

4728--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules and the social services law, in relation to income withholding for child support

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

1 Section 1. Subdivision (a) of section 5241 of the civil practice law
2 and rules is amended by adding a new paragraph 13 to read as follows:
3 13. "ISSUER" MEANS A SUPPORT COLLECTION UNIT, SHERIFF, THE CLERK OF
4 COURT, OR THE ATTORNEY FOR THE CREDITOR.
5 S 2. Paragraph 1 of subdivision (b) of section 5241 of the civil prac-
6 tice law and rules, as amended by chapter 59 of the laws of 1993, is
7 amended to read as follows:
8 (1) When a debtor is in default, an execution for support enforcement
9 may be issued by the support collection unit, or by the sheriff, the
10 clerk of court or the attorney for the creditor as an officer of the
11 court. Where a debtor is receiving or will receive income, an execution
12 for deductions therefrom in amounts not to exceed the limits set forth
13 in subdivision (g) of this section may be served upon an employer or
14 income payor after notice to the debtor. The amount of the deductions to
15 be withheld shall be sufficient to ensure compliance with the direction
16 in the order of support, and shall include an additional amount to be
17 applied to the reduction of arrears. The [creditor] ISSUER may amend the
18 execution before or after service upon the employer or income payor to
19 reflect additional arrears or payments made by the debtor after notice
20 pursuant to subdivision (d) of this section, or to conform the execution
21 to the facts found upon a determination made pursuant to subdivision (e)
22 of this section.

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

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1 S 3. Paragraph 1 of subdivision (c) of section 5241 of the civil prac-
2 tice law and rules, as amended by chapter 214 of the laws of 1998, is
3 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

52 (x) a notice that when an employer receives an income withholding
53 instrument issued by another state, the employer shall apply the income
54 withholding law of the state of the debtor's principal place of employ-
55 ment in determining:

56 (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 4. Subdivision (d) of section 5241 of the civil practice law and rules, as added by chapter 809 of the laws of 1985, is amended to read as follows:

(d) Notice to debtor. The [creditor] ISSUER shall serve a copy of the execution upon the debtor by regular mail to the debtor at his last known residence or such other place where he is likely to receive notice, or in the same manner as a summons may be served.

S 5. Subdivision (f) of section 5241 of the civil practice law and rules, as added by chapter 809 of the laws of 1985, is amended to read as follows:

(f) Levy. If a debtor fails to show mistake of fact within fifteen days, or after a determination pursuant to subdivision (e) of this section has been made, or if the [creditor] ISSUER is unable to serve the execution upon the debtor, the creditor may levy upon the income that the debtor is receiving or will receive by serving the execution upon the employer or income payor personally in the same manner as a summons or by regular mail, except that such service shall not be made by delivery to a person authorized to receive service of summons solely by a designation filed pursuant to a provision of law other than rule 318.

S 6. 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 AND SHALL BE PAYABLE TO AND REMITTED TO THE STATE DISBURSEMENT UNIT ESTABLISHED IN THIS STATE IN ACCORDANCE WITH SECTION SIX HUNDRED FIFTY-FOUR-B OF TITLE FORTY-TWO OF THE UNITED STATES CODE UNLESS THE INCOME EXECUTION IS FOR SPOUSAL SUPPORT ONLY, IN WHICH CASE THE PAYMENTS SHALL BE PAYABLE TO AND REMITTED TO THE CREDITOR. 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

1 address of the new employer, if known. AN INCOME PAYOR MUST NOTIFY THE
2 ISSUER PROMPTLY WHEN THE DEBTOR NO LONGER RECEIVES INCOME AND MUST
3 PROVIDE THE DEBTOR'S LAST ADDRESS AND THE NAME AND ADDRESS OF THE
4 DEBTOR'S NEW EMPLOYER, IF KNOWN. Where the income is compensation paid
5 or payable to the debtor for personal services, the amount of the
6 deductions to be withheld shall not exceed the following:

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

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

25 S 7. Subdivisions (c), (d), (e), (f) and (g) of section 5242 of the
26 civil practice law and rules, as amended by chapter 170 of the laws of
27 1994, and paragraph 1 and the opening paragraph of paragraph 2 of subdi-
28 vision (c) as amended by chapter 601 of the laws of 2007, are amended to
29 read as follows:

30 (c) [(1)] When the court enters an order of support on behalf of
31 persons other than those in receipt of public assistance or in receipt
32 of services pursuant to section one hundred eleven-g of the social
33 services law, or registers pursuant to article five-B of the family
34 court act an order of support which has been issued by a foreign juris-
35 diction and which is not to be enforced pursuant to title six-A of arti-
36 cle three of the social services law, where the court determines that
37 the [respondent earns wages] DEBTOR HAS INCOME that could be subject to
38 an income deduction order, the court shall issue an income deduction
39 order to obtain payment of the order at the same time it issues or
40 registers the order. The court shall enter the income deduction order
41 unless the court finds and sets forth in writing (i) the reasons that
42 there is good cause not to require immediate income withholding; or (ii)
43 that an agreement providing for an alternative arrangement has been
44 reached between the parties. Such agreement may include a written agree-
45 ment or an oral stipulation, made on the record, that results in a writ-
46 ten order. For purposes of this subdivision, good cause shall mean
47 substantial harm to the debtor. The absence of an arrearage or the mere
48 issuance of an income deduction order shall not constitute good cause.
49 When the court determines that there is good cause not to issue an
50 income deduction order immediately or when the parties agree to an
51 alternative arrangement as provided in this [paragraph] SUBDIVISION, the
52 court shall state expressly in the order of support the basis for its
53 decision.

