

8952

2009-2010 Regular Sessions

I N A S S E M B L Y

June 16, 2009

Introduced by M. of A. WEINSTEIN -- Multi-Sponsored by -- M. of A. JOHN  
-- (at request of the Office of Temporary and Disability Assistance)  
-- read once and referred to the Committee on Judiciary

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.  
18 S 3. Subdivision 1 of section 171-a of the tax law, as amended by  
19 chapter 398 of the laws of 1997, is amended to read as follows:  
20 (1) The department shall design, develop, implement and operate a wage  
21 reporting system within the department utilizing information submitted

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

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

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

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

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

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

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

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

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

1 to amounts of benefits under the social services law or similar law of  
2 another jurisdiction, locating absent parents or other persons legally  
3 responsible for the support of applicants for or recipients of public  
4 assistance and care under the social services law and persons legally  
5 responsible for the support of a recipient of services under section one  
6 hundred eleven-g of the social services law and, in appropriate cases,  
7 establishing support obligations pursuant to the social services law and  
8 the family court act or similar provision of law of another jurisdiction  
9 for the purpose of evaluating the effect on earnings of participation in  
10 employment, training or other programs designed to promote self-suffici-  
11 ency authorized pursuant to the social services law by current recipi-  
12 ents of public assistance and care and by former applicants and recipi-  
13 ents of public assistance and care, (except that with regard to former  
14 recipients, information which relates to a particular former recipient  
15 shall be provided with client identifying data deleted), to the state  
16 office of temporary and disability assistance for the purpose of deter-  
17 mining the eligibility of any child in the custody, care and custody or  
18 custody and guardianship of a local social services district or of the  
19 office of children and family services for federal payments for foster  
20 care and adoption assistance pursuant to the provisions of title IV-E of  
21 the federal social security act by providing information with respect to  
22 the parents, the stepparents, the child and the siblings of the child  
23 who were living in the same household as such child during the month  
24 that the court proceedings leading to the child's removal from the  
25 household were initiated, or the written instrument transferring care  
26 and custody of the child pursuant to the provisions of section three  
27 hundred fifty-eight-a or three hundred eighty-four-a of the social  
28 services law was signed, provided however that the office of temporary  
29 and disability assistance shall only use the information obtained pursu-  
30 ant to this subdivision for the purpose of determining the eligibility  
31 of such child for federal payments for foster care and adoption assist-  
32 ance pursuant to the provisions of title IV-E of the federal social  
33 security act, and to the state department of labor, or other individuals  
34 designated by the commissioner of labor, for the purpose of the adminis-  
35 tration of such department's unemployment insurance program, employment  
36 services program, federal and state employment and training programs,  
37 employment statistics and labor market information programs, worker  
38 protection programs, federal programs for which the department has  
39 administrative responsibility or for other purposes deemed appropriate  
40 by the commissioner of labor consistent with the provisions of the labor  
41 law, and redisclosure of such information in accordance with the  
42 provisions of sections five hundred thirty-six and five hundred thirty-  
43 seven of the labor law, or the furnishing of information, which is  
44 obtained from the wage reporting system operated pursuant to section one  
45 hundred seventy-one-a of this chapter, as added by chapter five hundred  
46 forty-five of the laws of nineteen hundred seventy-eight, to the state  
47 office of temporary and disability assistance so that it may furnish  
48 such information to public agencies of other jurisdictions with which  
49 the state office of temporary and disability assistance has an agreement  
50 pursuant to paragraph (h) or (i) of subdivision three of section twenty  
51 of the social services law, and to the state office of temporary and  
52 disability assistance for the purpose of fulfilling obligations and  
53 responsibilities otherwise incumbent upon the state department of labor,  
54 under section one hundred twenty-four of the federal family support act  
55 of nineteen hundred eighty-eight, by giving the federal parent locator  
56 service, maintained by the federal department of health and human

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

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

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

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

39 S 451. Continuing jurisdiction. 1. Except as provided in article  
40 five-B of this act, the court has continuing jurisdiction over any  
41 support proceeding brought under this article until its judgment is  
42 completely satisfied and may modify, set aside or vacate any order  
43 issued in the course of the proceeding, provided, however, that the  
44 modification, set aside or vacatur shall not reduce or annul child  
45 support arrears accrued prior to the making of an application pursuant  
46 to this section. The court shall not reduce or annul any other arrears  
47 unless the defaulting party shows good cause for failure to make appli-  
48 cation for relief from the judgment or order directing payment prior to  
49 the accrual of the arrears, in which case the facts and circumstances  
50 constituting such good cause shall be set forth in a written memorandum  
51 of decision. A modification may increase support payments nunc pro tunc  
52 as of the date of the initial application for support based on newly  
53 discovered evidence. Any retroactive amount of support due shall be paid  
54 [in one lump sum or periodic sums, as the court directs, taking into  
55 account any amount of support which has been paid] AND BE ENFORCEABLE AS  
56 PROVIDED IN SECTION FOUR HUNDRED FORTY OF THIS ARTICLE. Upon an applica-

1 tion to modify, set aside or vacate an order of support, no hearing  
2 shall be required unless such application shall be supported by affida-  
3 vit and other evidentiary material sufficient to establish a prima facie  
4 case for the relief requested.

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

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

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

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

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

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



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

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

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

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

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

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

1 HAD SUCH AN EXECUTION BEEN ISSUED. IN SUCH CASE, THE COURT SHALL NOT  
2 DIRECT THE SCHEDULE OF REPAYMENT OF RETROACTIVE SUPPORT.

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

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

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

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

16 (I) A SUBSTANTIAL CHANGE IN CIRCUMSTANCES; OR

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

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

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

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

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

32 (I) A SUBSTANTIAL CHANGE IN CIRCUMSTANCES; OR

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

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

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

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

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

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

54 20. IF THE RESPONDENT IS REQUIRED TO PARTICIPATE IN WORK PROGRAMS  
55 PURSUANT TO SECTION FOUR HUNDRED THIRTY-SEVEN-A OF THE FAMILY COURT ACT,  
56 AND THE COURT ENTERS AN ORDER OF SUPPORT ON BEHALF OF THE PERSONS IN

1 RECEIPT OF PUBLIC ASSISTANCE, THE SUPPORT COLLECTION UNIT SHALL NOT FILE  
2 A PETITION TO INCREASE THE SUPPORT OBLIGATION FOR TWELVE MONTHS FROM THE  
3 DATE OF ENTRY OF THE ORDER OF SUPPORT IF THE RESPONDENT'S INCOME IS  
4 DERIVED FROM PARTICIPATION IN SUCH PROGRAMS.

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

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

9 (i) entertain an application to enforce the order requiring support;  
10 or

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

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