

5570--A

2009-2010 Regular Sessions

I N S E N A T E

May 18, 2009

Introduced by Sen. HASSELL-THOMPSON -- (at request of the Office of Temporary and Disability Assistance) -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, the family court act, the domestic relations law and the social services law, in relation to the modification of child support orders, employer reporting of new hires and quarterly earnings, work programs and the noncustodial earned income tax credit

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "Low Income Support Obligation and Performance Improvement Act".
3 S 2. Subsection (d-1) of section 606 of the tax law is amended by
4 adding a new paragraph 8 to read as follows:
5 (8) IN A REPORT PREPARED BY THE COMMISSIONER AND SUBMITTED TO THE
6 OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, THE DEPARTMENT SHALL
7 INCLUDE INFORMATION CONCERNING THE CREDIT ALLOWED PURSUANT TO THIS
8 SUBSECTION INDICATING WHETHER OR NOT TAXPAYERS IDENTIFIED BY THE OFFICE
9 OF TEMPORARY AND DISABILITY ASSISTANCE PURSUANT TO PARAGRAPH FOUR OF
10 THIS SUBSECTION FILED AN INCOME TAX RETURN, FILED FOR A CREDIT, RECEIVED
11 A CREDIT, AND THE AMOUNT OF ANY SUCH CREDIT. ANY INDIVIDUAL TAXPAYER
12 INFORMATION FURNISHED BY THE DEPARTMENT PURSUANT TO THIS SECTION SHALL
13 BE DEEMED CONFIDENTIAL AND MAY NOT BE DISCLOSED TO ANY THIRD PARTY AND
14 THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE IS PROHIBITED FROM
15 USING THE INDIVIDUAL TAXPAYER INFORMATION EXCEPT FOR THE PURPOSE OF
16 ANALYZING THE IMPACT OF THE CREDIT AND ITS EFFECT ON CHILD SUPPORT
17 PAYMENTS.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 S 3. Subdivision 1 of section 171-a of the tax law, as amended by
2 chapter 398 of the laws of 1997, is amended to read as follows:

3 (1) The department shall design, develop, implement and operate a wage
4 reporting system within the department utilizing information submitted
5 by employers as defined under article eighteen of the labor law. The
6 department is authorized to require submission of a report, in such form
7 and in such manner as prescribed by regulations for not more frequently
8 than four times per annum, of the name, social security account number,
9 and gross wages paid to each employee who resides or is employed in this
10 state, whether or not such employee is a resident for purposes of this
11 chapter and whether or not the wages of such employee are subject to
12 withholding of tax or payments of tax under article twenty-two of this
13 chapter. EMPLOYERS ALSO SHALL REPORT IF DEPENDENT HEALTH INSURANCE
14 BENEFITS ARE AVAILABLE. No report shall be filed with respect to an
15 employee of a state or local agency performing intelligence or counter-
16 intelligence functions, if the head of such agency has determined that
17 filing such a report could endanger the safety of the employee or
18 compromise an ongoing investigation or intelligence mission.

19 S 4. Paragraphs (a) and (b) of subdivision 3 of section 171-h of the
20 tax law, as added by chapter 398 of the laws of 1997, are amended to
21 read as follows:

22 (a) General. Employers shall furnish to the state directory of new
23 hires a report that contains the name, address, and social security
24 number of each newly hired or re-hired employee who works in the state,
25 and the employer's name, address, and identification number as assigned
26 pursuant to section six thousand one hundred nine of the internal reven-
27 ue code of 1986. EMPLOYERS ALSO SHALL REPORT IF DEPENDENT HEALTH INSUR-
28 ANCE BENEFITS ARE AVAILABLE AND THE DATE THE EMPLOYEE QUALIFIES FOR THE
29 BENEFITS.

30 (b) Format. Each report shall be submitted on a W-4 (employee's with-
31 holding allowance certificate) form or, at employer option, an equiv-
32 alent form and transmitted by first class mail, magnetically, or elec-
33 tronically to the state directory of new hires. IN ADDITION, IF EACH
34 REPORT IS SUBMITTED ON A W-4, AN ADDITIONAL FORM AS PRESCRIBED BY THE
35 DEPARTMENT SHALL BE SUBMITTED TO REPORT IF DEPENDENT HEALTH INSURANCE
36 BENEFITS ARE AVAILABLE AND THE DATE THE EMPLOYEE QUALIFIES FOR THE BENE-
37 FITS. THAT ADDITIONAL FORM SHALL BE TRANSMITTED BY FIRST CLASS MAIL,
38 MAGNETICALLY, OR ELECTRONICALLY TO THE STATE DIRECTORY OF NEW HIRES.

