STATE OF NEW YORK

S. 5165 A. 5813

2021-2022 Regular Sessions

SENATE - ASSEMBLY

February 25, 2021

IN SENATE -- Introduced by Sen. PALUMBO -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act and the domestic relations law, in relation to reducing a parent's child support obligation by the amount of social security dependent benefits received by the child

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

Section 1. Subparagraph 1 of paragraph (b) of subdivision 1 of section 413 of the family court act, as amended by chapter 567 of the laws of 1989, is amended to read as follows:

(1) "Basic child support obligation" shall mean the sum derived by adding the amounts determined by the application of subparagraphs two and three of paragraph (c) of this subdivision except as increased pursuant to subparagraphs four, five, six and seven of such paragraph **and decreased pursuant to subparagraph eight of such paragraph**.

§ 2. Clause (iii) of subparagraph 5 of paragraph (b) of subdivision 1 of section 413 of the family court act, as amended by chapter 567 of the laws of 1989, subclauses (G) and (H) as amended and subclause (I) as added by chapter 387 of the laws of 2015, is amended to read as follows:

(iii) to the extent not already included in gross income in clauses (i) and (ii) of this subparagraph, the amount of income or compensation voluntarily deferred and income received, if any, from the following sources:

(A) workers' compensation,

(B) disability benefits,

(C) unemployment insurance benefits,

(D) social security benefits,

(E) veterans benefits,

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

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(F) pensions and retirement benefits,
(G) fellowships and stipends,
(H) annuity payments, [~~and~~]
(I) alimony or maintenance actually paid or to be paid to a spouse who is a party to the instant action pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, in which event the order or agreement shall provide for a specific adjustment, in accordance with this subdivision, in the amount of child support payable upon the termination of alimony or maintenance to such spouse; provided, however, that the specific adjustment in the amount of child support is without prejudice to either party's right to seek a modification in accordance with subdivision three of section four hundred fifty-one of this article. In an action or proceeding to modify an order of child support, including an order incorporating without merging an agreement, issued prior to the effective date of this subclause, the provisions of this subclause shall not, by themselves, constitute a substantial change of circumstances pursuant to paragraph (a) of subdivision three of section four hundred fifty-one of this article[~~.~~]**, and**

(J) social security dependent benefits received by the child or children due to the earnings of the parent;

§ 3. Paragraph (c) of subdivision 1 of section 413 of the family court act is amended by adding a new subparagraph 8 to read as follows:

(8) Social security benefits received by the child or children due to the earnings of a parent shall be credited as child support to the parent upon whose earning record it is based.

§ 4. Subparagraph 1 of paragraph (b) of subdivision 1-b of section 240 of the domestic relations law, as added by chapter 567 of the laws of 1989, is amended to read as follows:

(1) "Basic child support obligation" shall mean the sum derived by adding the amounts determined by the application of subparagraphs two and three of paragraph (c) of this subdivision except as increased pursuant to subparagraphs four, five, six and seven of such paragraph **and decreased pursuant to subparagraph eight of such paragraph**.

§ 5. Clause (iii) of subparagraph 5 of paragraph (b) of subdivision 1-b of section 240 of the domestic relations law, as added by chapter 567 of the laws of 1989, subclauses (G) and (H) as amended and subclause (I) as added by chapter 387 of the laws of 2015, is amended to read as follows:

(iii) to the extent not already included in gross income in clauses (i) and (ii) of this subparagraph, the amount of income or compensation voluntarily deferred and income received, if any, from the following sources:
(A) workers' compensation,
(B) disability benefits,
(C) unemployment insurance benefits,
(D) social security benefits,
(E) veterans benefits,
(F) pensions and retirement benefits,
(G) fellowships and stipends,
(H) annuity payments, [~~and~~]
(I) alimony or maintenance actually paid or to be paid to a spouse who is a party to the instant action pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, in which event the order or agreement shall provide for a specific adjustment, in accordance with this

subdivision, in the amount of child support payable upon the termination of alimony or maintenance to such spouse; provided, however, that the specific adjustment in the amount of child support is without prejudice to either party's right to seek a modification in accordance with subparagraph two of paragraph b of subdivision nine of part B of section two hundred thirty-six of this article. In an action or proceeding to modify an order of child support, including an order incorporating without merging an agreement, issued prior to the effective date of this subclause, the provisions of this subclause shall not, by themselves, constitute a substantial change of circumstances pursuant to paragraph b of subdivision nine of part B of section two hundred thirty-six of this article[~~.~~]**, and**

(J) social security dependent benefits received by the child or children due to the earnings of the parent;

§ 6. Paragraph (c) of subdivision 1-b of section 240 of the domestic relations law is amended by adding a new subparagraph 8 to read as follows:

(8) Social security benefits received by the child or children due to the earnings of a parent shall be credited as child support to the parent upon whose earning record it is based.

§ 7. This act shall take effect immediately.