§ 5241. Income execution for support enforcement. (a) Definitions. As used in this section and in section fifty-two hundred forty-two of this chapter, the following terms shall have the following meanings:

1. "Order of support" means any temporary or final order, judgment, agreement or stipulation incorporated by reference in such judgment or decree in a matrimonial action or family court proceeding, or any foreign support order, judgment or decree, registered pursuant to article five-B of the family court act which directs the payment of alimony, maintenance, support or child support.

2. "Debtor" means any person directed to make payments by an order of support.

3. "Creditor" means any person entitled to enforce an order of support, including a support collection unit.

4. "Employer" means any employer, future employer, former employer, union or employees' organization.

5. "Income payor" includes:

(i) the auditor, comptroller, trustee or disbursing officer of any pension fund, benefit program, policy of insurance or annuity;

(ii) the state of New York or any political subdivision thereof, or the United States; and

(iii) any person, corporation, trustee, unincorporated business or association, partnership, financial institution, bank, savings and loan association, credit union, stock purchase plan, stock option plan, profit sharing plan, stock broker, commodities broker, bond broker, real estate broker, insurance company, entity or institution.

6. "Income" includes any earned, unearned, taxable or non-taxable income, benefits, or periodic or lump sum payment due to an individual, regardless of source, including wages, salaries, commissions, bonuses, workers' compensation, disability benefits, unemployment insurance benefits, payments pursuant to a public or private pension or retirement program, federal social security benefits as defined in 42 U.S.C.

section 662(f) (2), and interest, but excluding public assistance benefits paid pursuant to the social services law and federal supplemental security income.

7. "Default" means the failure of a debtor to remit to a creditor three payments on the date due in the full amount directed by the order of support, or the accumulation of arrears equal to or greater than the amount directed to be paid for one month, whichever first occurs.

8. "Mistake of fact" means an error in the amount of current support or arrears or in the identity of the debtor or that the order of support does not exist or has been vacated.

9. "Support collection unit" means any support collection unit established by a social services district pursuant to the provisions of section one hundred eleven-h of the social services law.

10. "Date of withholding" means the date on which the income would otherwise have been paid or made available to the debtor were it not withheld by the employer or income payor.

11. "Health insurance benefits" means any medical, dental, optical and prescription drugs and health care services or other health care benefits which may be provided for dependents through an employer or organization, including such employers or organizations which are self-insured.

12. "Business day" means a day on which state offices are open for regular business.

13. "Issuer" means a support collection unit, sheriff, the clerk of court, or the attorney for the creditor.

(b) Issuance. (1) When a debtor is in default, an execution for support enforcement may be issued by the support collection unit, or by the sheriff, the clerk of court or the attorney for the creditor as an officer of the court. Where a debtor is receiving or will receive income, an execution for deductions therefrom in amounts not to exceed

the limits set forth in subdivision (g) of this section may be served upon an employer or income payor after notice to the debtor. The amount of the deductions to be withheld shall be sufficient to ensure compliance with the direction in the order of support, and shall include an additional amount to be applied to the reduction of arrears. The issuer may amend the execution before or after service upon the employer or income payor to reflect additional arrears or payments made by the debtor after notice pursuant to subdivision (d) of this section, or to conform the execution to the facts found upon a determination made pursuant to subdivision (e) of this section.

(2) (i) Where the court orders the debtor to provide health insurance benefits for specified dependents, an execution for medical support enforcement may, except as provided for herein, be issued by the support collection unit, or by the sheriff, the clerk of court or the attorney for the creditor as an officer of the court; provided, however, that when the court issues an order of child support or combined child and spousal support on behalf of persons other than those in receipt of public assistance or in receipt of services pursuant to section one hundred eleven-g of the social services law, such medical execution shall be in the form of a separate qualified medical child support order as provided by subdivision (j) of section four hundred sixteen of the family court act and paragraph (h) of subdivision one of section two hundred forty of the domestic relations law. Such execution for medical support enforcement may require the debtor's employer, organization or group health plan administrator to purchase on behalf of the debtor and the debtor's dependents such available health insurance benefits. Such execution shall direct the employer, organization or group health plan administrator to provide to the dependents for whom such benefits are required to be provided or such dependents' custodial parent or legal guardian or social services district on behalf of persons applying for or in receipt of public assistance any identification cards and benefit claim forms and to withhold from the debtor's income the employee's share of the cost of such health insurance benefits, and to provide written confirmation of such enrollment indicating the date such benefits were or become available or that such benefits are not available and the reasons therefor to the issuer of the execution. An execution for medical support enforcement shall not require a debtor's

