipt of the advance notice of withholding, as to whether the asserted mistake of fact is valid. No withholding shall occur pending the hearing decision. The failure to hold a hearing within 30 days shall not invalidate an otherwise properly entered order. If it is determined that a mistake of fact exists, no withholding shall occur. Otherwise, within 45 days of the obligor's receipt of the advance notice of withholding, the obligee shall serve the payor, pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. In the event of appeal, withholding shall not be stayed. If the appeal is concluded in favor of the obligor, the obligee shall promptly repay sums wrongfully withheld and notify the payor to cease withholding.

(d) Uncontested withholding. If the obligor does not contest the withholding within the 10-day response period, the obligee shall serve the payor, pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk.

(e) Payment not a defense to withholding. The payment of overdue support shall not be a basis for terminating or not implementing withholding.

(f) Multiple withholdings. The obligor must notify the obligee if the obligor is currently subject to another withholding for child support. In the case of two or more withholdings against one obligor, the obligee or obligees shall attempt to resolve any conflict between the orders in a manner that is fair and equitable to all parties and within the limits specified by G.S. 110-136.6. If the conflict cannot be so resolved, an injured party, upon request, shall be granted a hearing in accordance with the procedure specified in G.S. 110-136.4(c). The conflict between the withholding orders shall be resolved in accordance with G.S. 110-136.7.

(g) Inability to implement withholding. When an obligor is subject to withholding, but withholding under this section cannot be implemented because the obligor's location is unknown, because the extent and source of his disposable income cannot be determined, or for any other reason, the obligee shall either request the clerk of superior court to initiate enforcement proceedings under G.S. 15A-1344.1(d) or G.S. 50-13.9(d) or take other appropriate available measures to enforce the support obligation.

(h) Modification of withholding. When an order for withholding has been entered under this section, the obligee may modify the withholding based on changed circumstances. The obligee shall proceed as is provided in this section.

(i) Applicability of section. The provisions of this section apply to IV-D cases only.

"§ 110-136.5. Implementation of withholding in non-IV-D cases. – (a) Motion or complaint or consent order for withholding. Notwithstanding any other provision of law, any obligee may apply to the court for an order of income withholding, or at any time the parties may agree to income withholding by consent order. The obligee may apply to the court by motion or in an independent action. The motion or complaint shall be verified and state, to the extent known:

- (1) that the obligor is under a court order to provide child support, and information sufficient to identify the order;
- (2) that the obligor is delinquent in an amount equal to the support payable for one month or that the obligor has requested that income withholding begin;
- (3) the amount of overdue support and the total amount sought to be withheld;
- (4) the name of each child for whose benefit support is due;
- (5) the name, location, and mailing address of the payor or payors from whom withholding is sought and the amount of the obligor's monthly disposable earnings from each payor.

(b) Notice to obligor. The motion or complaint shall include or be accompanied by a notice to the obligor, stating:

- (1) that withholding, if implemented, will apply to the obligor's current payors and all subsequent payors;
- (2) that withholding, if implemented, will be continued until terminated pursuant to G.S. 110-136.10.

(c) Order for withholding. If the district court judge finds after hearing evidence that the obligor, at the time of the filing of the motion or complaint was, or at the time of the hearing is, delinquent in child support payments in an amount equal to the support payable for one month or that the obligor has requested that income withholding begin, the court shall enter an order for income withholding, unless:

- (1) the obligor proves a mistake of fact; or
- (2) the court finds that the child support obligation can be enforced and the child's right to receive support can be ensured without entry of an order for income withholding; or
- (3) the court finds that the obligor has no disposable income subject to withholding or that withholding is not feasible for any other reason.

If the obligor fails to respond or appear, the court shall hear evidence and enter an order as provided herein.

(d) Notice to payor and obligor. If an order for income withholding is entered, a notice of obligation to withhold shall be served by certified mail, return receipt requested, on the payor or payors and the obligor.

(e) Modification of withholding. When an order for withholding has been entered under this section, any party may file a motion seeking modification of the withholding based on changed circumstances. The clerk or the court on its own motion may initiate a

hearing for modification when it appears that modification of the withholding is required or appropriate.

