

5825

2009-2010 Regular Sessions

I N A S S E M B L Y

February 20, 2009

Introduced by M. of A. McKEVITT, WALKER, ERRIGO, FINCH, ALFANO, McDO-
NOUGH, KOLB -- Multi-Sponsored by -- M. of A. BACALLES, BARRA, GIGLIO
-- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the civil practice law
and rules, in relation to the enforcement of orders of restitution or
reparation

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

1 Section 1. Paragraph (b) of subdivision 6 of section 420.10 of the
2 criminal procedure law, as amended by chapter 618 of the laws of 1992,
3 is amended to read as follows:
4 (b) The district attorney may, in his or her discretion, and must,
5 upon order of the court, institute proceedings to collect such fine,
6 restitution or reparation INCLUDING, BUT NOT LIMITED TO, THE RETENTION
7 OF A COLLECTION AGENCY PREVIOUSLY APPROVED BY THE COURT IN ACCORDANCE
8 WITH THE GUIDELINES ESTABLISHED BY THE OFFICE OF COURT ADMINISTRATION.
9 S 2. Subdivision 6 of section 420.10 of the criminal procedure law is
10 amended by adding a new paragraph (c) to read as follows:
11 (C) THE COURT MAY MAKE AN INCOME DEDUCTION ORDER FOR RESTITUTION OR
12 REPARATION ENFORCEMENT UNDER SECTION FIFTY-TWO HUNDRED FORTY-TWO OF THE
13 CIVIL PRACTICE LAW AND RULES.
14 S 3. The section heading of section 5241 of the civil practice law and
15 rules, as added by chapter 809 of the laws of 1985, is amended to read
16 as follows:
17 Income execution for support, RESTITUTION OR REPARATION enforcement.
18 S 4. Subdivision (a) of section 5241 of the civil practice law and
19 rules is amended by adding a new paragraph 1-a to read as follows:
20 1-A. "ORDER OF RESTITUTION OR REPARATION" MEANS ANY ORDER OF A COURT
21 REQUIRING, AS PART OF A SENTENCE IMPOSED UPON A PERSON CONVICTED OF AN
22 OFFENSE, A DEFENDANT TO MAKE RESTITUTION OF THE FRUITS OF HIS OFFENSE OR
23 REPARATION FOR THE LOSS OR DAMAGE CAUSED THEREBY.

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

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1 S 5. Paragraphs 2, 3, 7 and 8 of subdivision (a) of section 5241 of
2 the civil practice law and rules, as added by chapter 809 of the laws of
3 1985, are amended to read as follows:

4 2. "Debtor" means any person directed to make payments by an order of
5 support, RESTITUTION OR REPARATION.

6 3. "Creditor" means any person entitled to enforce an order of
7 support, including a support collection unit OR AN ORDER OF RESTITUTION
8 OR REPARATION.

9 7. "Default" means the failure of a debtor to remit to a creditor
10 three payments on the date due in the full amount directed by [the] AN
11 order of support, RESTITUTION OR REPARATION or the accumulation of
12 arrears equal to or greater than the amount directed to be paid for one
13 month, whichever first occurs.

14 8. "Mistake of fact" means an error in the amount of current support,
15 RESTITUTION OR REPARATION or arrears or in the identity of the debtor or
16 that the order of support, RESTITUTION OR REPARATION does not exist or
17 has been vacated.

18 S 6. Paragraph 1 of subdivision (b) of section 5241 of the civil prac-
19 tice law and rules, as amended by chapter 59 of the laws of 1993, is
20 amended to read as follows:

21 (1) When a debtor is in default, an execution for support enforcement
22 may be issued by the support collection unit, or by the sheriff, the
23 clerk of court or the attorney for the creditor as an officer of the
24 court. WHEN A DEBTOR IS IN DEFAULT, AN EXECUTION FOR RESTITUTION OR
25 REPARATION ENFORCEMENT MAY BE ISSUED BY THE SHERIFF, THE CLERK OF THE
26 COURT OR THE ATTORNEY FOR THE CREDITOR AS AN OFFICER OF THE COURT. Where
27 a debtor is receiving or will receive income, an execution for
28 deductions therefrom in amounts not to exceed the limits set forth in
29 subdivision (g) of this section may be served upon an employer or income
30 payor after notice to the debtor. The amount of the deductions to be
31 withheld shall be sufficient to ensure compliance with the direction in
32 the order of support, RESTITUTION OR REPARATION and shall include an
33 additional amount to be applied to the reduction of arrears. The credi-
34 tor may amend the execution before or after service upon the employer or
35 income payor to reflect additional arrears or payments made by the
36 debtor after notice pursuant to subdivision (d) of this section, or to
37 conform the execution to the facts found upon a determination made
38 pursuant to subdivision (e) of this section.

