

Article 9.

Child Support.

**§ 110-128. Purposes.**

The purposes of this Article are to provide for the financial support of dependent children; to enforce spousal support when a child support order is being enforced; to provide that public assistance paid to dependent children is a supplement to the support required to be provided by the responsible parent; to provide that the payment of public assistance creates a debt to the State; to provide that the acceptance of public assistance operates as an assignment of the right to child support; to provide for the location of absent parents; to provide for a determination that a responsible parent is able to support his children; and to provide for enforcement of the responsible parent's obligation to furnish support and to provide for the establishment and administration of a program of child support enforcement in North Carolina. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 1; 1985, c. 506, s. 2.)

**§ 110-129. Definitions.**

As used in this Article:

- (1) "Court order" means any judgment or order of the courts of this State or of another state.
- (2) "Dependent child" means any person under the age of 18 who is not otherwise emancipated, married or a member of the Armed Forces of the United States, or any person over the age of 18 for whom a court orders that support payments continue as provided in G.S. 50-13.4(c).
- (3) "Responsible parent" means the natural or adoptive parent of a dependent child who has the legal duty to support said child and includes the father of a child born out-of-wedlock and the parents of a dependent child who is the custodial or noncustodial parent of the dependent child requiring support. If both the parents of the child requiring support were unemancipated minors at the time of the child's conception, the parents of both minor parents share primary liability for their grandchild's support until both minor parents reach the age of 18 or become emancipated. If only one parent of the child requiring support was an unemancipated minor at the time of the child's conception, the parents of both parents are liable for any arrearages in child support owed by the adult or emancipated parent until the other parent reaches the age of 18 or becomes emancipated.
- (4) "Program" means the Child Support Enforcement Program established and administered pursuant to the provisions of this Article and Title IV-D of the Social Security Act.
- (5) "Designated representative" means any person or agency designated by a board of county commissioners or the Department of Health and Human Services to administer a program of child support enforcement for a county or region of the State.
- (6) "Disposable income" means any form of periodic payment to an individual, regardless of sources, including but not limited to wages, salary, commission, self-employment income, bonus pay, severance pay, sick pay, incentive pay, vacation pay, compensation as an independent contractor, worker's compensation, unemployment compensation benefits, disability, annuity,

survivor's benefits, pension and retirement benefits, interest, dividends, rents, royalties, trust income and other similar payments, which remain after the deduction of amounts for federal, State, and local taxes, Social Security, and involuntary retirement contributions. However, Supplemental Security Income, Work First Family Assistance, and other public assistance payments shall be excluded from disposable income. For employers, disposable income means "wage" as it is defined by G.S. 95-25.2(16). Unemployment compensation benefits shall be treated as disposable income only for the purposes of income withholding under the provisions of G.S. 110-136.4, and the amount withheld shall not exceed twenty-five percent (25%) of the unemployment compensation benefits.

- (6a) "Financial Management Services" (FMS) means the unit of the U.S. Department of the Treasury, which, under federal law, offsets certain federal payments to satisfy support arrears.
- (7) "IV-D case" means a case in which services have been applied for or are being provided by a child support enforcement agency established pursuant to Title IV-D of the Social Security Act as amended and this Article.
- (8) "Non-IV-D case" means any case, other than a IV-D case, in which child support is legally obligated to be paid.
- (9) "Initiating party" means the party, the attorney for a party, a child support enforcement agency who initiates an action, proceeding, or procedure as allowed or required by law for the establishment or enforcement of a child support obligation.
- (9a) "Internal Revenue Service" (IRS) means the unit of the U.S. Department of the Treasury, which, under federal law, offsets income tax refunds against certain support arrears.
- (10) "Mistake of fact" means that the obligor:
  - a. Is not in arrears in an amount equal to the support payable for one month; or
  - b. Did not request that withholding begin, if withholding is pursuant to a purported request by the obligor for withholding; or
  - c. Is not the person subject to the court order of support for the child named in the advance notice of withholding; or
  - d. Does not owe the amount of current support or arrearages specified in the advance notice or motion of withholding; or
  - e. Has a rate of withholding which exceeds the amount of support specified in the court order.
- (11) "Obligee", in a IV-D case, means the child support enforcement agency, and in a non-IV-D case means the individual to whom a duty of support, whether child support, alimony, or postseparation support, is owed or the individual's legal representative.
- (12) "Obligor" means the individual who owes a duty to make child support payments or payments of alimony or postseparation support under a court order.
- (12a) "Offset" means withholding by the IRS or FMS of all or part of an income tax refund or certain federal payments due an obligor and remitting payments to the federal Office of Child Support Enforcement for transmittal to the State.

- (13) "Payor" means any payor, including any federal, State, or local governmental unit, of disposable income to an obligor. When the payor is an employer, payor means employer as is defined at 29 USC § 203(d) in the Fair Labor Standards Act. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, ss. 2, 3; 1985, c. 592; 1985 (Reg. Sess., 1986), c. 949, s. 1; 1987, c. 764, s. 3; 1989, c. 601, s. 1; 1991, c. 541, s. 3; 1995, c. 518, s. 2; 1997-443, ss. 11A.118(a), 12.27; 1997-465, s. 27; 1998-176, ss. 9, 10; 2010-96, s. 30; 2011-183, s. 75; 2023-65, s. 7.3(a).)

**§ 110-129.1. Additional powers and duties of the Department.**

(a) In addition to other powers and duties conferred upon the Department of Health and Human Services, Child Support Enforcement Program, by this Chapter or other State law, the Department shall have the following powers and duties:

- (1) Upon authorization of the Secretary, to issue a subpoena for the production of books, papers, correspondence, memoranda, agreements, or other information, documents, or records relevant to a child support establishment or enforcement proceeding or paternity establishment proceeding. The subpoena shall be signed by the Secretary and shall state the name of the person or entity required to produce the information authorized under this section, and a description of the information compelled to be produced. The subpoena may be served in the manner provided for service of subpoenas under the North Carolina Rules of Civil Procedure. The form of subpoena shall generally follow the practice in the General Court of Justice in North Carolina. Return of the subpoena shall be to the person who issued the subpoena. Upon the refusal of any person to comply with the subpoena, it shall be the duty of any judge of the district court, upon application by the person who issued the subpoena, to order the person subpoenaed to show cause why he should not comply with the requirements, if in the discretion of the judge the requirements are reasonable and proper. Refusal to comply with the subpoena or with the order shall be dealt with as for contempt of court and as otherwise provided by law. Information obtained as a result of a subpoena issued pursuant to this subdivision is confidential and may be used only by the Child Support Enforcement Program in conjunction with a child support establishment or enforcement proceeding or paternity establishment proceeding.
- (2) For the purposes of locating persons, establishing paternity, or enforcing child support orders, the Program shall have access to any information or data storage and retrieval system maintained and used by the Department of Transportation for drivers license issuance or motor vehicle registration, or by a law enforcement agency in this State for law enforcement purposes, as permitted pursuant to G.S. 132-1.4, except that the Program shall have access to information available to the law enforcement agency pertaining to drivers licenses and motor vehicle registrations issued in other states.
- (3) Establish and implement procedures under which in IV-D cases either parent or, in the case of an assignment of support, the State may request that a child support order enforced under this Chapter be reviewed and, if appropriate, adjusted in accordance with the most recently adopted uniform statewide child support guidelines prescribed by the Conference of Chief District Court Judges.

- (4) Develop procedures for entering into agreements with financial institutions to develop and operate a data match system as provided under G.S. 110-139.2.
- (5) Develop procedures for ensuring that when a noncustodial parent providing health care coverage pursuant to a court order changes employers and is eligible for health care coverage from the new employer, the new employer, upon receipt of notice of the order from the Department, enrolls the child in the employer's health care plan.
- (6) Develop and implement an administrative process for paternity establishment in accordance with G.S. 110-132.2.
- (7) Establish and implement administrative procedures to change the child support payee to ensure that child support payments are made to the appropriate caretaker when custody of the child has changed, in accordance with G.S. 50-13.4(d).
- (8) Establish and implement expedited procedures to take the following actions relating to the establishment of paternity or to establishment of support orders, without obtaining an order from a judicial tribunal:
  - a. Subpoena the parties to undergo genetic testing as provided under G.S. 110-132.2;
  - b. Implement income withholding in accordance with this Chapter;
  - c. For the purpose of securing overdue support, increase the amount of monthly support payments by implementation of income withholding procedures established under G.S. 110-136.4, or by notice and opportunity to contest to an obligor who is not subject to income withholding. Increases under this subdivision are subject to the limitations of G.S. 110-136.6;
  - d. For purposes of exerting and retaining jurisdiction in IV-D cases, transfer cases between jurisdictions in this State without the necessity for additional filing by the petitioner or service of process upon the respondent.
- (9) Implement and maintain performance standards for each of the State and county child support enforcement offices across the State. The performance standards shall include the following:
  - a. Cost per collections.
  - b. Consumer satisfaction.
  - c. Paternity establishments.
  - d. Administrative costs.
  - e. Orders established.
  - f. Collections on arrearages.
  - g. Location of absent parents.
  - h. Other related performance measures.The Department shall monitor the performance of each office and shall implement a system of reporting that allows each local office to review its performance as well as the performance of other local offices. The Department shall publish an annual performance report that includes the statewide and local office performance of each child support office.

- (10) Certify obligors to the federal Office of Child Support Enforcement for the Passport Denial Program under G.S. 110-143.
- (11) Certify to the federal Office of Child Support Enforcement determinations that an obligor in a IV-D case owes support arrears in an amount equal to or greater than the federally mandated thresholds for offset of federal income tax refunds under 42 U.S.C. § 664(b)(2) if the arrears are assigned to the State and 45 C.F.R. § 303.72(a)(2) if the arrears are not assigned to the State.
- (12) Certify obligors to the federal Office of Child Support Enforcement for the Administrative Offset Program under G.S. 110-144.

(b) As used in this section, the term "Secretary" means the Secretary of Health and Human Services, the Secretary's designee, or a designated representative as defined under G.S. 110-129(5). (1997-433, s. 2; 1997-443, s. 11A.122; 1998-17, s. 1; 2009-451, s. 10.46; 2023-65, s. 7.3(b).)

**§ 110-129.2. State Directory of New Hires established; employers required to report; civil penalties for noncompliance; definitions.**

(a) **Directory Established.** – There is established the State Directory of New Hires. The Directory shall be developed and maintained by the Department. The Directory shall be a central repository for employment information to assist in the location of persons owing child support, and in the establishment and enforcement of child support orders.

(b) **Employer Reporting.** – Every employer in this State shall report to the Directory the hiring of every employee for whom a federal W-4 form is required to be completed by the employee at the time of hiring. The employer shall report the information required under this section not later than 20 days from the date of hire, or, in the case of an employer who transmits new hire reports magnetically or electronically by two monthly transmissions, not less than 12 nor more than 16 days apart. The Department shall notify employers of the information they must report under this section and of the penalties for not reporting the required information. The required forms must be provided by the Department to employers.