employer, organization or group health plan administrator to purchase or otherwise acquire health insurance or health insurance benefits that would not otherwise be available to the debtor by reason of his or her employment or membership. Nothing herein shall be deemed to obligate or otherwise hold any employer, organization or group health plan administrator responsible for an option exercised by the debtor in selecting medical insurance coverage by an employee or member.

(ii) Where the child support order requires the debtor to provide health insurance benefits for specified dependents, and where the debtor provides such coverage and then changes employment, and the new employer provides health care coverage, an amended execution for medical support enforcement may be issued by the support collection unit, or by the sheriff, the clerk of the court or the attorney for the creditor as an officer of the court without any return to court. The issuance of the amended execution shall transfer notice of the requirements of the order and the execution to the new employer, organization or group health plan administrator, and shall have the same effect as the original execution for medical support issued pursuant to this section unless the debtor contests the execution.

(3) Any inconsistent provisions of this title or other law notwithstanding, in any case in which a parent is required by a court order to provide health coverage for a child and the parent is eligible for health insurance benefits as defined in this section through an employer or organization, including those which are self-insured, doing business in the state, such employer or organization must, in addition to implementing the provisions of a medical support execution:

(i) permit such parent to immediately enroll under such health insurance benefit coverage any such dependent who is otherwise eligible for such coverage without regard to any seasonal enrollment restrictions;

(ii) if such a parent is enrolled but fails to make application to obtain coverage of such dependent child, immediately enroll such dependent child under such health benefit coverage upon application by such child's other parent or by the office of temporary and disability assistance or social services district furnishing medical assistance to such child, and

(iii) not disenroll, or eliminate coverage of, such a child unless:

(A) the employer or organization is provided with satisfactory written evidence that such court order is no longer in effect, or the child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of such disenrollment, or

(B) such employer or organization has eliminated health insurance coverage for all similarly situated employees.

(c) Execution for support enforcement; form. (1) The income execution shall be on the form for income withholding promulgated by the office of temporary and disability assistance for this purpose and shall include the necessary information and directions to ensure its characterization as an income withholding notice as described and required by subsection (b) of section six hundred sixty-six of title forty-two of the United States Code; provided, however, that where the court enters an order for spousal support only for which income withholding will be ordered by the sheriff, the clerk of court or the attorney for the creditor, an alternate spousal support form for income withholding promulgated by the office of temporary and disability assistance may be used but is not required. In addition, the income execution shall specify the court in which it was entered, the amount of the periodic payments directed, and the names of the debtor and creditor. In addition, to the extent not already provided on the form for income withholding, a separate document shall be served with the income execution which shall include:

(i) the name and address of the employer or income payor from whom the debtor is receiving or will receive income;

(ii) the amount of the deductions to be made therefrom on account of current support, and the amount to be applied to the reduction of arrears;

(iii) a notice that deductions will apply to current and subsequent income;

(iv) a notice that the income execution will be served upon any current or subsequent employer or income payor unless a mistake of fact is shown within fifteen days, a notice of the manner in which a mistake of fact may be asserted, and a notice that, if the debtor claims a mistake of fact, a determination will be made within forty-five days after notice to the debtor as provided in subdivision (d) of this section, and that the debtor will receive written notice whether the

income execution will be served and of the time that deductions will begin;

