

STATE OF NEW YORK

5744

2019-2020 Regular Sessions

IN ASSEMBLY

February 14, 2019

Introduced by M. of A. GIGLIO, DeSTEFANO, LAWRENCE, McDONOUGH, MORINELLO
-- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to noncompliance with an income execution order

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

1 Section 1. Paragraph 1 of subdivision (g) of section 5241 of the civil
2 practice law and rules, as amended by chapter 270 of the laws of 2013,
3 is amended to read as follows:

4 (1) (A) An employer or income payor served with an income execution
5 shall commence deductions from income due or thereafter due to the
6 debtor no later than the first pay period that occurs fourteen days
7 after service of the execution, and shall remit payments within seven
8 business days of the date that the debtor is paid. Each payment remitted
9 by an employer or income payor shall include the information as
10 instructed on the income execution and shall be payable to and remitted
11 to the state disbursement unit established in this state in accordance
12 with section six hundred fifty-four-b of title forty-two of the United
13 States Code unless the income execution is for spousal support only, in
14 which case the payments shall be payable to and remitted to the creditor.
15 If the money due to the debtor consists of salary or wages and his
16 or her employment is terminated by resignation or dismissal at any time
17 after service of the execution, the levy shall thereafter be ineffective,
18 and the execution shall be returned, unless the debtor is reinstated
19 or re-employed within ninety days after such termination. An
20 employer must notify the issuer promptly when the debtor terminates
21 employment and provide the debtor's last address and name and address of
22 the new employer, if known. An income payor must notify the issuer
23 promptly when the debtor no longer receives income and must provide the
24 debtor's last address and the name and address of the debtor's new
25 employer, if known. Where the income is compensation paid or payable to

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

LBD06947-01-9

1 the debtor for personal services, the amount of the deductions to be
2 withheld shall not exceed the following:

3 (i) Where a debtor is currently supporting a spouse or dependent child
4 other than the creditor, the amount of the deductions to be withheld
5 shall not exceed fifty percent of the earnings of the debtor remaining
6 after the deduction therefrom of any amounts required by law to be with-
7 held ("disposable earnings"), except that if any part of such deduction
8 is to be applied to the reduction of arrears which shall have accrued
9 more than twelve weeks prior to the beginning of the week for which such
10 earnings are payable, the amount of such deduction shall not exceed
11 fifty-five percent of disposable earnings.

12 (ii) Where a debtor is not currently supporting a spouse or dependent
13 child other than the creditor, the amount of the deductions to be with-
14 held shall not exceed sixty percent of the earnings of the debtor
15 remaining after the deduction therefrom of any amounts required by law
16 to be withheld ("disposable earnings"), except that if any part of such
17 deduction is to be applied to the reduction of arrears which shall have
18 accrued more than twelve weeks prior to the beginning of the week for
19 which such earnings are payable, the amount of such deduction shall not
20 exceed sixty-five percent of disposable earnings.

21 (B) An employer or income payor served with an income execution shall
22 be served a notice by the creditor for each failure to withhold
23 deductions from income due or thereafter due to the debtor. Such notice
24 shall state the date payment was due under subparagraph (A) of this
25 paragraph, the date on which such notice was served, whether such notice
26 concerns a first, or subsequent offense and the monies owed in penalty.
27 In calculating the penalty under this subparagraph the support
28 collection unit shall use the penalties described in subparagraph (D) of
29 paragraph two of this subdivision and shall aggregate the penalties for
30 each instance of failure to withhold deductions or to remit payment to
31 the unit.

32 § 2. Subparagraph (D) of paragraph 2 of subdivision (g) of section
33 5241 of the civil practice law and rules, as amended by chapter 335 of
34 the laws of 2006, is amended to read as follows:

35 (D) In addition to the remedies herein provided and as may be other-
36 wise authorized by law, upon a finding by the family court that the
37 employer or income payor failed to deduct or remit deductions as
38 directed in the income execution, the court shall issue to the employer
39 or income payor an order directing compliance and may direct the payment
40 of a civil penalty not to exceed five hundred dollars for the first
41 instance and one thousand dollars per instance for the second and subse-
42 quent instances of employer or income payor noncompliance. Upon a find-
43 ing that the creditor has complied with the notice provisions of subpar-
44 agraph (B) of paragraph one of this subdivision, the court shall impose
45 a penalty as described for each failure to withhold deductions or remit
46 payment to the unit; provided that such penalties shall not accrue to
47 the government of the United States or the government of the state of
48 New York or its political subdivisions. The penalty shall be paid to the
49 creditor and may be enforced in the same manner as a civil judgment or
50 in any other manner permitted by law.

51 § 3. This act shall take effect immediately.