(c) **Report Contents.** – Each report required by this section shall contain the name, address, social security number of the newly hired employee, the date services for remuneration were first performed by the newly hired employee, and the name and address of the employer and the employer's identifying number assigned under section 6109 of the Internal Revenue Code of 1986 and the employer's State employer identification number. Reports shall be made on the W-4 form or, at the option of the employer, an equivalent form, and may be transmitted magnetically, electronically, or by first-class mail.

(d) **Penalties for Failure to Report.** – Upon a finding that an employer has failed to comply with the reporting requirements of this section, the district court shall impose a civil penalty in an amount not to exceed twenty-five dollars (\$25.00). If the court finds that an employer's failure to comply with the reporting requirements is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report, then the court shall impose upon the employer a civil penalty in an amount not to exceed five hundred dollars (\$500.00). Penalties collected under this subsection shall be deposited to the General Fund.

(e) **Entry of Report Data Into Directory.** – Within five business days of receipt of the report from the employer, the Department shall enter the information from the report into the Directory.

(f) **Notice to Employer to Withhold.** – Within two business days of the date the information was entered into the Directory, the Department or its designated representative as defined under

G.S. 110-129(5) shall transmit notice to the employer of the newly hired employee directing the employer to withhold from the income of the employee an amount equal to the monthly or other periodic child support obligation, including any past-due support obligation of the employee and subject to the limitations of G.S. 110-136.6, unless the employee's income is not subject to withholding.

(g) Other Uses of Directory Information. – The following agencies may access information entered into the Directory from employer reports for the purposes stated:

- (1) The Division of Employment Security for the purpose of administering employment security programs.
- (2) The North Carolina Industrial Commission for the purpose of administering workers' compensation programs.
- (3) The Department of Revenue for the purpose of administering the taxes it has a duty to collect under Chapter 105 of the General Statutes.

(h) Department May Contract for Services. – The Department may contract with other State or private entities to perform the services necessary to implement this section.

(i) Information Confidential. – Except as otherwise provided in this section, information contained in the Directory is confidential and may be used only by the State Child Support Enforcement Program.

(j) Definitions. – As used in this section, unless the context clearly requires otherwise, the term:

- (1) "Business day" means a day on which State offices are open for business.
- (2) "Department" means the Department of Health and Human Services.
- (3) "Employee" means an individual who is an employee within the meaning of Chapter 24 of the Internal Revenue Code of 1986. The term "employee" does not include an employee of a federal or State agency performing intelligence or counterintelligence functions, if the head of the agency has determined that reporting information as required under this section could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.
- (4) "Employer" has the meaning given the term in section 3401(d) of the Internal Revenue Code of 1986 and includes persons who are governmental entities and labor organizations. The term "labor organization" shall have the meaning given that term in section 2(5) of the National Labor Relations Act, and includes any entity which is used by the organization and an employer to carry out requirements described in section 8(f)(3) of the National Labor Relations Act of an agreement between the organization and the employer.
- (5) "Newly hired employee" means (i) an employee who has not previously been employed by the employer and (ii) an employee who was previously employed by the employer but has been separated from such prior employment for at least 60 consecutive days. (1997-433, s. 1; 1997-443, s. 11A.122; 1998-17, s. 1; 1999-438, s. 30; 2011-401, s. 3.13; 2012-134, s. 3(a), (b).)

### **§ 110-130. Action by the designated representatives of the county commissioners.**

Any county interested in the paternity and/or support of a dependent child may institute civil or criminal proceedings against the responsible parent of the child, or may take up and pursue any paternity and/or support action commenced by the mother, custodian or guardian of the child. Such

action shall be undertaken by the designated representative in the county where the mother of the child resides or is found, in the county where the father resides or is found, or in the county where the child resides or is found. Any legal proceeding instituted under this section may be based upon information or belief. The parent of the child may be subpoenaed for testimony at the trial of the action to establish the paternity of and/or to obtain support for the child either instituted or taken up by the designated representative of the county commissioners. The husband-wife privilege shall not be grounds for excusing the mother or father from testifying at the trial nor shall said privilege be grounds for the exclusion of confidential communications between husband and wife. If a parent called for examination declines to answer upon the grounds that his testimony may tend to incriminate him, the court may require him to answer in which event he shall not thereafter be prosecuted for any criminal act involved in the conception of the child whose paternity is in issue and/or for whom support is sought, except for perjury committed in this testimony. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 4; 1985, c. 410.)

**§ 110-130.1. Non-Work First services.**

(a) All child support collection and paternity determination services provided under this Article to recipients of public assistance shall be made available to any individual not receiving public assistance in accordance with federal law and as contractually authorized by the nonrecipient, upon proper application and payment of a nonrefundable application fee of twenty-five dollars (\$25.00). The fee shall be reduced to ten dollars (\$10.00) if the individual applying for the services is indigent. An indigent individual is an individual whose gross income does not exceed one hundred percent (100%) of the federal poverty guidelines issued each year in the Federal Register by the U.S. Department of Health and Human Services. For the purposes of this subsection, the term "gross income" has the same meaning as defined in G.S. 105-153.3.

In the case of an individual who has never received assistance under a State program funded pursuant to Title IV-A of the Social Security Act and for whom the State has collected and disbursed to the family in a federal fiscal year at least five hundred fifty dollars (\$550.00) of support, the State shall impose an annual fee of thirty-five dollars (\$35.00) for each case in which services are furnished. The child support agency shall retain the fee from support collected on behalf of the individual. However, the child support agency shall not retain the fee from the first five hundred fifty dollars (\$550.00) collected. The child support agency shall use the fee to support the ongoing operation of the program.

(b) Repealed by Session Laws 1989, c. 490.

(b1) In cases in which a public assistance debt which accrued pursuant to G.S. 110-135 remains unrecovered, support payments shall be transmitted to the Department of Health and Human Services for appropriate distribution. When services are terminated and all costs and any public assistance debts have been satisfied, the support payment shall be redirected to the client.

(c) Actions or proceedings to establish, enforce, or modify a duty of support or establish paternity as initiated under this Article shall be brought in the name of the county or State agency on behalf of the public assistance recipient or nonrecipient client. Collateral disputes between a custodial parent and noncustodial parent, involving visitation, custody and similar issues, shall be considered only in separate proceedings from actions initiated under this Article. The attorney representing the designated representative of programs under Title IV-D of the Social Security Act shall be deemed attorney of record only for proceedings under this Article, and not for the separate proceedings. No attorney/client relationship shall be considered to have been created between the

attorney who represents the child support enforcement agency and any person by virtue of the action of the attorney in providing the services required.

(c1) The Department is hereby authorized to use the electronic and print media in attempting to locate absent and deserting parents. Due diligence must be taken to ensure that the information used is accurate or has been verified. Print media shall be under no obligation or duty, except that of good faith, to anyone to verify the correctness of any information furnished to it by the Department or county departments of social services.

(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. (1983, c. 527, s. 1; 1985, c. 781, ss. 1-5; 1985 (Reg. Sess., 1986), c. 931, ss. 1-3; 1989, c. 490; 1995, c. 538, s. 3; 1997-223, s. 2; 1997-443, ss. 11A.118(a), 12.28; 2007-460, s. 1; 2015-62, s. 2(a); 2015-117, s. 3; 2018-5, s. 11C.3; 2018-97, s. 3.4.)

#### **§ 110-130.2. Collection of spousal support.**

Spousal support shall be collected for a spouse or former spouse with whom the absent parent's child is living when a child support order is being enforced under this Article. However, the spousal support shall be collected: (i) only if there is an order establishing the support obligation with respect to such spouse; and (ii) only if an order establishing the support obligation with respect to the child is being enforced under this Article. The Child Support Enforcement Program is not authorized to assist in the establishment of a spousal support obligation. (1985, c. 506, s. 1.)

#### **§ 110-131. Compelling disclosure of information respecting the nonsupporting responsible parent of a child receiving public assistance.**

(a) If a parent of any dependent child receiving public assistance fails or refuses to cooperate with the county in locating and securing support from a nonsupporting responsible parent, this parent may be cited to appear before any judge of the district court and compelled to disclose such information under oath and/or may be declared ineligible for public assistance by the county department of social services for as long as he fails to cooperate.

(b) Any parent who, having been cited to appear before a judge of the district court pursuant to subsection (a), fails or refuses to appear or fails or refuses to provide the information requested may be found to be in contempt of said court and may be fined not more than one hundred dollars (\$100.00) or imprisoned not more than six months or both.

(c) Any parent who is declared ineligible for public assistance by the county department of social services shall have his needs excluded from consideration in determining the amount of the grant, and the needs of the remaining family members shall be met in the form of a protective payment in accordance with G.S. 108-50. (1975, c. 827, s. 1.)

#### **§ 110-131.1. Notice; due process requirements met.**



In any child support enforcement proceeding the trial court may deem State due process requirements for notice and service of process to be met with respect to the nonmoving party, upon delivery of written notice in accordance with the notice requirements of Chapter 1A-1, Rule 5(b) of the Rules of Civil Procedure with respect to all pleadings subsequent to the original complaint. (1997-433, s. 2.3; 1998-17, s. 1.)

**§ 110-132. Affidavit of parentage and agreement to motion to set aside affidavit of parentage.**

(a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity, the written affidavits of parentage executed by the putative father and the mother of the dependent child shall constitute an admission of 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 rescission and to include in the order specific findings of fact that the request for rescission 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 been served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. In the event the court orders rescission and the putative father is thereafter found not to be the father of the child, then the clerk of court shall send a copy of the order of rescission to the State Registrar of Vital Statistics. Upon receipt of an order of rescission, the State Registrar shall remove the putative father's name from the birth certificate. In the event that the putative father defaults or fails to present or prosecute the issue of paternity, the trial court shall find the putative father to be the biological father as a matter of law.

(a1) Paternity established under subsection (a) of this section may be set aside in accordance with subsection (a2) of this section or in accordance with G.S. 50-13.13.

(a2) Notwithstanding the time limitations of G.S. 1A-1, Rule 60 of the North Carolina Rules of Civil Procedure, or any other provision of law, an affidavit of parentage may be set aside by a trial court after 60 days have elapsed if each of the following applies:

- (1) The affidavit of parentage was entered as the result of fraud, duress, mutual mistake, or excusable neglect.
- (2) Genetic tests establish that the putative father is not the biological father of the child.

The burden of proof in any motion to set aside an affidavit of parentage after 60 days allowed for rescission shall be on the moving party. Upon proper motion alleging fraud, duress, mutual mistake, or excusable neglect, the court shall order the child's mother, the child whose parentage is at issue, and the putative father to submit to genetic paternity testing pursuant to G.S. 8-50.1(b1). If the court determines, as a result of genetic testing, the putative father is not the biological father of the child and the affidavit of parentage was entered as a result of fraud, duress, mutual mistake, or excusable neglect, the court may set aside the affidavit of parentage. Nothing in this subsection shall be construed to affect the presumption of legitimacy where a child is born to a mother and the putative father during the course of a marriage.

(a3) A written agreement to support the child by periodic payments, which may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when

acknowledged as provided herein, filed with, and approved by a judge of the district court at any time, shall have the same force and effect as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. The written affidavit shall contain the social security number of the person executing the affidavit. Voluntary agreements to support shall contain the social security number of each of the parties to the agreement. The written affidavits and agreements to support shall be sworn to before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the affirmation, acknowledgment, or agreement is made, and shall be binding on the person executing the same whether the person is an adult or a minor. The child support enforcement agency shall ensure that the mother and putative father are given oral and written notice of the legal consequences and responsibilities arising from the signing of an affidavit of parentage and of any alternatives to the execution of an affidavit of parentage. The mother shall not be excused from making the affidavit on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she attests.