39 S 5. Paragraph 3 of subsection (e) of section 697 of the tax law, as
40 amended by section 4 of part V of chapter 57 of the laws of 2009, is
41 amended to read as follows:

42 (3) Nothing herein shall be construed to prohibit the department, its
43 officers or employees from furnishing information to the office of
44 temporary and disability assistance relating to the payment of the cred-
45 it for certain household and dependent care services necessary for gain-
46 ful employment under subsection (c) of section six hundred six of this
47 article and the earned income credit under subsection (d) of section six
48 hundred six of this article AND THE ENHANCED EARNED INCOME CREDIT UNDER
49 SUBSECTION (D-1) OF SECTION SIX HUNDRED SIX OF THIS ARTICLE, or pursuant
50 to a local law enacted by a city having a population of one million or
51 more pursuant to subsection (f) of section thirteen hundred ten of this
52 chapter, only to the extent necessary to calculate qualified state
53 expenditures under paragraph seven of subdivision (a) of section four
54 hundred nine of the federal social security act or to document the prop-
55 er expenditure of federal temporary assistance for needy families funds
56 under section four hundred three of such act. The office of temporary

1 and disability assistance may redisclose such information to the United
2 States department of health and human services only to the extent neces-
3 sary to calculate such qualified state expenditures or to document the
4 proper expenditure of such federal temporary assistance for needy fami-
5 lies funds. Nothing herein shall be construed to prohibit the delivery
6 by the commissioner to a commissioner of jurors, appointed pursuant to
7 section five hundred four of the judiciary law, or, in counties within
8 cities having a population of one million or more, to the county clerk
9 of such county, of a mailing list of individuals to whom income tax
10 forms are mailed by the commissioner for the sole purpose of compiling a
11 list of prospective jurors as provided in article sixteen of the judici-
12 ary law. Provided, however, such delivery shall only be made pursuant
13 to an order of the chief administrator of the courts, appointed pursuant
14 to section two hundred ten of the judiciary law. No such order may be
15 issued unless such chief administrator is satisfied that such mailing
16 list is needed to compile a proper list of prospective jurors for the
17 county for which such order is sought and that, in view of the responsi-
18 bilities imposed by the various laws of the state on the department, it
19 is reasonable to require the commissioner to furnish such list. Such
20 order shall provide that such list shall be used for the sole purpose of
21 compiling a list of prospective jurors and that such commissioner of
22 jurors, or such county clerk, shall take all necessary steps to insure
23 that the list is kept confidential and that there is no unauthorized use
24 or disclosure of such list. Furthermore, nothing herein shall be
25 construed to prohibit the delivery to a taxpayer or his or her duly
26 authorized representative of a certified copy of any return or report
27 filed in connection with his or her tax or to prohibit the publication
28 of statistics so classified as to prevent the identification of partic-
29 ular reports or returns and the items thereof, or the inspection by the
30 attorney general or other legal representatives of the state of the
31 report or return of any taxpayer or of any employer filed under section
32 one hundred seventy-one-h of this chapter, where such taxpayer or
33 employer shall bring action to set aside or review the tax based there-
34 on, or against whom an action or proceeding under this chapter or under
35 this chapter and article eighteen of the labor law has been recommended
36 by the commissioner, the commissioner of labor with respect to unemploy-
37 ment insurance matters, or the attorney general or has been instituted,
38 or the inspection of the reports or returns required under this article
39 by the comptroller or duly designated officer or employee of the state
40 department of audit and control, for purposes of the audit of a refund
41 of any tax paid by a taxpayer under this article, or the furnishing to
42 the state department of labor of unemployment insurance information
43 obtained or derived from quarterly combined withholding, wage reporting
44 and unemployment insurance returns required to be filed by employers
45 pursuant to paragraph four of subsection (a) of section six hundred
46 seventy-four of this article, for purposes of administration of such
47 department's unemployment insurance program, employment services
48 program, federal and state employment and training programs, employment
49 statistics and labor market information programs, worker protection
50 programs, federal programs for which the department has administrative
51 responsibility or for other purposes deemed appropriate by the commis-
52 sioner of labor consistent with the provisions of the labor law, and
53 redisclosure of such information in accordance with the provisions of
54 sections five hundred thirty-six and five hundred thirty-seven of the
55 labor law or any other applicable law, or the furnishing to the state
56 office of temporary and disability assistance of information obtained or

