

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 13-1058

BY REPRESENTATIVE(S) McCann, Buckner, Court, Fischer, Hulinghorst, Kagan, Labuda, Levy, McLachlan, Mitsch Bush, Pabon, Schafer, Young, Fields, Ryden;
also SENATOR(S) Kerr, Aguilar, Guzman, Heath, Newell, Steadman.

CONCERNING GUIDELINES FOR THE DETERMINATION OF SPOUSAL MAINTENANCE.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **repeal and reenact, with amendments**, 14-10-114 as follows:

14-10-114. Spousal maintenance - guidelines - legislative declaration - definitions. (1) **Legislative declaration.** (a) THE GENERAL ASSEMBLY HEREBY FINDS THAT:

(I) THE ECONOMIC LIVES OF SPOUSES ARE FREQUENTLY CLOSELY INTERTWINED IN MARRIAGE AND THAT IT IS OFTEN IMPOSSIBLE TO LATER SEGREGATE THE RESPECTIVE DECISIONS AND CONTRIBUTIONS OF THE SPOUSES; AND

(II) CONSEQUENTLY, AWARDED SPOUSAL MAINTENANCE MAY BE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

APPROPRIATE IF A SPOUSE NEEDS SUPPORT AND THE OTHER SPOUSE HAS THE ABILITY TO PAY SUPPORT.

(b) THE GENERAL ASSEMBLY FURTHER FINDS THAT:

(I) BECAUSE THE STATUTES PROVIDE LITTLE GUIDANCE TO THE COURT CONCERNING MAINTENANCE AWARDS, THERE HAS BEEN INCONSISTENCY IN THE AMOUNT AND TERM OF MAINTENANCE AWARDED IN DIFFERENT JUDICIAL DISTRICTS ACROSS THE STATE IN CASES THAT INVOLVE SIMILAR FACTUAL CIRCUMSTANCES; AND

(II) COURTS AND LITIGANTS WOULD BENEFIT FROM THE ESTABLISHMENT OF A MORE DETAILED STATUTORY FRAMEWORK THAT INCLUDES ADVISORY GUIDELINES TO BE CONSIDERED AS A STARTING POINT FOR THE DETERMINATION OF FAIR AND EQUITABLE MAINTENANCE AWARDS.

(c) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT IT IS APPROPRIATE TO CREATE A STATUTORY FRAMEWORK FOR THE DETERMINATION OF MAINTENANCE AWARDS, INCLUDING ADVISORY GUIDELINES FOR THE AMOUNT AND TERM OF MAINTENANCE IN CERTAIN CASES, THAT WILL ASSIST THE COURT AND THE PARTIES IN CRAFTING MAINTENANCE AWARDS THAT ARE FAIR, EQUITABLE, AND MORE CONSISTENT ACROSS JUDICIAL DISTRICTS.

(2) AT THE TIME OF PERMANENT ORDERS IN DISSOLUTION OF MARRIAGE, LEGAL SEPARATION, OR DECLARATION OF INVALIDITY PROCEEDINGS, AND UPON THE REQUEST OF EITHER PARTY, THE COURT MAY ORDER THE PAYMENT OF MAINTENANCE FROM ONE SPOUSE TO THE OTHER PURSUANT TO THE PROVISIONS OF THIS SECTION. AN AWARD OF MAINTENANCE SHALL BE IN AN AMOUNT AND FOR A TERM THAT IS FAIR AND EQUITABLE TO BOTH PARTIES AND SHALL BE MADE WITHOUT REGARD TO MARITAL MISCONDUCT.

(3) (a) (I) **Determination of maintenance.** WHEN A PARTY HAS REQUESTED MAINTENANCE IN A DISSOLUTION OF MARRIAGE, LEGAL SEPARATION, OR DECLARATION OF INVALIDITY PROCEEDING, PRIOR TO GRANTING OR DENYING AN AWARD OF MAINTENANCE, THE COURT SHALL MAKE INITIAL WRITTEN OR ORAL FINDINGS CONCERNING:

(A) THE AMOUNT OF EACH PARTY'S GROSS INCOME;

(B) THE MARITAL PROPERTY APPORTIONED TO EACH PARTY;

(C) THE FINANCIAL RESOURCES OF EACH PARTY, INCLUDING BUT NOT LIMITED TO THE ACTUAL OR POTENTIAL INCOME FROM SEPARATE OR MARITAL PROPERTY; AND

(D) REASONABLE FINANCIAL NEED AS ESTABLISHED DURING THE MARRIAGE.