(b) At any time after the filing with the district court of an affidavit of parentage, upon the application of any interested party, the court or any judge thereof shall cause a summons signed by him or by the clerk or assistant clerk of superior court, to be issued, requiring the putative father to appear in court at a time and place named therein, to show cause, if any he has, why the court should not enter an order for the support of the child by periodic payments, which order may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of the action under this subsection on the affidavit of parentage previously filed with said court. The court may order the responsible parents in a IV-D establishment case to perform a job search, if the responsible parent is not incapacitated. This includes IV-D cases in which the responsible parent is a noncustodial mother or a noncustodial father whose affidavit of parentage has been filed with the court or when paternity is not at issue for the child. The court may further order the responsible parent to participate in the work activities, as defined in 42 U.S.C. § 607, as the court deems appropriate. The amount of child support payments so ordered shall be determined as provided in G.S. 50-13.4(c). The prior judgment as to paternity shall be res judicata as to that issue and shall not be reconsidered by the court. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, ss. 5, 6; 1981, c. 275, s. 8; 1989, c. 529, s. 8; 1997-433, s. 4.7; 1998-17, s. 1; 1999-293, s. 1; 2001-237, s. 2; 2011-328, s. 2.)

**§ 110-132.1. Paternity determination by another state entitled to full faith and credit.**

A paternity determination made by another state:

- (1) In accordance with the laws of that state, and
  - (2) By any means that is recognized in that state as establishing paternity
- shall be entitled to full faith and credit in this State. (1993 (Reg. Sess., 1994), c. 733, s. 2.)

**§ 110-132.2. Expedited procedures to establish paternity in IV-D cases.**

(a) In a IV-D court action, a local child support enforcement office may, without obtaining a court order, subpoena a minor child, the minor child's mother, and the putative father of the minor child (including the mother's husband, if different from the putative father) to appear for the purpose of undergoing blood or genetic testing to establish paternity. A subpoena issued pursuant to this section must be served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. Refusal to comply with a subpoena may be dealt with as for contempt of court, and as

otherwise provided under law. A party may contest the results of the genetic or blood test. If the results are contested, the agency shall, upon request and advance payment by the contestant, obtain additional testing.

(b) A person subpoenaed to submit to testing pursuant to subsection (a) of this section may contest the subpoena. To contest the subpoena, a person must, within 15 days of receipt of the subpoena, request a hearing in the county where the local child support enforcement office that issued the subpoena is located. The hearing shall be before the district court and notice of the hearing must be served by the petitioner on all parties to the proceeding. Service shall be in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. The hearing shall be held and a determination made within 30 days of the petitioner's request for hearing as to whether the petitioner must comply with the subpoena to undergo testing. If the trial court determines that the petitioner must comply with the subpoena, the determination shall not prejudice any defenses the petitioner may present at any future paternity litigation. (1997-433, s. 4.11; 1998-17, s. 1.)

### **§ 110-133. Agreements of support.**

In lieu of or in conclusion of any legal proceeding instituted to obtain support from a responsible parent for a dependent child born of the marriage, a written agreement to support the child by periodic payments executed by the responsible parent when acknowledged before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the acknowledgment is made and filed with and approved by a judge of the district court in the county where the custodial parent of the child resides or is found, or in the county where the noncustodial parent resides or is found, or in the county where the child resides or is found shall have the same force and effect, retroactively and prospectively, in accordance with the terms of the agreement, as an order of support entered by the court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. A responsible parent executing a written agreement under this section shall provide on the agreement the responsible parent's social security number. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 7; 1995, c. 538, s. 5; 1997-433, s. 4.8; 1998-17, s. 1.)

### **§ 110-134. Filing of affidavits, agreements, and orders; fees.**

All affidavits, agreements, and resulting orders entered into under the provisions of G.S. 110-132 and G.S. 110-133 shall be filed by the clerk of superior court in the county in which they are entered. The filing fee for the institution of an action through the entry of an order under either of these provisions shall be in an amount equal to that provided in G.S. 7A-308(a)(18). (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 8; 2001-237, s. 3; 2010-31, s. 15.6.)

### **§ 110-135. Debt to State created.**

Acceptance of public assistance by or on behalf of a dependent child creates a debt, in the amount of public assistance paid, due and owing the State by the responsible parent or parents of the child. Provided, however, that in those cases in which child support was required to be paid incident to a court order during the time of receipt of public assistance, the debt shall be limited to the amount specified in such court order. This liability shall attach only to public assistance granted subsequent to June 30, 1975, and only with respect to the period of time during which public assistance is granted, and only if the responsible parent or parents were financially able to furnish support during this period.

The United States, the State of North Carolina, and any county within the State which has provided public assistance to or on behalf of a dependent child shall be entitled to share in any sum collected under this section, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid.

No action to collect such debt shall be commenced after the expiration of five years subsequent to the receipt of the last grant of public assistance. The county attorney or an attorney retained by the county and/or State shall represent the State in all proceedings brought under this section.

A past-due public assistance debt as described in this section may be deemed negotiable and subject to reduction if the public assistance debt is not less than fifteen thousand dollars (\$15,000) and the responsible parent continues to be obligated to pay current child support. Upon agreement between the State and the responsible parent, and upon approval of the court upon an inquiry into the financial status of the obligor, the responsible parent shall pay all child support payments, including payments due on child support arrears, entered by a valid court order for a 24-month period of time. Upon the timely payment of each court-ordered child support obligation during the full 24-month period, including payments due on child support arrears, the State shall reduce the responsible parent's public assistance debt by two-thirds. If the responsible parent is late or defaults on any single payment during the 24-month period, no portion of the public assistance debt shall be reduced. The responsible parent may attempt to achieve 24 consecutive months of child support payments as often as possible in order to reduce his or her public assistance debt. However, once the responsible parent's public assistance debt has been reduced by two-thirds because of the successful completion of this agreement, the responsible parent shall no longer be eligible for this program. The reduction of public assistance debt as set forth in this section shall be in addition to all other remedies available to the State for the retirement of the debt. This program shall not prevent the State from taking any and all other measures available by law.

Upon the termination of a child support obligation due to the death of the obligor, the Department shall determine whether the obligor's estate contains sufficient assets to satisfy any child support arrearages. If sufficient assets are available, the Department shall attempt to collect the arrearage. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, ss. 9, 10; 2003-288, s. 1.1; 2005-389, s. 2.)

#### **§ 110-136. Garnishment for enforcement of child-support obligation.**

(a) Notwithstanding any other provision of the law, in any case in which a responsible parent is under a court order or has entered into a written agreement pursuant to G.S. 110-132 or 110-133 to provide child support, a judge of the district court in the county where the mother of the child resides or is found, or in the county where the father resides or is found, or in the county where the child resides or is found may enter an order of garnishment whereby no more than forty percent (40%) of the responsible parent's monthly disposable earnings shall be garnished for the support of his minor child. For purposes of this section, "disposable earnings" is defined as that part of the compensation paid or payable to the responsible parent for personal services, whether denominated as wages, salary, commission, bonus, or otherwise (including periodic payments pursuant to a pension, retirement, or other deferred compensation program) which remains after the deduction of any amounts required by law to be withheld. The garnishee is the person, firm, association, or corporation by whom the responsible parent is employed.

(b) The mother, father, custodian, or guardian of the child or any designated representative interested in the support of a dependent child may move the court for an order of garnishment. The motion shall be verified and shall state that the responsible parent is under court order or has

entered into a written agreement pursuant to G.S. 110-132 or 110-133 to provide child support, that said parent is delinquent in such child support or has been erratic in making child-support payments, the name and address of the employer of the responsible parent, the responsible parent's monthly disposable earnings from said employer (which may be based upon information and belief), and the amount sought to be garnished, not to exceed forty percent (40%) of the responsible parent's monthly disposable earnings. The motion for the wage garnishment order along with a motion to join the alleged employer as a third-party garnishee defendant shall be served on both the responsible parent and the alleged employer in accordance with the provisions of G.S. 1A-1, Rules of Civil Procedure. The time period for answering or otherwise responding to pleadings, motions and other papers issued pursuant to this section shall be in accordance with the time periods set forth in G.S. 1A-1, Rules of Civil Procedure, except that the alleged employer third-party garnishee shall have 10 days from the date of service of process to answer both the motion to join him as a defendant garnishee and the motion for the wage garnishment order.

(b1) In addition to the foregoing method for instituting a continuing wage garnishment proceeding for child support through motion, the mother, father, custodian, or guardian of the child or any designated representative interested in the support of a dependent child may in an independent proceeding petition the court for an order of continuing wage garnishment. The petition shall be verified and shall state that the responsible parent is under court order or has entered into a written agreement pursuant to G.S. 110-132 or 110-133 to provide child support, that said parent is delinquent in such child support or has been erratic in making child-support payments, the name and address of the alleged-employer garnishee of the responsible parent, the responsible parent's monthly disposable earnings from said employer (which may be based on information and belief), and the amount sought to be garnished, not to exceed forty percent (40%) of the responsible parent's monthly disposable earnings. The petition shall be served on both the responsible parent and his alleged employer in accordance with the provisions for service of process set forth in G.S. 1A-1, Rule 4. The time period for answering or otherwise responding to process issued pursuant to this section shall be in accordance with the time periods set forth in G.S. 1A-1, Rules of Civil Procedure.

(c) Following the hearing held pursuant to this section, the court may enter an order of garnishment not to exceed forty percent (40%) of the responsible parent's monthly disposable earnings. If an order of garnishment is entered, a copy of same shall be served on the responsible parent and the garnishee either personally or by certified or registered mail, return receipt requested. The order shall set forth sufficient findings of fact to support the action by the court and the amount to be garnished for each pay period. The amount garnished shall be increased by an additional one dollar (\$1.00) processing fee to be assessed and retained by the employer for each payment under the order. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(d) Upon receipt of an order of garnishment, the garnishee shall transmit without delay to the State Child Support Collection and Disbursement Unit the amount ordered by the court to be garnished. These funds shall be disbursed to the party designated by the court which in those cases of dependent children receiving public assistance shall be the North Carolina Department of Health and Human Services.

(e) Any garnishee violating the terms of an order of garnishment shall be subject to punishment as for contempt. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, ss. 11, 12; 1979, c. 386, ss. 1-8; 1983 (Reg. Sess., 1984), c. 1047, s. 1; 1985, c. 660, s. 2; 1997-443, s. 11A.118(a); 1999-293, s. 17.)

**§ 110-136.1. Assignment of wages for child support.**

Pursuant to G.S. 50-13.4(f)(1), the court may require the responsible parent to execute an assignment of wages, salary, or other income due or to become due whenever his employer's voluntary written acceptance of the wage assignment under G.S. 95-31 is filed with the court. Such acceptance remains effective until the employer files an express written revocation with the court. The amount assigned shall be increased by an additional one dollar (\$1.00) processing fee to be assessed and retained by the employer for each payment under the order. (1981, c. 275, s. 7; 1983 (Reg. Sess., 1984), c. 1047, s. 2.)

