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

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2013-2014 Regular Sessions

I N S E N A T E

April 19, 2013

Introduced by COMMITTEE ON RULES -- (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 Rules

AN ACT to amend the social services law, in relation to child support collections (Part A); and to amend the civil practice law and rules and the social services law, in relation to income withholding for child support (Part B)

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

Section 1. This act enacts into law components of legislation which are necessary to provide mandate relief or government efficiencies. Each component is wholly contained within a Part identified as Parts A through B. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes reference to a section "of this act," when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

PART A

Section 1. Subdivision 11 of section 111-h of the social services law, as amended by chapter 502 of the laws of 1990, is amended to read as follows:

11. The department may PERFORM OR provide for the performance of [the] collection [and], disbursement, OR OTHER functions of the support collection units by contract with [a fiscal] AN agent OR AGENTS. For purposes of any reference to support collection unit in this chapter or any other law, the [fiscal] agent OR AGENTS under contract with the

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

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department shall be deemed to be part of all support collection units for which the [fiscal] agent performs [collection and disbursement] ANY functions; PROVIDED, HOWEVER, THAT THE AGENT OR AGENTS SHALL NOT BE A PARTY TO ANY ACTION OR PROCEEDING BROUGHT BY A PARTY TO A SUPPORT ORDER ARISING FROM ITS PERFORMANCE AS AGENT FOR THE SUPPORT COLLECT UNIT.

S 2. Subdivision 2 of section 111-d of the social services law, as added by chapter 502 of the laws of 1990, is amended to read as follows:

2. The local share of expenditures incurred by the department for the provision of centralized collection and disbursement [services] FUNCTIONS OR OTHER FUNCTIONS AUTHORIZED pursuant to section one hundred eleven-h of this title shall be charged back to social services districts. The local share shall be fifty per centum of the amount expended by the department after first deducting therefrom any federal funds properly received or to be received on account thereof[; provided, however, that a social services district's share of the costs related to the centralized collection and disbursement functions shall not exceed those incurred for the year immediately preceding implementation of such functions, except to the extent to which those costs would have increased had centralization of collection and disbursement functions not occurred].

S 3. This act shall take effect immediately.

PART B

Section 1. Paragraph 1 of subdivision (c) of section 5241 of the civil practice law and rules, as amended by chapter 214 of the laws of 1998, is amended to read as follows:

(1) The income execution shall [contain the caption of the order of support, and] BE ON THE FORM FOR INCOME WITHHOLDING PROMULGATED BY THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE FOR THIS PURPOSE AND SHALL INCLUDE THE NECESSARY INFORMATION AND DIRECTIONS TO ENSURE ITS CHARACTERIZATION AS AN INCOME WITHHOLDING NOTICE AS DESCRIBED AND REQUIRED BY SUBSECTION (B) OF SECTION SIX HUNDRED SIXTY-SIX OF TITLE FORTY-TWO OF THE UNITED STATES CODE; PROVIDED, HOWEVER, THAT WHERE THE COURT ENTERS AN ORDER FOR SPOUSAL SUPPORT ONLY FOR WHICH INCOME WITHHOLDING WILL BE ORDERED BY THE SHERIFF, THE CLERK OF COURT OR THE ATTORNEY FOR THE CREDITOR, AN ALTERNATE SPOUSAL SUPPORT FORM FOR INCOME WITHHOLDING PROMULGATED BY THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE MAY BE USED BUT IS NOT REQUIRED. IN ADDITION, THE INCOME EXECUTION SHALL specify [the date that the order of support was entered,] the court in which it was entered, the amount of the periodic payments directed, [the amount of arrears, the nature of the default] and the names of the debtor and creditor. In addition, TO THE EXTENT NOT ALREADY PROVIDED ON THE FORM FOR INCOME WITHHOLDING, A SEPARATE DOCUMENT SHALL BE SERVED WITH the income execution WHICH shall include:

(i) the name and address of the employer or income payor from whom the debtor is receiving or will receive income;

(ii) the amount of the deductions to be made therefrom on account of current support, and the amount to be applied to the reduction of arrears;

(iii) a notice that deductions will apply to current and subsequent income;

(iv) a notice that the income execution will be served upon any current or subsequent employer or income payor unless a mistake of fact is shown within fifteen days, a notice of the manner in which a mistake of fact may be asserted, and a notice that, if the debtor claims a mistake of fact, a determination will be made within forty-five days after notice to the debtor as provided in subdivision (d) of this section, and that the debtor will receive written notice whether the income execution will be served and of the time that deductions will begin;