1 derived from New York state personal income tax returns as described in
2 paragraph (b) of subdivision two of section one hundred seventy-one-g of
3 this chapter for the purpose of reviewing support orders enforced pursu-
4 ant to title six-A of article three of the social services law to aid in
5 the determination of whether such orders should be adjusted, or the
6 furnishing of information obtained from the reports required to be
7 submitted by employers regarding newly hired or re-hired employees
8 pursuant to section one hundred seventy-one-h of this chapter to the
9 state office of temporary and disability assistance, the state depart-
10 ment of health, the state department of labor and the workers' compen-
11 sation board for purposes of administration of the child support
12 enforcement program, verification of individuals' eligibility for one or
13 more of the programs specified in subsection (b) of section eleven
14 hundred thirty-seven of the federal social security act and for other
15 public assistance programs authorized by state law, and administration
16 of the state's employment security and workers' compensation programs,
17 and to the national directory of new hires established pursuant to
18 section four hundred fifty-three-A of the federal social security act
19 for the purposes specified in such section, or the furnishing to the
20 state office of temporary and disability assistance of the amount of an
21 overpayment of income tax and interest thereon certified to the comp-
22 troller to be credited against past-due support pursuant to section one
23 hundred seventy-one-c of this chapter and of the name and social securi-
24 ty number of the taxpayer who made such overpayment, or the disclosing
25 to the commissioner of finance of the city of New York, pursuant to
26 section one hundred seventy-one-l of this chapter, of the amount of an
27 overpayment and interest thereon certified to the comptroller to be
28 credited against a city of New York tax warrant judgment debt and of the
29 name and social security number of the taxpayer who made such overpay-
30 ment, or the furnishing to the New York state higher education services
31 corporation of the amount of an overpayment of income tax and interest
32 thereon certified to the comptroller to be credited against the amount
33 of a default in repayment of any education loan debt, including judg-
34 ments, owed to the federal or New York state government that is being
35 collected by the New York state higher education services corporation,
36 and of the name and social security number of the taxpayer who made such
37 overpayment, or the furnishing to the state department of health of the
38 information required by paragraph (f) of subdivision two and subdivision
39 two-a of section two thousand five hundred eleven of the public health
40 law and by subdivision eight of section three hundred sixty-six-a and
41 paragraphs (b) and (d) of subdivision two of section three hundred
42 sixty-nine-ee of the social services law, or the furnishing to the state
43 university of New York or the city university of New York respectively
44 or the attorney general on behalf of such state or city university the
45 amount of an overpayment of income tax and interest thereon certified to
46 the comptroller to be credited against the amount of a default in repay-
47 ment of a state university loan pursuant to section one hundred seven-
48 ty-one-e of this chapter and of the name and social security number of
49 the taxpayer who made such overpayment, or the disclosing to a state
50 agency, pursuant to section one hundred seventy-one-f of this chapter,
51 of the amount of an overpayment and interest thereon certified to the
52 comptroller to be credited against a past-due legally enforceable debt
53 owed to such agency and of the name and social security number of the
54 taxpayer who made such overpayment, or the furnishing of employee and
55 employer information obtained through the wage reporting system, pursu-
56 ant to section one hundred seventy-one-a of this chapter, as added by

chapter five hundred forty-five of the laws of nineteen hundred seventy-eight, to the state office of temporary and disability assistance, the department of health or to the state office of the medicaid inspector general for the purpose of verifying eligibility for and entitlement to amounts of benefits under the social services law or similar law of another jurisdiction, locating absent parents or other persons legally responsible for the support of applicants for or recipients of public assistance and care under the social services law and persons legally responsible for the support of a recipient of services under section one hundred eleven-g of the social services law and, in appropriate cases, establishing support obligations pursuant to the social services law and the family court act or similar provision of law of another jurisdiction for the purpose of evaluating the effect on earnings of participation in employment, training or other programs designed to promote self-sufficiency authorized pursuant to the social services law by current recipients of public assistance and care and by former applicants and recipients of public assistance and care, (except that with regard to former recipients, information which relates to a particular former recipient shall be provided with client identifying data deleted), to the state office of temporary and disability assistance for the purpose of determining the eligibility of any child in the custody, care and custody or custody and guardianship of a local social services district or of the office of children and family services for federal payments for foster care and adoption assistance pursuant to the provisions of title IV-E of the federal social security act by providing information with respect to the parents, the stepparents, the child and the siblings of the child who were living in the same household as such child during the month that the court proceedings leading to the child's removal from the household were initiated, or the written instrument transferring care and custody of the child pursuant to the provisions of section three hundred fifty-eight-a or three hundred eighty-four-a of the social services law was signed, provided however that the office of temporary and disability assistance shall only use the information obtained pursuant to this subdivision for the purpose of determining the eligibility of such child for federal payments for foster care and adoption assistance pursuant to the provisions of title IV-E of the federal social security act, and to the state department of labor, or other individuals designated by the commissioner of labor, for the purpose of the administration of such department's unemployment insurance program, employment services program, federal and state employment and training programs, employment statistics and labor market information programs, worker protection programs, federal programs for which the department has administrative responsibility or for other purposes deemed appropriate by the commissioner of labor consistent with the provisions of the labor law, and redisclosure of such information in accordance with the provisions of sections five hundred thirty-six and five hundred thirty-seven of the labor law, or the furnishing of information, which is obtained from the wage reporting system operated pursuant to section one hundred seventy-one-a of this chapter, as added by chapter five hundred forty-five of the laws of nineteen hundred seventy-eight, to the state office of temporary and disability assistance so that it may furnish such information to public agencies of other jurisdictions with which the state office of temporary and disability assistance has an agreement pursuant to paragraph (h) or (i) of subdivision three of section twenty of the social services law, and to the state office of temporary and disability assistance for the purpose of fulfilling obligations and

