

STATE OF NEW YORK

7802

2021-2022 Regular Sessions

IN ASSEMBLY

May 21, 2021

Introduced by M. of A. LAVINE -- (at request of the Office of Court Administration) -- 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 agreements and stipulations of child support

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

- 1 Section 1. Paragraph (h) of subdivision 1 of section 413 of the family
2 court act, as amended by chapter 41 of the laws of 1992, is amended to
3 read as follows:
- 4 (h) (1) A validly executed agreement or stipulation voluntarily
5 entered into between the parties after the effective date of this subdivi-
6 sion presented to the court for incorporation in an order or judgment
7 shall include the following:
- 8 (i) a provision stating that the parties have been advised of the
9 provisions of this subdivision; and
- 10 (ii) a provision stating that the basic child support obligation
11 provided for therein would presumptively result in the correct amount of
12 child support to be awarded.
- 13 (2) In the event that such agreement or stipulation deviates from the
14 basic child support obligation, the agreement or stipulation must speci-
15 fy the amount that such basic child support obligation would have been
16 and the reason or reasons that such agreement or stipulation does not
17 provide for payment of that amount.
- 18 (3) Such provision may not be waived by either party or counsel.
- 19 (4) Nothing contained in this subdivision shall be construed to alter
20 the rights of the parties to voluntarily enter into validly executed
21 agreements or stipulations which deviate from the basic child support
22 obligation provided such agreements or stipulations comply with the
23 provisions of this paragraph. The court shall, however, retain
24 discretion with respect to child support pursuant to this section.

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

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

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

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

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

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

35 (10) For the purposes of this section, a court of competent jurisdic-
36 tion shall be either the family court or the supreme court, notwith-
37 standing the court in which the agreement, stipulation or order was
38 initiated, unless the supreme court has retained exclusive jurisdiction
39 to enforce or modify the agreement, stipulation or order.

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

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

47 (i) a provision stating that the parties have been advised of the
48 provisions of this subdivision[7]; and

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

52 (2) In the event that such agreement or stipulation deviates from the
53 basic child support obligation, the agreement or stipulation must speci-
54 fy the amount that such basic child support obligation would have been
55 and the reason or reasons that such agreement or stipulation does not
56 provide for payment of that amount.

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

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

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

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

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

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

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

42 (10) For the purposes of this section, a court of competent jurisdic-
43 tion shall be either the family court or the supreme court, notwith-
44 standing the court in which the agreement, stipulation or order was
45 initiated, unless the supreme court has retained exclusive jurisdiction
46 to enforce or modify the agreement, stipulation or order.

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