

STATE OF NEW YORK

3282

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

Introduced by M. of A. WALSH, MORINELLO, McDONOUGH, B. MILLER, HAWLEY, SALKA, J. M. GIGLIO, PALMESANO, TAGUE -- Multi-Sponsored by -- M. of A. BYRNES, DeSTEFANO, FERNANDEZ, MANKTELOW, SIMON -- read once and referred to the Committee on Children and Families

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:

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

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

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

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

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

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

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

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

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

27 (d) (1) A support obligor may challenge in writing the correctness of
28 the determination of the support collection unit that the obligor's
29 driving privileges should be suspended, and in support of the challenge
30 may submit documentation demonstrating mistaken identity, error in
31 calculation of arrears, financial exemption from license suspension
32 pursuant to the conditions enumerated in paragraph (e) of this subdivi-
33 sion, the absence of an underlying court order to support such determi-
34 nation, or other reason that the person is not subject to such determi-
35 nation. Such documents may include but are not limited to a copy of the
36 order of support pursuant to which the obligor claims to have made
37 payment, other relevant court orders, copies of cancelled checks,
38 receipts for support payments, pay stubs or other documents identifying
39 wage withholding, and proof of identity. The support collection unit
40 shall review the documentation submitted by the support obligor, shall
41 adjust the support obligor's account if appropriate, and shall notify
42 the support obligor of the results of the review initiated in response
43 to the challenge within seventy-five days from the date of the notice
44 required by paragraph (b) of this subdivision. If the support collection
45 unit's review indicates that the determination to suspend driving privi-
46 leges was correct, the support collection unit shall notify the support
47 obligor of the results of the review and that the support obligor has
48 thirty-five days from the date of mailing of such notice to satisfy the
49 full amount of the arrears or commence payment of the arrears/past due
50 support as specified in paragraph (e) of this subdivision and if the
51 support obligor fails to do so, the support collection unit shall notify
52 the department of motor vehicles to suspend the support obligor's driv-
53 ing privileges pursuant to section five hundred ten of the vehicle and
54 traffic law. The support obligor shall be further notified that if the
55 support obligor files [~~objections with~~] a petition for review by the
56 family court and serves [~~these objections~~] the petition on the support

1 collection unit within thirty-five days from the date of mailing of the
2 notice denying the challenge pursuant to subdivision five of section
3 four hundred fifty-four of the family court act, the support collection
4 unit shall not notify the department of motor vehicles to suspend the
5 support obligor's driving privileges until fifteen days after entry of
6 ~~[judgement]~~ judgment by the family court denying the ~~[objections]~~ relief
7 requested in the petition.

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

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

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

38 (3) Upon receipt of notification from the office of temporary and
39 disability assistance of a person's failure to satisfy support arrears
40 or to make satisfactory payment arrangements thereon pursuant to para-
41 graph (e) of subdivision twelve of section one hundred eleven-b of the
42 social services law or notification from a court issuing an order pursu-
43 ant to section four hundred fifty-four or four hundred fifty-eight-a of
44 the family court act or section two hundred forty-four-b of the domestic
45 relations law, the commissioner or his or her agent shall suspend the
46 license of such person to operate a motor vehicle. In the event such
47 person is unlicensed, such person's privilege of obtaining a license
48 shall be suspended. Such suspension shall take effect no later than
49 fifteen days from the date of the notice thereof to the person whose
50 license or privilege of obtaining a license is to be suspended, and
51 shall remain in effect until such time as the commissioner is advised
52 that the person has satisfied the support arrears or has made satisfac-
53 tory payment arrangements thereon pursuant to paragraph (e) of subdivi-
54 sion twelve of section one hundred eleven-b of the social services law
55 or until such time as the court issues an order to terminate such
56 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

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

12 § 5. This act shall take effect immediately; provided, however, that
13 the amendments to subdivision 5 of section 454 of the family court act
14 made by section one of this act shall not affect the repeal of such
15 subdivision and shall be deemed repealed therewith; provided, however,
16 that the amendments to paragraphs (d) and (f) of subdivision 12 of
17 section 111-b of the social services law made by section two of this act
18 shall not affect the repeal of such subdivision and shall be deemed
19 repealed therewith; provided, however, that the amendments to paragraph
20 3 of subdivision 4-e of section 510 of the vehicle and traffic law made
21 by section three of this act shall not affect the repeal of such subdi-
22 vision and shall be deemed repealed therewith; provided, further, howev-
23 er, that the amendments to subdivision 5 of section 530 of the vehicle
24 and traffic law made by section four of this act shall not affect the
25 expiration of such subdivision and shall be deemed expired therewith.