1 responsibilities otherwise incumbent upon the state department of labor,
2 under section one hundred twenty-four of the federal family support act
3 of nineteen hundred eighty-eight, by giving the federal parent locator
4 service, maintained by the federal department of health and human
5 services, prompt access to such information as required by such act, or
6 to the state department of health to verify eligibility under the child
7 health insurance plan pursuant to subdivisions two and two-a of section
8 two thousand five hundred eleven of the public health law, to verify
9 eligibility under the medical assistance and family health plus programs
10 pursuant to subdivision eight of section three hundred sixty-six-a and
11 paragraphs (b) and (d) of subdivision two of section three hundred
12 sixty-nine-ee of the social services law, and to verify eligibility for
13 the program for elderly pharmaceutical insurance coverage under title
14 three of article two of the elder law, or to the office of vocational
15 and educational services for individuals with disabilities of the educa-
16 tion department, the commission for the blind and visually handicapped
17 and any other state vocational rehabilitation agency, for purposes of
18 obtaining reimbursement from the federal social security administration
19 for expenditures made by such office, commission or agency on behalf of
20 disabled individuals who have achieved economic self-sufficiency or to
21 the higher education services corporation for the purpose of assisting
22 the corporation in default prevention and default collection of educa-
23 tion loan debt, including judgments, owed to the federal or New York
24 state government; provided, however, that such information shall be
25 limited to the names, social security numbers, home and/or business
26 addresses, and employer names of defaulted or delinquent student loan
27 borrowers.

28 Provided, however, that with respect to employee information the
29 office of temporary and disability assistance shall only be furnished
30 with the names, social security account numbers and gross wages of those
31 employees who are (A) applicants for or recipients of benefits under the
32 social services law, or similar provision of law of another jurisdiction
33 (pursuant to an agreement under subdivision three of section twenty of
34 the social services law) or, (B) absent parents or other persons legally
35 responsible for the support of applicants for or recipients of public
36 assistance and care under the social services law or similar provision
37 of law of another jurisdiction (pursuant to an agreement under subdivi-
38 sion three of section twenty of the social services law), or (C) persons
39 legally responsible for the support of a recipient of services under
40 section one hundred eleven-g of the social services law or similar
41 provision of law of another jurisdiction (pursuant to an agreement under
42 subdivision three of section twenty of the social services law), or (D)
43 employees about whom wage reporting system information is being
44 furnished to public agencies of other jurisdictions, with which the
45 state office of temporary and disability assistance has an agreement
46 pursuant to paragraph (h) or (i) of subdivision three of section twenty
47 of the social services law, or (E) employees about whom wage reporting
48 system information is being furnished to the federal parent locator
49 service, maintained by the federal department of health and human
50 services, for the purpose of enabling the state office of temporary and
51 disability assistance to fulfill obligations and responsibilities other-
52 wise incumbent upon the state department of labor, under section one
53 hundred twenty-four of the federal family support act of nineteen
54 hundred eighty-eight, and, only if, the office of temporary and disabil-
55 ity assistance certifies to the commissioner that such persons are such
56 applicants, recipients, absent parents or persons legally responsible

1 for support or persons about whom information has been requested by a
2 public agency of another jurisdiction or by the federal parent locator
3 service and further certifies that in the case of information requested
4 under agreements with other jurisdictions entered into pursuant to
5 subdivision three of section twenty of the social services law, that
6 such request is in compliance with any applicable federal law. Provided,
7 further, that where the office of temporary and disability assistance
8 requests employee information for the purpose of evaluating the effects
9 on earnings of participation in employment, training or other programs
10 designed to promote self-sufficiency authorized pursuant to the social
11 services law, the office of temporary and disability assistance shall
12 only be furnished with the quarterly gross wages (excluding any refer-
13 ence to the name, social security number or any other information which
14 could be used to identify any employee or the name or identification
15 number of any employer) paid to employees who are former applicants for
16 or recipients of public assistance and care and who are so certified to
17 the commissioner by the commissioner of the office of temporary and
18 disability assistance. Provided, further, that with respect to employee
19 information, the department of health shall only be furnished with the
20 information required pursuant to the provisions of paragraph (f) of
21 subdivision two and subdivision two-a of section two thousand five
22 hundred eleven of the public health law and subdivision eight of section
23 three hundred sixty-six-a and paragraphs (b) and (d) of subdivision two
24 of section three hundred sixty-nine-ee of the social services law, with
25 respect to those individuals whose eligibility under the child health
26 insurance plan, medical assistance program, and family health plus
27 program is to be determined pursuant to such provisions and with respect
28 to those members of any such individual's household whose income affects
29 such individual's eligibility and who are so certified to the commis-
30 sioner or by the department of health. Provided, further, that wage
31 reporting information shall be furnished to the office of vocational and
32 educational services for individuals with disabilities of the education
33 department, the commission for the blind and visually handicapped and
34 any other state vocational rehabilitation agency only if such office,
35 commission or agency, as applicable, certifies to the commissioner that
36 such information is necessary to obtain reimbursement from the federal
37 social security administration for expenditures made on behalf of dis-
38 abled individuals who have achieved self-sufficiency. Reports and returns
39 shall be preserved for three years and thereafter until the commissioner
40 orders them to be destroyed.

