

HB0219S01 compared with HB0219

~~{deleted text}~~ shows text that was in HB0219 but was deleted in HB0219S01.

inserted text shows text that was not in HB0219 but was inserted into HB0219S01.

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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;
- ▶ ~~{excludes situations where the recipient spouse has been determined to be at fault; and~~

~~→ makes technical~~ provides conditions for reviewing imputation of income; and

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▶ makes clarifying, technical, and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~{ 30-3-5, as last amended by Laws of Utah 2023, Chapters 327, 418~~

~~‡ 78B-12-203, as last amended by Laws of Utah 2017, Chapter 368~~

ENACTS:

30-3-5.5, Utah Code Annotated 1953

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

Section 1. Section **30-3-5.5** is ~~{amended to read:~~

~~———— **30-3-5. Disposition of property -- Maintenance and health care of parties and children -- Division of debts -- Court to have continuing jurisdiction -- Custody and parent-time -- Alimony -- Nonmeritorious petition for modification.**~~

~~———— (1) As used in this section:~~

~~———— (a) "Cohabit" means to live together, or to reside together on a regular basis, in the same residence and in a relationship of a romantic or sexual nature:~~

~~———— (b) "Fault" means any of the following wrongful conduct during the marriage that substantially contributed to the breakup of the marriage:~~

~~———— (i) engaging in sexual relations with an individual other than the party's spouse;~~

~~———— (ii) knowingly and intentionally causing or attempting to cause physical harm to the other party or a child;~~

~~———— (iii) knowingly and intentionally causing the other party or a child to reasonably fear life-threatening harm; or~~

~~———— (iv) substantially undermining the financial stability of the other party or the child.~~

~~———— (c) "Length of the marriage" means, for purposes of alimony, the number of years from the day on which the parties are legally married to the day on which the petition for divorce is filed with the court.~~

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- ~~—— (2) When a decree of divorce is rendered, the court may include in the decree of divorce equitable orders relating to the children, property, debts or obligations, and parties.~~
- ~~—— (3) The court shall include the following in every decree of divorce:~~
- ~~—— (a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of a dependent child, including responsibility for health insurance out-of-pocket expenses such as co-payments, co-insurance, and deductibles;~~
- ~~—— (b) (i) if coverage is or becomes available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for a dependent child; and~~
- ~~—— (ii) a designation of which health, hospital, or dental insurance plan is primary and which health, hospital, or dental insurance plan is secondary in accordance with Section 30-3-5.4 that will take effect if at any time a dependent child is covered by both parents' health, hospital, or dental insurance plans;~~
- ~~—— (c) in accordance with Section 15-4-6.5:~~
- ~~—— (i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;~~
- ~~—— (ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and~~
- ~~—— (iii) provisions for the enforcement of these orders;~~
- ~~—— (d) provisions for income withholding in accordance with Title 26B, Chapter 9, Recovery Services and Administration of Child Support; and~~
- ~~—— (e) if either party owns a life insurance policy or an annuity contract, an acknowledgment by the court that the owner:~~
- ~~—— (i) has reviewed and updated, where appropriate, the list of beneficiaries;~~
- ~~—— (ii) has affirmed that those listed as beneficiaries are in fact the intended beneficiaries after the divorce becomes final; and~~
- ~~—— (iii) understands that if no changes are made to the policy or contract, the beneficiaries currently listed will receive any funds paid by the insurance company under the terms of the policy or contract.~~
- ~~—— (4) (a) The court may include, in an order determining child support, an order assigning~~

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~~financial responsibility for all or a portion of child care expenses incurred on behalf of a dependent child, necessitated by the employment or training of the custodial parent:~~

~~—— (b) If the court determines that the circumstances are appropriate and that the dependent child would be adequately cared for, the court may include an order allowing the noncustodial parent to provide child care for the dependent child, necessitated by the employment or training of the custodial parent.~~

~~—— (5) The court has continuing jurisdiction to make subsequent changes or new orders for the custody of a child and the child's support, maintenance, health, and dental care, and for distribution of the property and obligations for debts as is reasonable and necessary.~~

~~—— (6) Child support, custody, visitation, and other matters related to a child born to the parents after entry of the decree of divorce may be added to the decree by modification.~~

~~—— (7) (a) In determining parent-time rights of parents and visitation rights of grandparents and other members of the immediate family, the court shall consider the best interest of the child.~~

~~—— (b) Upon a specific finding by the court of the need for peace officer enforcement, the court may include in an order establishing a parent-time or visitation schedule a provision, among other things, authorizing any peace officer to enforce a court-ordered parent-time or visitation schedule entered under this chapter.~~

~~—— (8) If a petition for modification of child custody or parent-time provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorney fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted or defended against in good faith.~~

~~—— (9) If a motion or petition alleges noncompliance with a parent-time order by a parent, or a visitation order by a grandparent or other member of the immediate family where a visitation or parent-time right has been previously granted by the court, the court:~~

