

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 302

Short Title: Enhance Child Support Enforce./AB.

(Public)

Sponsors: Representatives Culpepper; Mosley and Gardner.

Referred to: Judiciary IV.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CHILD
SUPPORT ENFORCEMENT.

The General Assembly of North Carolina enacts:

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

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

(1) 60 days of the date the document is executed, or

(2) The date of entry of an order establishing paternity or an order for the
payment of child support.

In order to rescind, a challenger must request the district court to order the rescision
and to include in the order specific findings of fact that the request for rescision was filed
with the clerk of court within 60 days of the signing of the document. The court must also
find that all parties, including the child support enforcement agency, if appropriate, have

1 been served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. In
2 the event the court orders rescision and the putative father is thereafter found not to be the
3 father of the child, then the clerk of court shall send a copy of the order of rescision to the
4 State Registrar of Vital Statistics. Upon receipt of an order of rescision, the State Registrar
5 shall remove the putative father's name from the birth certificate. In the event that the
6 putative father defaults or fails to present or prosecute the issue of paternity, the trial
7 court shall find the putative father to be the biological father as a matter of law.

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

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

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

37 "(b) Upon finding that the individual has willfully failed to comply with the child
38 support order or with a subpoena issued pursuant to child support proceedings, and that
39 the obligor is at least 90 days in arrears, or upon a finding that an individual subject to a
40 subpoena issued pursuant to child support or paternity establishment proceedings has
41 failed to comply with the subpoena, the court ~~may~~ shall enter an order instituting any one
42 or more of the sanctions as provided in subsection (a) of this section. The court may stay
43 the effectiveness of the sanctions upon conditions requiring the obligor to make full

1 payment of the delinquency over time. Any court-ordered payment plan under this
2 subsection shall require the obligor to extinguish the delinquency within a period not to
3 exceed 10 years and to make an immediate initial payment representing at least five
4 percent (5%) of the total delinquency or five hundred dollars (\$500.00), whichever is
5 greater. Any ~~such stay~~ stay of an order under this subsection shall also be conditioned
6 upon the obligor's maintenance of current child support. The court may stay the
7 effectiveness of the sanctions against an individual subject to a subpoena issued pursuant
8 to child support or paternity establishment proceedings upon a finding that the individual
9 has complied with or is no longer subject to the subpoena. Upon entry of an order
10 pursuant to this section that is not stayed, the individual shall surrender any licenses
11 revoked by the court's order to the child support enforcement agency and the agency shall
12 forward a report to the appropriate licensing authority within 30 days of the order."

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

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

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

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

- 35 (1) If the child is otherwise emancipated, payments shall terminate at that
36 time;
- 37 (2) If the child is still in primary or secondary school when the child
38 reaches age 18, support payments shall continue until the child
39 graduates, otherwise ceases to attend school on a regular basis, fails to
40 make satisfactory academic progress towards graduation, or reaches age
41 20, whichever comes first, unless the court in its discretion orders that
42 payments cease at age 18 or prior to high school graduation.

1 In the case of graduation, or attaining age 20, payments shall terminate without order
2 by the court, subject to the right of the party receiving support to show, upon motion and
3 with notice to the opposing party, that the child has not graduated or attained the age of
4 20."

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

7 "(a) An income-withholding order issued in another state may be sent to the person
8 or entity defined or identified as the obligor's employer under the income-withholding
9 provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable, without
10 first filing a petition or comparable pleading or registering the order with a tribunal of
11 this State. In the event that an obligor is receiving unemployment compensation benefits
12 from the North Carolina Employment Security Commission, an income-withholding
13 order issued in another state may be sent to the Employment Security Commission
14 without first filing a petition or comparable pleading or registering the order with a
15 tribunal of this State. Upon receipt of the order, the employer or the Employment
16 Security Commission shall:

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

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

26 "(f) In the absence of a voluntary assignment of unemployment compensation
27 benefits, the Department of Health and Human Services shall implement income
28 withholding as provided in this Article for IV-D cases. The amount withheld shall not
29 exceed twenty-five percent (25%) of the unemployment compensation benefits. Notice of
30 the requirement to withhold shall be served upon the Employment Security Commission
31 and payment shall be made by the Employment Security Commission directly to the
32 Department of Health and Human Services pursuant to G.S. ~~96-17-96-17~~ or to another
33 state under G.S. 52C-5-501. Except for the requirement to withhold from unemployment
34 compensation benefits and the forwarding of withheld funds to the Department of Health
35 and Human ~~Services, Services~~ or to another state under G.S. 52C-5-501, the Employment
36 Security Commission is exempt from the provisions of G.S. 110-136.8."