**§ 110-136.2. Use of unemployment compensation benefits for child support.**

(a) A responsible parent may voluntarily assign unemployment compensation benefits to a child support agency to satisfy a child support obligation or a child support enforcement agency may request a responsible parent to voluntarily assign unemployment benefits to satisfy a child support obligation. An assignment of less than the full amount of the support obligation shall not relieve the responsible parent of liability for the remaining amount.

(b) Upon notification of a voluntary assignment by the Department of Health and Human Services, the Division of Employment Security shall deduct and withhold the amount assigned by the responsible parent as provided in G.S. 96-17.

(c) Any amount deducted and withheld shall be paid by the Division of Employment Security to the Department of Health and Human Services for distribution as required by federal law.

(d) Voluntary assignment of unemployment compensation benefits shall remain effective until the Division of Employment Security receives notification from the Department of Health and Human Services of an express written revocation by the responsible parent.

(e) The Department of Health and Human Services shall ensure that payments received under this section are properly credited against the responsible parent's child support obligation.

(f) In the absence of a voluntary assignment of unemployment compensation benefits, the Department of Health and Human Services shall implement income withholding as provided in this Article for IV-D cases. The amount withheld shall not exceed twenty-five percent (25%) of the unemployment compensation benefits. Notice of the requirement to withhold shall be served upon the Division and payment shall be made by the Division directly to the Department of Health and Human Services pursuant to G.S. 96-17 or to another state under G.S. 52C-5-501. Except for the requirement to withhold from unemployment compensation benefits and the forwarding of withheld funds to the Department of Health and Human Services or to another state under G.S. 52C-5-501, the Division is exempt from the provisions of G.S. 110-136.8. (1983, c. 33, s. 1; 1987, c. 764, ss. 1, 2; 1997-443, s. 11A.118(a); 1999-293, s. 6; 2011-401, s. 3.14.)

**§ 110-136.3. Income withholding procedures; applicability.**

(a) Required Contents of Support Orders. – All child support orders, civil or criminal, entered or modified in the State in IV-D cases shall include a provision ordering income withholding to take effect immediately. All child support orders, civil or criminal, initially entered in the State in non-IV-D cases on or after January 1, 1994, shall include a provision ordering income withholding to take effect immediately as provided in G.S. 110-136.5(c1), unless one of the exceptions specified in G.S. 110-136.5(c1) applies. A non-IV-D child support order that

contains an income withholding requirement and a IV-D child support order shall comply with each of the following:

- (1) Require the obligor to keep the clerk of court or IV-D agency informed of the obligor's current residence and mailing address.
- (2), (2a) Repealed by Session Laws 1993, c. 517, s. 1.
- (3) Require the obligor to cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income.
- (4) Require the custodial party to keep the obligor informed of the custodial party's disposable income and the amount and effective date of any substantial change in this disposable income.
- (4a) Include the current residence and mailing address of the custodial parent, or the address of the child if the address of the custodial parent and the address of the child are different. However, there is no requirement that the child support order contain the address of the custodial parent or the child if (i) there is an existing order prohibiting disclosure of the custodial parent's or child's address to the obligor or (ii) the court has determined that notice to the obligor is inappropriate because the obligor has made verbal or physical threats that constitute domestic violence under Chapter 50B of the General Statutes.
- (5) Require the obligor to keep the initiating party informed of the name and address of any payor of the obligor's disposable income and of the amount and effective date of any substantial change in this disposable income.
  - (a1) Payment Plan/Work Requirement for Past-Due Support. – In any IV-D case in which an obligor owes past-due support and income withholding has been ordered but cannot be implemented against the obligor, the court may order the obligor to pay the support in accordance with a payment plan approved by the court and, if the obligor is subject to the payment plan and is not incapacitated, the court may order the obligor to participate in such work activities, as defined under 42 U.S.C. § 607, as the court deems appropriate.
  - (b) When obligor subject to withholding. –
    - (1) In IV-D cases in which a new or modified child support order is entered on or after October 1, 1989, an obligor is subject to income withholding immediately upon entry of the order. In IV-D cases in which the child support order was entered prior to October 1, 1989, an obligor shall become subject to income withholding on the date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month, or the date on which the obligor or obligee requests withholding.
    - (2) In non-IV-D cases in which the child support order was entered prior to January 1, 1994, an obligor shall be subject to income withholding on the earliest of:
      - a. The date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month;
      - b. The date on which the obligor requests withholding; or
      - c. The date on which the court determines, pursuant to a motion or independent action filed by the obligee under G.S. 110-136.5(a), that the obligor is or has been delinquent in making child support payments or has been erratic in making child support payments.

- (3) In IV-D child support cases in which an order was issued or modified in this State prior to October 1, 1996, and in which the obligor is not otherwise subject to withholding, the obligor shall become subject to withholding if the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month.
- (4) In the enforcement of alimony or postseparation support orders pursuant to G.S. 110-130.2, an obligor shall become subject to income withholding on the earlier of:
  - a. The date on which the obligor fails to make legally obligated alimony or postseparation payments; or
  - b. The date on which the obligor or obligee requests withholding.
- (c) Repealed by Session Laws 1993, c. 517, s. 1.
- (d) Interstate cases. – An interstate case is one in which a child support order of one state is to be enforced in another state.
  - (1) In interstate cases withholding provisions shall apply to a child support order of this or any other state. A petition addressed to this State to enforce a child support order of another state or a petition from an initiating party in this State addressed to another state to enforce a child support order entered in this State shall include:
    - a. A certified copy of the support order with all modifications, including any income withholding notice or order still in effect;
    - b. A copy of the income withholding law of the jurisdiction which issued the support order, provided that this jurisdiction has a withholding law;
    - c. A sworn statement of arrearages;
    - d. The name, address, and social security number of the obligor, if known;
    - e. The name and address of the obligor's employer or of any other source of income of the obligor derived in the state in which withholding is sought; and
    - f. The name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.
  - (2) The law of the state in which the support order was entered shall apply in determining when withholding shall be implemented and interpreting the child support order. The law and procedures of the state where the obligor is employed shall apply in all other respects.
  - (3) Except as otherwise provided by subdivision (2), income withholding initiated under this subsection is subject to all of the notice, hearing and other provisions of Chapter 110.
  - (4) In all interstate cases notices and orders to withhold shall be served upon the payor by a North Carolina agency or judicial officer. In all interstate non-IV-D cases, the advance notice to the obligor shall be served pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure.
  - (5) For purposes of enforcing a petition under this subsection, jurisdiction is limited to the purposes of income withholding and Chapter 52A of the General Statutes shall not apply. Nothing in this subsection precludes any remedy otherwise available in a proceeding under Chapter 52A of the General Statutes.
- (d1) Recodified as § 110-139(c1) by Session Laws 2001-237, s. 5, effective June 23, 2001.



(e) Procedures and regulations. – Procedures, rules, regulations, forms, and instructions necessary to effect the income withholding provisions of this Article shall be established by the Secretary of the Department of Health and Human Services or the Secretary's designee and the Administrative Office of the Courts. Forms and instructions shall be sent with each order or notice of withholding. (1985 (Reg. Sess., 1986), c. 949, s. 2; 1987, c. 589, s. 1; 1989, c. 601, s. 2; 1993, c. 517, s. 1; 1997-433, ss. 3, 6.1; 1997-443, s. 11A.118(a); 1998-17, s. 1; 1998-176, s. 4; 2000-140, s. 20(b); 2001-237, s. 5; 2014-115, s. 44.5.)

**§ 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 sufficient to identify the court order under which the obligor has a duty to support the child, spouse, or former spouse;
    - d. The amount and sources of disposable income;
    - e. That the withholding will apply to the obligor's wages or other sources of disposable income from current payors and all subsequent payors once the procedures under this section are invoked;
    - f. An explanation of the obligor's rights and responsibilities pursuant to this section;
    - g. That withholding will be continued until terminated pursuant to G.S. 110-136.10.
  - (3) Contested withholding. The obligor may contest the withholding only on the basis of a mistake of fact, except that G.S. 110-129(10)(a) is not applicable if withholding is based on the obligor's or obligee's request for withholding. To contest the withholding, the obligor must, within 10 days of receipt of the advance notice of withholding, request a hearing in the county where the support order was entered before the district court and give notice to the obligee specifying the mistake of fact upon which the hearing request is based. If the asserted mistake of fact can be resolved by agreement between the obligee and the obligor, no hearing shall occur. Otherwise, a hearing shall be held and a

determination made, within 30 days of the obligor's receipt of the advance notice of withholding, as to whether the asserted mistake of fact is valid. No withholding shall occur pending the hearing decision. The failure to hold a hearing within 30 days shall not invalidate an otherwise properly entered order. If it is determined that a mistake of fact exists, no withholding shall occur. Otherwise, within 45 days of the obligor's receipt of the advance notice of withholding, the obligee shall serve the payor, pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, or by electronic transmission in compliance with the federal Office of Child Support Enforcement (OCSE) electronic income withholding (e-IWO) procedures, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. In the event of appeal, withholding shall not be stayed. If the appeal is concluded in favor of the obligor, the obligee shall promptly repay sums wrongfully withheld and notify the payor to cease withholding.

- (4) Uncontested withholding. If the obligor does not contest the withholding within the 10-day response period, the obligee shall serve the payor, pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, or by electronic transmission in compliance with the federal Office of Child Support Enforcement (OCSE) electronic income withholding (e-IWO) procedures, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk.
- (5) Payment not a defense to withholding. The payment of overdue support shall not be a basis for terminating or not implementing withholding.
- (6) Inability to implement withholding. When an obligor is subject to withholding, but withholding under this section cannot be implemented because the obligor's location is unknown, because the extent and source of his disposable income cannot be determined, or for any other reason, the obligee shall either request the clerk of superior court to initiate enforcement proceedings under G.S. 15A-1344.1(d) or G.S. 50-13.9(d) or take other appropriate available measures to enforce the support obligation.

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

(c) Subsequent payors. If the obligor changes employment or source of disposable income, notice to subsequent payors of their obligation to withhold shall be served as required by G.S. 1A-1, Rule 5, Rules of Civil Procedure or by electronic transmission in compliance with the federal Office of Child Support Enforcement (OCSE) electronic income withholding (e-IWO) procedures.

Copies of such notice shall be filed with the clerk of court and served upon the obligor by first class mail.

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

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

(f) Applicability of section. The provisions of this section apply to IV-D cases only. (1985 (Reg. Sess., 1986), c. 949, s. 2; 1989, c. 601, s. 3; 1997-433, s. 6.2; 1998-17, s. 1; 1998-176, s. 5; 2001-237, s. 4; 2015-62, s. 2(b); 2015-117, s. 4.)

### **§ 110-136.5. Implementation of withholding in non-IV-D cases.**

(a) Withholding based on delinquent or erratic payments. Notwithstanding any other provision of law, when an obligor is delinquent in making child support payments or has been erratic in making child support payments, the obligee may apply to the court, by motion or in an independent action, for an order for income withholding.