41 S 6. Section 451 of the family court act, as amended by chapter 533 of
42 the laws of 1999, is amended to read as follows:

43 S 451. Continuing jurisdiction. 1. Except as provided in article
44 five-B of this act, the court has continuing jurisdiction over any
45 support proceeding brought under this article until its judgment is
46 completely satisfied and may modify, set aside or vacate any order
47 issued in the course of the proceeding, provided, however, that the
48 modification, set aside or vacatur shall not reduce or annul child
49 support arrears accrued prior to the making of an application pursuant
50 to this section. The court shall not reduce or annul any other arrears
51 unless the defaulting party shows good cause for failure to make appli-
52 cation for relief from the judgment or order directing payment prior to
53 the accrual of the arrears, in which case the facts and circumstances
54 constituting such good cause shall be set forth in a written memorandum
55 of decision. A modification may increase support payments nunc pro tunc
56 as of the date of the initial application for support based on newly

1 discovered evidence. Any retroactive amount of support due shall be paid
2 [in one lump sum or periodic sums, as the court directs, taking into
3 account any amount of support which has been paid] AND BE ENFORCEABLE AS
4 PROVIDED IN SECTION FOUR HUNDRED FORTY OF THIS ARTICLE. Upon an applica-
5 tion to modify, set aside or vacate an order of support, no hearing
6 shall be required unless such application shall be supported by affida-
7 vit and other evidentiary material sufficient to establish a prima facie
8 case for the relief requested.

9 2. (A) THE COURT MAY MODIFY AN ORDER OF CHILD SUPPORT, INCLUDING AN
10 ORDER INCORPORATING WITHOUT MERGING AN AGREEMENT OR STIPULATION OF THE
11 PARTIES, UPON A SHOWING OF A SUBSTANTIAL CHANGE IN CIRCUMSTANCES.
12 INCARCERATION SHALL NOT BE A BAR TO FINDING A SUBSTANTIAL CHANGE IN
13 CIRCUMSTANCES PROVIDED SUCH INCARCERATION IS NOT THE RESULT OF NON-PAY-
14 MENT OF A CHILD SUPPORT ORDER, OR AN OFFENSE AGAINST THE CUSTODIAL
15 PARENT OR CHILD WHO IS THE SUBJECT OF THE ORDER OR JUDGMENT.

16 (B) IN ADDITION, UNLESS THE PARTIES HAVE SPECIFICALLY OPTED OUT OF THE
17 FOLLOWING PROVISIONS IN A VALIDLY EXECUTED AGREEMENT OR STIPULATION
18 ENTERED INTO BETWEEN THE PARTIES, THE COURT MAY MODIFY AN ORDER OF CHILD
19 SUPPORT WHERE:

20 (I) THREE YEARS HAVE PASSED SINCE THE ORDER WAS ENTERED, LAST MODIFIED
21 OR ADJUSTED; OR

22 (II) THERE HAS BEEN A CHANGE IN EITHER PARTY'S GROSS INCOME BY FIFTEEN
23 PERCENT OR MORE SINCE THE ORDER WAS ENTERED, LAST MODIFIED, OR ADJUSTED.
24 A REDUCTION IN INCOME SHALL NOT BE CONSIDERED AS A GROUND FOR MODIFICA-
25 TION UNLESS IT WAS INVOLUNTARY AND THE PARTY HAS MADE DILIGENT ATTEMPTS
26 TO SECURE EMPLOYMENT COMMENSURATE WITH HIS OR HER EDUCATION, ABILITY,
27 AND EXPERIENCE.