"§ 110-136.6. Amount to be withheld. – (a) Computation of amount. When income withholding is implemented pursuant to this Article, the amount to be withheld shall include:

- (1) an amount sufficient to pay current child support;
and
- (2) an additional amount toward liquidation of arrearages; and
- (3) a processing fee of two dollars (\$2.00) to cover the cost of withholding, to be retained by the payor for each withholding unless waived by the payor.

The amount withheld may also include court costs and attorneys fees as may be awarded by the court in non-IV-D cases and as may be awarded by the court in IV-D cases pursuant to G.S. 110-130.1.

(b) Limits on amount withheld. Withholding for current support, arrearages, processing fees, court costs, and attorneys fees shall not exceed forty percent (40%) of the obligor's disposable income for one pay period from the payor when there is one order of withholding. The sum of multiple withholdings, for current support, arrearages, processing fees, court costs, and attorneys fees shall not exceed:

- (1) forty-five percent (45%) of disposable income for one pay period from the payor in the case of an obligor who is supporting his spouse or other dependent children; or
- (2) fifty percent (50%) of disposable income for one pay period from the payor in the case of an obligor who is not supporting a spouse or other dependent children.

(c) Contents of order and notice. An order or advance notice for withholding and any notice to a payor of his obligation to withhold shall state a specific monetary amount to be withheld and the amount of disposable income from the applicable payor on which the amount to be withheld was determined. The notice shall clearly indicate that in no event shall the amount withheld exceed the appropriate percentage of disposable income paid by a payor as provided in subsection (b).

"§ 110-136.7. Multiple withholding. – When an obligor is subject to more than one withholding for child support, withholding for current child support shall have priority over past-due support. Where two or more orders for current support exist, each family shall receive a pro rata share of the total amount withheld based on the respective child support orders being enforced.

"§ 110-136.8. Notice to payor; payor's responsibilities. – (a) Contents of notice. Notice to a payor of his obligation to withhold shall include information regarding the payor's rights and responsibilities, the amount of disposable income attributable to that payor on which that withholding is based, the penalties under this section, and the maximum percentages of disposable income that may be withheld as provided in G.S. 110- 136.6.

(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 10 days of the date the obligor is paid, send to the clerk of superior court specified in the notice, the amount specified in the notice, 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 or the clerk of superior court;
- (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 in a non-IV-D case, in writing:
 - a. if there is more than one child 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.

(c) Change in obligor's employment. If the obligor changes employment within the State when withholding is in effect, the requirement for withholding shall continue, and

- (1) in a IV-D case, the IV-D obligee shall make any necessary adjustments to the withholding, notify the obligor and his new employer in accordance with this section, and file a copy of the adjusted withholding with the clerk of superior court;
- (2) in a non-IV-D case, the clerk shall serve a notice of obligation to withhold according to the terms of the withholding order on the new employer and on the obligor; if the obligor or payor gives notice that an adjustment to the withholding order, other than the change in payor, is needed, the matter shall be scheduled for hearing before a child support hearing officer or district court judge who shall make any necessary adjustments to the withholding.

(d) The payor may combine amounts withheld from obligors' disposable incomes in a single payment to each clerk of superior court if the payor separately identifies by name and case number the portion of the single payment attributable to each individual obligor.

(e) Prohibited conduct by payor; civil penalty.

Notwithstanding any other provision of law, when a court finds, pursuant to a motion in the cause filed by the initiating party joining the payor as a third party defendant, with 30 days notice to answer the motion, that a payor has willfully refused to comply with the provisions of this section, such payor shall be ordered to commence withholding and shall be held liable to the initiating party for any amount which such payor should have withheld, except that such payor shall not be required to vary the normal pay or disbursement cycles in order to comply with these provisions.

A payor shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any obligor solely because of the withholding. When a court finds that a payor has taken any of these actions, the payor shall be liable for a civil penalty to be paid to the county school fund. For a first offense, the civil penalty shall be one hundred dollars (\$100.00). For second and third offenses, the civil penalty shall be five hundred dollars (\$500.00) and one thousand dollars (\$1,000), respectively. Any payor who violates any provision of this paragraph shall be liable in a civil action for reasonable damages suffered by an obligor as a result of the violation, and an obligor discharged or demoted in violation of this paragraph shall be entitled to be reinstated to his former position. The statute of limitations for actions under this subsection shall be one year pursuant to G.S. 1-54.

