

IMPUTED INCOME AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to child support.

Highlighted Provisions:

This bill:

- ▶ provides that income may not be imputed to a parent with no recent work history and occupational qualifications;
- ▶ provides that income imputed to a parent at the federal minimum wage applies only in cases when the parent's occupation is unknown; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-12-203, as last amended by Laws of Utah 2012, Chapter 41

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

Section 1. Section **78B-12-203** is amended to read:

78B-12-203. Determination of gross income -- Imputed income.



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

35 (2) Income from earned income sources is limited to the equivalent of one full-time
36 40-hour job. If and only if during the time prior to the original support order, the parent
37 normally and consistently worked more than 40 hours at the parent's job, the court may
38 consider this extra time as a pattern in calculating the parent's ability to provide child support.

39 (3) Notwithstanding Subsection (1), specifically excluded from gross income are:

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

42 (b) benefits received under a housing subsidy program, the Job Training Partnership
43 Act, Supplemental Security Income, Social Security Disability Insurance, Medicaid, SNAP
44 benefits, or General Assistance; and

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

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

52 (b) Gross income determined under this subsection may differ from the amount of
53 business income determined for tax purposes.

54 (5) (a) When possible, gross income should first be computed on an annual basis and
55 then recalculated to determine the average gross monthly income.

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

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

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

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

64 (7) (a) Income may not be imputed to a parent unless the parent stipulates to the
65 amount imputed, the parent defaults, or, in contested cases, a hearing is held and the judge in a
66 judicial proceeding or the presiding officer in an administrative proceeding enters findings of
67 fact as to the evidentiary basis for the imputation.

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

73 (ii) Income may not be imputed to a parent for an occupation for which the parent has
74 no recent and significant work history and has no recent occupational qualifications, unless it
75 can be shown that the parent can obtain employment in that occupation.

76 (c) If a parent has no recent work history or a parent's occupation is unknown, income
77 shall be imputed at least at the federal minimum wage for a 40-hour work week. To impute a
78 greater 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 and the
81 condition is not of a temporary nature:

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

84 (ii) a parent is physically or mentally unable to earn minimum 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
Office of Legislative Research and General Counsel