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SENATE DRS15175-LU-70B (03/06)

Short Title: DHHS Child Support Recommendations.-AB

(Public)

Sponsors: Senator Pate (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE ADMINISTRATION OF CHILD SUPPORT SERVICES THAT WILL RESULT IN MORE EFFECTIVE AND EFFICIENT COLLECTION AND PAYMENT OF CHILD SUPPORT TO FAMILIES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 110-130.1(d) reads as rewritten:

"(d) Any fee imposed by the North Carolina Department of Revenue or the Secretary of the Treasury to cover their costs of withholding for non-Work First arrearages certified for the collection of past due support from State or federal income tax refunds or administrative offsets, as defined by 31 C.F.R. § 285.1(a), shall be borne by the client by deducting the fee from the amount collected.

Any income tax refund offset amounts or administrative offsets, as defined by 31 C.F.R. § 285.1(a), which are subsequently determined to have been incorrectly withheld and distributed to a client, and which must be refunded by the State to a responsible parent or the nondebtor spouse, shall constitute a debt to the State owed by the client."

**SECTION 2.** G.S. 110-136.4 reads as rewritten:

**"§ 110-136.4. Implementation of withholding in IV-D cases.**

(a) Withholding based on arrearages or obligor's request.

(1) Advance notice of withholding. When an obligor in a IV-D case becomes subject to income withholding, the obligee shall, after verifying the obligor's current employer or other payor, wages or other disposable income, and mailing address, serve the obligor with advance notice of withholding in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.

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

- a. Whether the proposed withholding is based on the obligor's failure to make legally obligated child support, alimony or postseparation support payments on the obligor's request for withholding, on the obligee's request for withholding, or on the obligor's eligibility for withholding under G.S. 110-136.3(b)(3);
- b. The amount of overdue child support, overdue alimony or postseparation support payments, the total amount to be withheld, and when the withholding will occur;
- c. The name of each child or person for whose benefit the child support, alimony or postseparation support payments are due and information



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- 1 sufficient to identify the court order under which the obligor has a  
2 duty to support the child, spouse, or former spouse;
- 3 d. The amount and sources of disposable income;
- 4 e. That the withholding will apply to the obligor's wages or other  
5 sources of disposable income from current payors and all subsequent  
6 payors once the procedures under this section are invoked;
- 7 f. An explanation of the obligor's rights and responsibilities pursuant to  
8 this section;
- 9 g. That withholding will be continued until terminated pursuant to  
10 G.S. 110-136.10.
- 11 (3) Contested withholding. The obligor may contest the withholding only on the  
12 basis of a mistake of fact, except that G.S. 110-129(10)(a) is not applicable if  
13 withholding is based on the obligor's or obligee's request for withholding. To  
14 contest the withholding, the obligor must, within 10 days of receipt of the  
15 advance notice of withholding, request a hearing in the county where the  
16 support order was entered before the district court and give notice to the  
17 obligee specifying the mistake of fact upon which the hearing request is  
18 based. If the asserted mistake of fact can be resolved by agreement between  
19 the obligee and the obligor, no hearing shall occur. Otherwise, a hearing  
20 shall be held and a determination made, within 30 days of the obligor's  
21 receipt of the advance notice of withholding, as to whether the asserted  
22 mistake of fact is valid. No withholding shall occur pending the hearing  
23 decision. The failure to hold a hearing within 30 days shall not invalidate an  
24 otherwise properly entered order. If it is determined that a mistake of fact  
25 exists, no withholding shall occur. Otherwise, within 45 days of the obligor's  
26 receipt of the advance notice of withholding, the obligee shall serve the  
27 payor, pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, or by  
28 electronic transmission in compliance with the Federal Office of Child  
29 Support Enforcement (OCSE) electronic income withholding (e-IWO)  
30 procedures, with notice of his obligation to withhold, and shall mail a copy  
31 of such notice to the obligor and file a copy with the clerk. In the event of  
32 appeal, withholding shall not be stayed. If the appeal is concluded in favor of  
33 the obligor, the obligee shall promptly repay sums wrongfully withheld and  
34 notify the payor to cease withholding.
- 35 (4) Uncontested withholding. If the obligor does not contest the withholding  
36 within the 10-day response period, the obligee shall serve the payor,  
37 pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, or by electronic  
38 transmission in compliance with the Federal Office of Child Support  
39 Enforcement (OCSE) electronic income withholding (e-IWO) procedures,  
40 with notice of his obligation to withhold, and shall mail a copy of such  
41 notice to the obligor and file a copy with the clerk.
- 42 (5) Payment not a defense to withholding. The payment of overdue support shall  
43 not be a basis for terminating or not implementing withholding.
- 44 (6) Inability to implement withholding. When an obligor is subject to  
45 withholding, but withholding under this section cannot be implemented  
46 because the obligor's location is unknown, because the extent and source of  
47 his disposable income cannot be determined, or for any other reason, the  
48 obligee shall either request the clerk of superior court to initiate enforcement  
49 proceedings under G.S. 15A-1344.1(d) or G.S. 50-13.9(d) or take other  
50 appropriate available measures to enforce the support obligation.