39 S 7. The subdivision heading, the opening paragraph and subparagraph
40 (ii) of paragraph 1 of subdivision (c) of section 5241 of the civil
41 practice law and rules, the subdivision heading as amended by chapter 59
42 of the laws of 1993 and the opening paragraph and subparagraph (ii) of
43 paragraph 1 as amended by chapter 214 of the laws of 1998, are amended
44 to read as follows:

45 Execution for support, RESTITUTION OR REPARATION enforcement; form.

46 The income execution shall contain the caption of the order of
47 support, RESTITUTION OR REPARATION and specify the date that the order
48 of support, RESTITUTION OR REPARATION was entered, the court in which it
49 was entered, the amount of the periodic payments directed, the amount of
50 arrears, the nature of the default and the names of the debtor and cred-
51 itor. In addition, the income execution shall include:

52 (ii) the amount of the deductions to be made therefrom on account of
53 current support, RESTITUTION OR REPARATION and the amount to be applied
54 to the reduction of arrears;

1 S 8. Subdivision (e) of section 5241 of the civil practice law and
2 rules, as amended by chapter 94 of the laws of 2008, is amended to read
3 as follows:

4 (e) Determination of mistake of fact. Where the execution has been
5 issued by the support collection unit, the debtor may assert a mistake
6 of fact and shall have an opportunity to make a submission in support of
7 the objection within fifteen days from service of a copy thereof. There-
8 after, the agency shall determine the merits of the objection, and
9 shall notify the debtor of its determination within forty-five days
10 after notice to the debtor as provided in subdivision (d) of this
11 section. If the objection is disallowed, the debtor shall be notified
12 that the income execution will be served on the employer or income
13 payor, and of the time that deductions will begin. Where the income
14 execution has been issued by an attorney as officer of the court, or by
15 the sheriff, or by the clerk of the court, the debtor may assert a
16 mistake of fact within fifteen days from service of a copy thereof by
17 application to the supreme court or to the family court having jurisdic-
18 tion in accordance with section four hundred sixty-one of the family
19 court act. If application is made to the family court, such application
20 shall be by petition on notice to the creditor and it shall be heard and
21 determined in accordance with the provisions of section four hundred
22 thirty-nine of the family court act, and a determination thereof shall
23 be made, and the debtor notified thereof within forty-five days of the
24 application. If application is made to the supreme court such applica-
25 tion shall be by order to show cause or motion on notice to the creditor
26 in the action in which the order or judgement sought to be enforced was
27 entered and a determination thereof shall be made, and the debtor noti-
28 fied thereof within forty-five days of the application. WHERE THE
29 INCOME EXECUTION HAS BEEN ISSUED BY AN ATTORNEY AS OFFICER OF THE COURT,
30 OR BY THE SHERIFF, OR BY THE CLERK OF THE COURT TO ENFORCE AN ORDER OF
31 RESTITUTION OR REPARATION, THE DEBTOR MAY ASSERT A MISTAKE OF FACT WITH-
32 IN FIFTEEN DAYS FROM SERVICE OF A COPY THEREOF BY APPLICATION TO THE
33 SUPREME COURT HAVING ISSUED SUCH ORDER. SUCH APPLICATION SHALL BE BY
34 PETITION ON NOTICE TO THE CREDITOR AND, IT SHALL BE HEARD AND DETERMINED
35 IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE FOUR OF THIS CHAPTER, AND A
36 DETERMINATION THEREOF SHALL BE MADE, AND THE DEBTOR NOTIFIED THEREOF
37 WITHIN FORTY-FIVE DAYS OF THE APPLICATION.

