

4721

2011-2012 Regular Sessions

I N S E N A T E

April 15, 2011

Introduced by Sen. ZELDIN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to noncompliance with an income execution order

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

1 Section 1. Paragraph 1 of subdivision (g) of section 5241 of the civil
2 practice law and rules, as amended by chapter 398 of the laws of 1997,
3 is amended to read as follows:
4 (1)(A) An employer or income payor served with an income execution
5 shall commence deductions from income due or thereafter due to the
6 debtor no later than the first pay period that occurs fourteen days
7 after service of the execution, and shall remit payments to the creditor
8 within seven business days of the date that the debtor is paid. Each
9 payment remitted by an employer or income payor shall include, in addition
10 to the identity and social security number of the debtor, the date
11 and amount of each withholding of the debtor's income included in the
12 payment. If the money due to the debtor consists of salary or wages and
13 his or her employment is terminated by resignation or dismissal at any
14 time after service of the execution, the levy shall thereafter be ineffective,
15 and the execution shall be returned, unless the debtor is reinstated or re-employed
16 within ninety days after such termination. An employer must notify the issuer
17 promptly when the debtor terminates employment and provide the debtor's last
18 address and name and address of the new employer, if known. Where the income
19 is compensation paid or payable to the debtor for personal services, the amount
20 of the deductions to be withheld shall not exceed the following:
21 (i) Where a debtor is currently supporting a spouse or dependent child
22 other than the creditor, the amount of the deductions to be withheld
23 shall not exceed fifty percent of the earnings of the debtor remaining
24 after the deduction therefrom of any amounts required by law to be withheld
25

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

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1 held ("disposable earnings"), except that if any part of such deduction
2 is to be applied to the reduction of arrears which shall have accrued
3 more than twelve weeks prior to the beginning of the week for which such
4 earnings are payable, the amount of such deduction shall not exceed
5 fifty-five percent of disposable earnings.

6 (ii) Where a debtor is not currently supporting a spouse or dependent
7 child other than the creditor, the amount of the deductions to be with-
8 held shall not exceed sixty percent of the earnings of the debtor
9 remaining after the deduction therefrom of any amounts required by law
10 to be withheld ("disposable earnings"), except that if any part of such
11 deduction is to be applied to the reduction of arrears which shall have
12 accrued more than twelve weeks prior to the beginning of the week for
13 which such earnings are payable, the amount of such deduction shall not
14 exceed sixty-five percent of disposable earnings.

15 (B) AN EMPLOYER OR INCOME PAYOR SERVED WITH AN INCOME EXECUTION SHALL
16 BE SERVED A NOTICE BY THE CREDITOR FOR EACH FAILURE TO WITHHOLD
17 DEDUCTIONS FROM INCOME DUE OR THEREAFTER DUE TO THE DEBTOR. SUCH NOTICE
18 SHALL STATE THE DATE PAYMENT WAS DUE UNDER SUBPARAGRAPH (A) OF THIS
19 PARAGRAPH, THE DATE ON WHICH SUCH NOTICE WAS SERVED, WHETHER SUCH NOTICE
20 CONCERNS A FIRST, OR SUBSEQUENT OFFENSE AND THE MONIES OWED IN PENALTY.
21 IN CALCULATING THE PENALTY UNDER THIS SUBPARAGRAPH THE SUPPORT
22 COLLECTION UNIT SHALL USE THE PENALTIES DESCRIBED IN SUBPARAGRAPH (D) OF
23 PARAGRAPH TWO OF THIS SUBDIVISION AND SHALL AGGREGATE THE PENALTIES FOR
24 EACH INSTANCE OF FAILURE TO WITHHOLD DEDUCTIONS OR TO REMIT PAYMENT TO
25 THE UNIT.

26 S 2. Subparagraph (D) of paragraph 2 of subdivision (g) of section
27 5241 of the civil practice and rules, as amended by chapter 335 of the
28 laws of 2006, is amended to read as follows:

29 (D) In addition to the remedies herein provided and as may be other-
30 wise authorized by law, upon a finding by the family court that the
31 employer or income payor failed to deduct or remit deductions as
32 directed in the income execution, the court shall issue to the employer
33 or income payor an order directing compliance and may direct the payment
34 of a civil penalty not to exceed five hundred dollars for the first
35 instance and one thousand dollars per instance for the second and subse-
36 quent instances of employer or income payor noncompliance. UPON A FIND-
37 ING THAT THE CREDITOR HAS COMPLIED WITH THE NOTICE PROVISIONS OF SUBPAR-
38 AGRAPH (B) OF PARAGRAPH ONE OF THIS SUBDIVISION, THE COURT SHALL IMPOSE
39 A PENALTY AS DESCRIBED FOR EACH FAILURE TO WITHHOLD DEDUCTIONS OR REMIT
40 PAYMENT TO THE UNIT; PROVIDED THAT SUCH PENALTIES SHALL NOT ACCRUE TO
41 THE GOVERNMENT OF THE UNITED STATES OR THE GOVERNMENT OF THE STATE OF
42 NEW YORK OR ITS POLITICAL SUBDIVISIONS. The penalty shall be paid to the
43 creditor and may be enforced in the same manner as a civil judgment or
44 in any other manner permitted by law.

45 S 3. This act shall take effect immediately.