(v) a notice that the employer or income payor must commence deductions no later than the first pay period that occurs after fourteen days following the service of the income execution and that payment must be remitted within seven business days of the date that the debtor paid;

(vi) a notice that the income execution is binding until further notice;

(vii) a notice of the substance of the provisions of section fifty-two hundred fifty-two of this [chapter] ARTICLE and that a violation thereof is punishable as a contempt of court by fine or imprisonment or both;

(viii) a notice of the limitations upon deductions from wages set forth in subdivision (g) of this section;

(ix) a notice that an employer must notify the issuer promptly when the debtor terminates employment and provide the debtor's last address and the name and address of the new employer, if known;

(x) a notice that when an employer receives an income withholding instrument issued by another state, the employer shall apply the income withholding law of the state of the debtor's principal place of employment in determining:

(A) the employer's fee for processing income withholding;

(B) the maximum amount permitted to be withheld from the debtor's income;

(C) the time periods within which the employer must implement the income withholding and forward the child support payment;

(D) the priorities for withholding and allocating income withheld for multiple child support creditors; and

(E) any withholding terms or conditions not specified in the withholding instrument; [and]

(xi) a notice that an employer who complies with an income [withholding notice] EXECUTION that is regular on its face shall not be subject to civil liability to any individual or agency for conduct in compliance with the notice; AND

(XII) THE AMOUNT OF ARREARS.

S 2. Paragraph 1 of subdivision (g) of section 5241 of the civil practice law and rules, as amended by chapter 398 of the laws of 1997, is amended to read as follows:

(1) An employer or income payor served with an income execution shall commence deductions from income due or thereafter due to the debtor no later than the first pay period that occurs fourteen days after service of the execution, and shall remit payments to the creditor within seven business days of the date that the debtor is paid. Each payment remitted by an employer or income payor shall include[, in addition to the identity and social security number of the debtor, the date and amount of each withholding of the debtor's income included in the payment] THE INFORMATION AS INSTRUCTED ON THE INCOME EXECUTION. If the money due to the debtor consists of salary or wages and his or her employment is terminated by resignation or dismissal at any time after service of the execution, the levy shall thereafter be ineffective, and the execution shall be returned, unless the debtor is reinstated or re-employed within ninety days after such termination. An employer must notify the issuer promptly when the debtor terminates employment and provide the debtor's last address and name and address of the new employer, if known. AN

INCOME PAYOR MUST NOTIFY THE CREDITOR WHEN THE DEBTOR NO LONGER RECEIVES INCOME AND MUST PROVIDE THE DEBTOR'S LAST ADDRESS AND THE NAME AND ADDRESS OF THE DEBTOR'S NEW EMPLOYER, IF KNOWN. Where the income is compensation paid or payable to the debtor for personal services, the amount of the deductions to be withheld shall not exceed the following:

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

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

S 3. Subdivisions (c), (d), (e), (f) and (g) of section 5242 of the civil practice law and rules, as amended by chapter 170 of the laws of 1994, and paragraph (1) and the opening paragraph of paragraph 2 of subdivision (c) as amended by chapter 601 of the laws of 2007, are amended to read as follows:

(c) [(1)] When the court enters an order of CHILD support OR COMBINED CHILD AND SPOUSAL SUPPORT on behalf of persons other than those in receipt of public assistance or in receipt of services pursuant to section one hundred eleven-g of the social services law, or registers pursuant to article five-B of the family court act an order of support which has been issued by a foreign jurisdiction and which is not to be enforced pursuant to title six-A of article three of the social services law, where the court determines that the [respondent earns wages] DEBTOR HAS INCOME that could be subject to an income deduction order, the court shall issue an income deduction order to obtain payment of the order at the same time it issues or registers the order. The court shall enter the income deduction order unless the court finds and sets forth in writing (i) the reasons that there is good cause not to require immediate income withholding; or (ii) that an agreement providing for an alternative arrangement has been reached between the parties. Such agreement may include a written agreement or an oral stipulation, made on the record, that results in a written order. For purposes of this subdivision, good cause shall mean substantial harm to the debtor. The absence of an arrearage or the mere issuance of an income deduction order shall not constitute good cause. When the court determines that there is good cause not to issue an income deduction order immediately or when the parties agree to an alternative arrangement as provided in this [paragraph] SUBDIVISION, the court shall state expressly in the order of support the basis for its decision.

