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

4271

2013-2014 Regular Sessions

I N S E N A T E

March 18, 2013

Introduced by Sen. BONACIC -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the family court act, in relation to child support arrears accrued prior to applications to modify child support orders in supreme or family court

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

Section 1. Subdivisions 2 and 5 of section 455 of the family court act, as amended by chapter 533 of the laws of 1999, are amended to read as follows:

2. Except as provided in article five-B of this act, any respondent against whom an order of commitment has been issued, if financially unable to comply with any lawful order issued under this article, upon such notice to such parties as the court may direct, may make application to the court for an order relieving him or her of FUTURE payments directed in such order and the commitment order. The court, upon the hearing on such application, if satisfied by competent proof that the respondent is financially unable to comply with such order may, upon a showing of good cause until further order of the court, modify such order and relieve the respondent from the commitment order. NO SUCH MODIFICATION SHALL REDUCE OR ANNUL CHILD SUPPORT ARREARS ACCRUED PRIOR TO THE MAKING OF AN APPLICATION PURSUANT TO THIS SECTION. No such modification shall reduce or annul unpaid sums or installments OF OTHER ARREARS accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief from the order directing payment prior to the accrual of such arrears. Such modification may increase the amount to be paid pursuant to a lawful order issued under this article nunc pro tunc based on newly discovered evidence.

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

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5. Any respondent may assert his or her financial inability to comply with the directions contained in an order issued under this article or an order or judgment entered in a matrimonial action or in an action for the enforcement in this state of a judgment in a matrimonial action rendered in another state, as a defense in a proceeding instituted against him or her under subdivision one of section four hundred fifty-four of this article or under the judiciary law to punish him or her for failure to comply with such directions. If the court, upon the hearing of such contempt proceeding, is satisfied by competent proof that the respondent is financially unable to comply with such order or judgment, it may, in its discretion, until further order of the court, make an order modifying such order or judgment and denying the application to punish the respondent for contempt; provided, however, that if an order or [judgement] JUDGMENT for child support issued by another state is before the court solely for enforcement, the court may only modify the order in accordance with article five-B of this act. NO SUCH MODIFICATION SHALL REDUCE OR ANNUL CHILD SUPPORT ARREARS ACCRUED PRIOR TO THE MAKING OF AN APPLICATION PURSUANT TO THIS SECTION. No such modification shall reduce or annul UNPAID SUMS OR INSTALLMENTS OF OTHER arrears accrued prior to the making of such application for modification unless the defaulting party shows good cause for failure to make application for relief from the order or judgment directing such payment prior to the accrual of such arrears. Such modification may increase such support nunc pro tunc as of the date of the application based on newly discovered evidence. Any retroactive amount of support due shall be paid in one sum or periodic sums, as the court shall direct, taking into account any amount of temporary support which has been paid.

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