1 (b) Immediate income withholding. When a new or modified child support order is  
2 entered, the district court judge shall, after hearing evidence regarding the obligor's disposable  
3 income, place the obligor under an order for immediate income withholding. The IV-D agency  
4 shall serve the payor pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, or by electronic  
5 transmission in compliance with the Federal Office of Child Support Enforcement (OCSE)  
6 electronic income withholding (e-IWO) procedures, with a notice of his obligation to withhold,  
7 and shall mail a copy of such notice to the obligor and file a copy with the clerk. If information  
8 is unavailable regarding an obligor's disposable income, or the obligor is unemployed, or an  
9 agreement is reached between both parties which provides for an alternative arrangement,  
10 immediate income withholding shall not apply. The obligor, however, is subject to income  
11 withholding pursuant to G.S. 110-136.4(a).

12 (c) Subsequent payors. If the obligor changes employment or source of disposable  
13 income, notice to subsequent payors of their obligation to withhold shall be served as required  
14 by G.S. 1A-1, Rule 5, Rules of Civil Procedure. ~~Procedure~~, or by electronic transmission in  
15 compliance with the Federal Office of Child Support Enforcement (OCSE) electronic income  
16 withholding (e-IWO) procedures. Copies of such notice shall be filed with the clerk of court  
17 and served upon the obligor by first class mail.

18 (d) Multiple withholdings. The obligor must notify the obligee if the obligor is currently  
19 subject to another withholding for child support. In the case of two or more withholdings  
20 against one obligor, the obligee or obligees shall attempt to resolve any conflict between the  
21 orders in a manner that is fair and equitable to all parties and within the limits specified by  
22 G.S. 110-136.6. If the conflict cannot be so resolved, an injured party, upon request, shall be  
23 granted a hearing in accordance with the procedure specified in G.S. 110-136.4(c). The conflict  
24 between the withholding orders shall be resolved in accordance with G.S. 110-136.7.

25 (e) Modification of withholding. When an order for withholding has been entered under  
26 this section, the obligee may modify the withholding based on changed circumstances. The  
27 obligee shall proceed as is provided in this section.

28 (f) Applicability of section. The provisions of this section apply to IV-D cases only."

29 **SECTION 3.** G.S. 110-139.2(b1) reads as rewritten:

30 "(b1) The Department of Health and Human Services Child Support Enforcement Agency  
31 may notify any financial institution doing business in this State that an obligor who maintains  
32 an identified account with the financial institution has a child support obligation that may be  
33 eligible for levy on the account in an amount that satisfies some or all of the amount of unpaid  
34 support owed. In order to be able to attach a lien on and levy an obligor's account, the amount  
35 of unpaid support owed shall be an amount not less than the amount of support owed for six  
36 months or one thousand dollars (\$1,000), whichever is less.

37 Upon certification of the amount of unpaid support owed in accordance with G.S. 44-86(c),  
38 the Child Support Agency shall serve or cause to be served upon the obligor, and when the  
39 matched account is owned jointly, any other nonliable owner of the account, and the financial  
40 institution a notice as provided by this subsection. The notice shall include the name of the  
41 obligor, the financial institution where the account is located, the account number of the  
42 account to be levied to satisfy the lien, the certified amount of unpaid support, information for  
43 the obligor or account owner on how to remove the lien or contest the lien in order to avoid the  
44 levy, and a ~~copy of reference to~~ reference to the applicable law, G.S. 110-139.2. The notice shall be served  
45 on the obligor, and any nonliable account owner, in any manner provided in Rule 4 of the  
46 North Carolina Rules of Civil Procedure. The financial institution shall be served notice in  
47 accordance with Rule 5 of the North Carolina Rules of Civil Procedure. Upon service of the  
48 notice, the financial institution shall proceed in the following manner:

49 (1) Immediately attach a lien to the identified account.

1           (2)    Notify the Child Support Agency of the balance of the account and date of  
2                    the lien or that the account does not meet the requirement for levy under this  
3                    subsection.

4           In order for an obligor or account owner to contest the lien, within 10 days after the obligor  
5 or account owner is served with the notice, the obligor or account owner shall send written  
6 notice of the basis of the contest to the Child Support Agency and shall request a hearing before  
7 the district court in the county where the support order was entered. The obligor account holder  
8 may contest the lien only on the basis that the amount owed is an amount less than the amount  
9 of support owed for six months, or is less than one thousand dollars (\$1,000), whichever is less,  
10 or the contesting party is not the person subject to the court order of support. The district court  
11 may assess court costs against the nonprevailing party. If no response is received from the  
12 obligor or account owner within 10 days of the service of the notice, the Child Support Agency  
13 shall notify the financial institution to submit payment, up to the total amount of the child  
14 support arrears, if available. This amount is to be applied to the debt of the obligor.

15           A financial institution shall not be liable to any person for complying in good faith with this  
16 subsection. The remedy set forth in this section shall be in addition to all other remedies  
17 available to the State for the reduction of the obligor's child support arrears. This remedy shall  
18 not prevent the State from taking any and all other concurrent measures available by law.

19           This levy procedure is to be available for direct use by all states' child support programs to  
20 financial institutions in this State without involvement of the Department."

21           **SECTION 4.** This act is effective when it becomes law.