~~—— (a) may award to the prevailing party:~~

~~—— (i) actual attorney fees incurred;~~

~~—— (ii) the costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation or parent-time, which may include:~~

~~—— (A) court costs;~~

~~—— (B) child care expenses;~~

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- ~~—— (C) transportation expenses actually incurred;~~
- ~~—— (D) lost wages, if ascertainable; or~~
- ~~—— (E) counseling for a child or parent if ordered or approved by the court; or~~
- ~~—— (iii) any other appropriate equitable remedy; and~~
- ~~—— (b) shall award reasonable make-up parent-time to the prevailing party, unless make-up parent-time is not in the best interest of the child.~~
- ~~—— (10) (a) The court shall consider at least the following factors in determining alimony:~~
- ~~—— (i) the financial condition and needs of the recipient spouse;~~
- ~~—— (ii) the recipient's earning capacity or ability to produce income, including the impact of diminished workplace experience resulting from primarily caring for a child of the payor spouse;~~
- ~~—— (iii) the ability of the payor spouse to provide support;~~
- ~~—— (iv) the length of the marriage;~~
- ~~—— (v) whether the recipient spouse has custody of a minor child requiring support;~~
- ~~—— (vi) whether the recipient spouse worked in a business owned or operated by the payor spouse; and~~
- ~~—— (vii) whether the recipient spouse directly contributed to any increase in the payor spouse's skill by paying for education received by the payor spouse or enabling the payor spouse to attend school during the marriage.~~
- ~~—— (b) The court may consider the fault of the parties in determining whether to award alimony and the terms of the alimony.~~
- ~~—— (c) The court may, when fault is at issue, close the proceedings and seal the court records.~~
- ~~—— (d) The court shall impute income of a recipient spouse for alimony purposes under Section 30-3-5.5 if:~~
- ~~—— (i) fault has not been shown on the part of the recipient spouse; and~~
- ~~—— (ii) the recipient spouse:~~
- ~~—— (A) has no recent full-time work history resulting primarily from caring for a child of the payor spouse; or~~
- ~~—— (B) has been diagnosed with a disability.~~
- ~~—— [(d)] (c) As a general rule, the court should look to the standard of living, existing at~~

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~~the time of separation, in determining alimony in accordance with Subsection (10)(a).~~

~~However, the court shall consider all relevant facts and equitable principles and may, in the court's discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no child has been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.~~

~~——— [(c)] (f) The court may, under appropriate circumstances, attempt to equalize the parties' respective standards of living.~~

~~——— [(f)] (g) When a marriage of long duration dissolves on the threshold of a major change in the income of one of the spouses due to the collective efforts of both, that change shall be considered in dividing the marital property and in determining the amount of alimony. If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, the court may make a compensating adjustment in dividing the marital property and awarding alimony.~~

~~——— [(g)] (h) In determining alimony when a marriage of short duration dissolves, and no child has been conceived or born during the marriage, the court may consider restoring each party to the condition which existed at the time of the marriage.~~

~~——— (11) (a) The court has continuing jurisdiction to make substantive changes and new orders regarding alimony based on a substantial material change in circumstances not expressly stated in the divorce decree or in the findings that the court entered at the time of the divorce decree.~~

~~——— (b) A party's retirement is a substantial material change in circumstances that is subject to a petition to modify alimony, unless the divorce decree, or the findings that the court entered at the time of the divorce decree, expressly states otherwise.~~

~~——— (c) The court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action.~~

~~——— (d) (i) In determining alimony, the income of any subsequent spouse of the payor may not be considered, except as provided in Subsection (10) or this Subsection (11).~~

~~——— (ii) The court may consider the subsequent spouse's financial ability to share living expenses.~~

~~——— (iii) The court may consider the income of a subsequent spouse if the court finds that~~

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~~the payor's improper conduct justifies that consideration:~~

~~—— (c) (i) Except as provided in Subsection (11)(c)(iii), the court may not order alimony for a period of time longer than the length of the marriage:~~

~~—— (ii) If a party is ordered to pay temporary alimony during the pendency of the divorce action, the period of time that the party pays temporary alimony shall be counted towards the period of time for which the party is ordered to pay alimony:~~

~~—— (iii) At any time before the termination of alimony, the court may find extenuating circumstances or good cause that justify the payment of alimony for a longer period of time than the length of the marriage:~~

~~—— (12) (a) Except as provided in Subsection (12)(b), unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage or death of that former spouse:~~

~~—— (b) If the remarriage of the former spouse is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and the payor party's rights are determined:~~

~~—— (13) If a party establishes that a current spouse cohabits with another individual during the pendency of the divorce action, the court:~~

~~—— (a) may not order the party to pay temporary alimony to the current spouse; and~~

~~—— (b) shall terminate any order that the party pay temporary alimony to the current spouse:~~

