

4766

2015-2016 Regular Sessions

I N   A S S E M B L Y

February 6, 2015

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Introduced by M. of A. McKEVITT, GRAF, MONTESANO, KOLB -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the civil practice law and rules, in relation to the enforcement of orders of restitution or reparation

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

1     Section 1. Paragraph (b) of subdivision 6 of section 420.10 of the  
2 criminal procedure law, as amended by chapter 618 of the laws of 1992,  
3 is amended to read as follows:  
4     (b) The district attorney may, in his or her discretion, and must,  
5 upon order of the court, institute proceedings to collect such fine,  
6 restitution or reparation INCLUDING, BUT NOT LIMITED TO, THE RETENTION  
7 OF A COLLECTION AGENCY PREVIOUSLY APPROVED BY THE COURT IN ACCORDANCE  
8 WITH THE GUIDELINES ESTABLISHED BY THE OFFICE OF COURT ADMINISTRATION.  
9     S 2. Subdivision 6 of section 420.10 of the criminal procedure law is  
10 amended by adding a new paragraph (c) to read as follows:  
11     (C) THE COURT MAY MAKE AN INCOME DEDUCTION ORDER FOR RESTITUTION OR  
12 REPARATION ENFORCEMENT UNDER SECTION FIFTY-TWO HUNDRED FORTY-TWO OF THE  
13 CIVIL PRACTICE LAW AND RULES.  
14     S 3. The section heading of section 5241 of the civil practice law and  
15 rules, as added by chapter 809 of the laws of 1985, is amended to read  
16 as follows:  
17     Income execution for support, RESTITUTION OR REPARATION enforcement.  
18     S 4. Subdivision (a) of section 5241 of the civil practice law and  
19 rules is amended by adding a new paragraph 1-a to read as follows:  
20     1-A. "ORDER OF RESTITUTION OR REPARATION" MEANS ANY ORDER OF A COURT  
21 REQUIRING, AS PART OF A SENTENCE IMPOSED UPON A PERSON CONVICTED OF AN  
22 OFFENSE, A DEFENDANT TO MAKE RESTITUTION OF THE FRUITS OF HIS OFFENSE OR  
23 REPARATION FOR THE LOSS OR DAMAGE CAUSED THEREBY.

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

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1 S 5. Paragraphs 2, 3, 7 and 8 of subdivision (a) of section 5241 of  
2 the civil practice law and rules, as added by chapter 809 of the laws of  
3 1985, are amended to read as follows:

4 2. "Debtor" means any person directed to make payments by an order of  
5 support, RESTITUTION OR REPARATION.

6 3. "Creditor" means any person entitled to enforce an order of  
7 support, including a support collection unit OR AN ORDER OF RESTITUTION  
8 OR REPARATION.

9 7. "Default" means the failure of a debtor to remit to a creditor  
10 three payments on the date due in the full amount directed by [the] AN  
11 order of support, RESTITUTION OR REPARATION or the accumulation of  
12 arrears equal to or greater than the amount directed to be paid for one  
13 month, whichever first occurs.

14 8. "Mistake of fact" means an error in the amount of current support,  
15 RESTITUTION OR REPARATION or arrears or in the identity of the debtor or  
16 that the order of support, RESTITUTION OR REPARATION does not exist or  
17 has been vacated.

18 S 6. Paragraph 1 of subdivision (b) of section 5241 of the civil prac-  
19 tice law and rules, as amended by chapter 270 of the laws of 2013, is  
20 amended to read as follows:

21 (1) When a debtor is in default, an execution for support enforcement  
22 may be issued by the support collection unit, or by the sheriff, the  
23 clerk of court or the attorney for the creditor as an officer of the  
24 court. WHEN A DEBTOR IS IN DEFAULT, AN EXECUTION FOR RESTITUTION OR  
25 REPARATION ENFORCEMENT MAY BE ISSUED BY THE SHERIFF, THE CLERK OF THE  
26 COURT OR THE ATTORNEY FOR THE CREDITOR AS AN OFFICER OF THE COURT. Where  
27 a debtor is receiving or will receive income, an execution for  
28 deductions therefrom in amounts not to exceed the limits set forth in  
29 subdivision (g) of this section may be served upon an employer or income  
30 payor after notice to the debtor. The amount of the deductions to be  
31 withheld shall be sufficient to ensure compliance with the direction in  
32 the order of support, RESTITUTION OR REPARATION and shall include an  
33 additional amount to be applied to the reduction of arrears. The issuer  
34 may amend the execution before or after service upon the employer or  
35 income payor to reflect additional arrears or payments made by the  
36 debtor after notice pursuant to subdivision (d) of this section, or to  
37 conform the execution to the facts found upon a determination made  
38 pursuant to subdivision (e) of this section.

39 S 7. The subdivision heading, the opening paragraph and subparagraph  
40 (ii) of paragraph 1 of subdivision (c) of section 5241 of the civil  
41 practice law and rules, the subdivision heading as amended by chapter 59  
42 of the laws of 1993, the opening paragraphs and subparagraph (ii) as  
43 amended by chapter 270 of the laws of 2013, are amended to read as  
44 follows:

45 Execution for support, RESTITUTION OR REPARATION enforcement; form.

46 The income execution shall be on the form for income withholding  
47 promulgated by the office of temporary and disability assistance for  
48 this purpose and shall include the necessary information and directions  
49 to ensure its characterization as an income withholding notice as  
50 described and required by subsection (b) of section six hundred sixty-  
51 six of title forty-two of the United States Code; provided, however,  
52 that where the court enters an order for spousal support, RESTITUTION OR  
53 REPARATION only for which income withholding will be ordered by the  
54 sheriff, the clerk of court or the attorney for the creditor, an alter-  
55 nate [spousal support] form for income withholding promulgated by the  
56 office of temporary and disability assistance may be used but is not

1 required. In addition, the income execution shall specify the court in  
2 which it was entered, the amount of the periodic payments directed, and  
3 the names of the debtor and creditor. In addition, to the extent not  
4 already provided on the form for income withholding, a separate document  
5 shall be served with the income execution which shall include:

6 (ii) the amount of the deductions to be made therefrom on account of  
7 current support, RESTITUTION OR REPARATION and the amount to be applied  
8 to the reduction of arrears;

9 S 8. Subdivision (e) of section 5241 of the civil practice law and  
10 rules, as amended by chapter 94 of the laws of 2008, is amended to read  
11 as follows:

12 (e) Determination of mistake of fact. Where the execution has been  
13 issued by the support collection unit, the debtor may assert a mistake  
14 of fact and shall have an opportunity to make a submission in support of  
15 the objection within fifteen days from service of a copy thereof. There-  
16 after, the agency shall determine the merits of the objection, and  
17 shall notify the debtor of its determination within forty-five days  
18 after notice to the debtor as provided in subdivision (d) of this  
19 section. If the objection is disallowed, the debtor shall be notified  
20 that the income execution will be served on the employer or income  
21 payor, and of the time that deductions will begin. Where the income  
22 execution has been issued by an attorney as officer of the court, or by  
23 the sheriff, or by the clerk of the court, the debtor may assert a  
24 mistake of fact within fifteen days from service of a copy thereof by  
25 application to the supreme court or to the family court having jurisdic-  
26 tion in accordance with section four hundred sixty-one of the family  
27 court act. If application is made to the family court, such application  
28 shall be by petition on notice to the creditor and it shall be heard and  
29 determined in accordance with the provisions of section four hundred  
30 thirty-nine of the family court act, and a determination thereof shall  
31 be made, and the debtor notified thereof within forty-five days of the  
32 application. If application is made to the supreme court such applica-  
33 tion shall be by order to show cause or motion on notice to the creditor  
34 in the action in which the order or judgement sought to be enforced was  
35 entered and a determination thereof shall be made, and the debtor noti-  
36 fied thereof within forty-five days of the application. WHERE THE  
37 INCOME EXECUTION HAS BEEN ISSUED BY AN ATTORNEY AS OFFICER OF THE COURT,  
38 OR BY THE SHERIFF, OR BY THE CLERK OF THE COURT TO ENFORCE AN ORDER OF  
39 RESTITUTION OR REPARATION, THE DEBTOR MAY ASSERT A MISTAKE OF FACT WITH-  
40 IN FIFTEEN DAYS FROM SERVICE OF A COPY THEREOF BY APPLICATION TO THE  
41 SUPREME COURT HAVING ISSUED SUCH ORDER. SUCH APPLICATION SHALL BE BY  
42 PETITION ON NOTICE TO THE CREDITOR, AND IT SHALL BE HEARD AND DETERMINED  
43 IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE FOUR OF THIS CHAPTER, AND A  
44 DETERMINATION THEREOF SHALL BE MADE, AND THE DEBTOR NOTIFIED THEREOF  
45 WITHIN FORTY-FIVE DAYS OF THE APPLICATION.