28 S 7. Paragraph b of subdivision 9 of part B of section 236 of the
29 domestic relations law, as amended by chapter 354 of the laws of 1993,
30 is amended to read as follows:

31 b. (1) Upon application by either party, the court may annul or modify
32 any prior order or judgment as to maintenance [or child support], upon a
33 showing of the recipient's inability to be self-supporting or a substan-
34 tial change in circumstance or termination of child support awarded
35 pursuant to section two hundred forty of this article, including finan-
36 cial hardship. Where, after the effective date of this part, a sepa-
37 ration agreement remains in force no modification of a prior order or
38 judgment incorporating the terms of said agreement shall be made as to
39 maintenance without a showing of extreme hardship on either party, in
40 which event the judgment or order as modified shall supersede the terms
41 of the prior agreement and judgment for such period of time and under
42 such circumstances as the court determines. [Provided, however, that no
43 modification or annulment shall reduce or annul any arrears of child
44 support which have accrued prior to the date of application to annul or
45 modify any prior order or judgment as to child support.] The court shall
46 not reduce or annul any arrears of maintenance which have been reduced
47 to final judgment pursuant to section two hundred forty-four of this
48 [chapter] ARTICLE. No other arrears of maintenance which have accrued
49 prior to the making of such application shall be subject to modification
50 or annulment unless the defaulting party shows good cause for failure to
51 make application for relief from the judgment or order directing such
52 payment prior to the accrual of such arrears and the facts and circum-
53 stances constituting good cause are set forth in a written memorandum of
54 decision. Such modification may increase maintenance [or child support]
55 nunc pro tunc as of the date of application based on newly discovered
56 evidence. Any retroactive amount of maintenance[, or child support] due

1 shall, except as provided for herein, be paid in one sum or periodic
2 sums, as the court directs, taking into account any temporary or partial
3 payments which have been made. [Any retroactive amount of child support
4 due shall be support arrears/past due support. In addition, such retro-
5 active child support shall be enforceable in any manner provided by law
6 including, but not limited to, an execution for support enforcement
7 pursuant to subdivision (b) of section fifty-two hundred forty-one of
8 the civil practice law and rules. When a child receiving support is a
9 public assistance recipient, or the order of support is being enforced
10 or is to be enforced pursuant to section one hundred eleven-g of the
11 social services law, the court shall establish the amount of retroactive
12 child support and notify the parties that such amount shall be enforced
13 by the support collection unit pursuant to an execution for support
14 enforcement as provided for in subdivision (b) of section fifty-two
15 hundred forty-one of the civil practice law and rules, or in such peri-
16 odic payments as would have been authorized had such an execution been
17 issued. In such case, the court shall not direct the schedule of repay-
18 ment of retroactive support.] The provisions of this subdivision shall
19 not apply to a separation agreement made prior to the effective date of
20 this part.

21 (2) (I) THE COURT MAY MODIFY AN ORDER OF CHILD SUPPORT, INCLUDING AN
22 ORDER INCORPORATING WITHOUT MERGING AN AGREEMENT OR STIPULATION OF THE
23 PARTIES, UPON A SHOWING OF A SUBSTANTIAL CHANGE IN CIRCUMSTANCES. INCAR-
24 CERATION SHALL NOT BE A BAR TO FINDING A SUBSTANTIAL CHANGE IN CIRCUM-
25 STANCES PROVIDED SUCH INCARCERATION IS NOT THE RESULT OF NON-PAYMENT OF
26 A CHILD SUPPORT ORDER, OR AN OFFENSE AGAINST THE CUSTODIAL PARENT OR
27 CHILD WHO IS THE SUBJECT OF THE ORDER OR JUDGMENT.

28 (II) IN ADDITION, UNLESS THE PARTIES HAVE SPECIFICALLY OPTED OUT OF
29 THE FOLLOWING PROVISIONS IN A VALIDLY EXECUTED AGREEMENT OR STIPULATION
30 ENTERED INTO BETWEEN THE PARTIES, THE COURT MAY MODIFY AN ORDER OF CHILD
31 SUPPORT WHERE:

32 (A) THREE YEARS HAVE PASSED SINCE THE ORDER WAS ENTERED, LAST MODIFIED
33 OR ADJUSTED; OR

34 (B) THERE HAS BEEN A CHANGE IN EITHER PARTY'S GROSS INCOME BY FIFTEEN
35 PERCENT OR MORE SINCE THE ORDER WAS ENTERED, LAST MODIFIED, OR ADJUSTED.
36 A REDUCTION IN INCOME SHALL NOT BE CONSIDERED AS A GROUND FOR MODIFICA-
37 TION UNLESS IT WAS INVOLUNTARY AND THE PARTY HAS MADE DILIGENT ATTEMPTS
38 TO SECURE EMPLOYMENT COMMENSURATE WITH HIS OR HER EDUCATION, ABILITY,
39 AND EXPERIENCE.

