

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:

1 Section 1. Subdivisions 2 and 5 of section 455 of the family court
2 act, as amended by chapter 533 of the laws of 1999, are amended to read
3 as follows:
4 2. Except as provided in article five-B of this act, any respondent
5 against whom an order of commitment has been issued, if financially
6 unable to comply with any lawful order issued under this article, upon
7 such notice to such parties as the court may direct, may make applica-
8 tion to the court for an order relieving him or her of FUTURE payments
9 directed in such order and the commitment order. The court, upon the
10 hearing on such application, if satisfied by competent proof that the
11 respondent is financially unable to comply with such order may, upon a
12 showing of good cause until further order of the court, modify such
13 order and relieve the respondent from the commitment order. NO SUCH
14 MODIFICATION SHALL REDUCE OR ANNUL CHILD SUPPORT ARREARS ACCRUED PRIOR
15 TO THE MAKING OF AN APPLICATION PURSUANT TO THIS SECTION. No such
16 modification shall reduce or annul unpaid sums or installments OF OTHER
17 ARREARS accrued prior to the making of such application unless the
18 defaulting party shows good cause for failure to make application for
19 relief from the order directing payment prior to the accrual of such
20 arrears. Such modification may increase the amount to be paid pursuant
21 to a lawful order issued under this article nunc pro tunc based on newly
22 discovered evidence.

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

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

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