

# STATE OF NEW YORK

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7077

2021-2022 Regular Sessions

## IN SENATE

May 27, 2021

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Introduced by Sen. HOYLMAN -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed 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 subdi-  
45    vision 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.