40 (III) NO MODIFICATION OR ANNULMENT SHALL REDUCE OR ANNUL ANY ARREARS
41 OF CHILD SUPPORT WHICH HAVE ACCRUED PRIOR TO THE DATE OF APPLICATION TO
42 ANNUL OR MODIFY ANY PRIOR ORDER OR JUDGMENT AS TO CHILD SUPPORT. SUCH
43 MODIFICATION MAY INCREASE CHILD SUPPORT NUNC PRO TUNC AS OF THE DATE OF
44 APPLICATION BASED ON NEWLY DISCOVERED EVIDENCE. ANY RETROACTIVE AMOUNT
45 OF CHILD SUPPORT DUE SHALL, EXCEPT AS PROVIDED FOR IN THIS SUBPARAGRAPH,
46 BE PAID IN ONE SUM OR PERIODIC SUMS, AS THE COURT DIRECTS, TAKING INTO
47 ACCOUNT ANY TEMPORARY OR PARTIAL PAYMENTS WHICH HAVE BEEN MADE. ANY
48 RETROACTIVE AMOUNT OF CHILD SUPPORT DUE SHALL BE SUPPORT ARREARS/PAST
49 DUE SUPPORT. IN ADDITION, SUCH RETROACTIVE CHILD SUPPORT SHALL BE
50 ENFORCEABLE IN ANY MANNER PROVIDED BY LAW INCLUDING, BUT NOT LIMITED TO,
51 AN EXECUTION FOR SUPPORT ENFORCEMENT PURSUANT TO SUBDIVISION (B) OF
52 SECTION FIFTY-TWO HUNDRED FORTY-ONE OF THE CIVIL PRACTICE LAW AND RULES.
53 WHEN A CHILD RECEIVING SUPPORT IS A PUBLIC ASSISTANCE RECIPIENT, OR THE
54 ORDER OF SUPPORT IS BEING ENFORCED OR IS TO BE ENFORCED PURSUANT TO
55 SECTION ONE HUNDRED ELEVEN-G OF THE SOCIAL SERVICES LAW, THE COURT SHALL
56 ESTABLISH THE AMOUNT OF RETROACTIVE CHILD SUPPORT AND NOTIFY THE PARTIES

1 THAT SUCH AMOUNT SHALL BE ENFORCED BY THE SUPPORT COLLECTION UNIT PURSU-
2 ANT TO AN IMMEDIATE EXECUTION FOR SUPPORT ENFORCEMENT AS PROVIDED FOR BY
3 THIS CHAPTER, OR IN SUCH PERIODIC PAYMENTS AS WOULD HAVE BEEN AUTHORIZED
4 HAD SUCH AN EXECUTION BEEN ISSUED. IN SUCH CASE, THE COURT SHALL NOT
5 DIRECT THE SCHEDULE OF REPAYMENT OF RETROACTIVE SUPPORT.

6 S 8. Subdivision 4 of section 440 of the family court act, as amended
7 by chapter 398 of the laws of 1997, is amended to read as follows:

8 4. Any support order made by the court in any proceeding under the
9 provisions of article five-B of this act, pursuant to a reference from
10 the supreme court under section two hundred fifty-one of the domestic
11 relations law or under the provisions of THIS article [four,] OR ARTICLE
12 five or five-A of this act shall include, on its face, a notice printed
13 or typewritten in a size equal to at least eight point bold type:

14 (A) informing the respondent that a willful failure to obey the order
15 may, after court hearing, result in commitment to jail for a term not to
16 exceed six months for contempt of court[.], AND

17 (B) INFORMING THE PARTIES OF THEIR RIGHT TO SEEK A MODIFICATION OF THE
18 CHILD SUPPORT ORDER UPON A SHOWING OF:

19 (I) A SUBSTANTIAL CHANGE IN CIRCUMSTANCES; OR

20 (II) THAT THREE YEARS HAVE PASSED SINCE THE ORDER WAS ENTERED, LAST
21 MODIFIED OR ADJUSTED; OR

22 (III) THERE HAS BEEN A CHANGE IN EITHER PARTY'S GROSS INCOME BY
23 FIFTEEN PERCENT OR MORE SINCE THE ORDER WAS ENTERED, LAST MODIFIED, OR
24 ADJUSTED;

25 HOWEVER, IF THE PARTIES HAVE SPECIFICALLY OPTED OUT OF SUBPARAGRAPH (II)
26 OR (III) OF THIS PARAGRAPH IN A VALIDLY EXECUTED AGREEMENT OR STIPU-
27 LATION, THEN THAT BASIS TO SEEK MODIFICATION DOES NOT APPLY.