(v) a notice that the employer or income payor must commence deductions no later than the first pay period that occurs after fourteen days following the service of the income execution and that payment must be remitted within seven business days of the date that the debtor paid;

(vi) a notice that the income execution is binding until further notice;

(vii) a notice of the substance of the provisions of section fifty-two hundred fifty-two of this article and that a violation thereof is punishable as a contempt of court by fine or imprisonment or both;

(viii) a notice of the limitations upon deductions from wages set forth in subdivision (g) of this section;

(ix) a notice that an employer must notify the issuer promptly when the debtor terminates employment and provide the debtor's last address and the name and address of the new employer, if known;

(x) a notice that when an employer receives an income withholding instrument issued by another state, the employer shall apply the income withholding law of the state of the debtor's principal place of employment in determining:

(A) the employer's fee for processing income withholding;

(B) the maximum amount permitted to be withheld from the debtor's income;

(C) the time periods within which the employer must implement the income withholding and forward the child support payment;

(D) the priorities for withholding and allocating income withheld for multiple child support creditors; and

(E) any withholding terms or conditions not specified in the withholding instrument;

(xi) a notice that an employer who complies with an income execution that is regular on its face shall not be subject to civil liability to any individual or agency for conduct in compliance with the notice; and

(xii) the amount of arrears.

(2) The medical support execution shall contain the caption of the order of support and specify the date that the order of support was entered and the court in which it was entered. Such execution shall include the name and address of the employer or organization and shall

include:

(i) a notice that the debtor has been ordered by the court to enroll the dependents in any available health insurance benefits and to maintain such coverage for such dependents as long as such benefits remain available;

(ii) a notice inquiring of the employer or organization as to whether such health insurance benefits are presently in effect for the eligible dependents named in the execution, the date such benefits were or become available, or that such benefits are not available and the reasons therefor and directing that the response to such inquiry immediately be forwarded to the issuer of such execution;

(iii) a statement directing the employer or organization to purchase on behalf of the debtor any available health insurance benefits to be made available to the debtor's dependents as directed by the execution, including the enrollment of such eligible dependents in such benefit plans and the provision to the dependents or such dependents' custodial parent or legal guardian or social services district on behalf of persons applying for or in receipt of public assistance of any identification cards and benefit claim forms;

(iv) a statement directing the employer or organization to deduct from the debtor's income such amount which is the debtor's share of the premium, if any, for such health insurance benefits for such dependents who are otherwise eligible for such coverage without regard to any seasonal enrollment restrictions;

(v) a notice that the debtor's employer must notify the issuer promptly at any time the debtor terminates or changes such health insurance benefits;

(vi) a statement that the debtor's employer or organization shall not be required to purchase or otherwise acquire health insurance or health insurance benefits for such dependents that would not otherwise be available to the debtor by reason of his employment or membership;

(vii) a statement that failure to enroll the eligible dependents in such health insurance plan or benefits or failure to deduct from the debtor's income the debtor's share of the premium for such plan or benefits shall make such employer or organization jointly and severally liable for all medical expenses incurred on the behalf of the debtor's dependents named in the execution while such dependents are not so

enrolled to the extent of the health insurance benefits that should have been provided under the execution;

(viii) the name and last known mailing address of the debtor and the name and mailing address of the dependents; provided however, that the name and mailing address of a social services official may be substituted on behalf of such dependents;

(ix) a reasonable description of the type of coverage to be provided to each dependent, or the manner in which such type of coverage is to be determined;

(x) the period to which such execution applies; and

(xi) a statement that the debtor's employer or organization shall not be required to provide any type or form of benefit or option not otherwise provided under the group health plan except to the extent necessary to meet the requirements of a law relating to medical child support described in section one thousand three hundred ninety-six-g-1 of title forty-two of the United States Code.

(d) Notice to debtor. The issuer shall serve a copy of the execution upon the debtor by regular mail to the debtor at his last known residence or such other place where he is likely to receive notice, or in the same manner as a summons may be served.

