STATE OF NEW YORK

921

2019-2020 Regular Sessions

IN ASSEMBLY

January 14, 2019

Introduced by M. of A. WALSH, MORINELLO, McDONOUGH, CROUCH, B. MILLER, D'URSO, LAWRENCE -- Multi-Sponsored by -- M. of A. FERNANDEZ, SIMON, TAGUE -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act, the social services law and the vehicle and traffic law, in relation to family court reviews of administrative driver's license suspensions for failure to pay child support and eligibility for restricted use licenses

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

Section 1. Subdivision 5 of section 454 of the family court act, as amended by chapter 468 of the laws of 2012, is amended to read as follows:

5. The court may review a support collection unit's denial of [~~a~~] **an administrative** challenge made by a support obligor pursuant to paragraph (d) of subdivision twelve of section one hundred eleven-b of the social services law if [~~objections thereto are~~] **a petition is** filed by a support obligor who has received notice that the office of temporary and disability assistance intends to notify the department of motor vehicles that the support obligor's driving privileges are to be suspended. [~~Specific written objections to~~]

a. The petition challenging a support collection unit's denial may be filed by the support obligor within thirty-five days of the mailing of the notice of the support collection unit's denial. A support obligor who files such [~~objections~~] **a petition** shall serve a copy of the [~~objections~~] **petition** upon the support collection unit **and the support obligee**, [~~which~~] **each of whom** shall have ten days from such service to file a written [~~rebuttal to such objections and~~] **answer. On or before the return date of the petition, the support collection unit shall provide to the court** a copy of the record upon which the support collection unit's denial was made, including all documentation submitted by the support obligor. Proof of service shall be filed with the court

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

LBD02872-01-9

at the time of filing of [~~objections~~] **the petition** and any [~~rebuttal. The court's review shall be based upon the record and submissions of the support obligor and the support collection unit upon which the support collection unit's denial was made. Within forty-five days after the rebuttal, if any, is filed, the~~] **answer**.

b. The support obligor shall submit to the court the financial disclosure required by subdivision (a) of section four hundred twenty-four-a of this article. The court shall not determine the petition in the absence of such submission.

c. The court shall (i) deny the [~~objections~~] **petition** and remand to the support collection unit or (ii) [~~affirm~~] **grant** the [~~objections~~] **petition** if the court finds the determination of the support collection unit is based upon a clearly erroneous determination of fact or error of law[~~, whereupon~~]**. If** the court **grants the petition, it** shall direct the support collection unit not to notify the department of motor vehicles to suspend the support obligor's driving privileges.

d. Provisions set forth herein relating to procedures for [~~appeal to~~] **review by** the family court by individuals subject to suspension of driving privileges for failure to pay child support shall apply solely to such cases and not affect or modify any other procedure for review or appeal of administrative enforcement of child support requirements.

§ 2. Paragraphs (d) and (f) of subdivision 12 of section 111-b of the social services law, paragraph (d) as amended by chapter 309 of the laws of 1996 and paragraph (f) as added by chapter 81 of the laws of 1995, are amended to read as follows:

(d) (1) A support obligor may challenge in writing the correctness of the determination of the support collection unit that the obligor's driving privileges should be suspended, and in support of the challenge may submit documentation demonstrating mistaken identity, error in calculation of arrears, financial exemption from license suspension pursuant to the conditions enumerated in paragraph (e) of this subdivision, the absence of an underlying court order to support such determination, or other reason that the person is not subject to such determination. Such documents may include but are not limited to a copy of the order of support pursuant to which the obligor claims to have made payment, other relevant court orders, copies of cancelled checks, receipts for support payments, pay stubs or other documents identifying wage withholding, and proof of identity. The support collection unit shall review the documentation submitted by the support obligor, shall adjust the support obligor's account if appropriate, and shall notify the support obligor of the results of the review initiated in response to the challenge within seventy-five days from the date of the notice required by paragraph (b) of this subdivision. If the support collection unit's review indicates that the determination to suspend driving privileges was correct, the support collection unit shall notify the support obligor of the results of the review and that the support obligor has thirty-five days from the date of mailing of such notice to satisfy the full amount of the arrears or commence payment of the arrears/past due support as specified in paragraph (e) of this subdivision and if the support obligor fails to do so, the support collection unit shall notify the department of motor vehicles to suspend the support obligor's driving privileges pursuant to section five hundred ten of the vehicle and traffic law. The support obligor shall be further notified that if the support obligor files [~~objections with~~] **a petition for review by** the family court and serves [~~these objections~~] **the petition** on the support collection unit within thirty-five days from the date of mailing of the

notice denying the challenge pursuant to subdivision five of section four hundred fifty-four of the family court act, the support collection unit shall not notify the department of motor vehicles to suspend the support obligor's driving privileges until fifteen days after entry of [~~judgement~~] **judgment** by the family court denying the [~~objections~~] **relief requested in the petition**.

(2) A support obligor may within thirty-five days of mailing of the notice denying his or her challenge by the support collection unit [~~request that the~~] **file a petition seeking** family court review **of** the support collection unit's determination pursuant to subdivision five of section four hundred fifty-four of the family court act. If the support obligor [~~requests the~~] **files a petition seeking** family court [~~to~~] review **of** the determination of the support collection unit, the support collection unit shall not notify the department of motor vehicles to suspend the support obligor's driving privileges until fifteen days after mailing of a copy of the judgment by the family court to the support obligor denying the [~~objections~~] **relief requested in the petition**.