54 (D) In entering the income deduction order, the court shall [specify
55 an amount to be withheld by the debtor's employer, which shall be suffi-
56 cient to ensure compliance with the order of support and also shall

1 include an additional amount to be applied to the reduction of arrears,
2 if any, and shall specify the names, addresses, and social security
3 numbers of the parties to the support proceeding and the mailing address
4 of the unit within the state office of temporary and disability assist-
5 ance designated to receive such deductions] USE THE FORM FOR INCOME
6 WITHHOLDING PROMULGATED BY THE OFFICE OF TEMPORARY AND DISABILITY
7 ASSISTANCE FOR THIS PURPOSE, WHICH FORM SHALL INCLUDE THE NECESSARY
8 INFORMATION AND DIRECTIONS TO ENSURE THE CHARACTERIZATION OF THE INCOME
9 DEDUCTION ORDER AS AN INCOME WITHHOLDING NOTICE AS DESCRIBED AND
10 REQUIRED BY SUBSECTION (B) OF SECTION SIX HUNDRED SIXTY-SIX OF TITLE
11 FORTY-TWO OF THE UNITED STATES CODE; PROVIDED, HOWEVER, THAT WHERE THE
12 COURT ENTERS AN ORDER FOR SPOUSAL SUPPORT ONLY, AN ALTERNATE SPOUSAL
13 SUPPORT FORM FOR INCOME WITHHOLDING PROMULGATED BY THE OFFICE OF TEMPO-
14 RARY AND DISABILITY ASSISTANCE MAY BE USED BUT IS NOT REQUIRED. The
15 court shall SERVE OR CAUSE TO BE SERVED A COPY OF THE INCOME DEDUCTION
16 ORDER ON THE EMPLOYER OR INCOME PAYOR AND transmit copies of such order
17 to the parties; and, IN ADDITION, WHERE THE INCOME DEDUCTION ORDER IS
18 FOR CHILD SUPPORT OR COMBINED CHILD AND SPOUSAL SUPPORT, to [such unit]
19 THE STATE DISBURSEMENT UNIT ESTABLISHED IN THIS STATE IN ACCORDANCE WITH
20 SECTION SIX HUNDRED FIFTY-FOUR-B OF TITLE FORTY-TWO OF THE UNITED STATES
21 CODE.

22 [(2)] (E) An employer OR INCOME PAYOR served with an income deduction
23 order entered pursuant to this [subdivision] SECTION shall commence
24 deductions from the income due or thereafter due to the debtor no later
25 than the first pay period that occurs fourteen days after service of the
26 income deduction order, and shall MAKE PAYMENTS PAYABLE TO AND remit
27 SUCH payments to the state [office of temporary and disability assist-
28 ance pursuant to subdivision fourteen of section one hundred eleven-b of
29 the social services law] DISBURSEMENT UNIT IF THE DEDUCTIONS ARE FOR
30 CHILD OR COMBINED CHILD AND SPOUSAL SUPPORT, OR TO THE CREDITOR IF THE
31 DEDUCTIONS ARE FOR SPOUSAL SUPPORT ONLY, within [ten] SEVEN BUSINESS
32 days of the date that the debtor is paid. Each payment remitted by the
33 employer OR INCOME PAYOR shall [be made payable to the creditor named in
34 the order, and shall include the names, addresses, and social security
35 numbers of the debtor and the creditor, and the date and the amount of
36 each withholding of the debtor's income included in the payment.]
37 INCLUDE THE INFORMATION AS INSTRUCTED ON THE INCOME DEDUCTION ORDER. THE
38 AMOUNT REMITTED BY THE EMPLOYER OR INCOME PAYOR SHALL BE AS SET FORTH IN
39 THE INCOME DEDUCTION ORDER INCLUDING THE ADDITIONAL AMOUNT THAT SHALL BE
40 ORDERED BY THE COURT AND APPLIED TO THE REDUCTION OF ARREARS, IF ANY,
41 UNLESS SUCH DEDUCTION IS OTHERWISE LIMITED BY SUBDIVISION (F) OF THIS
42 SECTION.