(e) Determination of mistake of fact. Where the execution has been issued by the support collection unit, the debtor may assert a mistake of fact and shall have an opportunity to make a submission in support of the objection within fifteen days from service of a copy thereof. Thereafter, the agency shall determine the merits of the objection, and shall notify the debtor of its determination within forty-five days after notice to the debtor as provided in subdivision (d) of this section. If the objection is disallowed, the debtor shall be notified that the income execution will be served on the employer or income payor, and of the time that deductions will begin. Where the income execution has been issued by an attorney as officer of the court, or by the sheriff, or by the clerk of the court, the debtor may assert a mistake of fact within fifteen days from service of a copy thereof by application to the supreme court or to the family court having jurisdiction in accordance with section four hundred sixty-one of the family court act. If application is made to the family court, such application shall be by petition on notice to the creditor and it shall

be heard and determined in accordance with the provisions of section four hundred thirty-nine of the family court act, and a determination thereof shall be made, and the debtor notified thereof within forty-five days of the application. If application is made to the supreme court such application shall be by order to show cause or motion on notice to the creditor in the action in which the order or judgement sought to be enforced was entered and a determination thereof shall be made, and the debtor notified thereof within forty-five days of the application.

(f) Levy. If a debtor fails to show mistake of fact within fifteen days, or after a determination pursuant to subdivision (e) of this section has been made, or if the issuer is unable to serve the execution upon the debtor, the creditor may levy upon the income that the debtor is receiving or will receive by serving the execution upon the employer or income payor personally in the same manner as a summons or by regular mail, except that such service shall not be made by delivery to a person authorized to receive service of summons solely by a designation filed pursuant to a provision of law other than rule 318.

(g) Deduction from income. (1) An employer or income payor served with an income execution shall commence deductions from income due or thereafter due to the debtor no later than the first pay period that occurs fourteen days after service of the execution, and shall remit payments within seven business days of the date that the debtor is paid. Each payment remitted by an employer or income payor shall include the information as instructed on the income execution and shall be payable to and remitted to the state disbursement unit established in this state in accordance with section six hundred fifty-four-b of title forty-two of the United States Code unless the income execution is for spousal support only, in which case the payments shall be payable to and remitted to the creditor. If the money due to the debtor consists of salary or wages and his or her employment is terminated by resignation or dismissal at any time after service of the execution, the levy shall thereafter be ineffective, and the execution shall be returned, unless the debtor is reinstated or re-employed within ninety days after such termination. An employer must notify the issuer promptly when the debtor terminates employment and provide the debtor's last address and name and address of the new employer, if known. An income payor must notify the issuer promptly when the debtor no longer receives income and must

provide the debtor's last address and the name and address of the debtor's new employer, if known. Where the income is compensation paid or payable to the debtor for personal services, the amount of the deductions to be withheld shall not exceed the following:

(i) Where a debtor is currently supporting a spouse or dependent child other than the creditor, the amount of the deductions to be withheld shall not exceed fifty percent of the earnings of the debtor remaining after the deduction therefrom of any amounts required by law to be withheld ("disposable earnings"), except that if any part of such deduction is to be applied to the reduction of arrears which shall have accrued more than twelve weeks prior to the beginning of the week for which such earnings are payable, the amount of such deduction shall not exceed fifty-five percent of disposable earnings.

(ii) Where a debtor is not currently supporting a spouse or dependent child other than the creditor, the amount of the deductions to be withheld shall not exceed sixty percent of the earnings of the debtor remaining after the deduction therefrom of any amounts required by law to be withheld ("disposable earnings"), except that if any part of such deduction is to be applied to the reduction of arrears which shall have accrued more than twelve weeks prior to the beginning of the week for which such earnings are payable, the amount of such deduction shall not exceed sixty-five percent of disposable earnings.

(2) (A) An employer or income payor served with an income execution in accordance with paragraph one of this subdivision shall be liable to the creditor for failure to deduct the amounts specified. The creditor may commence a proceeding against the employer or income payor for accrued deductions, together with interest and reasonable attorney's fees.