(D) In entering the income deduction order, the court shall [specify an amount to be withheld by the debtor's employer, which shall be sufficient to ensure compliance with the order of support and also shall include an additional amount to be applied to the reduction of arrears, if any, and shall specify the names, addresses, and social security numbers of the parties to the support proceeding and the mailing address of the unit within the state office of temporary and disability assistance designated to receive such deductions] USE THE FORM FOR INCOME WITHHOLDING PROMULGATED BY THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE FOR THIS PURPOSE, WHICH FORM SHALL INCLUDE THE NECESSARY INFORMATION AND DIRECTIONS TO ENSURE THE CHARACTERIZATION OF THE INCOME DEDUCTION ORDER AS AN INCOME WITHHOLDING NOTICE AS DESCRIBED AND REQUIRED BY SUBSECTION (B) OF SECTION SIX HUNDRED SIXTY-SIX OF TITLE FORTY-TWO OF THE UNITED STATES CODE; PROVIDED, HOWEVER, THAT WHERE THE COURT ENTERS AN ORDER FOR SPOUSAL SUPPORT ONLY, AN ALTERNATE SPOUSAL SUPPORT FORM FOR INCOME WITHHOLDING PROMULGATED BY THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE MAY BE USED BUT IS NOT REQUIRED. The court shall SERVE OR CAUSE TO BE SERVED A COPY OF THE INCOME DEDUCTION ORDER ON THE EMPLOYER OR INCOME PAYOR AND transmit copies of such order to the parties; and, IN ADDITION, WHERE THE INCOME DEDUCTION ORDER IS FOR CHILD SUPPORT OR COMBINED CHILD AND SPOUSAL SUPPORT, to [such unit] THE STATE DISBURSEMENT UNIT PROVIDED FOR IN SUBDIVISION FOURTEEN OF SECTION ONE HUNDRED ELEVEN-B OF THE SOCIAL SERVICES LAW.

[(2)] (E) An employer OR INCOME PAYOR served with an income deduction order entered pursuant to this [subdivision] SECTION shall [commence deductions from the income due or thereafter due to the debtor no later than the first pay period that occurs fourteen days after service of the income deduction order, and shall remit payments to the state office of temporary and disability assistance pursuant to subdivision fourteen of section one hundred eleven-b of the social services law within ten days of the date that the debtor is paid. Each payment remitted by the employer shall be made payable to the creditor named in the order, and shall include the names, addresses, and social security numbers of the debtor and the creditor, and the date and the amount of each withholding of the debtor's income included in the payment.] FOLLOW THE DIRECTIONS PROVIDED IN THE INCOME DEDUCTION ORDER, INCLUDING BUT NOT LIMITED TO, INSTRUCTIONS AS TO TIMEFRAMES FOR REMITTANCE, AMOUNT OF REMITTANCE INCLUDING AN ADDITIONAL AMOUNT TO BE APPLIED TO THE REDUCTION OF ARREARS, IF ANY, WITHHOLDING LIMITS, TERMINATION AND REINSTATEMENT OF THE EMPLOYEE, EMPLOYER LIABILITY, NOTICE OF UPCOMING LUMP SUM PAYMENTS, AND PRIORITY OF WITHHOLDING.

(F) An employer OR INCOME PAYOR shall be liable to the creditor for failure to deduct the amounts specified in the income deduction order, provided however that deduction by the employer OR INCOME PAYOR of the amounts specified shall not relieve the debtor of the underlying obligation of support. If an employer OR INCOME PAYOR shall fail to so pay the creditor, the creditor may commence a proceeding against the employer OR INCOME PAYOR for accrued deductions, together with interest and reasonable attorney's fees. If the debtor's employment is terminated by resignation or dismissal at any time after service of the income deduction order, the order shall cease to have force and effect unless the debtor is reinstated or re-employed by the same employer. An employer must notify the creditor promptly when the debtor terminates employment and must provide the debtor's last address and the name and address of the debtor's new employer, if known. AN INCOME PAYOR MUST NOTIFY THE CREDITOR WHEN THE DEBTOR NO LONGER RECEIVES INCOME AND MUST PROVIDE THE DEBTOR'S LAST ADDRESS AND THE NAME AND ADDRESS OF THE DEBTOR'S NEW EMPLOYER, IF KNOWN. Where the income is compensation paid or payable to the debtor for personal services, the amount withheld by the employer shall not exceed the following:

(i) Where the debtor currently is supporting a spouse or dependent child other than the creditor's dependent child, the amount withheld shall not exceed fifty percent of the earnings of the debtor remaining after the deduction therefrom of any amounts required by law to be withheld ("disposable earnings"), except that if any part of the deduction is to be applied to the reduction of arrears which shall have accrued more than twelve weeks prior to the beginning of the week for which such earnings are payable, the amount withheld shall not exceed fifty-five percent of disposable earnings.