- (1) The motion or complaint shall be verified and state, to the extent known:
  - a. Whether the obligor is under a court order to provide child support and, if so, information sufficient to identify the order;
  - b. Either:
    1. That the obligor is currently delinquent in making child support payments; or
    2. That the obligor has been erratic in making child support payments;
  - c. The amount of overdue support and the total amount sought to be withheld;
  - d. The name of each child for whose benefit support is payable; and
  - e. The name, location, and mailing address of the payor or payors from whom withholding is sought and the amount of the obligor's monthly disposable income from each payor.
- (2) The motion or complaint shall include or be accompanied by a notice to the obligor, stating:
  - a. That withholding, if implemented, will apply to the obligor's current payors and all subsequent payors; and
  - b. That withholding, if implemented, will be continued until terminated pursuant to G.S. 110-136.10.

At any time the parties may agree to income withholding by consent order.

(b) Withholding Based on Obligor's Request. The obligor may request at any time that income withholding be implemented. The request may be made either verbally in open court or by written request.

- (1) A written request for withholding shall state:

- a. That the obligor is under a court order to provide child support, and information sufficient to identify the order;
- b. Whether the obligor is delinquent and the amount of any overdue support;
- c. The name of each child for whose benefit support is payable;
- d. The name, location, and mailing address of the payor or payors from whom the obligor receives disposable income and the amount of the obligor's monthly disposable income from each payor;
- e. That the obligor understands that withholding, if implemented, will apply to the obligor's current payors and all subsequent payors and will be continued until terminated pursuant to G.S. 110-136.10; and
- f. That the obligor understands that the amount withheld will include an amount sufficient to pay current child support, an additional amount toward liquidation of any arrearages, and a two dollar (\$2.00) processing fee to be retained by the employer for each withholding, but that the total amount withheld may not exceed the following percent of disposable income:
  - 1. Forty percent (40%) if there is only one order for withholding;
  - 2. Forty-five percent (45%) if there is more than one order for withholding and the obligor is supporting other dependent children or his or her spouse; or
  - 3. Fifty percent (50%) if there is more than one order for withholding and the obligor is not supporting other dependent children or a spouse.

(2) A written request for withholding shall be filed in the office of the clerk of superior court of the court that entered the order for child support. If the request states and the clerk verifies that the obligor is not delinquent, the court may enter an order for withholding without further notice or hearing. If the request states or the clerk finds that the obligor is delinquent, the matter shall be scheduled for hearing unless the obligor in writing waives his right to a hearing and consents to the entry of an order for withholding of an amount the court determines to be appropriate. The court may require a hearing in any case. Notice of any hearing under this subdivision shall be sent to the obligee.

(c) Order for withholding. If the district court judge finds after hearing evidence that the obligor, at the time of the filing of the motion or complaint was, or at the time of the hearing is, delinquent in child support payments or that the obligor has been erratic in making child support payments in accordance with G.S. 110-136.5(a), or that the obligor has requested that income withholding begin in accordance with G.S. 110-136.5(b), the court shall enter an order for income withholding, unless:

- (1) The obligor proves a mistake of fact, except that G.S. 110-129(10)(a) is not applicable if withholding is based on the obligee's motion or independent action alleging that the obligor is delinquent or has been erratic in making child support payments; or
- (2) The court finds that the child support obligation can be enforced and the child's right to receive support can be ensured without entry of an order for income withholding; or

- (3) The court finds that the obligor has no disposable income subject to withholding or that withholding is not feasible for any other reason.

If the obligor fails to respond or appear, the court shall hear evidence and enter an order as provided herein.

(c1) Immediate income withholding. In non-IV-D cases in which a child support order is initially entered on or after January 1, 1994, an obligor is subject to income withholding immediately upon entry of the order, unless either of the following applies:

- a. One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding.
- b. A written agreement is reached between the parties that provides for an alternative arrangement.

The term "good cause" as used in this subsection includes a reasonable and workable plan for consistent and timely payments by some means other than income withholding. In considering whether a plan is reasonable, the court may consider the obligor's employment history and record of meeting financial obligations in a timely manner.

In entering an order for immediate income withholding under this subsection, the court shall follow the requirements and procedures as specified in other sections of this Article, including amount to be withheld, multiple withholdings, notice to payor, and termination of withholding.

(d) Notice to payor and obligor. If an order for income withholding is entered, a notice of obligation to withhold shall be served on the payor as required by G.S. 1A-1, Rule 5, Rules of Civil Procedure. Copies of such notice shall be filed with the clerk of court and served upon the obligor by first class mail.

(e) Modification of withholding. When an order for withholding has been entered under this section, any party may file a motion seeking modification of the withholding based on changed circumstances. The clerk or the court on its own motion may initiate a hearing for modification when it appears that modification of the withholding is required or appropriate. (1985 (Reg. Sess., 1986), c. 949, s. 2; 1987, c. 60; 1989, c. 601, s. 4; 1993, c. 517, s. 2; 1999-293, s. 18; 2001-487, s. 72.)

#### **§ 110-136.6. Amount to be withheld.**

(a) Computation of amount. When income withholding is implemented pursuant to this Article, the amount to be withheld shall include:

- (1) An amount sufficient to pay current child support; and
- (2) An additional amount toward liquidation of arrearages; and
- (3) A processing fee of two dollars (\$2.00) to cover the cost of withholding, to be retained by the payor for each withholding unless waived by the payor.

The amount withheld may also include court costs and attorneys fees as may be awarded by the court in non-IV-D cases and as may be awarded by the court in IV-D cases pursuant to G.S. 110-130.1.

(b) Limits on amount withheld. Withholding for current support, arrearages, processing fees, court costs, and attorneys fees shall not exceed forty percent (40%) of the obligor's disposable income for one pay period from the payor when there is one order of withholding. The sum of multiple withholdings, for current support, arrearages, processing fees, court costs, and attorneys fees shall not exceed:

- (1) Forty-five percent (45%) of disposable income for one pay period from the payor in the case of an obligor who is supporting his spouse or other dependent children; or
- (2) Fifty percent (50%) of disposable income for one pay period from the payor in the case of an obligor who is not supporting a spouse or other dependent children.

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

(c) Contents of order and notice. An order or advance notice for withholding and any notice to a payor of his obligation to withhold shall state a specific monetary amount to be withheld and the amount of disposable income from the applicable payor on which the amount to be withheld was determined. The notice shall clearly indicate that in no event shall the amount withheld exceed the appropriate percentage of disposable income paid by a payor as provided in subsection (b). (1985 (Reg. Sess., 1986), c. 949, s. 2; 1998-176, s. 6.)

#### **§ 110-136.7. Multiple withholding.**

When an obligor is subject to more than one withholding for child support, withholding for current child support shall have priority over past-due support. Where two or more orders for current support exist, each family shall receive a pro rata share of the total amount withheld based on the respective child support orders being enforced. (1985 (Reg. Sess., 1986), c. 949, s. 2.)

#### **§ 110-136.8. Notice to payor; payor's responsibilities.**

(a) Contents of notice. Notice to a payor of his obligation to withhold shall include information regarding the payor's rights and responsibilities, the amount of disposable income attributable to that payor on which that withholding is based, the penalties under this section, and the maximum percentages of disposable income that may be withheld as provided in G.S. 110-136.6.

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

- (1) Withhold from the obligor's disposable income and, within 7 business days of the date the obligor is paid, send to the State Child Support Collection and Disbursement Unit the amount specified in the notice and the date the amount was withheld, but in no event more than the amount allowed by G.S. 110-136.6; however, if a lesser amount of disposable income is available for any pay period, the payor shall either:
  - a. Compute, and send the appropriate amount to the State Child Support Collection and Disbursement Unit, using the percentages as provided in G.S. 110-136.6; or
  - b. Request the initiating party to inform the payor of the proper amount to be withheld for that period;
- (2) Continue withholding until further notice from the IV-D agency, the clerk of superior court, or the State Child Support Collection and Disbursement Unit;
- (3) Withhold for child support before withholding pursuant to any other legal process under State law against the same disposable income;

- (4) Begin withholding from the first payment due the obligor in the first pay period that occurs 14 days following the date the notice of the obligation to withhold was served on the payor;
  - (5) Promptly notify the obligee in a IV-D case, or the clerk of superior court or the State Child Support Collection and Disbursement Unit in a non-IV-D case, in writing:
    - a. If there are one or more orders of child support withholding for the obligor;
    - a1. If there are one or more orders of alimony or postseparation support withholding for the obligor;
    - b. When the obligor terminates employment or otherwise ceases to be entitled to disposable income from the payor, and provide the obligor's last known address, and the name and address of his new employer, if known;
    - c. Of the payor's inability to comply with the withholding for any reason; and
  - (6) Cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income.
- (c) Change in obligor's employment. If the obligor changes employment within the State when withholding is in effect, the requirement for withholding shall continue, and
- (1) In a IV-D case, the IV-D obligee shall make any necessary adjustments to the withholding, notify the obligor and his new employer in accordance with this section, and file a copy of the adjusted withholding with the clerk of superior court;
  - (2) In a non-IV-D case, the clerk shall serve a notice of obligation to withhold according to the terms of the withholding order on the new employer and on the obligor; if the obligor or payor gives notice that an adjustment to the withholding order, other than the change in payor, is needed, the matter shall be scheduled for hearing before a child support hearing officer or district court judge who shall make any necessary adjustments to the withholding.
- (d) The payor may combine amounts withheld from obligors' disposable incomes in a single payment to the State Child Support Collection and Disbursement Unit if the payor separately identifies by name and case number the portion of the single payment attributable to each individual obligor and the date that each payment was withheld from the obligor's disposable income.
- (e) Prohibited conduct by payor; civil penalty. Notwithstanding any other provision of law, when a court finds, pursuant to a motion in the cause filed by the initiating party joining the payor as a third party defendant, with 30 days notice to answer the motion, that a payor has willfully refused to comply with the provisions of this section, such payor shall be ordered to commence withholding and shall be held liable to the initiating party for any amount which such payor should have withheld, except that such payor shall not be required to vary the normal pay or disbursement cycles in order to comply with these provisions.

A payor shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any obligor solely because of the withholding. When a court finds that a payor has taken any of these actions, the payor shall be liable for a civil penalty. For a first offense, the civil penalty shall be one hundred dollars (\$100.00). For second and third offenses, the civil penalty

shall be five hundred dollars (\$500.00) and one thousand dollars (\$1,000), respectively. Any payor who violates any provision of this paragraph shall be liable in a civil action for reasonable damages suffered by an obligor as a result of the violation, and an obligor discharged or demoted in violation of this paragraph shall be entitled to be reinstated to his former position. The statute of limitations for actions under this subsection shall be one year pursuant to G.S. 1-54.

The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(f) Any payor who withholds the sum provided in any notice or order to the payor shall not be liable for any penalties under this section. (1985 (Reg. Sess., 1986), c. 949, s. 2; 1987, c. 589, s. 2; 1991, c. 541, ss. 1, 2; 1997-433, s. 6; 1997-465, s. 27; 1998-17, s. 1; 1998-176, s. 7; 1998-215, s. 76; 1999-293, ss. 19, 20.)

#### **§ 110-136.9. Payment of withheld funds.**

In all cases, the State Child Support Collection and Disbursement Unit shall distribute payments received from payors to the appropriate recipient. (1985 (Reg. Sess., 1986), c. 949, s. 2; 1997-443, s. 11A.118(a); 1999-293, s. 21.)