46 S 9. The opening paragraph of paragraph 1 of subdivision (g) of  
47 section 5241 of the civil practice law and rules, as amended by chapter  
48 270 of the laws of 2013, is amended to read as follows:

49 An employer or income payor served with an income execution shall  
50 commence deductions from income due or thereafter due to the debtor no  
51 later than the first pay period that occurs fourteen days after service  
52 of the execution, and shall remit payments within seven business days of  
53 the date that the debtor is paid. Each payment remitted by an employer  
54 or income payor shall include the information as instructed on the  
55 income execution and shall be payable to and remitted to the state  
56 disbursement unit established in this state in accordance with section

1 six hundred fifty-four-b of title forty-two of the United States Code  
2 unless the income execution is for spousal support only, in which case  
3 the payments shall be payable to and remitted to the creditor. If the  
4 money due to the debtor consists of salary or wages and his or her  
5 employment is terminated by resignation or dismissal at any time after  
6 service of the execution, the levy shall thereafter be ineffective, and  
7 the execution shall be returned, unless the debtor is reinstated or  
8 re-employed within ninety days after such termination. An employer must  
9 notify the issuer promptly when the debtor terminates employment and  
10 provide the debtor's last address and name and address of the new  
11 employer, if known. An income payor must notify the issuer promptly when  
12 the debtor no longer receives income and must provide the debtor's last  
13 address and the name and address of the debtor's new employer, if known.  
14 Where the income is compensation paid or payable to the debtor for  
15 personal services, the amount of the deductions to be withheld FOR  
16 SUPPORT ENFORCEMENT shall not exceed the following:

17 S 10. Subdivision (g) of section 5241 of the civil practice law and  
18 rules is amended by adding a new paragraph 5 to read as follows:

19 (5) WHERE THE INCOME IS COMPENSATION PAID OR PAYABLE TO THE DEBTOR FOR  
20 PERSONAL SERVICES, THE AMOUNT OF THE DEDUCTIONS TO BE WITHHELD FOR  
21 RESTITUTION OR REPARATION SHALL NOT EXCEED FIFTY PERCENT OF THE EARNINGS  
22 OF THE DEBTOR REMAINING AFTER THE DEDUCTION THEREFROM OF ANY AMOUNTS  
23 REQUIRED BY LAW TO BE WITHHELD ("DISPOSABLE EARNINGS").

24 S 11. The section heading and subdivisions (a) and (b) of section 5242  
25 of the civil practice law and rules, as amended by chapter 170 of the  
26 laws of 1994, are amended to read as follows:

27 Income deduction order for support, RESTITUTION OR REPARATION enforce-  
28 ment. (a) Upon application of a creditor, for good cause shown, and  
29 upon such terms as justice may require, the court may correct any  
30 defect, irregularity, error or omission in an income execution for  
31 support, RESTITUTION OR REPARATION enforcement issued pursuant to  
32 section [5241] FIFTY-TWO HUNDRED FORTY-ONE of this article.

33 (b) Upon application of a creditor, for good cause shown, the court  
34 may enter an income deduction order for support, RESTITUTION OR REPARA-  
35 TION enforcement. In determining good cause, the court may take into  
36 consideration evidence of the degree of such debtor's past financial  
37 responsibility, credit references, credit history, and any other matter  
38 the court considers relevant in determining the likelihood of payment in  
39 accordance with the order of support, RESTITUTION OR REPARATION. Proof  
40 of default establishes a prima facie case against the debtor, which can  
41 be overcome only by proof of the debtor's inability to make the  
42 payments. Unless the prima facie case is overcome, the court shall  
43 enter an income deduction order for support, RESTITUTION OR REPARATION  
44 enforcement pursuant to this section.

45 S 12. Subdivision (g) of section 5242 of the civil practice law and  
46 rules, as amended by chapter 270 of the laws of 2013, is amended to read  
47 as follows:

48 (g) An order pursuant to this section shall take priority over any  
49 other assignment, levy or process. If an employer or income payor is  
50 served with more than one income deduction order FOR RESTITUTION  
51 ENFORCEMENT, REPARATION ENFORCEMENT OR SUPPORT ENFORCEMENT pertaining to  
52 a single employee pursuant to this section, or with an order issued  
53 pursuant to this section and also an execution pursuant to section  
54 [5241] FIFTY-TWO HUNDRED FORTY-ONE of this article, and if the combined  
55 total amount of the income to be withheld exceeds the limits set forth  
56 in subdivision (f) of this section, the employer or income payor shall

1 withhold the maximum amount permitted thereby and pay to each creditor  
2 that proportion thereof which such creditor's claim bears to the  
3 combined total.

4 S 13. This act shall take effect on the one hundred twentieth day  
5 after it shall have become a law, except that any guidelines necessary  
6 for the timely implementation of this act on its effective date shall be  
7 established on or before such date.