

## CHAPTER TEXT:

LAWS OF NEW YORK, 2008

## CHAPTER 94

AN ACT to amend the civil practice law and rules, in relation to the application made to the supreme court to determine a mistake of fact in an income execution for support enforcement

Became a law May 27, 2008, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

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

Section 1. Subdivision (e) of section 5241 of the civil practice law and rules, as amended by chapter 815 of the laws of 1987, is amended to read as follows:

(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 [~~petition~~] order to show cause or motion on notice to the creditor [~~and, it shall be heard and determined in accordance with the provisions of article four of the civil practice law and rules,~~] 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.

§ 2. This act shall take effect immediately.

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

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The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO

Temporary President of the Senate

SHELDON SILVER

Speaker of the Assembly

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**SUMMARY:**

**A7371** Lancman (MS) Same as [S 3564](#) VOLKER

LANCMAN, WEINSTEIN, HOOPER; M-S: Clark, Colton, Jaffee, Lafayette, Lavine, Pheffer, Sweeney, Titus, Young

Amd S5241, CPLR

Requires that, in actions to enforce a money judgment, applications to assert a mistake of fact in supreme court be made by order to show cause or motion on notice to the creditor in the same action in which the order or judgment sought to be enforced was entered.

EFF. DATE 05/27/2008

Office of Court Administration

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**SPONSORS MEMO:**

**NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(e)**

**BILL NUMBER:** A7371

**SPONSOR:** Lancman (MS)

**TITLE OF BILL:** An act to amend the civil practice law and rules, in relation to the application made to the supreme court to determine a mistake of fact in an income execution for support enforcement

This is one in a series of measures being introduced at the request of the Chief Administrative Judge upon the recommendation of his Advisory Committee on Civil Practice.

This measure would amend CPLR 5241(e) to require that, in actions to enforce a money judgment, applications to assert a mistake of fact in Supreme Court be made by order to show cause or motion on notice to the creditor in the same action in which the order or judgment sought to be enforced was entered.

Currently, the law requires that where an income execution is served on a debtor, the debtor has 15 days to reply and, where the income execution contains an error as defined in CPLR 5241(a)(8), to bring a petition under CPLR Article 4 for mistake of fact. This petition is in aid of a court order, i.e., either a Supreme Court order in a matrimonial proceeding or a Family Court order in a support proceeding. Our Advisory Committee believes that it should not be necessary that a new proceeding be brought to challenge an error in an income execution and recommends removal of the burden of commencing a new, separate, enforcement proceeding, together with payment of a new index number fee and fee for a request for judicial intervention, solely to correct the error.

This measure would have no fiscal impact on the State. It would take effect immediately.

**LEGISLATIVE HISTORY:**

None. New proposal.