(f) Any payor who withholds the sum provided in any notice or order to the payor shall not be liable for any penalties under this section.

"§ 110-136.9. Payment of withheld funds. – In IV-D cases, when required by federal or State law or regulations or by court order, the clerk of superior court shall transmit payments received from payors to the Department of Human Resources for appropriate distribution. In all other cases, unless a court order requires otherwise, the clerk of superior court shall transmit the payments to the custodial parent.

"§ 110-136.10. Termination of withholding. – A requirement that income be withheld for child support shall promptly terminate as to prospective payments when the payor receives notice from the court or IV-D agency that:

- (1) the child support order has expired or become invalid; or
- (2) the initiating party, the obligor, and the district court judge agree to termination because there is another adequate means to collect child support or arrearages; or
- (3) the whereabouts of the child and obligee are unknown, except that withholding shall not be terminated until all valid arrearages to the State are paid in full."

Sec. 3. G.S. 50-13.9(b) is amended by adding at the end the following to read:

"In IV-D cases, when required by federal or state law or regulations or by court order, the clerk of superior court shall transmit child support payments that are made to the clerk to the Department of Human Resources for appropriate distribution. In all other cases, whether IV-D or non-IV-D, the clerk shall transmit the payments to the custodial parent or other party entitled to receive them, unless a court order requires otherwise."

Sec. 4. G.S. 50-13.9(d) is rewritten to read:

"(d) In a non-IV-D case, when an obligor fails to make a required payment of child support and is in arrears, the clerk of superior court shall mail by regular mail to the last known address of the obligor a notice of delinquency. The notice shall set out the amount of child support currently due and shall demand immediate payment of said amount. The notice shall also state that failure to make immediate payment will result in the issuance by the court of an enforcement order requiring the obligor to appear before a district court judge and show cause why the support obligation should not be enforced by income withholding, contempt of court, or other appropriate means. Failure to receive the delinquency notice shall not be a defense in any subsequent proceeding. If income withholding has been implemented against the obligor or the obligor has been previously found in contempt for nonpayment under the same child support order, sending the notice of delinquency shall be in the discretion of the clerk.

If the arrearage is not paid in full within 21 days after the mailing of the delinquency notice, or is not paid within 30 days after the obligor becomes delinquent if the clerk has elected not to send a delinquency notice, the clerk shall cause an enforcement order to be issued and shall issue a notice of hearing before a district court judge. The enforcement order shall order the obligor to appear and show cause why he should not be subjected to income withholding or adjudged in contempt of court, or both, and shall order the obligor to bring to the hearing records and information relating to his employment and the amount and sources of his disposable income. The enforcement order shall state:

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

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

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

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

Sec. 5. G.S. 50-13.9(f) is amended by rewriting the first seven lines to read:

"(f) At least seven days prior to an enforcement hearing as set forth in subsection (d), the clerk must notify the district court judge of all cases to be heard for enforcement at the next term, and the judge shall appoint an attorney from the list described in subsection (e) to represent each party to whom support payments are owed if the judge deems it to be in the best interest of the child for whom support is being paid, unless:"

G.S. 50-13.9(f) is further amended by rewriting the last sentence to read:

"The judge may order payment of reasonable attorney's fees as provided in G.S. 50-13.6."

Sec. 6. G.S. 50-13.9(g) is rewritten to read:

"(g) Nothing in this section shall preclude the independent initiation by a party of proceedings for civil contempt or for income withholding."

Sec. 7. G.S. 15A-1344.1(d) is rewritten to read:

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

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

Sec. 8. Chapter 52A of the General Statutes is amended by adding a new section to read:

"§ 52A-30.1. **Income withholding.** – Income withholding pursuant to G.S. 110-136.3 through 110-136.10 is available as a remedy to allow withholding from income derived in this State to enforce support orders from other states."

Sec. 9. Nothing in this act shall be construed as affecting any garnishment proceeding heretofore or hereafter instituted.

Sec. 10. This act shall become effective October 1, 1986.

In the General Assembly read three times and ratified, this the 9th day of July, 1986.