28 S 9. Subdivision 7 of part B of section 236 of the domestic relations
29 law is amended by adding a new paragraph d to read as follows:

30 D. ANY CHILD SUPPORT ORDER MADE BY THE COURT IN ANY PROCEEDING UNDER
31 THE PROVISIONS OF THIS SECTION SHALL INCLUDE, ON ITS FACE, A NOTICE
32 PRINTED OR TYPEWRITTEN IN A SIZE EQUAL TO AT LEAST EIGHT POINT BOLD TYPE
33 INFORMING THE PARTIES OF THEIR RIGHT TO SEEK A MODIFICATION OF THE CHILD
34 SUPPORT ORDER UPON A SHOWING OF:

35 (I) A SUBSTANTIAL CHANGE IN CIRCUMSTANCES; OR

36 (II) THAT THREE YEARS HAVE PASSED SINCE THE ORDER WAS ENTERED, LAST
37 MODIFIED OR ADJUSTED; OR

38 (III) THERE HAS BEEN A CHANGE IN EITHER PARTY'S GROSS INCOME BY
39 FIFTEEN PERCENT OR MORE SINCE THE ORDER WAS ENTERED, LAST MODIFIED, OR
40 ADJUSTED;

41 HOWEVER, IF THE PARTIES HAVE SPECIFICALLY OPTED OUT OF SUBPARAGRAPH (II)
42 OR (III) OF THIS PARAGRAPH IN A VALIDLY EXECUTED AGREEMENT OR STIPU-
43 LATION, THEN THAT BASIS TO SEEK MODIFICATION DOES NOT APPLY.

44 S 10. The family court act is amended by adding a new section 437-a to
45 read as follows:

46 S 437-A. REFERRAL TO WORK PROGRAMS. IN ANY PROCEEDING TO ESTABLISH AN
47 ORDER OF SUPPORT, IF THE RESPONDENT IS UNEMPLOYED, THE COURT MAY REQUIRE
48 THE RESPONDENT TO SEEK EMPLOYMENT, OR TO PARTICIPATE IN JOB TRAINING,
49 EMPLOYMENT COUNSELING OR OTHER PROGRAMS DESIGNED TO LEAD TO EMPLOYMENT
50 PROVIDED SUCH PROGRAMS ARE AVAILABLE. THE COURT SHALL NOT REQUIRE THE
51 RESPONDENT TO SEEK EMPLOYMENT OR TO PARTICIPATE IN JOB TRAINING, EMPLOY-
52 MENT COUNSELING, OR OTHER PROGRAMS DESIGNED TO LEAD TO EMPLOYMENT UNDER
53 THIS SECTION IF THE RESPONDENT IS IN RECEIPT OF SUPPLEMENTAL SECURITY
54 INCOME OR SOCIAL SECURITY DISABILITY BENEFITS.

55 S 11. Section 111-h of the social services law is amended by adding a
56 new subdivision 20 to read as follows:

1 20. IF THE RESPONDENT IS REQUIRED TO PARTICIPATE IN WORK PROGRAMS
2 PURSUANT TO SECTION FOUR HUNDRED THIRTY-SEVEN-A OF THE FAMILY COURT ACT,
3 AND THE COURT ENTERS AN ORDER OF SUPPORT ON BEHALF OF THE PERSONS IN
4 RECEIPT OF PUBLIC ASSISTANCE, THE SUPPORT COLLECTION UNIT SHALL NOT FILE
5 A PETITION TO INCREASE THE SUPPORT OBLIGATION FOR TWELVE MONTHS FROM THE
6 DATE OF ENTRY OF THE ORDER OF SUPPORT IF THE RESPONDENT'S INCOME IS
7 DERIVED FROM PARTICIPATION IN SUCH PROGRAMS.

8 S 12. Subdivision (b) of section 461 of the family court act is
9 amended to read as follows:

10 (b) If an order of the supreme court or of another court of competent
11 jurisdiction requires support of the child, the family court may:

12 (i) entertain an application to enforce the order requiring support;
13 or

14 (ii) entertain an application to modify such order [on the ground that
15 changed circumstances requires such modification] AS PROVIDED UNDER
16 SUBDIVISION TWO OF SECTION FOUR HUNDRED FIFTY-ONE OF THIS ARTICLE,
17 unless the order of the supreme court provides that the supreme court
18 retains exclusive jurisdiction to enforce or modify the order.

19 S 13. This act shall take effect on the ninetieth day after it shall
20 have become law; provided however, that sections six and seven of this
21 act shall apply to any action or proceeding to modify any order of child
22 support entered on or after the effective date of this act except that
23 if the child support order incorporated without merging a valid agree-
24 ment or stipulation of the parties, the amendments regarding the modifi-
25 cation of a child support order set forth in sections six and seven of
26 this act shall only apply if the incorporated agreement or stipulation
27 was executed on or after this act's effective date; provided however,
28 that sections three and four of this act shall take effect on the three
29 hundred sixty-fifth day after it shall have become a law.