

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 302  
Committee Substitute Favorable 4/22/99

Short Title: Enhance Child Support Enforce./AB.

(Public)

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Sponsors:

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Referred to:

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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  
19 with the clerk of court within 60 days of the signing of the document. The court must also

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

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

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

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

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

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

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

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

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

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

- 42 (1) If the child is otherwise emancipated, payments shall terminate at that  
43 time;

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

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

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

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

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

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

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

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

1 **"§ 110-139.3. High-volume, automated administrative enforcement in interstate**  
2 **cases (AEI).**

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

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

14 **"§ 108A-69. Employer obligations.**

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

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

24 (2) 'Health insurer' means any health insurance company subject to Articles  
25 1 through 63 of Chapter 58 of the General Statutes, including a multiple  
26 employee welfare arrangement, and any corporation subject to Articles  
27 65 and 67 of Chapter 58 of the General Statutes; ~~and means~~ a group  
28 health plan, as defined in Section 607(1) of the Employee Retirement  
29 Income Security Act of ~~1974.~~ 1974; and the Teachers' and State  
30 Employees' Comprehensive Major Medical Plan under Chapter 135 of  
31 the General Statutes.

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

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

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

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

- 1 a. The employer is provided satisfactory written evidence that:  
2 1. The court or administrative order is no longer in effect; or  
3 2. The child is or will be enrolled in comparable health  
4 benefit plan coverage that will take effect not later than  
5 the effective date of disenrollment; or  
6 b. The employer has eliminated family health benefit plan coverage  
7 for all of its employees.

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

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

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

- 16 (1) 'Health benefit plan' means any accident and health insurance policy or  
17 certificate; a nonprofit hospital or medical service corporation contract;  
18 a health maintenance organization subscriber contract; a plan provided  
19 by a multiple employer welfare arrangement; the Teachers' and State  
20 Employees' Comprehensive Major Medical Plan under Chapter 135 of  
21 the General Statutes; or a plan provided by another benefit arrangement.  
22 'Health benefit plan' does not mean a Medicare supplement policy as  
23 defined in G.S. 58-54-1(5).  
24 (2) 'Health insurer' means any health insurance company subject to Articles  
25 1 through 63 of this Chapter, including a multiple employee welfare  
26 arrangement, and any corporation subject to Articles 65 and 67 of this  
27 Chapter; ~~and means~~ a group health plan, as defined in section 607(1) of  
28 the Employee Retirement Income Security Act of ~~1974~~-1974; and the  
29 Teachers' and State Employees' Comprehensive Major Medical Plan  
30 under Chapter 135 of the General Statutes."

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

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

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

40 "(b) After entry of such an order by the court, the clerk of superior court shall  
41 transmit child support payments that are made to the clerk in IV-D cases to the  
42 Department of Health and Human Services for appropriate distribution. Pursuant to G.S.  
43 110-139(f), amounts withheld by employers in IV-D and in non-IV-D cases shall be sent

1 directly from the employer to the State Child Support Collection and Disbursement Unit  
2 for disbursement to the custodial parent or other party entitled to receive them, unless a  
3 court order requires otherwise. In all other cases, non-IV-D cases in which wage  
4 withholding is not in effect, the clerk shall transmit the payments to the custodial parent  
5 or other party entitled to receive them, unless a court order requires otherwise."

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

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

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

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

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

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

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

26 (1) Withhold from the obligor's disposable income and, within 7 business  
27 days of the date the obligor is paid, send to the ~~clerk of superior court or~~  
28 ~~State collection and disbursement unit,~~ Child Support Collection and  
29 Disbursement Unit, as specified in the notice, the amount specified in  
30 the notice and the date the amount was withheld, but in no event more  
31 than the amount allowed by G.S. 110-136.6; however, if a lesser amount  
32 of disposable income is available for any pay period, the payor shall  
33 either: (a) compute and send the appropriate amount to the ~~clerk of court,~~  
34 State Child Support Collection and Disbursement Unit, using the  
35 percentages as provided in G.S. 110-136.6, or (b) request the initiating  
36 party to inform the payor of the proper amount to be withheld for that  
37 period;

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

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

- 1 (4) Begin withholding from the first payment due the obligor in the first pay  
2 period that occurs 14 days following the date the notice of the obligation  
3 to withhold was served on the payor;
- 4 (5) Promptly notify the obligee in a IV-D case, or the clerk of superior court  
5 or the State collection and disbursement unit in a non-IV-D case, in  
6 writing:
- 7 a. If there are one or more orders of child support withholding for  
8 the obligor;
- 9 a1. If there are one or more orders of alimony or postseparation  
10 support withholding for the obligor;
- 11 b. When the obligor terminates employment or otherwise ceases to  
12 be entitled to disposable income from the payor, and provide the  
13 obligor's last known address, and the name and address of his  
14 new employer, if known;
- 15 c. Of the payor's inability to comply with the withholding for any  
16 reason; and
- 17 (6) Cooperate fully with the initiating party in the verification of the amount  
18 of the obligor's disposable income."

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

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

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

26 "**§ 110-136.9. Payment of withheld funds.**

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

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