~~—— (14) (a) Subject to Subsection (14)(b), the court shall terminate an order that a party pay alimony to a former spouse if the party establishes that, after the order for alimony is issued, the former spouse cohabits with another individual even if the former spouse is not cohabiting with the individual when the party paying alimony files the motion to terminate alimony:~~

~~—— (b) A party paying alimony to a former spouse may not seek termination of alimony under Subsection (14)(a), later than one year from the day on which the party knew or should have known that the former spouse has cohabited with another individual:~~

~~—— Section 2. Section ~~30-3-5.5~~ is }enacted to read:~~

30-3-5.5. Imputed income for recipient spouse for alimony purposes -- {Absence of fault -- }No recent work history or disability.

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(1) Notwithstanding the provisions of Section 30-3-5 or 78B-12-203, the court shall, ~~for alimony purposes, impute the~~ in determining imputation of income ~~off~~ to a recipient spouse ~~under~~, apply the provisions of this section if:

~~— (a) fault has not been shown on the part of the recipient spouse; and~~

~~— (b) } the recipient spouse:~~

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

~~(~~iii~~)b~~ has been diagnosed with a disability.

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

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

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

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

(d) impute income above the federal minimum wage for a 40-hour work week ~~unless an employment or vocation expert can show:~~

~~— (i) a current job opening in the recipient spouse's community with a specific employer;~~

~~— (ii) that the employer identified in Subsection (2)(d)(i) is willing to:~~

~~— (A) hire the recipient spouse specifically over other applicants knowing that the recipient spouse has no recent full-time work history; and~~

~~— (B) pay the recipient spouse the amount to be imputed}; and~~

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

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

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

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

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limitations; or

~~(ii) the disability was caused by wrongdoing on the part of the recipient spouse; or
(iii) the payor spouse's employment or vocational expert can show a specific employer in the recipient spouse's community who is willing to hire the recipient spouse, in specific conformity with the recipient spouse's disability, needs, and limitations, and who will pay the recipient spouse the amount to be imputed.~~

~~(b) The court shall~~ court finds the expert testimony to be wholly unreliable; and

(b) the court may impute income in ~~the~~ another amount than that shown under Subsection (3)(a) ~~(iii)~~, as applicable ~~or another amount~~, provided that the court enters specific, unrefuted findings of fact as to the evidentiary basis for the imputation.

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

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

(5) (a) After a divorce decree has been entered, subject to the requirements of Subsection 30-3-5(11), the court shall ~~+~~

~~(a) +~~ review an income imputation to a recipient spouse ~~that is made~~ under this section upon a, if applicable.

~~(b) A~~ recipient spouse's ~~motion; and~~

~~(b) rescind an income imputation retroactively to the date of imputation if~~ showing that barriers have prevented significant improvement of the recipient spouse's employment situation, despite reasonable efforts on the part of the recipient spouse ~~shows a barrier or inability to earn the amount imputed.~~

~~Section 3~~ to improve their employment situation, shall constitute a substantial material change in circumstances and eligibility to review an income imputation under this section.

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

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

(1) As used in the guidelines, "gross income" includes prospective income from any

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source, including earned and nonearned income sources which may include salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony from previous marriages, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment compensation, income replacement disability insurance benefits, and payments from "nonmeans-tested" government programs.

(2) (a) Notwithstanding the provisions of this section, imputation of the income of a recipient spouse ~~{for alimony purposes }~~ shall be determined under Section 30-3-5.5 if:

~~— (a) fault has not been shown on the part of the recipient spouse; and~~

~~— (b) } the recipient spouse:~~

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

~~(ii) has been diagnosed with a disability.~~

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

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

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

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

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

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

~~[(4)] (5)~~ (a) Gross income from self-employment or operation of a business shall be calculated by subtracting necessary expenses required for self-employment or business operation from gross receipts. The income and expenses from self-employment or operation of a business shall be reviewed to determine an appropriate level of gross income available to the

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parent to satisfy a child support award. Only those expenses necessary to allow the business to operate at a reasonable level may be deducted from gross receipts.

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

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

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

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

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

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

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

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

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

- (i) employment opportunities;
- (ii) work history;
- (iii) occupation qualifications;
- (iv) educational attainment;
- (v) literacy;
- (vi) age;
- (vii) health;
- (viii) criminal record;

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(ix) other employment barriers and background factors; and

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

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

(ii) ~~ff~~To impute a greater or lesser income, the judge in a judicial proceeding₂ or the presiding officer in an administrative proceeding₂ shall enter~~{}~~ A court may impute an income that is greater or lesser than the amount provided in Subsection (9)(c)(i) if the court enters} specific findings of fact as to the evidentiary basis for the imputation.

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

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

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

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

or

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

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

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

Section ~~{4}~~3. **Effective date.**

This bill takes effect on May 1, 2024.