(B) An employer or income payor served with an income execution in accordance with paragraph one of this subdivision shall be liable to the creditor and the debtor for failure to remit any amounts which have been deducted as directed by the income execution. Either party may commence a proceeding against the employer or income payor for accrued deductions, together with interest and reasonable attorney's fees.

(C) The actions of the employer or income payor in deducting or failing to deduct amounts specified by an income execution shall not relieve the debtor of the underlying obligation of support.

(D) In addition to the remedies herein provided and as may be

otherwise authorized by law, upon a finding by the family court that the employer or income payor failed to deduct or remit deductions as directed in the income execution, the court shall issue to the employer or income payor an order directing compliance and may direct the payment of a civil penalty not to exceed five hundred dollars for the first instance and one thousand dollars per instance for the second and subsequent instances of employer or income payor noncompliance. The penalty shall be paid to the creditor and may be enforced in the same manner as a civil judgment or in any other manner permitted by law.

(3) If an employer, organization or group health plan administrator is served with an execution for medical support enforcement, such employer, organization or group health plan administrator shall: (i) purchase on behalf of the debtor any health insurance benefits which may be made available to the debtor's dependents as ordered by the execution, including the immediate enrollment of such eligible dependents in such benefit plans; (ii) provide the dependents for whom such benefits are required, or a social services official substituted for such dependents, identification cards and benefit claim forms; (iii) commence deductions from income due or thereafter due to the debtor of such amount which is the debtor's share of the premium, if any, for such health insurance benefits, provided, however, that such deduction when combined with deductions for support does not exceed the limitations set forth in paragraph one of this subdivision and is consistent with the priority provisions set forth in subdivision (h) of this section; and (iv) provide a confirmation of such enrollment indicating the date such benefits were or become available or that such benefits are not available and the reasons therefor to the issuer of the execution. Except as otherwise provided by law, nothing herein shall be deemed to obligate an employer or organization to maintain or continue an employee's or member's health insurance benefits.

(4) If such employer, organization or group health plan administrator shall fail to so enroll such eligible dependents or to deduct from the debtor's income the debtor's share of the premium, such employer, organization or group health plan administrator shall be jointly and severally liable for all medical expenses incurred on behalf of the debtor's dependents named in the execution while such dependents are not so enrolled to the extent of the insurance benefits that should have

been provided under such execution. Except as otherwise provided by law, nothing herein shall be deemed to obligate an employer, organization or group health plan administrator to maintain or continue an employee's or member's health insurance benefits.

(h) Priority. A levy pursuant to this section or an income deduction order pursuant to section 5242 of this chapter shall take priority over any other assignment, levy or process. If an employer or income payor is served with more than one execution pursuant to this section, or with an execution pursuant to this section and also an order pursuant to section 5242 of this chapter, and if the combined total amount of the deductions to be withheld exceeds the limits set forth in subdivision (g) of this section, the employer or income payor shall withhold the maximum amount permitted thereby and pay to each creditor that proportion thereof which such creditor's claim bears to the combined total. Any additional deduction authorized by subdivision (g) of this section to be applied to the reduction of arrears shall be applied to such arrears in proportion to the amount of arrears due to each creditor. Deductions to satisfy current support obligations shall have priority over deductions for the debtor's share of health insurance premiums which shall have priority over any additional deduction authorized by subdivision (g) of this section.

(i) Levy upon money payable by the state. A levy upon money payable directly by a department of the state, or by an institution under its jurisdiction, shall be made by serving the income execution upon the head of the department, or upon a person designated by him, at the office of the department in Albany; a levy upon money payable directly upon the state comptroller's warrant, or directly by a state board, commission, body or agency which is not within any department of the state, shall be made by serving the execution upon the state department of audit and control at its office in Albany. Service at the office of a department or any agency or institution of the state in Albany may be made by registered or certified mail, return receipt requested.