

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-237
HOUSE BILL 377**

**AN ACT TO MAKE CLARIFYING AND OTHER CHANGES TO THE GENERAL
STATUTES PERTAINING TO CHILD SUPPORT.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.4 reads as rewritten:

"§ 50-13.4. Action for support of minor child.

(a) Any parent, or any person, agency, organization or institution having custody of a minor child, or bringing an action or proceeding for the custody of such child, or a minor child by his guardian may institute an action for the support of such child as hereinafter provided.

(b) In the absence of pleading and proof that the circumstances otherwise warrant, the father and mother shall be primarily liable for the support of a minor child. In the absence of pleading and proof that the circumstances otherwise warrant, parents of a minor, unemancipated child who is the custodial or noncustodial parent of a child shall share this primary liability for their grandchild's support with the minor parent, the court determining the proper share, until the minor parent reaches the age of 18 or becomes emancipated. 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. In the absence of pleading and proof that the circumstances otherwise warrant, any other person, agency, organization or institution standing in loco parentis shall be secondarily liable for such support. Such other circumstances may include, but shall not be limited to, the relative ability of all the above-mentioned parties to provide support or the inability of one or more of them to provide support, and the needs and estate of the child. The judge may enter an order requiring any one or more of the above-mentioned parties to provide for the support of the child as may be appropriate in the particular case, and if appropriate the court may authorize the application of any separate estate of the child to his support. However, the judge may not order support to be paid by a person who is not the child's parent or an agency, organization or institution standing in loco parentis absent evidence and a finding that such person, agency, organization or institution has voluntarily assumed the obligation of support in writing. The preceding sentence shall not be construed to prevent any court from ordering the support of a child by an agency of the State or county which agency may be responsible under law for such support.

The judge may order 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 work activities, as defined in 42 U.S.C. § 607, as the court deems appropriate.

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

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

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

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

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

(c1) Effective July 1, 1990, the Conference of Chief District Judges shall prescribe uniform statewide presumptive guidelines for the computation of child support obligations of each parent as provided in Chapter 50 or elsewhere in the General Statutes and shall develop criteria for determining when, in a particular case, application of the guidelines would be unjust or inappropriate. Prior to May 1, 1990 these guidelines and criteria shall be reported to the General Assembly by the Administrative Office of the Courts by delivering copies to the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The purpose of the guidelines and criteria shall be to ensure that payments ordered for the support of a minor child are in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. The guidelines shall include a procedure for setting child support, if any, in a joint or shared custody arrangement which shall reflect the other statutory requirements herein.

Periodically, but at least once every four years, the Conference of Chief District Judges shall review the guidelines to determine whether their application results in appropriate child support award amounts. The Conference may modify the guidelines accordingly. The Conference shall give the Department of Health and Human Services, the Administrative Office of the Courts, and the general public an opportunity to provide the Conference with information relevant to the development and review of the

guidelines. Any modifications of the guidelines or criteria shall be reported to the General Assembly by the Administrative Office of the Courts before they become effective by delivering copies to the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The guidelines, when adopted or modified, shall be provided to the Department of Health and Human Services and the Administrative Office of the Courts, which shall disseminate them to the public through local IV-D offices, clerks of court, and the media.

Until July 1, 1990, the advisory guidelines adopted by the Conference of Chief District Judges pursuant to this subsection as formerly written shall operate as presumptive guidelines and the factors adopted by the Conference of Chief District Judges pursuant to this subsection as formerly written shall constitute criteria for varying from the amount of support determined by the guidelines.

(d) In non-IV-D cases, payments for the support of a minor child shall be ordered to be paid to the person having custody of the child or any other proper person, agency, organization or institution, or to the State Child Support Collection and Disbursement Unit, for the benefit of the child. In IV-D cases, payments for the support of a minor child shall be ordered to be paid to the State Child Support Collection and Disbursement Unit for the benefit of the child.

(d1) For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) shall apply.

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

(e1) In IV-D cases, the order for child support shall provide that the clerk shall transfer the case to another jurisdiction in this State if the IV-D agency requests the transfer on the basis that the obligor, the custodian of the child, and the child do not reside in the jurisdiction in which the order was issued. The IV-D agency shall provide notice of the transfer to the obligor by delivery of written notice in accordance with the notice requirements of Chapter 1A-1, Rule 5(b) of the Rules of Civil Procedure. The clerk shall transfer the case to the jurisdiction requested by the IV-D agency, which shall be a jurisdiction in which the obligor, the custodian of the child, or the child resides. Nothing in this subsection shall be construed to prevent a party from contesting the transfer.

