

# STATE OF NEW YORK

2154

2023-2024 Regular Sessions

## IN SENATE

January 18, 2023

Introduced by Sen. PALUMBO -- 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 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:

1 Section 1. Subparagraph 1 of paragraph (b) of subdivision 1 of section  
2 413 of the family court act, as amended by chapter 567 of the laws of  
3 1989, is amended to read as follows:

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

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

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

- 17 (A) workers' compensation,
- 18 (B) disability benefits,
- 19 (C) unemployment insurance benefits,
- 20 (D) social security benefits,
- 21 (E) veterans benefits,
- 22 (F) pensions and retirement benefits,
- 23 (G) fellowships and stipends,
- 24 (H) annuity payments, [~~and~~]

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

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1 (I) alimony or maintenance actually paid or to be paid to a spouse who  
2 is a party to the instant action pursuant to an existing court order or  
3 contained in the order to be entered by the court, or pursuant to a  
4 validly executed written agreement, in which event the order or agree-  
5 ment shall provide for a specific adjustment, in accordance with this  
6 subdivision, in the amount of child support payable upon the termination  
7 of alimony or maintenance to such spouse; provided, however, that the  
8 specific adjustment in the amount of child support is without prejudice  
9 to either party's right to seek a modification in accordance with subdivi-  
10 sion three of section four hundred fifty-one of this article. In an  
11 action or proceeding to modify an order of child support, including an  
12 order incorporating without merging an agreement, issued prior to the  
13 effective date of this subclause, the provisions of this subclause shall  
14 not, by themselves, constitute a substantial change of circumstances  
15 pursuant to paragraph (a) of subdivision three of section four hundred  
16 fifty-one of this article[+], and

17 (J) social security dependent benefits received by the child or chil-  
18 dren due to the earnings of the parent;

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

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

24 § 4. Subparagraph 1 of paragraph (b) of subdivision 1-b of section 240  
25 of the domestic relations law, as added by chapter 567 of the laws of  
26 1989, is amended to read as follows:

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

32 § 5. Clause (iii) of subparagraph 5 of paragraph (b) of subdivision  
33 1-b of section 240 of the domestic relations law, as added by chapter  
34 567 of the laws of 1989, subclauses (G) and (H) as amended and subclause  
35 (I) as added by chapter 387 of the laws of 2015, is amended to read as  
36 follows:

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

- 41 (A) workers' compensation,
- 42 (B) disability benefits,
- 43 (C) unemployment insurance benefits,
- 44 (D) social security benefits,
- 45 (E) veterans benefits,
- 46 (F) pensions and retirement benefits,
- 47 (G) fellowships and stipends,
- 48 (H) annuity payments, [and]

49 (I) alimony or maintenance actually paid or to be paid to a spouse who  
50 is a party to the instant action pursuant to an existing court order or  
51 contained in the order to be entered by the court, or pursuant to a  
52 validly executed written agreement, in which event the order or agree-  
53 ment shall provide for a specific adjustment, in accordance with this  
54 subdivision, in the amount of child support payable upon the termination  
55 of alimony or maintenance to such spouse; provided, however, that the  
56 specific adjustment in the amount of child support is without prejudice

1 to either party's right to seek a modification in accordance with  
2 subparagraph two of paragraph b of subdivision nine of part B of section  
3 two hundred thirty-six of this article. In an action or proceeding to  
4 modify an order of child support, including an order incorporating with-  
5 out merging an agreement, issued prior to the effective date of this  
6 subclause, the provisions of this subclause shall not, by themselves,  
7 constitute a substantial change of circumstances pursuant to paragraph b  
8 of subdivision nine of part B of section two hundred thirty-six of this  
9 article[ ~~], and~~

10 (J) social security dependent benefits received by the child or chil-  
11 dren due to the earnings of the parent;

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

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

18 § 7. This act shall take effect immediately.