

Chapter 105B.

Defaulted Student Loan Recovery Act.

Article 1.

Withholding of Personal Earnings.

§ 105B-1. Purpose and Definitions.

(a) It is the purpose of this Article to enable the State Education Assistance Authority to seek an order of withholding of personal earnings against a debtor who owes money to the Authority through default on a student loan as a means of enforcing a judgment which requires the payment of money to the Authority.

(b) As used in this Article:

- (1) "Annual federal poverty guidelines" means the annual federal poverty guidelines issued by the United States Department of Health and Human Services in effect at the time in question.
- (2) "Authority" means the State Education Assistance Authority as enabled by Article 23 of Chapter 116 of the General Statutes.
- (3) "Debtor" means any individual owing money to the Authority through default on a student loan made, guaranteed or owned by the Authority, which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy.
- (4) "Family" means a parent or parents and minor children or spouses that reside together.
- (5) "Family income" means family income as set out in the annual federal poverty guidelines.
- (6) "Mistake of fact" means that the debtor:
 - a. Is not the actual person named in the judgment that is the basis for a withholding action under this section;
 - b. Has satisfied the obligation represented by the judgment in full and is entitled to have the judgment cancelled; or
 - c. Does not have monthly disposable earnings or is not employed by the payor as stated by the Authority in its motion to the court.
 - d. Has family income at or below two hundred percent (200%) of the annual federal poverty guidelines.
- (7) "Payor" means the person, firm, association or corporation by whom the debtor is employed.
- (8) "Student loan" means a loan or loans made to eligible students or parents of students to aid in obtaining an education beyond the high school level. (1989, c. 475, s. 1.)

§ 105B-2. Remedy additional.

The collection remedy under this Article is in addition to and not in substitution for any other remedy available by law. (1989, c. 475, s. 1.)

§ 105B-3. Procedure.

(a) Notwithstanding any other provision of the law, in any case in which the Authority obtains a judgment against a debtor as defined in this Chapter, a judge of the district court in the

county where the debtor resides or is found may enter an order of withholding whereby no more than ten percent (10%) of the debtor's monthly disposable earnings shall be withheld for the repayment of the debt owed to the Authority. For purposes of this section, "disposable earnings" is defined as that part of the compensation paid or payable to the debtor for personal services; whether denominated as wages, salary, commission, bonus, or otherwise (including periodic payments pursuant to a pension or retirement program) which remains after the deduction of any amounts required by law to be withheld.

(b) The Authority may move the court for an order of withholding. The motion shall be verified and shall state the name and address of the employer of the debtor, the debtor's monthly disposable earnings from said employer (which may be based upon information and belief), and the amount sought to be withheld, not to exceed ten percent (10%) of the debtor's monthly disposable earnings. The motion shall be accompanied by a letter to the debtor which includes information that the Authority will withdraw the motion if the debtor executes a sworn statement to the Authority that his family income is at or below two hundred percent (200%) of the annual federal poverty guidelines. The letter shall include the definitions of family and family income, the federal poverty guidelines in effect as of the date of the letter, and the procedure to contest the proposed garnishment. The Authority shall provide a form to the debtor for the purpose of securing his sworn statement about the level of his annual family income. The motion shall be served on both the debtor and his alleged employer either personally or by certified mail, return receipt requested as set forth in G.S. 1A-1, Rules of Civil Procedure.

(c) At any time following the filing with the district court of a motion under this section, the debtor may inspect and copy records relating to the debt or debts at the offices of the Authority.

(d) In lieu of or in conclusion of any legal proceeding instituted under this section, the debtor may enter into a written agreement with the State Education Assistance Authority to establish a schedule for the repayment of the debt or debts by periodic payments made directly to the Authority. Upon acceptance of any such repayment agreement, the Authority shall withdraw the motion for withholding.

(e) **Contested Withholding.** – The debtor or the payor may contest the withholding only on the basis of mistake of fact. To contest the withholding, the debtor or the payor must, within 30 days from the date of service, request a hearing before the district court by serving a written request upon the court and the Authority which specifies the mistake of fact upon which the hearing request is based. If the asserted mistake of fact can be resolved by agreement between the Authority and the debtor or the payor, whoever has asserted the mistake of fact, no hearing shall occur. Otherwise, a hearing shall be held and a determination made within 30 days of the filing of the request by the debtor or payor. Following the hearing the court may enter an order of withholding not to exceed ten percent (10%) of the debtor's monthly disposable earnings and not to reduce the debtor's annual family income to a point at or below two hundred percent (200%) of the annual federal poverty guidelines. However, the court shall not enter an order of garnishment unless the court makes findings of fact that the family income of the debtor at the time of the hearing exceeds two hundred percent (200%) of the annual federal poverty guidelines. If an order of withholding is entered, a copy of same shall be served on the debtor and the payor either personally or by certified mail, return receipt requested. The order shall set forth sufficient findings of fact to support the action by the court and the amount to be withheld for each pay period. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(f) **Uncontested Withholding.** – If neither the debtor nor the payor contests the withholding as provided in subsection (e) within the 30-day response period, the court may, without further

hearing, enter an order of withholding not to exceed ten percent (10%) of the debtor's monthly disposable earnings and not to reduce the debtor's annual family income to a point at or below two hundred percent (200%) of the annual federal poverty guidelines. However, the court shall not enter an order of garnishment unless the court makes findings of fact that the family income of the debtor at the time of the hearing exceeds two hundred percent (200%) of the annual federal poverty guidelines. If an order of withholding is entered, a copy of same shall be served on the debtor and the payor either personally or by certified mail, return receipt requested. The order shall set forth sufficient findings of fact to support the action by the court and the amount to be withheld for each pay period. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(g) Upon receipt of an order of withholding, the payor shall transmit without delay the amount ordered to be withheld to the clerk of superior court who shall disburse it to the State Education Assistance Authority. The amount ordered to be withheld shall be increased by a processing fee of two dollars (\$2.00) to be retained by the payor, unless waived, for each withholding under the order. (1989, c. 475, s. 1.)

§ 105B-4. Prohibited conduct by payor; civil penalty.

(a) Notwithstanding any other provision of law, when a court finds, pursuant to a motion in the cause filed by the Authority 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 Authority for any amount which such payor should have withheld, except that such payor shall not be required to vary his normal pay or disbursement cycles in order to comply with these provisions.

(b) A payor shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any debtor 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. 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 a debtor as a result of the violation, and a debtor 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.

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(c) 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. (1989, ch. 475, s. 1; 1998-215, s. 116, s. 1.)

§ 105B-5. Termination of withholding.

A requirement that income be withheld under this section shall promptly terminate as to prospective payments when the payor receives notice from the court that the withholding order has expired or become invalid. (1989, c. 475, s. 1.)