(f) Remedies for enforcement of support of minor children shall be available as herein provided.

- (1) The court may require the person ordered to make payments for the support of a minor child to secure the same by means of a bond, mortgage or deed of trust, or any other means ordinarily used to secure an obligation to pay money or transfer property, or by requiring the execution of an assignment of wages, salary or other income due or to become due.
- (2) If the court requires the transfer of real or personal property or an interest therein as provided in subsection (e) as a part of an order for payment of support for a minor child, or for the securing thereof, the court may also enter an order which shall transfer title as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.
- (3) The remedy of arrest and bail, as provided in Article 34 of Chapter 1 of the General Statutes, shall be available in actions for child-support payments as in other cases.

- (4) The remedies of attachment and garnishment, as provided in Article 35 of Chapter 1 of the General Statutes, shall be available in an action for child-support payments as in other cases, and for such purposes the child or person bringing an action for child support shall be deemed a creditor of the defendant. Additionally, in accordance with the provisions of G.S. 110-136, a continuing wage garnishment proceeding for wages due or to become due may be instituted by motion in the original child support proceeding or by independent action through the filing of a petition.
- (5) The remedy of injunction, as provided in Article 37 of Chapter 1 of the General Statutes and G.S. 1A-1, Rule 65, shall be available in actions for child support as in other cases.
- (6) Receivers, as provided in Article 38 of Chapter 1 of the General Statutes, may be appointed in action for child support as in other cases.
- (7) A minor child or other person for whose benefit an order for the payment of child support has been entered shall be a creditor within the meaning of Article 3A of Chapter 39 of the General Statutes pertaining to fraudulent conveyances.
- (8) Except as provided in Article 15 of Chapter 44 of the General Statutes, a judgment for child support shall not be a lien against real property unless the judgment expressly so provides, sets out the amount of the lien in a sum certain, and adequately describes the real property affected; but past due periodic payments may by motion in the cause or by a separate action be reduced to judgment which shall be a lien as ~~other judgments.~~ judgments and may include provisions for periodic payments.
- (9) An order for the periodic payments of child support or a child support judgment that provides for periodic payments is enforceable by proceedings for civil contempt, and ~~its~~ disobedience may be punished by proceedings for criminal contempt, as provided in Chapter 5A of the General Statutes.
Notwithstanding the provisions of G.S. 1-294, an order for the payment of child support which has been appealed to the appellate division is enforceable in the trial court by proceedings for civil contempt during the pendency of the appeal. Upon motion of an aggrieved party, the court of the appellate division in which the appeal is pending may stay any order for civil contempt entered for child support until the appeal is decided, if justice requires.
- (10) The remedies provided by Chapter 1 of the General Statutes, Article 28, Execution; Article 29B, Execution Sales; and Article 31, Supplemental Proceedings, shall be available for the enforcement of judgments for child support as in other cases, but amounts so payable shall not constitute a debt as to which property is exempt from execution as provided in Article 16 of Chapter 1C of the General Statutes.
- (11) The specific enumeration of remedies in this section shall not constitute a bar to remedies otherwise available.

(g) An individual who brings an action or motion in the cause for the support of a minor child, and the individual who defends the action, shall provide to the clerk of the court in which the action is brought or the order is issued, the individual's social security number. The child support order shall contain the social security number of the parties as evidenced in the support proceeding.

(h) Child support orders initially entered or modified on and after October 1, 1998, shall contain the name of each of the parties, the date of birth of each party, the social security number of each party, and the court docket number. The Administrative

Office of the Courts shall transmit to the Department of Health and Human Services, Child Support Enforcement Program, on a timely basis, the information required to be included on orders under this subsection."

SECTION 2. G.S. 110-132 reads as rewritten:

"§ 110-132. ~~Acknowledgment of paternity~~Affidavit of parentage and agreement to support.