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

[(d)] (G) An order pursuant to this section shall take priority over any other assignment, levy or process. If an employer or income payor is served with more than one income deduction order pertaining to a single employee pursuant to this section, or with an order issued pursuant to this section and also an execution pursuant to section 5241 of this [chapter] ARTICLE, and if the combined total amount of the income to be withheld exceeds the limits set forth in subdivision [(c)] (F) of this section, the employer or income payor shall withhold the maximum amount permitted thereby and pay to each creditor that proportion thereof which such creditor's claim bears to the combined total.

[(e)] (H) An employer or income payor shall be liable to the creditor for failure to deduct the amounts specified, provided however that deduction of the amounts specified by the employer or income payor shall not relieve the debtor of the underlying obligation of support.

[(f)] (I) A creditor shall not be required to issue process under section 5241 of this article prior to obtaining relief pursuant to this section.

[(g) Where the court issues an income deduction order for support enforcement payable to the support collection unit, as defined in paragraph nine of subdivision (a) of section 5241 of this article, each payment remitted by an employer or income payor shall include, in addition to the identity and social security number of the debtor, the date and amount of each withholding of the debtor's income included in the payment.]

S 4. Subdivision 14 of section 111-b of the social services law, as amended by chapter 398 of the laws of 1997, is amended to read as follows:

14. [The] FOR PURPOSES OF THIS SUBDIVISION, THE department OR ITS FISCAL AGENT PURSUANT TO SECTION ONE HUNDRED ELEVEN-H OF THIS TITLE, SHALL ACT AS THE STATE DISBURSEMENT UNIT AND is authorized to [receive] COLLECT and [transmit funds] DISBURSE ANY SUPPORT paid pursuant to any order of child support or child and spousal support issued on or after the first day of January, nineteen hundred ninety-four under the provisions of section two hundred thirty-six or two hundred forty of the domestic relations law, or article four, five, five-A or five-B of the family court act, and which the court has ordered to be paid pursuant to an income deduction order issued by the court pursuant to subdivision (c) of section five thousand two hundred forty-two of the civil practice

law and rules. Such [funds] SUPPORT received shall be [transmitted] DISBURSED within [five] TWO business days of [their] receipt. The department shall maintain records of its [receipt] COLLECTION and [transmission] DISBURSEMENT of [funds] SUCH SUPPORT and furnish such records to the parties to the order upon request. The department shall be entitled to collect an annual service fee not to exceed the maximum fee permitted pursuant to federal law for its provision of such services. Funds received in satisfaction of such fee shall be deposited in an account and shall be made available to the department for costs incurred in the implementation of this section. The department shall not furnish any additional services to the parties to enforce the support obligation; however, a party seeking enforcement of a support obligation may apply for [enforcement] CHILD SUPPORT services pursuant to section one hundred eleven-g of this title. The department shall not be responsible for the [receipt] COLLECTION and [transmission] DISBURSEMENT of any [funds] SUPPORT until after it has received a copy of the income deduction order and the person entitled to the payment of support pursuant to the order of support has submitted payment of the annual service fee IF ANY, and unless its records show that it has received such [funds] SUPPORT on behalf of the parties to the order, and that the party to whom the funds are to be [transmitted] DISBURSED has provided the department with [his or her correct] ANY address CHANGES.

S 5. Within the thirty-day period prior to the effective date of this act, the state disbursement unit shall provide written notice to the employer or income payor and to the creditor that any income execution or income deduction order issued prior to such effective date requiring payments to be remitted through the state disbursement unit shall be made payable to the state disbursement unit on and after such effective date.

S 6. This act shall take effect on the two hundred seventieth day after it shall have become law, except that any rule or regulation necessary for the timely implementation of this act on its effective date may be promulgated on or before such date.

S 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 3. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through B of this act shall be as specifically set forth in the last section of such Parts.