#### **§ 110-136.10. Termination of withholding.**

A requirement that income be withheld for child support shall promptly terminate as to prospective payments when the payor receives notice from the court or IV-D agency that:

- (1) The child support order has expired or become invalid; or
- (2) The initiating party, the obligor, and the district court judge agree to termination because there is another adequate means to collect child support or arrearages; or
- (3) The whereabouts of the child and obligee are unknown, except that withholding shall not be terminated until all valid arrearages to the State are paid in full. (1985 (Reg. Sess., 1986), c. 949, s. 2.)

#### **§ 110-136.11. National Medical Support Notice required.**

(a) Notice Required. – The National Medical Support Notice shall be used to notify employers and health insurers or health care plan administrators of an order entered pursuant to G.S. 50-13.11 for dependent health benefit plan coverage in a IV-D case. For purposes of this section and G.S. 110-136.12 through G.S. 110-136.14, the terms "health benefit plan" and "health insurer" are as defined in G.S. 108A-69(a).

(b) Exception. – The National Medical Support Notice shall not be used in cases where the court has ordered nonemployment-based health benefit plan coverage or where the parties have stipulated to nonemployment-based health benefit plan coverage. (2001-237, s. 8.)

#### **§ 110-136.12. IV-D agency responsibilities.**

(a) Within five business days after the order for dependent health benefit plan coverage has been filed in a IV-D case, the IV-D agency shall serve, pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, the National Medical Support Notice on the employer, if known to the agency, of the noncustodial parent.

(b) In cases where the obligor is a newly hired employee, the agency shall serve, pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, the National Medical Support Notice, along with



the income withholding notice pursuant to G.S. 110-136.8, on the employer within two business days after the date of entry of an obligor in the State Directory of New Hires.

(c) The IV-D agency shall notify the employer within 10 business days when there is no longer a current order for medical support for which the agency is responsible.

(d) In cases where the health insurer or health care plan administrator reports that there is more than one health care option available under the health benefit plan, the IV-D agency, in consultation with the custodian, may within 20 business days of the date the insurer or administrator informed the agency of the option, select an option and inform the health insurer or health care plan administrator of the option selected. (2001-237, s. 9.)

### **§ 110-136.13. Employer responsibilities.**

(a) For purposes of this section, G.S. 110-136.11, 110-136.12, and 110-136.14, the term "employer" means employer as is defined at 29 U.S.C. § 203(d) in the Fair Labor Standards Act.

(b) Within 20 business days after the date of the National Medical Support Notice, the employer shall transfer the Notice to the health insurer or health care plan administrator that provides health benefit plan coverage for which the child is eligible unless one of following applies:

- (1) The employer does not maintain or contribute to plans providing dependent or family health insurance.
- (2) The employee is among a class of employees that are not eligible for family health benefit plan coverage under any group health plan maintained by the employer or to which the employer contributes.
- (3) Health benefit plan coverage is not available because the employee is no longer employed by this employer.
- (4) State or federal withholding limitations prevent the withholding from the obligor's income of the amount required to obtain insurance under the terms of the plan.

(c) If the employer is not required to transfer the Notice under subsection (b) of this section, then the employer shall, within the 20 business days after the date of the Notice, inform the agency in writing of the reason or reasons the Notice was not transferred.

(d) Upon receipt from the health insurer or health care plan administrator of the cost of dependent coverage, the employer shall withhold this amount from the obligor's wages and transfer this amount directly to the insurer or plan administrator.

(e) In the event the health insurer or health care plan administrator informs the employer that the Notice is not a "qualified medical child support order" (QMCSO), the employer shall notify the agency in writing.

(f) In the event the health insurer or health care plan administrator informs the employer of a waiting period for enrollment, the employer shall inform the insurer or administrator when the employee is eligible to be enrolled in the plan.

(g) An employer obligated to provide health benefit plan coverage pursuant to this section shall inform the IV-D agency upon termination of the noncustodial parent's employment within 10 business days. The notice shall be in writing to the agency and shall include the obligor's last known address and the name and address of the new employer, if known.

(h) In the event the employee contests the withholding order, the employer shall initiate and continue the withholding until the employer receives notice that the contested case is resolved.

(i) An employer shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any obligor solely because of the withholding.

(j) If a court finds that an employer has failed to comply with this section, the employer is liable as a payor pursuant to G.S. 110-136.8(e). Additionally, an employer who violates this section is liable in a civil action for reasonable damages. (2001-237, s. 10; 2004-203, s. 9.)

**§ 110-136.14. Health insurer or health care plan administrator responsibilities.**

(a) Upon receipt of the National Medical Support Notice from the employer, and within 40 business days after the date of the Notice, a health care plan administrator shall determine if the Notice is a "qualified medical child support order" (QMCSO), as defined under the Employee Retirement Income Security Act (ERISA) or the Child Support Performance and Incentive Act (CSPIA). If the Notice is not a qualified medical support order, the plan administrator shall inform the employer within the time set forth in this subsection.

(b) Upon receipt of the Notice in a nonqualified ERISA plan, or upon a finding that the Notice constitutes a qualified medical child support order, the health insurer or plan administrator shall enroll the dependent child or children in a health benefit plan, determine the cost of the coverage, and inform the employer of the amount of the employee contribution to be withheld from the obligor's wages, if appropriate. If the child or children are already enrolled in a health benefit plan, the employer shall be so notified. The employer shall also be notified of any applicable enrollment waiting periods.

(c) If there is more than one health benefit plan in which the dependent child or children may be enrolled, the insurer or plan administrator shall so inform the custodian within the time specified in this subsection. If no plan has been selected within 20 days from the date the insurer or administrator informed the agency of the option, the insurer or administrator may enroll the child or children in the insurer's or administrator's default option.

(d) If the obligor is subject to a waiting period for enrollment, the insurer or administrator shall inform the agency, the employer, the obligor, and the custodial parent. Upon the completion of the waiting period, the enrollment shall be instituted.

(e) When a court finds that a health insurer or health care plan administrator has failed to comply with this section, the employer is liable as a payor pursuant to G.S. 110-136.10(e). Additionally, a health insurer or health care plan administrator who violates this section is liable in a civil action for reasonable damages. (2001-237, s. 11.)

**§ 110-137. Acceptance of public assistance constitutes assignment of support rights to the State or county.**

By accepting public assistance for or on behalf of a dependent child or children, the recipient shall be deemed to have made an assignment to the State or to the county from which such assistance was received of the right to any child support owed for the child or children up to the amount of public assistance paid. The State or county shall be subrogated to the right of the child or children or the person having custody to initiate a support action under this Article and to recover any payments ordered by the court of this or any other state. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 13.)

**§ 110-138. Duty of county to obtain support.**

Whenever a county department of social services receives an application for public assistance on behalf of a dependent child, and it shall appear to the satisfaction of the county department that

the child has been abandoned by one or both responsible parents, or that the responsible parent(s) has failed to provide support for the child, the county department shall without delay notify the designated representative who shall take appropriate action under this Article to provide that the parent(s) responsible supports the child. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 14.)

**§ 110-138.1. Duty of judicial officials to assist in obtaining support.**

Any party to whom child support has been ordered to be paid, and who has failed to receive the ordered support payments for two consecutive months, may make application to a magistrate for issuance of criminal process against the responsible parent for violation of G.S. 14-322. If the magistrate determines that the applicant has failed to receive the ordered support for two consecutive months, and that the responsible parent has willfully neglected or refused to make such payments, he shall make a finding of probable cause and issue criminal process for violation of G.S. 14-322. It shall be the duty of the District Attorney to prosecute such charges according to law. It shall be the duty of the Clerk of Superior Court to assist the applicant in making such application to the magistrate for the issuance of criminal process, and to supply such necessary child support records as are in his possession to the magistrate, District Attorney, and the Court. (1981, c. 613, s. 4.)

**§ 110-139. Location of absent parents.**

(a) The Department of Health and Human Services shall attempt to locate absent parents for the purpose of establishing paternity of and/or securing support for dependent children. The Department is to serve as a registry for the receipt of information which directly relates to the identity or location of absent parents, to assist any governmental agency or department in locating an absent parent, to answer interstate inquiries concerning deserting parents, and to develop guidelines for coordinating activities with any governmental department, board, commission, bureau or agency in providing information necessary for the location of absent parents.

(b) In order to carry out the responsibilities imposed under this Article, the Department may request from any governmental department, board, commission, bureau or agency information and assistance. All State, county and city agencies, officers and employees shall cooperate with the Department in the location of parents who have abandoned and deserted children with all pertinent information relative to the location, income and property of such parents, notwithstanding any provision of law making such information confidential. Except as otherwise stated in this subsection, all nonjudicial records maintained by the Department pertaining to child-support enforcement shall be confidential, and only duly authorized representatives of social service agencies, public officials with child-support enforcement and related duties, and members of legislative committees shall have access to these records. The payment history of an obligor pursuant to a support order may be examined by or released to the court, the obligor, or the person on whose behalf enforcement actions are being taken or that person's designee. Income and expense information of either parent may be released to the other parent for the purpose of establishing or modifying a support order.

(c) Notwithstanding any other provision of law making such information confidential, an employer doing business in this State or incorporated under the laws of this State shall provide the Department with the following information upon certification by the Department that the information is needed to locate a parent for the purpose of collecting child support or to enforce an order for child support: full name, social security account number, date of birth, home address,

wages, existing or available medical, hospital, and dental insurance coverage, and number of dependents listed for tax purposes.

(c1) Employment verifications. – For the purpose of establishing, enforcing, or modifying a child support order, the amount of the obligor's gross income may be established by a written statement signed by the obligor's employer or the employer's designee or an Employee Verification form produced by the Automated Collections Tracking System that has been completed and signed by the obligor's employer or the employer's designee. A written statement signed by the employer of the obligor or the employer's designee that sets forth an obligor's gross income, as well as an Employee Verification form signed by the obligor's employer or the employer's designee, shall be admissible evidence in any action establishing, enforcing, or modifying a child support order.

(d) Notwithstanding any other provision of law making this information confidential, including Chapter 53B of the General Statutes, any utility company, cable television company, electronic communications or Internet service provider, or financial institution, including federal, State, commercial, or savings banks, savings and loan associations and cooperative banks, federal or State chartered credit unions, benefit associations, insurance companies, safe deposit companies, money market mutual funds, and investment companies doing business in this State or incorporated under the laws of this State, shall provide the Department of Health and Human Services with the following information upon certification by the Department that the information is needed to locate a parent for the purpose of collecting child support or to establish or enforce an order for child support: full name, social security number, address, telephone number, account numbers, and other identifying data for any person who maintains an account at the utility company, cable television company, electronic communications or Internet service provider, or financial institution. A utility company, cable television company, electronic communications or Internet service provider, or financial institution that discloses information pursuant to this subsection in good faith reliance upon certification by the Department is not liable for damages resulting from the disclosure.

(e) Repealed by Session Laws 2019-240, s. 13, effective November 6, 2019.