37 Section 6. The General Statutes are amended by adding a new section to read:

38 **"§ 110-139.3. High-volume, automated administrative enforcement in interstate**
39 **cases (AEI).**

40 Upon request of another state, the Department of Health and Human Services shall
41 use automated data processing to search State databases and determine if information is
42 available regarding a parent who owes a child support obligation and shall seize
43 identified assets using the same techniques as used in intrastate cases. Any request by

1 another state to enforce support orders shall certify the amount of each obligor's debt and
2 that appropriate due process requirements have been met by the requesting state with
3 respect to each obligor. The Department of Health and Human Services shall likewise
4 transmit to other states requests for assistance in enforcing support orders through high-
5 volume, automated administrative enforcement where appropriate."

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

8 **"§ 108A-69. Employer obligations.**

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

10 (1) 'Health benefit plan' means an accident and health insurance policy or
11 certificate; a nonprofit hospital or medical service corporation contract;
12 a health maintenance organization subscriber contract; a plan provided
13 by a multiple employer welfare arrangement; the Teachers' and State
14 Employees' Comprehensive Major Medical Plan under Chapter 135 of
15 the General Statutes; or a plan provided by another benefit arrangement.
16 'Health benefit plan' does not mean a Medicare supplement policy as
17 defined in G.S. 58-54-1(5).

18 (2) 'Health insurer' means any health insurance company subject to Articles
19 1 through 63 of Chapter 58 of the General Statutes, including a multiple
20 employee welfare arrangement, and any corporation subject to Articles
21 65 and 67 of Chapter 58 of the General Statutes; ~~and means a group~~
22 ~~health plan, as defined in Section 607(1) of the Employee Retirement~~
23 ~~Income Security Act of 1974.—1974;~~ and the Teachers' and State
24 Employees' Comprehensive Major Medical Plan under Chapter 135 of
25 the General Statutes.

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

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

32 (2) Must enroll the child under family coverage upon application of the
33 child's other parent or upon receipt of notice from the Department of
34 Health and Human Services in connection with its administration of the
35 Medical Assistance or Child Support Enforcement Program if the parent
36 is enrolled but fails to make application to obtain coverage for the child.

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

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

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

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

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

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

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

- 11 (1) 'Health benefit plan' means any accident and health insurance policy or
12 certificate; a nonprofit hospital or medical service corporation contract;
13 a health maintenance organization subscriber contract; a plan provided
14 by a multiple employer welfare arrangement; the Teachers' and State
15 Employees' Comprehensive Major Medical Plan under Chapter 135 of
16 the General Statutes; or a plan provided by another benefit arrangement.
17 'Health benefit plan' does not mean a Medicare supplement policy as
18 defined in G.S. 58-54-1(5).

- 19 (2) 'Health insurer' means any health insurance company subject to Articles
20 1 through 63 of this Chapter, including a multiple employee welfare
21 arrangement, and any corporation subject to Articles 65 and 67 of this
22 Chapter; ~~and means~~ a group health plan, as defined in section 607(1) of
23 the Employee Retirement Income Security Act of ~~1974-1974;~~ and the
24 Teachers' and State Employees' Comprehensive Major Medical Plan
25 under Chapter 135 of the General Statutes."

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

27 "(a) When the court requires, as a condition of supervised or unsupervised
28 probation, that a defendant support his children, the court may order at any time that
29 support payments be made to the clerk of court for remittance to the party entitled to
30 receive the payments. For child support orders initially entered on or after January 1,
31 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) ~~shall~~ apply. If
32 child support is to be paid through income withholding, the payments shall be made in
33 accordance with G.S. 110-139(f)."

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

35 "(b) After entry of such an order by the court, the clerk of superior court shall
36 transmit child support payments that are made to the clerk in IV-D cases to the
37 Department of Health and Human Services for appropriate distribution. Pursuant to G.S.
38 110-139(f), amounts withheld by employers in IV-D and in non-IV-D cases shall be sent
39 directly from the employer to the State Child Support Collection and Disbursement Unit
40 for disbursement to the custodial parent or other party entitled to receive them, unless a
41 court order requires otherwise. In all other cases, non-IV-D cases in which wage
42 withholding is not in effect, the clerk shall transmit the payments to the custodial parent
43 or other party entitled to receive them, unless a court order requires otherwise."

