

9464

I N A S S E M B L Y

May 1, 2014

Introduced by M. of A. BARRETT, 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 applications to modify orders of child support in the family court

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

1 Section 1. Section 451 of the family court act, as amended by chapter
2 182 of the laws of 2010, is amended to read as follows:
3 S 451. Continuing jurisdiction. 1. Except as provided in article
4 five-B of this act, the court has continuing jurisdiction over any
5 support proceeding brought under this article until its judgment is
6 completely satisfied and may modify, set aside or vacate any order
7 issued in the course of the proceeding, provided, however, that the
8 modification, set aside or vacatur shall not reduce or annul child
9 support arrears accrued prior to the making of an application pursuant
10 to this section. The court shall not reduce or annul any other arrears
11 unless the defaulting party shows good cause for failure to make appli-
12 cation for relief from the judgment or order directing payment prior to
13 the accrual of the arrears, in which case the facts and circumstances
14 constituting such good cause shall be set forth in a written memorandum
15 of decision. A modification may increase support payments nunc pro tunc
16 as of the date of the initial application for support based on newly
17 discovered evidence. Any retroactive amount of support due shall be paid
18 and be enforceable as provided in section four hundred forty of this
19 article. Upon an application to [modify,] set aside or vacate an order
20 of support, no hearing shall be required unless such application shall
21 be supported by affidavit and other evidentiary material sufficient to
22 establish a prima facie case for the relief requested.
23 2. A PROCEEDING TO MODIFY AN ORDER OF SUPPORT SHALL BE COMMENCED BY
24 THE FILING OF A PETITION WHICH SHALL ALLEGE FACTS SUFFICIENT TO MEET ONE
25 OR MORE OF THE GROUNDS ENUMERATED IN SUBDIVISION THREE OF THIS SECTION.
26 3. (a) The court may modify an order of child support, including an
27 order incorporating without merging an agreement or stipulation of the

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

1 parties, upon a showing of a substantial change in circumstances.
2 Incarceration shall not be a bar to finding a substantial change in
3 circumstances provided such incarceration is not the result of non-pay-
4 ment of a child support order, or an offense against the custodial
5 parent or child who is the subject of the order or judgment.

6 (b) In addition, unless the parties have specifically opted out of the
7 following provisions in a validly executed agreement or stipulation
8 entered into between the parties, the court may modify an order of child
9 support where:

10 (i) three years have passed since the order was entered, last modified
11 or adjusted; or

12 (ii) there has been a change in either party's gross income by fifteen
13 percent or more since the order was entered, last modified, or adjusted.
14 A reduction in income shall not be considered as a ground for modifica-
15 tion unless it was involuntary and the party has made diligent attempts
16 to secure employment commensurate with his or her education, ability,
17 and experience.

18 S 2. This act shall take effect on the ninetieth day after it shall
19 have become a law.