38 S 9. The opening paragraph of paragraph 1 of subdivision (g) of
39 section 5241 of the civil practice law and rules, as amended by chapter
40 398 of the laws of 1997, is amended to read as follows:

41 An employer or income payor served with an income execution shall
42 commence deductions from income due or thereafter due to the debtor no
43 later than the first pay period that occurs fourteen days after service
44 of the execution, and shall remit payments to the creditor within seven
45 business days of the date that the debtor is paid. Each payment remit-
46 ted by an employer or income payor shall include, in addition to the
47 identity and social security number of the debtor, the date and amount
48 of each withholding of the debtor's income included in the payment. If
49 the money due to the debtor consists of salary or wages and his or her
50 employment is terminated by resignation or dismissal at any time after
51 service of the execution, the levy shall thereafter be ineffective, and
52 the execution shall be returned, unless the debtor is reinstated or
53 re-employed within ninety days after such termination. An employer must
54 notify the issuer promptly when the debtor terminates employment and
55 provide the debtor's last address and name and address of the new
56 employer, if known. Where the income is compensation paid or payable to

1 the debtor for personal services, the amount of the deductions to be
2 withheld FOR SUPPORT ENFORCEMENT shall not exceed the following:

3 S 10. Subdivision (g) of section 5241 of the civil practice law and
4 rules is amended by adding a new paragraph 5 to read as follows:

5 (5) WHERE THE INCOME IS COMPENSATION PAID OR PAYABLE TO THE DEBTOR FOR
6 PERSONAL SERVICES, THE AMOUNT OF THE DEDUCTIONS TO BE WITHHELD FOR
7 RESTITUTION OR REPARATION SHALL NOT EXCEED FIFTY PERCENT OF THE EARNINGS
8 OF THE DEBTOR REMAINING AFTER THE DEDUCTION THEREFROM OF ANY AMOUNTS
9 REQUIRED BY LAW TO BE WITHHELD ("DISPOSABLE EARNINGS").

10 S 11. The section heading and subdivisions (a) and (b) of section 5242
11 of the civil practice law and rules, as amended by chapter 170 of the
12 laws of 1994, are amended to read as follows:

13 Income deduction order for support, RESTITUTION OR REPARATION enforce-
14 ment. (a) Upon application of a creditor, for good cause shown, and
15 upon such terms as justice may require, the court may correct any
16 defect, irregularity, error or omission in an income execution for
17 support, RESTITUTION OR REPARATION enforcement issued pursuant to
18 section [5241] FIFTY-TWO HUNDRED FORTY-ONE of this article.

19 (b) Upon application of a creditor, for good cause shown, the court
20 may enter an income deduction order for support, RESTITUTION OR REPARA-
21 TION enforcement. In determining good cause, the court may take into
22 consideration evidence of the degree of such debtor's past financial
23 responsibility, credit references, credit history, and any other matter
24 the court considers relevant in determining the likelihood of payment in
25 accordance with the order of support, RESTITUTION OR REPARATION. Proof
26 of default establishes a prima facie case against the debtor, which can
27 be overcome only by proof of the debtor's inability to make the
28 payments. Unless the prima facie case is overcome, the court shall
29 enter an income deduction order for support, RESTITUTION OR REPARATION
30 enforcement pursuant to this section.

31 S 12. Subdivision (g) of section 5242 of the civil practice law and
32 rules, as amended by chapter 170 of the laws of 1994, is amended to read
33 as follows:

34 (g) Where the court issues an income deduction order for RESTITUTION
35 ENFORCEMENT, REPARATION ENFORCEMENT OR support enforcement payable to
36 the support collection unit, as defined in paragraph nine of subdivision
37 (a) of section [5241] FIFTY-TWO HUNDRED FORTY-ONE of this article, each
38 payment remitted by an employer or income payor shall include, in addi-
39 tion to the identity and social security number of the debtor, the date
40 and amount of each withholding of the debtor's income included in the
41 payment.

42 S 13. This act shall take effect on the one hundred twentieth day
43 after it shall have become a law, except that any guidelines necessary
44 for the timely implementation of this act on its effective date shall be
45 established on or before such date.