

CHILD SUPPORT AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lorie D. Fowlke

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill clarifies that income for determining child support includes earnings from a full-time job and unearned sources of income.

Highlighted Provisions:

This bill:

- ▶ clarifies that gross income includes earnings from a full-time job and unearned sources of income combined; and
- ▶ allows for the exclusion from gross income of income not used to support and maintain the family during the marriage.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78-45-7.5, as last amended by Chapter 116, Laws of Utah 2001

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78-45-7.5** is amended to read:

78-45-7.5. Determination of gross income -- Imputed income.



28 (1) As used in the guidelines, "gross income" includes[:~~(a)~~] prospective income from
29 any source, including earned and nonearned income sources[~~,-except under Subsection (3); and~~
30 ~~(b) income from~~] which may include salaries, wages, commissions, royalties, bonuses, rents,
31 gifts from anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony
32 from previous marriages, annuities, capital gains, Social Security benefits, workers'
33 compensation benefits, unemployment compensation, income replacement disability insurance
34 benefits, and payments from "nonmeans-tested" government programs.

35 (2) Income from earned income sources is limited to the equivalent of one full-time
36 40-hour job. [~~However, if~~]

37 (a) If and only if during the time prior to the original support order, the parent normally
38 and consistently worked more than 40 hours at his job, the court may consider this extra time
39 as a pattern in calculating the parent's ability to provide child support.

40 (b) Nonearned income from sources that was not used during the marriage to support
41 and maintain the family may be excluded from gross income.

42 (3) [~~Specifically~~] Notwithstanding Subsection (1), specifically excluded from gross
43 income are:

44 (a) cash assistance provided under Title 35A, Chapter 3, Part 3, Family Employment
45 Program;

46 (b) benefits received under a housing subsidy program, the Job Training Partnership
47 Act, Supplemental Security Income, Social Security Disability Insurance, Medicaid, Food
48 Stamps, or General Assistance; and

49 (c) other similar means-tested welfare benefits received by a parent.

50 (4) (a) Gross income from self-employment or operation of a business shall be
51 calculated by subtracting necessary expenses required for self-employment or business
52 operation from gross receipts. The income and expenses from self-employment or operation of
53 a business shall be reviewed to determine an appropriate level of gross income available to the
54 parent to satisfy a child support award. Only those expenses necessary to allow the business to
55 operate at a reasonable level may be deducted from gross receipts.

56 (b) Gross income determined under this Subsection (4) may differ from the amount of
57 business income determined for tax purposes.

58 (5) (a) When possible, gross income should first be computed on an annual basis and

59 then recalculated to determine the average gross monthly income.

60 (b) Each parent shall provide verification of current income. Each parent shall provide
61 year-to-date pay stubs or employer statements and complete copies of tax returns from at least
62 the most recent year unless the court finds the verification is not reasonably available.

63 Verification of income from records maintained by the Department of Workforce Services may
64 be substituted for pay stubs, employer statements, and income tax returns.

65 (c) Historical and current earnings shall be used to determine whether an
66 underemployment or overemployment situation exists.

67 (6) Gross income includes income imputed to the parent under Subsection (7).

68 (7) (a) Income may not be imputed to a parent unless the parent stipulates to the
69 amount imputed, the party defaults, or, in contested cases, a hearing is held and a finding made
70 that the parent is voluntarily unemployed or underemployed.

71 (b) If income is imputed to a parent, the income shall be based upon employment
72 potential and probable earnings as derived from work history, occupation qualifications, and
73 prevailing earnings for persons of similar backgrounds in the community, or the median
74 earning for persons in the same occupation in the same geographical area as found in the
75 statistics maintained by the Bureau of Labor Statistics.

76 (c) If a parent has no recent work history or their occupation is unknown, income shall
77 be imputed at least at the federal minimum wage for a 40-hour work week. To impute a greater
78 income, the judge in a judicial proceeding or the presiding officer in an administrative
79 proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation.

80 (d) Income may not be imputed if any of the following conditions exist:

81 (i) the reasonable costs of child care for the parents' minor children approach or equal
82 the amount of income the custodial parent can earn;

83 (ii) a parent is physically or mentally disabled to the extent he cannot earn minimum
84 wage;

85 (iii) a parent is engaged in career or occupational training to establish basic job skills;

86 or

87 (iv) unusual emotional or physical needs of a child require the custodial parent's
88 presence in the home.

89 (8) (a) Gross income may not include the earnings of a minor child who is the subject

90 of a child support award nor benefits to a minor child in the child's own right such as
91 Supplemental Security Income.

92 (b) Social Security benefits received by a child due to the earnings of a parent shall be
93 credited as child support to the parent upon whose earning record it is based, by crediting the
94 amount against the potential obligation of that parent. Other unearned income of a child may
95 be considered as income to a parent depending upon the circumstances of each case.

Legislative Review Note
as of 1-16-06 6:26 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel