

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 254

Short Title: Student Loan Recovery Act.

(Public)

Sponsors: Senators Staton; and Sands.

Referred to: Judiciary II.

February 23, 1989

1 A BILL TO BE ENTITLED  
2 AN ACT TO IMPROVE RECOVERY OF DEFAULTED STUDENT LOANS.  
3 The General Assembly of North Carolina enacts:

4 Section 1. The General Statutes are amended by adding a new Chapter to  
5 read:

6 **“CHAPTER 105B.**  
7 **"DEFAULTED STUDENT LOAN RECOVERY ACT.**  
8 **"ARTICLE 1.**

9 **"§ 105B-1. Purpose and Definitions.**

10 (a) It is the purpose of this Article to enable the State Education Assistance  
11 Authority to seek an order of withholding of personal earnings against a debtor who  
12 owes money to the Authority through default on a student loan as a means of enforcing  
13 a judgment which requires the payment of money to the Authority.

14 (b) As used in this Article:

15 (1) ‘Authority’ means the State Education Assistance Authority as  
16 enabled by Article 23 of Chapter 116 of the General Statutes.

17 (2) ‘Debtor’ means any individual owing money to the Authority through  
18 default on a student loan made, guaranteed or owned by the Authority,  
19 which obligation has not been adjudicated satisfied by court order, set  
20 aside by court order, or discharged in bankruptcy.

21 (3) ‘Mistake of fact’ means that the debtor:

22 a. Is not the actual person named in the judgment that is the basis  
23 for a withholding action under this section; or

1           b. Has satisfied the obligation represented by the judgment in full  
2           and is entitled to have the judgment cancelled.

3           (4) 'Payor' means the person, firm, association or corporation by whom  
4           the debtor is employed.

5           (5) 'Student Loan' means a loan or loans made to eligible students or  
6           parents of students to aid in obtaining an education beyond the high  
7           school level.

8 **"§ 105B-2. Remedy additional.**

9           The collection remedy under this Article is in addition to and not in substitution for  
10 any other remedy available by law.

11 **"§ 105B-3. Procedure.**

12           (a) Notwithstanding any other provision of the law, in any case in which the  
13 State Education Assistance Authority obtains a judgment against a debtor as defined in  
14 this Chapter, a judge of the district court in the county where the debtor resides or is  
15 found may enter an order of withholding whereby no more than ten percent (10%) of  
16 the debtor's monthly disposable earnings shall be withheld for the repayment of the  
17 debt owed to the Authority. For purposes of this section, 'disposable earnings' is  
18 defined as that part of the compensation paid or payable to the debtor for personal  
19 services; whether denominated as wages, salary, commission, bonus, or otherwise  
20 (including periodic payments pursuant to a pension or retirement program) which  
21 remains after the deduction of any amounts required by law to be withheld.

22           (b) The Authority may move the court for an order of withholding. The motion  
23 shall be verified and shall state the name and address of the employer of the debtor, the  
24 debtor's monthly disposable earnings from said employer (which may be based upon  
25 information and belief), and the amount sought to be withheld, not to exceed ten percent  
26 (10%) of the debtor's monthly disposable earnings. The motion shall be served on both  
27 the debtor and his alleged employer either personally or by registered mail, return  
28 receipt requested as set forth in G.S. 1A-1, Rules of Civil Procedure.

29           (c) At any time following the filing with the district court of a motion under this  
30 section, the debtor may inspect and copy records relating to the debt or debts at the  
31 offices of the Authority.

32           (d) In lieu of or in conclusion of any legal proceeding instituted under this  
33 section, the debtor may enter into a written agreement with the State Education  
34 Assistance Authority to establish a schedule for the repayment of the debt or debts by  
35 periodic payments made directly to the Authority. Upon acceptance of any such  
36 repayment agreement, the Authority shall withdraw the motion for withholding.

37           (e) Contested withholding. The debtor may contest the withholding only on the  
38 basis of mistake of fact. To contest the withholding, the debtor must, within 30 days  
39 from the date of service, request a hearing before the district court by serving a written  
40 request upon the court and the Authority which specifies the mistake of fact upon which  
41 the hearing request is based. If the asserted mistake of fact can be resolved by  
42 agreement between the Authority and the debtor, no hearing shall occur. Otherwise, a  
43 hearing shall be held and a determination made within 30 days of the filing of the  
44 debtor's request. If it is determined that a mistake of fact exists, no withholding shall

1 occur. Following the hearing the court may enter an order of withholding not to exceed  
2 ten percent (10%) of the debtor's monthly disposable earnings. If an order of  
3 withholding is entered, a copy of same shall be served on the debtor and the payor either  
4 personally or by registered mail, return receipt requested. The order shall set forth  
5 sufficient findings of fact to support the action by the court and the amount to be  
6 withheld for each pay period. The order shall be subject to review for modification and  
7 dissolution upon the filing of a motion in the cause.

8 (f) Uncontested withholding. If the debtor does not contest the withholding as  
9 provided in subsection (e) within the 30-day response period, the court may enter an  
10 order of withholding not to exceed ten percent (10%) of the debtor's monthly disposable  
11 earnings without further hearing. If an order of withholding is entered, a copy of same  
12 shall be served on the debtor and the payor either personally or by registered mail,  
13 return receipt requested. The order shall set forth sufficient findings of fact to support  
14 the action by the court and the amount to be withheld for each pay period. The order  
15 shall be subject to review for modification and dissolution upon the filing of a motion in  
16 the cause.

17 (g) Upon receipt of an order of withholding, the payor shall transmit without  
18 delay to the clerk of superior court the amount ordered by the court to be withheld.  
19 These funds shall be disbursed to the State Education Assistance Authority.

20 **"§ 105B-4. Prohibited conduct by payor; civil penalty.**

21 (a) Notwithstanding any other provision of law, when a court finds, pursuant to a  
22 motion in the cause filed by the Authority joining the payor as a third party defendant,  
23 with 30 days notice to answer the motion, that a payor has willfully refused to comply  
24 with the provisions of this section, such payor shall be ordered to commence  
25 withholding and shall be held liable to the Authority for any amount which such payor  
26 should have withheld, except that such payor shall not be required to vary the normal  
27 pay or disbursement cycles in order to comply with these provisions.

28 (b) A payor shall not discharge from employment, refuse to employ, or otherwise  
29 take disciplinary action against any debtor solely because of the withholding. When a  
30 court finds that a payor has taken any of these actions, the payor shall be liable for a  
31 civil penalty to be paid to the county school fund. For a first offense, the civil penalty  
32 shall be one hundred dollars (\$100.00). For second and third offenses, the civil penalty  
33 shall be five hundred dollars (\$500.00) and one thousand dollars (\$1,000), respectively.  
34 Any payor who violates any provision of this paragraph shall be liable in a civil action  
35 for reasonable damages suffered by a debtor as a result of the violation, and a debtor  
36 discharged or demoted in violation of this paragraph shall be entitled to be reinstated to  
37 his former position. The statute of limitations for actions under this subsection shall be  
38 one year pursuant to G.S. 1-54.

39 (c) Any payor who withholds the sum provided in any notice or order to the  
40 payor shall not be liable for any penalties under this section.

41 **"§ 105B-5. Termination of withholding.**

42 A requirement that income be withheld under this section shall promptly terminate  
43 as to prospective payments when the payor receives notice from the court that the  
44 withholding order has expired or become invalid."

1           Sec. 2. This act is effective upon ratification.