STATE OF NEW YORK

1378

2019-2020 Regular Sessions

IN SENATE

January 14, 2019

Introduced by Sen. FUNKE -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the criminal procedure law, the family court act, the domestic relations law and the civil practice law and rules, in relation to orders of protection and child support enforcement

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

Section 1. Section 530.11 of the criminal procedure law is amended by adding a new subdivision 8 to read as follows:

8. An order of protection that has been issued by the court to a victim of domestic violence, as defined in section four hundred fifty-nine-a of the social services law, shall include a provision that such order shall not expire or be vacated for any reason, unless the party against whom such order is issued is in compliance with any court order directing him or her to pay child support.

§ 2. Section 812 of the family court act is amended by adding a new subdivision 6 to read as follows:

6. An order of protection that has been issued by the court to a victim of domestic violence, as defined in section four hundred fifty-nine-a of the social services law, shall include a provision that such order shall not expire or be vacated for any reason, unless the party against whom such order is issued is in compliance with any court order directing him or her to pay child support.

§ 3. Subdivision 3 of section 240 of the domestic relations law is amended by adding a new paragraph j to read as follows:

j. An order of protection that has been issued by the court to a victim of domestic violence, as defined in section four hundred fifty-nine-a of the social services law, shall include a provision that such order shall not expire or be vacated for any reason, unless the party against whom such order is issued is in compliance with any court order directing him or her to pay child support.

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

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

(1) When a debtor is in default, an execution for support enforcement may be issued by the support collection unit, or by the sheriff, the clerk of court or the attorney for the creditor as an officer of the court. **When a debtor of a child support order also has an order of protection currently in force against him or her, which has been issued to the creditor of the child support order, an execution for support enforcement shall be issued by the support collection unit, or by the sheriff, the clerk of the court or the attorney for the creditor as an officer of the court.** Where a debtor is receiving or will receive income, an execution for deductions therefrom in amounts not to exceed the limits set forth in subdivision (g) of this section may be served upon an employer or income payor after notice to the debtor. The amount of the deductions to be withheld shall be sufficient to ensure compliance with the direction in the order of support, and shall include an additional amount to be applied to the reduction of arrears. The issuer may amend the execution before or after service upon the employer or income payor to reflect additional arrears or payments made by the debtor after notice pursuant to subdivision (d) of this section, or to conform the execution to the facts found upon a determination made pursuant to subdivision (e) of this section.

§ 5. Subdivision (c) of section 5242 of the civil practice law and rules, as amended by chapter 270 of the laws of 2013, is amended to read as follows:

(c) When the court enters an order of support on behalf of persons other than those in receipt of public assistance or in receipt of services pursuant to section one hundred eleven-g of the social services law, or registers pursuant to article five-B of the family court act an order of support which has been issued by a foreign jurisdiction and which is not to be enforced pursuant to title six-A of article three of the social services law, where the court determines that the debtor has income that could be subject to an income deduction order, the court shall issue an income deduction order to obtain payment of the order at the same time it issues or registers the order. **When the court enters an order of child support on behalf of a victim of domestic violence who has also been issued an order of protection, and such order of protection has been issued against the debtor of the order of child support, the court shall enter an income deduction order to obtain payment of the order at the same time it issues or registers the order.** The court shall enter the income deduction order unless the court finds and sets forth in writing (i) the reasons that there is good cause not to require immediate income withholding; or (ii) that an agreement providing for an alternative arrangement has been reached between the parties. Such agreement may include a written agreement or an oral stipulation, made on the record, that results in a written order. For purposes of this subdivision, good cause shall mean substantial harm to the debtor. The absence of an arrearage or the mere issuance of an income deduction order shall not constitute good cause. When the court determines that there is good cause not to issue an income deduction order immediately or when the parties agree to an alternative arrangement as provided in this subdivision, the court shall state expressly in the order of support the basis for its decision.

§ 6. Subdivision 2 of section 454 of the family court act is amended by adding a new paragraph (b-1) to read as follows:

(b-1) the court shall make an income deduction order for support enforcement under section fifty-two hundred forty-two of the civil practice law and rules when a debtor is in default for non-payment of child support and has an order of protection currently in place against him or her that was issued to the creditor of such child support order;

§ 7. This act shall take effect immediately.