(f) There is established the State Child Support Collection and Disbursement Unit. The duties of the Unit shall be the collection and disbursement of payments under support orders for all cases. The Department may administer and operate the Unit or may contract with another State or private entity for the administration and operation of the Unit. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 15; 1987, c. 591; 1991, c. 419, s. 1; 1995, c. 538, s. 4; 1997-433, ss. 8.1, 9.1; 1997-443, s. 11A.118(a); 1998-17, s. 1; 1999-293, s. 22; 2000-140, s. 20(b); 2001-237, ss. 5, 6; 2003-288, s. 3.1; 2019-240, s. 13.)

### **§ 110-139.1. Access to federal parent locator service; parental kidnapping and child custody cases.**

(a) Except as otherwise provided in this section, the parent locator service of the Department of Health and Human Services shall transmit, upon payment of the fee prescribed by federal law, requests for information as to the whereabouts of any parent or child to the federal parental locator service when such requests are made by judges, clerks of superior court, district attorneys, or United States attorneys, and when the information is to be used to locate the parent or child for the purpose of enforcing State or federal law with respect to:

- (1) The unlawful taking or restraint of a child;
- (2) Making or enforcing a child custody determination, including visitation orders;
- (3) Establishing paternity; or

- (4) Establishing, setting or modifying the amount of, or enforcing child support obligations.

The Department shall not disclose any information from or through the parent locator service if there is reasonable evidence of domestic violence or child abuse and the disclosure of the information could be harmful to the custodial parent or the child of the custodial parent.

(b) For the purpose of this section, custody determination means a judgment, decree, or other order of the court providing for the custody or visitation of a child and includes permanent or temporary orders, and initial orders and modifications.

(c) All nonjudicial records maintained by the Department pertaining to the unlawful taking or restraint of a child or child custody determinations shall be confidential, and only individuals directly connected with the administration of the child support enforcement program and those authorized herein shall have access to these records. (1983, c. 15, s. 1; 1997-433, s. 8.2; 1997-443, s. 11A.118(a); 1998-17, s. 1.)

**§ 110-139.2. Data match system; agreements with financial institutions.**

(a) The Department of Health and Human Services and financial institutions doing business in this State shall enter into mutual agreements for the purpose of facilitating the enforcement of child support obligations. The agreements shall provide for the development and operation of a data match system that will enable the financial institutions to provide to the Department on a quarterly basis the information required under G.S. 110-139(d). Financial institutions shall provide the information upon certification by the Department that the person about whom the information is requested is subject to a child support order and the information is necessary to enforce the order. The Department may pay a reasonable fee to the financial institution for conducting the data match required under this section provided that the fee shall not exceed the actual costs incurred by the financial institution to conduct the match.

(b) A financial institution shall not be liable under any State law, including but not limited to Chapter 53B of the General Statutes, for disclosure of information to the State child support agency under this section, and for any other action taken by the financial institution in good faith to comply with this section or with G.S. 110-139.

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

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

Rules of Civil Procedure. Upon service of the notice, the financial institution shall proceed in the following manner:

- (1) Immediately attach a lien to the identified account.
- (2) Notify the Child Support Agency of the balance of the account and date of the lien or that the account does not meet the requirement for levy under this subsection.

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

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

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

(c) As used in this subdivision, a financial institution includes federal, State, commercial, or savings banks, savings and loan associations and cooperative banks, federal or State chartered credit unions, benefit associations, insurance companies, safe deposit companies, money market mutual funds, and investment companies doing business in this State or incorporated under the laws of this State. (1997-433, s. 9; 1997-443, s. 11A.122; 1998-17, s. 1; 2003-288, s. 4; 2004-203, s. 42; 2005-389, s. 5; 2015-62, s. 2(c); 2015-117, s. 5.)

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

Upon request of another state, the Department of Health and Human Services shall use automated data processing to search State databases and determine if information is available regarding a parent who owes a child support obligation and shall seize identified assets using the same techniques as used in intrastate cases. Any request by another state to enforce support orders shall certify the amount of each obligor's debt and that appropriate due process requirements have been met by the requesting state with respect to each obligor. The Department of Health and Human Services shall likewise transmit to other states requests for assistance in enforcing support orders through high-volume, automated administrative enforcement where appropriate. (1999-293, s. 7.)

### **§ 110-140. Conformity with federal requirements; restriction on options without federal funding.**

(a) Nothing in this Article is intended to conflict with any provision of federal law or to result in the loss of federal funds.

(b) Effective July 24, 1997, the Department of Health and Human Services shall not elect any child support distribution option for families receiving cash assistance under the State Plan for the Temporary Assistance for Needy Families (TANF) Block Grant Program for which the federal government does not provide funding to the State to exercise the option. (1975, c. 827, s. 1; 1997-223, s. 1; 1997-443, s. 11A.122.)

**§ 110-141. Effectuation of intent of Article.**

The North Carolina Department of Health and Human Services shall supervise the administration of the program in accordance with federal law and shall cause the provisions of this Article to be effectuated and to secure child support from absent, deserting, abandoning and nonsupporting parents.

Effective July 1, 2010, each child support enforcement program being administered by the Department of Health and Human Services on behalf of counties shall be administered, or the administration provided for, by the board of county commissioners of those counties. Until July 1, 2010, it shall be the responsibility of the Department of Health and Human Services to administer or provide for the administration of the program in those counties.

A county may negotiate alternative arrangements to the procedure outlined in G.S. 110-130 for designating a local person or agency to administer the provisions of this Article in that county. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 16; 1979, c. 488; 1983 (Reg. Sess., 1984), c. 1034, s. 76; 1985, c. 244; c. 479, s. 103; 1985 (Reg. Sess., 1986), c. 1014, s. 129; 1997-443, s. 11A.118(a); 2009-451, s. 10.46A(a).)

**§ 110-142. Definitions; suspension and revocation of occupational, professional, or business licenses of obligors who are delinquent in court-ordered child support, or who are not in compliance with subpoenas issued pursuant to child support or paternity establishment proceedings.**

The definitions in G.S. 110-129 and G.S. 147-54.12 apply to this section and G.S. 110-142.1, and G.S. 110-142.2. In addition, to these sections the following definitions apply:

- (1) "Applicant" means any person applying for issuance or renewal of a license.
- (2) "Board" means any department, division, agency, officer, board, or other unit of State government that issues licenses.
- (3) "Certified list" means a list provided by the designated representative to the Department of Health and Human Services that verifies, under penalty of perjury, that the names contained therein are obligors who have been found to be out of compliance with a judgment or order for support in a IV-D case.
- (4) "Compliance with an order for support" means that, as set forth in a judgment or order for child support or family support, the obligor is no more than 90 calendar days in arrears in making payments for current support, in making periodic payments on a support arrearage, or in making periodic payments on a reimbursement for public assistance, has obtained a judicial finding that precludes enforcement of the order, or has entered into a payment schedule, including G.S. 110-142.1(h), for the child support arrearage with the approval of the obligee in a IV-D case.
- (5) "License" means (i) for the purposes of G.S. 110-142.1, a license, certificate, permit, registration, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession or (ii) for the purposes

of G.S. 110-142.2, a license to operate a regular or commercial motor vehicle, or to participate in hunting, fishing, or trapping.

- (6) "Licensee" means any person holding a license.
- (7) "Obligor" means the individual who owes a duty to make child support payments under a court order. (1995, c. 538, s. 1.4; 1997-433, s. 5; 1997-443, s. 11A.118(a); 1998-17, s. 1.)

**§ 110-142.1. IV-D notified suspension, revocation, and issuance of occupational, professional, or business licenses of obligors who are delinquent in court-ordered child support or who are not in compliance with subpoenas issued pursuant to child support or paternity establishment proceedings.**

(a) Effective July 1, 1996, the Department of Health and Human Services may notify any board that a person licensed by that board is not in compliance with an order for child support or has been found by the court not to be in compliance with a subpoena issued pursuant to child support or paternity establishment proceedings.

(b) The designated representative shall submit a certified list with the names, social security numbers, and last known address of individuals who are not in compliance with a child support order or with a subpoena issued pursuant to a child support or paternity establishment proceeding. The designated representative shall verify, under penalty of perjury, that the individuals listed are subject to an order for the payment of support and are not in compliance with the order, or have been found by the court to be not in compliance with a subpoena issued pursuant to a child support or paternity establishment proceeding. The verification shall include the name, address, and telephone number of the designated representative who certified the list. An updated certified list shall be submitted to the Department on a monthly basis.

The Department of Health and Human Services, Division of Social Services, Child Support Enforcement Office, shall consolidate the certified lists received from the designated representatives and, within 30 calendar days of receipt, shall furnish each board with a certified list of the individuals, as specified in this section.

(c) Each board shall coordinate with the Department of Health and Human Services, Division of Social Services, Child Support Enforcement Office, in the development of forms and procedures to implement this section.

(d) Promptly after receiving the certified list of individuals from the Department of Health and Human Services, each board shall determine whether its applicant or licensee is an individual on the list. If the applicant or licensee is on the list, the board shall immediately send notice as specified in this subsection to the applicant or licensee of the board's intent to revoke or suspend the licensee's license in 20 days from the date of the notice, or that the board is withholding issuance or renewal of an applicant's license, until the designated representative certifies that the applicant or licensee is entitled to be licensed or reinstated. The notice shall be made personally or by certified mail to the individual's last known mailing address on file with the board.

(e) Unless notified by the designated representative as provided in subsection (h) of this section, the board shall revoke or suspend the individual's license 20 days from the date of the notice to the individual of the board's intent to revoke or suspend the license. In the event that a license is revoked or application is denied pursuant to this section, the board is not required to refund fees paid by the individual.

(f) Notices shall be developed by each board in accordance with guidelines provided by the Department of Health and Human Services and shall be subject to the approval of the



Department of Health and Human Services. The notice shall include the address and telephone number of the designated representative who submitted the name on the certified list, and shall emphasize the necessity of obtaining a certification of compliance from the designated representative or the child support enforcement agency as a condition of issuance, renewal, or reinstatement of the license. The notice shall inform the individual that if a license is revoked or application is denied pursuant to this subsection, the board is not required to refund fees paid by the individual. The Department of Health and Human Services shall also develop a form that the individual shall use to request a review by the designated representative. A copy of this form shall be included with every notice sent pursuant to subsection (d) of this section.

(g) The Department of Health and Human Services shall establish review procedures consistent with this section to allow an individual to have the underlying arrearage and any relevant defenses investigated, to provide an individual information on the process of obtaining a modification of a support order, or, if the circumstances so warrant, to provide an individual assistance in the establishment of a payment schedule on arrears.

(h) If the individual wishes to challenge the submission of the individual's name on the certified list, or if the individual wishes to negotiate a payment schedule, the individual shall within 14 days of the date of notice from the board request a review from the designated representative. The designated representative shall within six days of the date of the request for review notify the appropriate board of the request for review and direct the board to stay any action revoking or suspending the individual's license until further notice from the designated representative. The designated representative shall review the case and inform the individual in writing of the representative's findings and decision upon completion of the review. If the findings so warrant, the designated representative shall immediately send a notice to the appropriate board certifying the individual's compliance with this section. The agreement shall also provide for the maintenance of current support obligations and shall be incorporated into a consent order to be entered by the court. If the individual fails to meet the conditions of this subsection, the designated representative shall notify the appropriate board to immediately revoke or suspend the individual's license. Upon receipt of notice from the designated representative, the board shall immediately revoke or suspend the individual's license.

