

Representative Jordan D. Teuscher proposes the following substitute bill:

DIVORCE IMPUTED INCOME REQUIREMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jordan D. Teuscher

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to imputation of income for alimony purposes.

Highlighted Provisions:

This bill:

- ▶ provides standards for imputing income to a spouse who will be receiving alimony payments from another spouse;
- ▶ provides potential limitations on imputation of income for alimony purposes in some circumstances where the recipient spouse has no recent full-time work history or has been diagnosed with a disability;
- ▶ provides conditions for reviewing imputation of income; and
- ▶ makes clarifying, technical, and conforming 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 2017, Chapter 368



26 ENACTS:

27 **30-3-5.5**, Utah Code Annotated 1953



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

30 Section 1. Section **30-3-5.5** is enacted to read:

31 **30-3-5.5. Imputed income for recipient spouse for alimony purposes -- No recent**
32 **work history or disability.**

33 (1) Notwithstanding the provisions of Section 30-3-5 or 78B-12-203, the court shall, in
34 determining imputation of income to a recipient spouse, apply the provisions of this section if
35 the recipient spouse:

36 (a) has no recent full-time work history resulting primarily from caring for a child of
37 the payor spouse; or

38 (b) has been diagnosed with a disability.

39 (2) If a recipient spouse has no recent full-time work history resulting primarily from
40 caring for a child of the payor spouse, the court may not:

41 (a) impute income to the recipient spouse for at least six months following the date of
42 filing of the divorce petition;

43 (b) impute full-time income to a recipient spouse for employment, training, or
44 education which is not recent or for which the recipient spouse has no recent full-time work
45 history;

46 (c) impute income to a recipient spouse for full-time work if that spouse is working
47 part-time and can show a reasonable barrier to obtaining full-time employment;

48 (d) impute income above the federal minimum wage for a 40-hour work week; and

49 (e) impute any income for employment for which the recipient spouse can show a
50 reasonable barrier to obtaining or retaining that employment.

51 (3) If a recipient spouse has been diagnosed with a disability:

52 (a) the court may not impute income to a recipient spouse in an amount that is contrary
53 to the recipient spouse's testimony and evidence, or the recipient spouse's expert's testimony,
54 unless:

55 (i) fraud is shown on the part of the recipient spouse in alleging disability or work
56 limitations; or

57 (ii) the court finds the expert testimony to be wholly unreliable; and
58 (b) the court may impute income in another amount than that shown under Subsection
59 (3)(a), as applicable, provided that the court enters specific, unrefuted findings of fact as to the
60 evidentiary basis for the imputation.

61 (4) (a) In making an income imputation under this section, the court may use relevant
62 provisions of Section 78B-12-203, provided that the provision is not contrary to the
63 requirements of this section.

64 (b) When determining the length of time that is considered by the court to be recent as
65 relates to a recipient spouse's work history, training, or education under this section, the court
66 shall consider whether the spouse is fully competitive against other employment applicants
67 whose work history, training, or education is current.

68 (5) (a) After a divorce decree has been entered, subject to the requirements of
69 Subsection 30-3-5(11), the court shall review an income imputation to a recipient spouse under
70 this section, if applicable.

71 (b) A recipient spouse's showing that barriers have prevented significant improvement
72 of the recipient spouse's employment situation, despite reasonable efforts on the part of the
73 recipient spouse to improve their employment situation, shall constitute a substantial material
74 change in circumstances and eligibility to review an income imputation under this section.

75 Section 2. Section **78B-12-203** is amended to read:

76 **78B-12-203. Determination of gross income -- Imputed income.**

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

84 (2) (a) Notwithstanding the provisions of this section, imputation of the income of a
85 recipient spouse shall be determined under Section 30-3-5.5 if the recipient spouse:

86 (i) has no recent full-time work history resulting primarily from caring for a child of
87 the payor spouse; or

88 (ii) has been diagnosed with a disability.

89 (b) When determining the length of time that is considered by the court to be recent for
90 the purposes of this Subsection (2), the court shall consider whether the spouse is fully
91 competitive against other employment applicants whose work history is current.

92 [~~2~~] (3) Income from earned income sources is limited to the equivalent of one
93 full-time 40-hour job. If and only if during the time before the original support order, the
94 parent normally and consistently worked more than 40 hours at the parent's job, the court may
95 consider this extra time as a pattern in calculating the parent's ability to provide child support.

96 [~~3~~] (4) Notwithstanding Subsection (1), specifically excluded from gross income are:

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

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

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

103 [~~4~~] (5) (a) Gross income from self-employment or operation of a business shall be
104 calculated by subtracting necessary expenses required for self-employment or business
105 operation from gross receipts. The income and expenses from self-employment or operation of
106 a business shall be reviewed to determine an appropriate level of gross income available to the
107 parent to satisfy a child support award. Only those expenses necessary to allow the business to
108 operate at a reasonable level may be deducted from gross receipts.

109 (b) Gross income determined under this Subsection [~~4~~] (5) may differ from the
110 amount of business income determined for tax purposes.

111 [~~5~~] (6) (a) When possible, gross income should first be computed on an annual basis
112 and then recalculated to determine the average gross monthly income.

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

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

118 (c) Historical and current earnings shall be used to determine whether an

119 underemployment or overemployment situation exists.

120 ~~[(6)]~~ (7) Incarceration of at least six months may not be treated as voluntary
121 unemployment by the office in establishing or modifying a support order.

122 ~~[(7)]~~ (8) Gross income includes income imputed to the parent under Subsection ~~[(8)]~~
123 (9).

124 ~~[(8)]~~ (9) (a) Income may not be imputed to a parent unless the parent stipulates to the
125 amount imputed, the parent defaults, or, in contested cases, a hearing is held and the judge in a
126 judicial proceeding or the presiding officer in an administrative proceeding enters findings of
127 fact as to the evidentiary basis for the imputation.

128 (b) If income is imputed to a parent, the income shall be based upon employment
129 potential and probable earnings considering, to the extent known:

130 (i) employment opportunities;

131 (ii) work history;

132 (iii) occupation qualifications;

133 (iv) educational attainment;

134 (v) literacy;

135 (vi) age;

136 (vii) health;

137 (viii) criminal record;

138 (ix) other employment barriers and background factors; and

139 (x) prevailing earnings and job availability for persons of similar backgrounds in the
140 community.

141 (c) (i) If a parent has no recent work history or a parent's occupation is unknown, and if
142 the parent does not meet the requirements of Subsection (2), that parent may be imputed an
143 income at the federal minimum wage for a 40-hour work week.

144 (ii) To impute a greater or lesser income, the judge in a judicial proceeding, or the
145 presiding officer in an administrative proceeding, shall enter specific findings of fact as to the
146 evidentiary basis for the imputation.

147 (d) Income may not be imputed if any of the following conditions exist and the
148 condition is not of a temporary nature:

149 (i) the reasonable costs of child care for the parents' minor children approach or equal

150 the amount of income the custodial parent can earn;

151 (ii) a parent is physically or mentally unable to earn minimum wage;

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

153 or

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

156 [~~9~~] (10) (a) Gross income may not include the earnings of a minor child who is the
157 subject of a child support award nor benefits to a minor child in the child's own right such as
158 Supplemental Security Income.

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

163 Section 3. **Effective date.**

164 This bill takes effect on May 1, 2024.