43 (F) An employer OR INCOME PAYOR shall be liable to the creditor for
44 failure to deduct the amounts specified in the income deduction order,
45 provided however that deduction by the employer OR INCOME PAYOR of the
46 amounts specified shall not relieve the debtor of the underlying obli-
47 gation of support. If an employer OR INCOME PAYOR shall fail to so pay
48 THE STATE DISBURSEMENT UNIT OR, IF A SPOUSAL SUPPORT ONLY PAYMENT the
49 creditor, the creditor may commence a proceeding against the employer OR
50 INCOME PAYOR for accrued deductions, together with interest and reason-
51 able attorney's fees. If the debtor's employment is terminated by
52 resignation or dismissal at any time after service of the income
53 deduction order, the order shall cease to have force and effect unless
54 the debtor is reinstated or re-employed WITHIN NINETY DAYS AFTER SUCH
55 TERMINATION. An employer must notify the [creditor] ISSUER promptly when
56 the debtor terminates employment and must provide the debtor's last

1 address and the name and address of the debtor's new employer, if known.
2 AN INCOME PAYOR MUST NOTIFY THE ISSUER WHEN THE DEBTOR NO LONGER
3 RECEIVES INCOME AND MUST PROVIDE THE DEBTOR'S LAST ADDRESS AND THE NAME
4 AND ADDRESS OF THE DEBTOR'S NEW EMPLOYER, IF KNOWN. Where the income is
5 compensation paid or payable to the debtor for personal services, the
6 amount withheld by the employer shall not exceed the following:

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

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

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

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

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

42 [(g) Where the court issues an income deduction order for support
43 enforcement payable to the support collection unit, as defined in para-
44 graph nine of subdivision (a) of section 5241 of this article, each
45 payment remitted by an employer or income payor shall include, in addi-
46 tion to the identity and social security number of the debtor, the date
47 and amount of each withholding of the debtor's income included in the
48 payment.]

49 S 8. Subdivision 14 of section 111-b of the social services law, as
50 amended by chapter 398 of the laws of 1997, is amended to read as
51 follows:

52 14. [The] FOR PURPOSES OF THIS SUBDIVISION, THE department OR, PURSU-
53 ANT TO CONTRACT, A FISCAL AGENT is authorized to [receive] COLLECT and
54 [transmit funds] DISBURSE ANY SUPPORT paid pursuant to any order of
55 child support or COMBINED child and spousal support issued on or after
56 the first day of January, nineteen hundred ninety-four under the

1 provisions of section two hundred thirty-six or two hundred forty of the
2 domestic relations law, or article four, five, five-A or five-B of the
3 family court act, and which the court has ordered to be paid pursuant to
4 AN INCOME EXECUTION ISSUED BY THE SHERIFF, THE CLERK OF THE COURT, OR
5 THE ATTORNEY FOR THE CREDITOR PURSUANT TO SUBDIVISION (C) OF SECTION
6 FIVE THOUSAND TWO HUNDRED FORTY-ONE OF THE CIVIL PRACTICE LAW AND RULES
7 OR an income deduction order issued by the court pursuant to subdivision
8 (c) of section five thousand two hundred forty-two of the civil practice
9 law and rules. Such [funds] SUPPORT received shall be [transmitted]
10 DISBURSED within [five] TWO business days of [their] receipt. The
11 department shall maintain records of its [receipt] COLLECTION and [tran-
12 smission] DISBURSEMENT of [funds] SUCH SUPPORT and furnish such records
13 to the parties to the order upon request. The department shall be enti-
14 tled to collect an annual service fee not to exceed the maximum fee
15 permitted pursuant to federal law for its provision of such services.
16 Funds received in satisfaction of such fee shall be deposited in an
17 account and shall be made available to the department for costs incurred
18 in the implementation of this section. The department shall not furnish
19 any additional services to the parties [to enforce the support obli-
20 gation]; however, a party seeking [enforcement of a support obligation]
21 CHILD SUPPORT SERVICES may apply for [enforcement] SUCH services pursu-
22 ant to section one hundred eleven-g of this title. The department shall
23 not be responsible for the [receipt] COLLECTION and [transmission]
24 DISBURSEMENT of any [funds] SUPPORT until after it HAS received a copy
25 of the INCOME EXECUTION FROM THE SHERIFF, THE CLERK OF THE COURT, OR THE
26 ATTORNEY FOR THE CREDITOR OR A COPY OF THE income deduction order ISSUED
27 BY THE COURT and the person entitled to the payment of support pursuant
28 to the order of support has submitted payment of the annual service fee
29 IF ANY, and unless its records show that it has received such [funds]
30 SUPPORT on behalf of the parties to the order, and that the party to
31 whom the funds are to be [transmitted] DISBURSED has provided the
32 department with [his or her correct] ANY address CHANGES.

33 S 9. Within the thirty-day period prior to the effective date of this
34 act, the state disbursement unit shall provide written notice to the
35 employer or income payor and to the creditor that any income execution
36 or income deduction order issued prior to such effective date requiring
37 payments to be remitted through the state disbursement unit shall be
38 made payable to the state disbursement unit on and after such effective
39 date.

40 S 10. This act shall take effect on the two hundred seventieth day
41 after it shall have become law, except that any rule or regulation
42 necessary for the timely implementation of this act on its effective
43 date may be promulgated on or before such date.