(a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity, the written ~~acknowledgment of paternity~~affidavits of parentage executed by the putative father of the dependent child ~~when accompanied by a written affirmation of paternity executed and sworn to by~~ 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 ~~recession~~rescission and to include in the order specific findings of fact that the request for ~~recession~~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 ~~recession~~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 ~~recession~~rescission to the State Registrar of Vital Statistics. Upon receipt of an order of ~~recession~~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.

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

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 ~~affirmation~~affidavit shall contain the social security number of the person executing the affirmation, and the written acknowledgment shall contain the social security number of the person executing the acknowledgment. ~~affidavit~~. Voluntary agreements to support shall contain the social security number of each of the parties to the agreement. The written ~~affirmations, acknowledgments~~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 ~~acknowledgment of paternity~~affidavit of parentage and of any alternatives to the execution of an ~~acknowledgment or affirmation of paternity~~affidavit of parentage. The mother shall not be excused from making the ~~affirmation~~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 ~~makes affirmation attests.~~

(b) At any time after the filing with the district court of an ~~acknowledgment of paternity, 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 ~~acknowledgment of paternity~~ 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."

SECTION 3. G.S. 110-134 reads as rewritten:

"§ 110-134. Filing of affirmations, ~~acknowledgments, agreements~~ affidavits, agreements, and orders; fees.

All ~~affirmations, acknowledgments, agreements~~ 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 four dollars (\$4.00)."

SECTION 4. G.S. 110-136.4 reads as rewritten:

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

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

- (1) Advance notice of withholding. When an obligor in a IV-D case becomes subject to income withholding, the obligee shall, after verifying the obligor's current employer or other payor, wages or other disposable income, and mailing address, serve the obligor with advance notice of withholding in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.
- (2) Contents of advance notice. The advance notice to the obligor shall contain, at a minimum, the following information:
 - a. Whether the proposed withholding is based on the obligor's failure to make legally obligated child support, alimony or postseparation support payments on the obligor's request for withholding, on the obligee's request for withholding, or on the obligor's eligibility for withholding under G.S. 110-136.3(b)(3);
 - b. The amount of overdue child support, overdue alimony or postseparation support payments, the total amount to be withheld, and when the withholding will occur;
 - c. The name of each child or person for whose benefit the child support, alimony or postseparation support payments are due and information 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 4~~, Rule 5, Rules of Civil Procedure, 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 4~~, Rule 5, Rules of Civil Procedure, 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 4~~, Rule 5, Rules of Civil Procedure, 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 4~~, 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.

(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."

SECTION 5. G.S. 110-136.3(d1) is recodified as G.S. 110-139(c1).

SECTION 6. G.S. 110-139(c1), as recodified in Section 5 of this act, reads as rewritten:

"(c1) Employment verifications. – For the purpose of ~~establishing~~ 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 and 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 is admissible evidence in any action ~~establishing~~ establishing, enforcing, or modifying a child support order."

SECTION 7. G.S. 50-13.9(b1) reads as rewritten:

"(b1) In a IV-D case:

- (1) The designated child support enforcement agency shall have the sole responsibility and authority for monitoring the obligor's compliance with all child support orders in the case and for initiating any enforcement procedures that it considers appropriate.
- (2) The clerk of court shall maintain all official records in the case.
- (3) The designated child support enforcement agency shall maintain any other records needed to monitor the obligor's compliance with or to enforce the child support orders in the case, including records showing the amount of each payment of child support received from or on behalf of the obligor, along with the dates on which each payment was received. In any action establishing, enforcing, or modifying a child support order, the payment records maintained by the designated child support agency shall be admissible evidence, and the court shall permit the designated representative to authenticate those records."

SECTION 8. Article 9 of Chapter 110 of the General Statutes is amended by adding a new section to read:

"§ 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."

SECTION 9. Article 9 of Chapter 110 of the General Statutes is amended by adding a new section to read:

"§ 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."

SECTION 10. Article 9 of Chapter 110 of the General Statutes is amended by adding a new section to read:

"§ 110-136.13. Employer responsibilities.

(a) For purposes of this section, G.S. 110-136.11, 110-136.12, and 110-14, 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."

SECTION 11. Article 9 of Chapter 110 of the General Statutes is amended by adding a new section to read:

"§ 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."

SECTION 12. Sections 8 through 10 of this act become effective October 1, 2001. Section 11 of this act becomes effective July 1, 2002. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of June, 2001.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 2:05 p.m. this 23rd day of June, 2001