S T A T E O F N E W Y O R K

10345

I N A S S E M B L Y

May 23, 2012

Introduced by M. of A. O'DONNELL, WEINSTEIN -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act, in relation to the authority of support magistrates in family court to adjudicate child support license suspension proceedings

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

Section 1. Subdivision (a) of section 439 of the family court act, as amended by section 1 of chapter 576 of the laws of 2005, is amended to read as follows:

(a) The chief administrator of the courts shall provide, in accordance with subdivision (f) of this section, for the appointment of a sufficient number of support magistrates to hear and determine support proceedings. Except as hereinafter provided, support magistrates shall be empowered to hear, determine and grant any relief within the powers of the court in any proceeding under this article, articles five, five-A, and five-B and sections two hundred thirty-four and two hundred thirty-five of this act, and objections raised pursuant to section five thousand two hundred forty-one of the civil practice law and rules. Support magistrates shall not be empowered to hear, determine and grant any relief with respect to issues specified in [subdivision five of section four hundred fifty-four or] section four hundred fifty-five of this [act] ARTICLE, issues of contested paternity involving claims of equitable estoppel, custody, visitation including visitation as a defense, and orders of protection or exclusive possession of the home, which shall be referred to a judge as provided in subdivision (b) or (c) of this section. Where an order of filiation is issued by a judge in a paternity proceeding and child support is in issue, the judge, or support magistrate upon referral from the judge, shall be authorized to immediately make a temporary or final order of support, as applicable. A support magistrate shall have the authority to hear and decide motions and issue summonses and subpoenas to produce persons pursuant to section one hundred fifty-three of this act, hear and decide proceedings and

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

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issue any order authorized by subdivision (g) of section five thousand two hundred forty-one of the civil practice law and rules, issue subpoenas to produce prisoners pursuant to section two thousand three hundred two of the civil practice law and rules and make a determination that any person before the support magistrate is in violation of an order of the court as authorized by section one hundred fifty-six of this act subject to confirmation by a judge of the court who shall impose any punishment for such violation as provided by law. A determination by a support magistrate that a person is in willful violation of an order under subdivision three of section four hundred fifty-four of this article and that recommends commitment shall be transmitted to the parties, accompanied by findings of fact, but the determination shall have no force and effect until confirmed by a judge of the court.

S 2. Subdivision (a) of section 439 of the family court act, as amended by section 2 of chapter 576 of the laws of 2005, is amended to read as follows:

(a) The chief administrator of the courts shall provide, in accordance with subdivision (f) of this section, for the appointment of a sufficient number of support magistrates to hear and determine support proceedings. Except as hereinafter provided, support magistrates shall be empowered to hear, determine and grant any relief within the powers of the court in any proceeding under this article, articles five, five-A, and five-B and sections two hundred thirty-four and two hundred thirty-five of this act, and objections raised pursuant to section five thousand two hundred forty-one of the civil practice law and rules. Support magistrates shall not be empowered to hear, determine and grant any relief with respect to issues specified in section four hundred fifty-five of this [act] ARTICLE, issues of contested paternity involving claims of equitable estoppel, custody, visitation including visitation as a defense, and orders of protection or exclusive possession of the home, which shall be referred to a judge as provided in subdivision (b) or (c) of this section. Where an order of filiation is issued by a judge in a paternity proceeding and child support is in issue, the judge, or support magistrate upon referral from the judge, shall be authorized to immediately make a temporary or final order of support, as applicable. A support magistrate shall have the authority to hear and decide motions and issue summonses and subpoenas to produce persons pursuant to section one hundred fifty-three of this act, hear and decide proceedings and issue any order authorized by subdivision (g) of section five thousand two hundred forty-one of the civil practice law and rules, issue subpoenas to produce prisoners pursuant to section two thousand three hundred two of the civil practice law and rules and make a determination that any person before the support magistrate is in violation of an order of the court as authorized by section one hundred fifty-six of this act subject to confirmation by a judge of the court who shall impose any punishment for such violation as provided by law. A determination by a support magistrate that a person is in willful violation of an order under subdivision three of section four hundred fifty-four of this article and that recommends commitment shall be transmitted to the parties, accompanied by findings of fact, but the determination shall have no force and effect until confirmed by a judge of the court.

S 3. Subdivision 5 of section 454 of the family court act, as amended by chapter 601 of the laws of 2007, is amended to read as follows:

5. The court may review a support collection unit's denial of a challenge made by a support obligor pursuant to paragraph (d) of subdivision twelve of section one hundred eleven-b of the social services law if

objections thereto are filed by a support obligor who has received notice that the office of temporary and disability assistance intends to notify the department of motor vehicles that the support obligor's driving privileges are to be suspended. Specific written objections to a support collection unit's denial may be filed by the support obligor within thirty-five days of the mailing of the notice of the support collection unit's denial. A support obligor who files such objections shall serve a copy of the objections upon the support collection unit, which shall have ten days from such service to file a written rebuttal to such objections and a copy of the record upon which the support collection unit's denial was made, including all documentation submitted by the support obligor. Proof of service shall be filed with the court at the time of filing of objections and any rebuttal. The court's review shall be based upon the record and submissions of the support obligor and the support collection unit upon which the support collection unit's denial was made. Within forty-five days after the rebuttal, if any, is filed, the [family] court [judge] shall (i) deny the objections and remand to the support collection unit or (ii) affirm the objections if the court finds the determination of the support collection unit is based upon a clearly erroneous determination of fact or error of law, whereupon the court shall direct the support collection unit not to notify the department of motor vehicles to suspend the support obligor's driving privileges. Provisions set forth herein relating to procedures for appeal to the family court by individuals subject to suspension of driving privileges for failure to pay child support shall apply solely to such cases and not affect or modify any other procedure for review or appeal of administrative enforcement of child support requirements.

S 4. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that:

(a) the amendments to subdivision (a) of section 439 of the family court act made by section one of this act shall be subject to the expiration and reversion of such subdivision pursuant to subdivision 19 of section 246 of chapter 81 of the laws of 1995, as amended, when upon such date the provisions of section two of this act shall take effect; and

(b) the amendments to subdivision 5 of section 454 of the family court act made by section three of this act shall be subject to the repeal of such subdivision pursuant to subdivision 19 of section 246 of chapter 81 of the laws of 1995, as amended.