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

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

- 3 (1) The clerk of court shall have the responsibility and authority for
4 monitoring the obligor's compliance with all child support orders in the
5 case and for initiating any enforcement procedures that it considers
6 appropriate. In non-IV-D cases subject to income withholding, the State
7 Child Support Collection and Disbursement Unit shall notify the clerk
8 of court of all payments made in non-IV-D income-withholding cases so
9 that the clerk of court can initiate enforcement proceedings as provided
10 in subsection (d) of this section.
11 (2) The clerk of court shall maintain all official records in the case.
12 (3) The clerk of court shall maintain any other records needed to monitor
13 the obligor's compliance with or to enforce the child support orders in
14 the case, including records showing the amount of each payment of
15 child support received from or on behalf of the obligor, along with the
16 dates on which each payment was received."

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

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

- 21 (1) Withhold from the obligor's disposable income and, within 7 business
22 days of the date the obligor is paid, send to the ~~clerk of superior court or~~
23 ~~State collection and disbursement unit,~~ Child Support Collection and
24 Disbursement Unit, as specified in the notice, the amount specified in
25 the notice and the date the amount was withheld, but in no event more
26 than the amount allowed by G.S. 110-136.6; however, if a lesser amount
27 of disposable income is available for any pay period, the payor shall
28 either: (a) compute and send the appropriate amount to the ~~clerk of court,~~
29 State Child Support Collection and Disbursement Unit, using the
30 percentages as provided in G.S. 110-136.6, or (b) request the initiating
31 party to inform the payor of the proper amount to be withheld for that
32 period;
33 (2) Continue withholding until further notice from the IV-D agency, the
34 clerk of superior court, or the State collection and disbursement unit;
35 (3) Withhold for child support before withholding pursuant to any other
36 legal process under State law against the same disposable income;
37 (4) Begin withholding from the first payment due the obligor in the first pay
38 period that occurs 14 days following the date the notice of the obligation
39 to withhold was served on the payor;
40 (5) Promptly notify the obligee in a IV-D case, or the clerk of superior court
41 or the State collection and disbursement unit in a non-IV-D case, in
42 writing:

- 1 a. If there are one or more orders of child support withholding for
2 the obligor;
- 3 a1. If there are one or more orders of alimony or postseparation
4 support withholding for the obligor;
- 5 b. When the obligor terminates employment or otherwise ceases to
6 be entitled to disposable income from the payor, and provide the
7 obligor's last known address, and the name and address of his
8 new employer, if known;
- 9 c. Of the payor's inability to comply with the withholding for any
10 reason; and
- 11 (6) Cooperate fully with the initiating party in the verification of the amount
12 of the obligor's disposable income."

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

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

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

20 "**§ 110-136.9. Payment of withheld funds.**

21 In IV-D ~~cases,~~ cases and in non-IV-D cases in which the support order was initially
22 issued in this State on or after January 1, 1994, and in which the income of the
23 noncustodial parent is subject to income withholding, when required by federal or State
24 law or regulations or by court order, the ~~clerk of superior court~~ State Child Support
25 Collection and Disbursement Unit shall ~~transmit~~ distribute payments received from payors
26 ~~to the Department of Health and Human Services for appropriate distribution.~~ payors. In all
27 other cases, unless a court order requires otherwise, the clerk of superior court shall
28 transmit the payments to the custodial parent."

29 Section 15. Section 25 of Article I of the Constitution of North Carolina reads
30 as rewritten:

31 "Sec. 25. Right of jury trial in civil cases.

32 In all controversies at law respecting property, the ancient mode of trial by jury is one
33 of the best securities of the rights of the people, and shall remain sacred and ~~inviolable.~~
34 inviolable, except in civil cases in which paternity is contested."

35 Section 16. The amendment set out in Section 15 of this act shall be
36 submitted to the qualified voters of the State at the general election in November of 2000,
37 which election shall be conducted under the laws then governing elections in the State.
38 Ballots, voting systems, or both may be used in accordance with Chapter 163 of the
39 General Statutes. The question to be used in the voting systems and ballots shall be:

40 "[] YES [] NO

41 Shall the State of North Carolina amend the Constitution of North Carolina to
42 allow the parties' right to a jury in all cases except in the adjudication of paternity in a
43 civil action."

1 Section 17. If a majority of votes cast on the question are in favor of the
2 amendment set out in Section 15 of this act, the State Board of Elections shall certify the
3 amendment to the Secretary of State. The amendments become effective January 1,
4 2001. The Secretary of State shall enroll the amendment so certified among the
5 permanent records of that office.

6 Section 18. This act becomes effective October 1, 1999.