(i) The designated representative shall notify the individual in writing that the individual may, by filing a motion, request any or all of the following:

- (1) Judicial review of the designated representative's decision.
- (2) A judicial determination of compliance.
- (3) A modification of the support order.

The notice shall also contain the name and address of the court in which the individual shall file the motion and inform the individual that the individual's name shall remain on the certified list unless the judicial review results in a finding by the court that the individual is in compliance with this section. The notice shall also inform the individual that the individual must comply with all statutes and rules of court regarding motions and notices of hearing and that any motion filed under this section is subject to the limitations of G.S. 50-13.10.

(j) The motion for judicial review of the designated representative's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. After service of the request for review, the court shall hold an evidentiary hearing at the next regularly scheduled session for the hearing of child support matters in civil district court. The request for judicial review shall be served by the individual upon the designated representative

who submitted the individual's name on the certified list within seven calendar days of the filing of the motion.

(k) If the judicial review results in a finding by the court that the individual is no longer in arrears or that the individual's license should be reinstated to allow the individual an opportunity to comply with a payment schedule on arrears or reimbursement and current support obligations, the designated representative shall immediately send a notice to the appropriate board certifying the individual's compliance with this section. If the judicial review results in a finding that the individual has complied with or is no longer subject to the subpoena that was the basis for the revocation, then the designated representative shall immediately send a notice to the appropriate board certifying the individual's compliance with this section. In the event of an appeal from judicial review, the license revocation shall not be stayed unless the court specifically provides otherwise.

(l) The Department of Health and Human Services shall prescribe forms for use by the designated representative. When the individual is no longer in arrears or negotiates an agreement with the designated representative for a payment schedule on arrears or reimbursement, the designated representative shall mail to the individual and the appropriate board a notice certifying that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that, for the purposes of this section, the individual is in compliance with the order for support. When the individual has complied with or is no longer subject to a subpoena issued pursuant to a child support or paternity establishment proceeding, the designated representative shall mail to the individual and the appropriate board a notice certifying that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that the individual is in compliance with this section.

(m) The Department of Health and Human Services may enter into interagency agreements with the boards necessary to implement this section.

(n) The procedures specified in Articles 3 and 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, shall not apply to the denial or failure to issue or renew a license pursuant to this section.

(o) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or revoked under this section shall respond only that the license was denied or revoked pursuant to this section. Information collected pursuant to this section shall be confidential and shall not be disclosed except in accordance with the laws of this State.

(p) If any provision of this section or its application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable. (1995, c. 538, s. 1.4; 1997-433, s. 5.1; 1997-443, ss. 11A.118(a), 122; 1998-17, s. 1; 2007-484, ss. 12(a), (b).)

**§ 110-142.2. Suspension, revocation, restriction of license to operate a motor vehicle or hunting, fishing, or trapping licenses; refusal of registration of motor vehicle.**

(a) Effective December 1, 1996, notwithstanding any other provision of law, when an individual is at least 90 days in arrears in making child support payments, or has been found by the court to be not in compliance with a subpoena issued pursuant to child support or paternity establishment proceedings, the child support enforcement agency may apply to the court, pursuant to the regular show cause and contempt provisions of G.S. 50-13.9(d), for an order doing any of the following:

- (1) Revoking the individual's regular or commercial license to operate a motor vehicle;
- (2) Revoking the individual's hunting, fishing, or trapping licenses;
- (3) Directing the Department of Transportation, Division of Motor Vehicles, to refuse, pursuant to G.S. 20-50.4, to register the individual's motor vehicle.

(b) Upon finding that the individual has willfully failed to comply with the child support order or with a subpoena issued pursuant to child support proceedings, and that the obligor is at least 90 days in arrears, or upon a finding that an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings has failed to comply with the subpoena, the court may enter an order instituting the sanctions as provided in subsection (a) of this section. If an individual is adjudicated to be in civil or criminal contempt for a third or subsequent time for failure to comply with a child support order, the court shall enter an order instituting any one or more of the sanctions, if applicable, as provided in subsection (a) of this section. The court may stay the effectiveness of the sanctions upon conditions requiring the obligor to make full payment of the delinquency over time. Any court-ordered payment plan under this subsection shall require the individual to extinguish the delinquency within a reasonable period of time. In determining the amount to be applied to the delinquency, the court shall consider the amount of the debt and the individual's financial ability to pay. The payment shall not exceed the limits under G.S. 110-136.6(b). The individual shall make an immediate initial payment representing at least five percent (5%) of the total delinquency or five hundred dollars (\$500.00), whichever is less. Any stay of an order under this subsection shall also be conditioned upon the obligor's maintenance of current child support. The court may stay the effectiveness of the sanctions against an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings upon a finding that the individual has complied with or is no longer subject to the subpoena. Upon entry of an order pursuant to this section that is not stayed, the individual shall surrender any licenses revoked by the court's order to the child support enforcement agency and the agency shall forward a report to the appropriate licensing authority within 30 days of the order.

(c) If the individual's regular or commercial drivers license is revoked under this section and the court, after the hearing, makes a finding that a license to operate a motor vehicle is necessary to the individual's livelihood, the court may issue a limited driving privilege, with those terms and conditions applying as the court shall prescribe. An individual whose license has been revoked for reasons not related to this section and whose license remains revoked at the time of the hearing shall not be eligible and may not be issued a limited driving privilege. The court may modify or revoke the limited driving privilege pursuant to G.S. 20-179.3(i).

(d) An individual may file a request with the child support enforcement agency for certification that the individual is no longer delinquent in child support payments upon submission of proof satisfactory to the child support enforcement agency that the individual has paid the delinquent amount in full. An individual subject to a subpoena issued pursuant to a child support or paternity establishment proceeding may file a request with the child support enforcement agency for certification that the individual has complied with or is no longer subject to the subpoena. The child support enforcement agency shall provide a form to be used by the individual for a request for certification. If the child support enforcement agency finds that the individual has met the requirements for reinstatement under this subsection, then the child support enforcement agency shall certify that the individual is no longer delinquent or that the individual has complied with or is no longer subject to a subpoena issued pursuant to child support or paternity establishment proceedings and shall provide a copy of the certification to the individual.

(e) If licensing privileges are revoked under this section, the individual may petition the district court for a reinstatement of such privileges. The court may order the privileges reinstated conditioned upon full payment of the delinquency over time, or, as applicable, may order the reinstatement if the court finds that the individual has complied with or is no longer subject to the subpoena issued pursuant to paternity establishment proceedings. Any order allowing license reinstatement shall additionally require the obligor's maintenance of current child support. Upon reinstatement under this subsection, the child support enforcement agency shall certify that the individual is no longer delinquent, or, as applicable, that the individual has complied with or is no longer subject to the subpoena issued pursuant to child support or paternity establishment proceedings and shall provide a copy of the certification to the individual, as applicable.

(f) Upon receipt of certification under subsection (d) or (e) of this section, the Division of Motor Vehicles shall reinstate the license to operate a motor vehicle in accordance with G.S. 20-24.1, and remove any restriction of the individual's motor vehicle registration.

(g) Upon receipt of certification under subsection (d) or (e) of this section, the licensing board having jurisdiction over the individual's hunting, fishing, or trapping license shall reinstate the license.

(h) If the court imposes sanctions under subdivision (3) of subsection (a) of this section and the sanctions are stayed upon conditions as provided in subsection (b) of this section, the child support enforcement agency may, without any further application to the court, notify the Division of Motor Vehicles if the individual violates the terms and conditions of the stay. The Division shall then take such action as provided in subdivision (3) of subsection (a) of this section. The Division shall not remove any restriction of the individual's motor vehicle registration, until receipt of certification pursuant to subsection (d) or (e) of this section.

(i) The Department of Health and Human Services, the Administrative Office of the Courts, the Division of Motor Vehicles, and the Department of Environmental Quality shall work together to develop the forms and procedures necessary for the implementation of this process. (1995, c. 538, s. 1.4; 1997-433, s. 5.2; 1997-443, ss. 11A.118(a), 11A.119(a); 1998-17, s. 1; 1999-293, s. 2; 2015-241, s. 14.30(u).)

#### **§ 110-143. Passport Denial Program.**

(a) Participation. – The Department of Health and Human Services shall participate in the federal Passport Denial Program for the denial, revocation, or limitation of an obligor's passports under 42 U.S.C. § 654(31) and 42 U.S.C. § 652(k).

(b) Certification. – The Department shall annually certify to the federal Office of Child Support Enforcement (OCSE) an obligor in a IV-D case whose support arrears exceed the federally mandated threshold in 42 U.S.C. § 654(31). The OCSE shall transmit the certification to the U.S. Department of State pursuant to the federal Passport Denial Program.

(c) Notice. – The Department shall send written notice of the certification to the obligor at the obligor's last known address. The notice shall advise the obligor of all of the following:

- (1) The amount of the arrears as of the date of the notice.
- (2) The possibility that the obligor's passport may be denied, revoked, or restricted by the U.S. Department of State.
- (3) The procedure to contest the certification.

(d) Appeal. – Within 60 days of the date the notice is placed in the mail to the obligor, the obligor may file a contested case petition with the North Carolina Office of Administrative Hearings to contest the certification. The contested case shall be conducted in accordance with

Article 3 of Chapter 150B of the General Statutes. The obligor may contest the certification only if one of the following applies:

- (1) An arrearage does not exist.
- (2) An arrearage does exist, but never exceeded the federally mandated threshold.
- (3) There is a claim of mistaken identity.

(e) Withdrawal of Certification. – The Department shall notify the OCSE if the obligor's support arrears are paid in full. (2023-65, s. 7.3(c).)

**§ 110-144. Administrative Offset Program.**

(a) Participation. – The Department of Health and Human Services shall participate in the federal Administrative Offset Program for the offset of certain federal payments under 31 C.F.R. § 285.1.

(b) Certification. – The Department shall annually certify to the federal Office of Child Support Enforcement (OCSE) an obligor in a IV-D case whose support arrears are (i) equal to or greater than one hundred fifty dollars (\$150.00) if the arrears are assigned to the State and (ii) equal to or greater than five hundred dollars (\$500.00) if the arrears are not assigned to the State.

(c) Notice. – At least 30 days before certification, the Department shall send written notice of the certification to the obligor at the obligor's last known address. The notice shall advise the obligor of all of the following:

- (1) The amount of the arrears as of the date of the notice.
- (2) The possibility that the obligor may have certain federal payments offset by FMS.
- (3) The procedures to contest the certification.

Without further notice to the obligor, the Department shall provide OCSE with updates to adjust the amount of arrears to reflect any payments or additional arrears that accrue after the date of certification.

(d) Appeal. – Within 60 days of the date the notice is placed in the mail to the obligor, the obligor may file a contested case petition with the North Carolina Office of Administrative Hearings to contest the certification. The contested case shall be conducted in accordance with Article 3 of Chapter 150B of the General Statutes. The obligor may contest the certification only if either of the following applies:

- (1) The amount of arrears stated in the notice is incorrect.
- (2) There is a claim of mistaken identity. (2023-65, s. 7.3(c).)