STATE OF NEW YORK

4829--A

2017-2018 Regular Sessions

IN SENATE

March 2, 2017

Introduced by Sen. AVELLA -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the family court act and the domestic relations law, in relation to agreements and stipulations of child support

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (h) of subdivision 1 of section 413 of the family court act, as amended by chapter 41 of the laws of 1992, is amended to read as follows:

(h) **(1)** A validly executed agreement or stipulation voluntarily entered into between the parties after the effective date of this subdivision presented to the court for incorporation in an order or judgment shall include **the following:**

(i) a provision stating that the parties have been advised of the provisions of this subdivision**;** and

(ii) a provision stating that the basic child support obligation provided for therein would presumptively result in the correct amount of child support to be awarded.

(2) In the event that such agreement or stipulation deviates from the basic child support obligation, the agreement or stipulation must specify the amount that such basic child support obligation would have been and the reason or reasons that such agreement or stipulation does not provide for payment of that amount.

(3) Such provision may not be waived by either party or counsel.

(4) Nothing contained in this subdivision shall be construed to alter the rights of the parties to voluntarily enter into validly executed agreements or stipulations which deviate from the basic child support obligation provided such agreements or stipulations comply with the

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

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provisions of this paragraph. The court shall, however, retain discretion with respect to child support pursuant to this section.

(5) Any court order or judgment incorporating a validly executed agreement or stipulation which deviates from the basic child support obligation shall set forth the court's reasons for such deviation.

(6) If a court of competent jurisdiction finds that sections relating to child support in any agreement, stipulation or court order fail to comply with any of the provisions of this paragraph, such sections shall be deemed void as of the date that any of the parties raises this failure to comply in a pleading or motion or as of the date that a court of competent jurisdiction makes a finding of the failure to comply, whichever is earlier. Any sections of an agreement, stipulation or court order that are so directly connected or intertwined with a section deemed void that they necessarily must be recalculated therewith shall also be deemed void as of the same earlier date. Provided, however, that the provisions of this subparagraph shall be subject to the terms of subparagraph eight of this paragraph.

(7) If a court of competent jurisdiction finds that an agreement, stipulation or court order fails to comply with any of the provisions of this paragraph, the court shall issue a temporary order of child support and schedule a hearing to determine the final child support order. The final determination of child support shall be made pursuant to this section de novo and shall be effective as of the date that any of the parties raises the failure to comply with any of the provisions of this paragraph in a pleading or motion or a court of competent jurisdiction makes a finding of the failure to comply, whichever is earlier.

(8) If the family court finds that sections of an agreement, stipulation or court order other than those relating to child support are directly connected or intertwined with a section that relates to child support that the court has found fails to comply with this paragraph, it shall dismiss the proceeding without prejudice.

(9) The provisions of this paragraph shall not constitute a defense to non-payment of a child support obligation prior to the date that any of the parties raises the failure to comply in a pleading or motion or a court of competent jurisdiction makes a finding of the failure to comply, whichever is earlier.

(10) For the purposes of this section, a court of competent jurisdiction shall be either the family court or the supreme court, notwithstanding the court in which the agreement, stipulation or order was initiated, unless the supreme court has retained exclusive jurisdiction to enforce or modify the agreement, stipulation or order.

§ 2. Paragraph (h) of subdivision 1-b of section 240 of the domestic relations law, as amended by chapter 41 of the laws of 1992, is amended to read as follows:

(h) (1) A validly executed agreement or stipulation voluntarily entered into between the parties after the effective date of this subdivision presented to the court for incorporation in an order or judgment shall include the following:

(i) a provision stating that the parties have been advised of the provisions of this subdivision[~~.~~]; and

(ii) a provision stating that the basic child support obligation provided for therein would presumptively result in the correct amount of child support to be awarded.

(2) In the event that such agreement or stipulation deviates from the basic child support obligation, the agreement or stipulation must specify the amount that such basic child support obligation would have been

and the reason or reasons that such agreement or stipulation does not provide for payment of that amount.

(3) Such provision may not be waived by either party or counsel.

(4) Nothing contained in this subdivision shall be construed to alter the rights of the parties to voluntarily enter into validly executed agreements or stipulations which deviate from the basic child support obligation provided such agreements or stipulations comply with the provisions of this paragraph. The court shall, however, retain discretion with respect to child support pursuant to this section.

(5) Any court order or judgment incorporating a validly executed agreement or stipulation which deviates from the basic child support obligation shall set forth the court's reasons for such deviation.

(6) If a court of competent jurisdiction finds that sections relating to child support in any agreement, stipulation or court order fail to comply with any of the provisions of this paragraph, such sections shall be deemed void as of the date that any of the parties raises this failure to comply in a pleading or motion or as of the date that a court of competent jurisdiction makes a finding of the failure to comply, whichever is earlier. Any sections of an agreement, stipulation or court order that are so directly connected or intertwined with a section deemed void that they necessarily must be recalculated therewith shall also be deemed void as of the same earlier date. Provided, however, that the provisions of this subparagraph shall be subject to the terms of subparagraph eight of this paragraph.

(7) If a court of competent jurisdiction finds that an agreement, stipulation or court order fails to comply with any of the provisions of this paragraph, the court shall issue a temporary order of child support and schedule a hearing to determine the final child support order. The final determination of child support shall be made pursuant to this section de novo and shall be effective as of the date that any of the parties raises the failure to comply with any of the provisions of this paragraph in a pleading or motion or a court of competent jurisdiction makes a finding of the failure to comply, whichever is earlier.

(8) If the family court finds that sections of an agreement, stipulation or court order other than those relating to child support are directly connected or intertwined with a section that relates to child support that the court has found fails to comply with this paragraph, it shall dismiss the proceeding without prejudice.

(9) The provisions of this paragraph shall not constitute a defense to non-payment of a child support obligation for any period prior to the date that any of the parties raises the failure to comply in a pleading or motion or a court of competent jurisdiction makes a finding of the failure to comply, whichever is earlier.

(10) For the purposes of this section, a court of competent jurisdiction shall be either the family court or the supreme court, notwithstanding the court in which the agreement, stipulation or order was initiated, unless the supreme court has retained exclusive jurisdiction to enforce or modify the agreement, stipulation or order.

§ 3. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to agreements and stipulations entered into on or after such effective date.