(f) A support obligor [~~who alleges that he or she has not received actual notice pursuant to paragraph one of subdivision (b) of this section and~~] whose driving privileges were suspended may at any time request a review pursuant to [~~subdivision~~] **paragraph** (d) of this [~~section~~] **subdivision** or comply with the requirements of [~~subdivision~~] **paragraph** (e) of this [~~section~~] **subdivision**, and upon a determination that he or she has not accumulated support arrears equivalent to or greater than the amount of support due for a period of four months or that he or she meets the requirements of [~~subdivision~~] **paragraph** (e) of this [~~section~~] **subdivision**, the department shall notify the department of motor vehicles that the suspension of driving privileges shall be terminated. **If the support collection unit upholds the suspension, the support obligor may seek a review by the family court of the determination pursuant to paragraph (d) of this subdivision and section four hundred fifty-four of the family court act.**

§ 3. Paragraph 3 of subdivision 4-e of section 510 of the vehicle and traffic law, as amended by chapter 601 of the laws of 2007, is amended to read as follows:

(3) Upon receipt of notification from the office of temporary and disability assistance of a person's failure to satisfy support arrears or to make satisfactory payment arrangements thereon pursuant to paragraph (e) of subdivision twelve of section one hundred eleven-b of the social services law or notification from a court issuing an order pursuant to section four hundred **fifty-four or four hundred** fifty-eight-a of the family court act or section two hundred forty-four-b of the domestic relations law, the commissioner or his or her agent shall suspend the license of such person to operate a motor vehicle. In the event such person is unlicensed, such person's privilege of obtaining a license shall be suspended. Such suspension shall take effect no later than fifteen days from the date of the notice thereof to the person whose license or privilege of obtaining a license is to be suspended, and shall remain in effect until such time as the commissioner is advised that the person has satisfied the support arrears or has made satisfactory payment arrangements thereon pursuant to paragraph (e) of subdivision twelve of section one hundred eleven-b of the social services law or until such time as the court issues an order to terminate such suspension;

§ 4. Subdivisions 3 and 5 of section 530 of the vehicle and traffic law, subdivision 3 as amended by chapter 539 of the laws of 1990 and subdivision 5 as amended by section 31 of part LL of chapter 56 of the laws of 2010, are amended to read as follows:

(3) Such license or privilege and renewal thereof shall be issued for a period not exceeding the period during which such person's regular driver's license or privilege has been suspended or revoked, shall be marked and identified as a restricted use license or privilege and shall be valid only: (a) during the time the holder is actually engaged in pursuing or commuting to or from his **or her** business, trade, occupation or profession, (b) enroute to and from a driver rehabilitation program or related activity specified by the commissioner at which his **or her** attendance is required, (c) to and from a class or course at an accredited school, college or university or at a state approved institution of vocational or technical training, (d) enroute to and from a medical examination or treatment as part of a necessary medical treatment for such participant or member of his **or her** household, as evidenced by a written statement to that effect from a licensed medical practitioner, or (e) enroute to and from a place, including a school, at which the child or children of the holder are cared for on a regular basis and which is necessary for the holder to maintain such holder's employment or enrollment at an accredited school, college or university or at a state approved institution of vocational or technical training and shall contain the terms and conditions under which it is issued and is valid. In the event the holder of a restricted use license or privilege is convicted of: any violation (other than parking, stopping or standing) or of operating a motor vehicle for other than his **or her** employment, business, trade, occupational or professional or other purposes for which the license or privilege was issued, or does not comply with other requirements established by the commissioner, such license or privilege may be revoked and the holder shall not be eligible to receive a license or privilege pursuant to this section for a period of five years from the date of such revocation. **Subject to the limitations of subdivision five of this section, a restricted use license issued to a person whose license has been suspended for failure to make payments of child support or combined child and spousal support shall be valid for operation of a motor vehicle incident to the holder's business, trade, occupation or profession.**

(5) A restricted use license or privilege shall be valid for the operation of any motor vehicle, except a vehicle for hire as a taxicab, livery, coach, limousine, van or wheelchair accessible van or tow truck as defined in this chapter subject to the conditions set forth herein, which the holder would otherwise be entitled to operate had his drivers license or privilege not been suspended or revoked. Notwithstanding anything to the contrary in a certificate of relief from disabilities or a certificate of good conduct issued pursuant to article twenty-three of the correction law, a restricted use license shall not be valid for the operation of a commercial motor vehicle. A restricted use license shall not be valid for the operation of a vehicle for hire as a taxicab, livery, coach, limousine, van or wheelchair accessible van or tow truck where the holder thereof had his or her drivers license suspended or revoked and (i) such suspension or revocation is mandatory pursuant to the provisions of subdivision two or two-a of section five hundred ten of this title; or (ii) any such suspension is permissive for habitual or persistent violations of this chapter or any local law relating to traffic as set forth in paragraph d or i of subdivision three of section

five hundred ten of this title; or (iii) any such suspension is permissive and has been imposed by a magistrate, justice or judge of any city, town or village, any supreme court justice, any county judge, or judge of a district court. Except for a commercial motor vehicle as defined in subdivision four of section five hundred one-a of this title, the restrictions on types of vehicles which may be operated with a restricted license contained in this subdivision shall not be applicable to a restricted license issued to a person whose license has been suspended **for failure to make payments of child support or combined child and spousal support** pursuant to paragraph three of subdivision four-e of section five hundred ten of this title.

§ 5. This act shall take effect immediately; provided, however, that the amendments to subdivision 5 of section 454 of the family court act made by section one of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith; provided, however, that the amendments to paragraphs (d) and (f) of subdivision 12 of section 111-b of the social services law made by section two of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith; provided, however, that the amendments to paragraph 3 of subdivision 4-e of section 510 of the vehicle and traffic law made by section three of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith; provided, further, however, that the amendments to subdivision 5 of section 530 of the vehicle and traffic law made by section four of this act shall not affect the expiration of such subdivision and shall be deemed expired therewith.