

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 534  
Committee Substitute Favorable 4/23/97

Short Title: Support Orders Enforcement.

(Public)

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Sponsors:

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Referred to:

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March 18, 1997

A BILL TO BE ENTITLED

AN ACT REGARDING THE CONTRACTUAL OBLIGATIONS OF SPOUSES, THE  
TRANSFER OF PROPERTY AND INCOME WITHHOLDING TO ENFORCE  
SUPPORT ORDERS, AND THE AWARDED OF ALIMONY, AS  
RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH  
CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 52-2 reads as rewritten:

**"§ 52-2. Capacity to contract.**

(a) Subject to the provisions of G.S. 52-10 or 52-10.1, G.S. 39-7 and other regulations and limitations now or hereafter prescribed by the General Assembly, every married person is authorized to contract and deal so as to affect his or her real and personal property in the same manner and with the same effect as if he or she were unmarried.

(b) Except as otherwise provided by this section or by other State law, a spouse shall not be responsible for the other spouse's contract liability to a third party, whether the liability arose before or after the marriage. The doctrine of necessities as it existed at common law, however, shall apply and shall apply equally to both spouses, except as

1 provided in subsection (c) of this section, but shall in no event create any liability  
2 between the spouses as to each other.

3 (c) The doctrine of necessities shall not apply to either spouse when the spouses  
4 are living separate and apart with the intent on behalf of one of them to cease marital  
5 cohabitation, unless one of the following applies:

6 (1) The nondebtor spouse has willfully created the appearance of not being  
7 separated and has requested that the creditor extend credit to the  
8 estranged debtor spouse; or

9 (2) The debt is for medical expenses and the nondebtor spouse carries  
10 medical insurance on the debtor spouse, provided that the nondebtor  
11 spouse shall be liable only for the debt that is or will be discharged  
12 under the terms of the medical insurance."

13 Section 2. G.S. 50-13.4(e) reads as rewritten:

14 "(e) Payment for the support of a minor child shall be paid by lump sum payment,  
15 periodic payments, or by transfer of title or possession of personal property of any  
16 interest therein, or a security interest in or possession of real property, as the court may  
17 order. The court may order the transfer of title to real property in payment of arrearages  
18 of child support so long as the net value of the interest in the property being transferred  
19 does not exceed the amount of the arrearage being satisfied. In every case in which  
20 payment for the support of a minor child is ordered and alimony or postseparation  
21 support is also ordered, the order shall separately state and identify each allowance."

22 Section 3. G.S. 50-16.7(a) reads as rewritten:

23 "(a) Alimony or postseparation support shall be paid by lump sum payment,  
24 periodic payments, income withholding, or by transfer of title or possession of personal  
25 property or any interest therein, or a security interest in or possession of real property, as  
26 the court may order. The court may order the transfer of title to real property in payment  
27 of lump-sum payments of alimony or postseparation support or in payment of arrearages  
28 of alimony or postseparation support so long as the net value of the interest in the  
29 property being transferred does not exceed the amount of the arrearage being satisfied. In  
30 every case in which either alimony or postseparation support is allowed and provision is  
31 also made for support of minor children, the order shall separately state and identify each  
32 allowance."

33 Section 4. G.S. 50-16.7 is amended by adding the following new subsection to  
34 read:

35 "(11) The dependent spouse may apply to the court for an order of income  
36 withholding for current or delinquent payments of alimony or postseparation support or  
37 for any portion of the payments. If the court orders income withholding, a notice of  
38 obligation to withhold shall be served on the payor as required by G.S. 1A-1, Rule 4,  
39 Rules of Civil Procedure. Copies of the notice shall be filed with the clerk of court and  
40 served upon the supporting spouse by first-class mail."

41 Section 5. G.S. 110-136.3(b) is amended by adding a new subdivision to read:

1           "(3) In the enforcement of alimony or postseparation support orders pursuant  
2 to G.S. 110-130.2, and obligor shall become subject to income  
3 withholding on the earlier of:

4           a. The date on which the obligor fails to make legally obligated  
5 alimony or postseparation payments; or

6           b. The date on which the obligor or obligee requests withholding."

