

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 534  
Committee Substitute Favorable 4/23/97  
Senate Judiciary Committee Substitute Adopted 8/10/98

Short Title: Support Orders Enforcement.

(Public)

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Sponsors:

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Referred to:

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March 18, 1997

1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW INCOME WITHHOLDING TO ENFORCE SUPPORT  
3 ORDERS, AND THE AWARDING OF ALIMONY, AS RECOMMENDED BY  
4 THE FAMILY LAW SECTION OF THE NORTH CAROLINA BAR  
5 ASSOCIATION.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 50-16.7(a) reads as rewritten:  
8 "(a) Alimony or postseparation support shall be paid by lump sum payment,  
9 periodic payments, income withholding, or by transfer of title or possession of personal  
10 property or any interest therein, or a security interest in or possession of real property, as  
11 the court may order. In every case in which either alimony or postseparation support is  
12 allowed and provision is also made for support of minor children, the order shall  
13 separately state and identify each allowance."

14 Section 2. G.S. 50-16.7 is amended by adding the following new subsection to  
15 read:

16 "(11) The dependent spouse may apply to the court for an order of income  
17 withholding for current or delinquent payments of alimony or postseparation support or  
18 for any portion of the payments. If the court orders income withholding, a notice of

1 obligation to withhold shall be served on the payor as required by G.S. 1A-1, Rule 4,  
2 Rules of Civil Procedure. Copies of the notice shall be filed with the clerk of court and  
3 served upon the supporting spouse by first-class mail."

4 Section 3. G.S. 110-136.3(b) is amended by adding a new subdivision to read:

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

- 8 a. The date on which the obligor fails to make legally obligated  
9 alimony or postseparation payments; or  
10 b. The date on which the obligor or obligee requests withholding."

11 Section 4. G.S. 110-136.4(a)(2) reads as rewritten:

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

- 14 a. Whether the proposed withholding is based on the obligor's  
15 failure to make legally obligated ~~payments in an amount equal to~~  
16 ~~the support payable for one month alimony or postseparation~~  
17 support payments or on the obligor's request for withholding or  
18 on the obligee's request for withholding;  
19 b. The amount of overdue child support, overdue alimony or  
20 postseparation support payments, the total amount to be  
21 withheld, and when the withholding will occur;  
22 c. The name of each child or person for whose benefit the child  
23 ~~support is~~ support, alimony or postseparation support payments  
24 are due and information sufficient to identify the court order  
25 under which the obligor has a duty to support the ~~child;~~ child,  
26 spouse, or former spouse;  
27 d. The amount and sources of disposable income;  
28 e. That the withholding will apply to the obligor's wages or other  
29 sources of disposable income from current payors and all  
30 subsequent payors once the procedures under this section are  
31 invoked;  
32 f. An explanation of the obligor's rights and responsibilities  
33 pursuant to this section;  
34 g. That withholding will be continued until terminated pursuant to  
35 G.S. 110-136.10."

36 Section 5. G.S. 110-136.6 is amended by adding the following new subsection  
37 to read:

38 "(b1) When there is an order of income withholding for current or delinquent  
39 payments of alimony or postseparation support or for any portion of the payments, the  
40 total amount withheld under this Article and under G.S. 50-16.7 shall not exceed the  
41 amounts allowed under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C.  
42 § 1673(b)."

43 Section 6. G.S. 110-136.8(b) reads as rewritten:

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

- 3           (1) Withhold from the obligor's disposable income and, within 10 days of  
4 the date the obligor is paid, send to the clerk of superior court specified  
5 in the notice, the amount specified in the notice and the date the amount  
6 was withheld, but in no event more than the amount allowed by G.S.  
7 110-136.6; however, if a lesser amount of disposable income is  
8 available for any pay period, the payor shall either: (a) compute and  
9 send the appropriate amount to the clerk of court, using the percentages  
10 as provided in G.S. 110-136.6, or (b) request the initiating party to  
11 inform the payor of the proper amount to be withheld for that period;
- 12           (2) Continue withholding until further notice from the IV-D agency or the  
13 clerk of superior court;
- 14           (3) Withhold for child support before withholding pursuant to any other  
15 legal process under State law against the same disposable income;
- 16           (4) Begin withholding from the first payment due the obligor in the first pay  
17 period that occurs 14 days following the date the notice of the obligation  
18 to withhold was served on the payor;
- 19           (5) Promptly notify the obligee in a IV-D case, or the clerk of superior court  
20 in a non-IV-D case, in writing:
- 21           a. ~~If there is more than one child support withholding for the obligor;~~  
22           are one or more orders of child support withholding for the  
23           obligor;
- 24           a1. If there are one or more orders of alimony or postseparation  
25           support withholding for the obligor;
- 26           b. When the obligor terminates employment or otherwise ceases to  
27 be entitled to disposable income from the payor, and provide the  
28 obligor's last known address, and the name and address of his  
29 new employer, if known;
- 30           c. Of the payor's inability to comply with the withholding for any  
31 reason; and
- 32           (6) Cooperate fully with the initiating party in the verification of the amount  
33 of the obligor's disposable income."

34 Section 7. G.S. 50-16.1A is amended by adding the following new subdivision  
35 to read:

36           "(4a) 'Payor' means any payor, including any federal, State, or local  
37           governmental unit, of disposable income to an obligor. When the  
38           payor is an employer, payor means employer as defined under 20  
39           U.S.C. § 203(d) of the Fair Labor Standards Act."

40 Section 8. G.S. 110-129(11) reads as rewritten:

41           "(11) 'Obligee', in a IV-D case, means the child support enforcement  
42 agency, and in a non-IV-D case means the individual to whom a duty

1                   of ~~support~~ support, whether child support, alimony, or postseparation  
2                   support, is owed or the individual's legal representative."

3           Section 9. G.S. 110-129(12) reads as rewritten:

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

7           Section 10. G.S. 50-16.3A(b) is amended by adding the following new  
8           subdivision to read:

9           "(16) The fact that income being received by either party was previously  
10           considered by the court in determining the value of a marital asset in  
11           an equitable distribution of the parties' marital property."

12           Section 11. This act becomes effective October 1, 1998. Sections 1 through 9  
13           apply to actions pending on or after the effective date. Section 10 applies to actions filed  
14           on or after the effective date.