7 Section 6. G.S. 110-136.4(a)(2) reads as rewritten:

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

10           a. Whether the proposed withholding is based on the obligor's  
11 failure to make legally obligated ~~payments in an amount equal to~~  
12 ~~the support payable for one month~~ alimony or postseparation  
13 support payments or on the obligor's request for withholding or  
14 on the obligee's request for withholding;

15           b. The amount of overdue child support, overdue alimony or  
16 postseparation support payments, the total amount to be  
17 withheld, and when the withholding will occur;

18           c. The name of each child or person for whose benefit the child  
19 ~~support is~~ support, alimony or postseparation support payments  
20 are due and information sufficient to identify the court order  
21 under which the obligor has a duty to support the ~~child;~~ child,  
22 spouse, or former spouse;

23           d. The amount and sources of disposable income;

24           e. That the withholding will apply to the obligor's wages or other  
25 sources of disposable income from current payors and all  
26 subsequent payors once the procedures under this section are  
27 invoked;

28           f. An explanation of the obligor's rights and responsibilities  
29 pursuant to this section;

30           g. That withholding will be continued until terminated pursuant to  
31 G.S. 110-136.10."

32 Section 7. G.S. 110-136.6 is amended by adding the following new subsection  
33 to read:

34           "(b1) When there is an order of income withholding for current or delinquent  
35 payments of alimony or postseparation support or for any portion of the payments, the  
36 total amount withheld under this Article and under G.S. 50-16.7 shall not exceed the  
37 amounts allowed under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C.  
38 § 1673(b)."

39 Section 8. G.S. 110-136.8(b) reads as rewritten:

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

42           (1) Withhold from the obligor's disposable income and, within 10 days of  
43 the date the obligor is paid, send to the clerk of superior court specified

1 in the notice, the amount specified in the notice and the date the amount  
2 was withheld, but in no event more than the amount allowed by G.S.  
3 110-136.6; however, if a lesser amount of disposable income is  
4 available for any pay period, the payor shall either: (a) compute and  
5 send the appropriate amount to the clerk of court, using the percentages  
6 as provided in G.S. 110-136.6, or (b) request the initiating party to  
7 inform the payor of the proper amount to be withheld for that period;

8 (2) Continue withholding until further notice from the IV-D agency or the  
9 clerk of superior court;

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

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

15 (5) Promptly notify the obligee in a IV-D case, or the clerk of superior court  
16 in a non-IV-D case, in writing:

17 a. ~~If there is more than one child support withholding for the obligor;~~  
18 are one or more orders of child support withholding for the  
19 obligor;

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

22 b. When the obligor terminates employment or otherwise ceases to  
23 be entitled to disposable income from the payor, and provide the  
24 obligor's last known address, and the name and address of his  
25 new employer, if known;

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

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

30 Section 9. G.S. 50-16.1A is amended by adding the following new subdivision

31 to read:

32 "(4a) 'Payor' means any payor, including any federal, State, or local  
33 governmental unit, of disposable income to an obligor. When the  
34 payor is an employer, payor means employer as defined under 20  
35 U.S.C. § 203(d) of the Fair Labor Standards Act."

36 Section 10. G.S. 110-129(11) reads as rewritten:

37 "(11) 'Obligee', in a IV-D case, means the child support enforcement  
38 agency, and in a non-IV-D case means the individual to whom a duty  
39 of ~~support~~ support, whether child support, alimony, or postseparation  
40 support, is owed or the individual's legal representative."

41 Section 11. G.S. 110-129(12) reads as rewritten:

1           "(12) 'Obligor' means the individual who owes a duty to make child support  
2           payments or payments of alimony or postseparation support under a  
3           court order."

4           Section 12. G.S. 50-16.3A(b) is amended by adding the following new  
5 subdivision to read:

6           "(16) Income being received by either party that was previously considered  
7           by the court in determining the value of a marital asset in an equitable  
8           distribution of the parties' marital property."

9           Section 13. This act becomes effective October 1, 1997. Section 1 of this act  
10 applies to contracts entered into and transactions occurring on and after that date.