(II) AFTER MAKING THE INITIAL FINDINGS DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), THE COURT SHALL DETERMINE THE AMOUNT AND TERM OF THE MAINTENANCE AWARD, IF ANY, THAT IS FAIR AND EQUITABLE TO BOTH PARTIES AFTER CONSIDERING:

(A) THE GUIDELINE AMOUNT AND TERM OF MAINTENANCE SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (3), IF APPLICABLE, BASED UPON THE DURATION OF THE MARRIAGE AND THE COMBINED GROSS INCOMES OF THE PARTIES;

(B) THE FACTORS RELATING TO THE AMOUNT AND TERM OF MAINTENANCE SET FORTH IN PARAGRAPH (c) OF THIS SUBSECTION (3); AND

(C) WHETHER THE PARTY SEEKING MAINTENANCE HAS MET THE REQUIREMENT FOR A MAINTENANCE AWARD PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (3).

(b) Guideline amount and term of maintenance - combined gross income of up to two hundred forty thousand dollars and duration of marriage of at least three years. IF THE DURATION OF THE PARTIES' MARRIAGE IS AT LEAST THREE YEARS AND THE PARTIES' COMBINED, ANNUAL ADJUSTED GROSS INCOME DOES NOT EXCEED THE GREATER OF TWO HUNDRED FORTY THOUSAND DOLLARS OR THE UPPERMOST LIMITS OF THE SCHEDULE OF BASIC CHILD SUPPORT OBLIGATIONS SET FORTH IN SECTION 14-10-115, THE COURT SHALL MAKE ADDITIONAL ORAL OR WRITTEN FINDINGS CONCERNING THE DURATION OF THE MARRIAGE IN WHOLE MONTHS AND THE GUIDELINE AMOUNT AND TERM OF MAINTENANCE, CALCULATED AS FOLLOWS:

(I) **Guideline maintenance amount.** THE AMOUNT OF MAINTENANCE UNDER THE GUIDELINES IS EQUAL TO FORTY PERCENT OF THE HIGHER INCOME PARTY'S MONTHLY ADJUSTED GROSS INCOME LESS FIFTY

PERCENT OF THE LOWER INCOME PARTY'S MONTHLY ADJUSTED GROSS INCOME; EXCEPT THAT, WHEN ADDED TO THE GROSS INCOME OF THE RECIPIENT, SHALL NOT RESULT IN THE RECIPIENT RECEIVING IN EXCESS OF FORTY PERCENT OF THE PARTIES' COMBINED MONTHLY ADJUSTED GROSS INCOME.

(II) (A) THE TERM OF MAINTENANCE UNDER THE GUIDELINES, CALCULATED IN WHOLE MONTHS, FOR MARRIAGES OF AT LEAST THREE YEARS BUT NOT MORE THAN TWENTY YEARS, IS SET FORTH IN THE TABLE CONTAINED IN SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (II). WHEN THE DURATION OF THE PARTIES' MARRIAGE EXCEEDS TWENTY YEARS, THE COURT MAY AWARD MAINTENANCE FOR A SPECIFIED TERM OF YEARS OR FOR AN INDEFINITE TERM, BUT THE COURT SHALL NOT SPECIFY A MAINTENANCE TERM THAT IS LESS THAN THE MAINTENANCE TERM UNDER THE GUIDELINES FOR A TWENTY-YEAR MARRIAGE WITHOUT MAKING SPECIFIC FINDINGS THAT SUPPORT A REDUCED TERM OF MAINTENANCE.

(B) Table of guideline maintenance term (in whole months)

MONTHS OF MARRIAGE	PERCENTAGE	GUIDELINE TERM OF MAINTENANCE
36	31.00%	11
37	31.17%	12
38	31.33%	12
39	31.50%	12
40	31.67%	13
41	31.83%	13
42	32.00%	13
43	32.17%	14
44	32.33%	14
45	32.50%	15
46	32.67%	15
47	32.83%	15
48	33.00%	16
49	33.17%	16
50	33.33%	17
51	33.50%	17
52	33.67%	18
53	33.83%	18

54	34.00%	18
55	34.17%	19
56	34.33%	19
57	34.50%	20
58	34.67%	20
59	34.83%	21
60	35.00%	21
61	35.17%	21
62	35.33%	22
63	35.50%	22
64	35.67%	23
65	35.83%	23
66	36.00%	24
67	36.17%	24
68	36.33%	25
69	36.50%	25
70	36.67%	26
71	36.83%	26
72	37.00%	27
73	37.17%	27
74	37.33%	28
75	37.50%	28
76	37.67%	29
77	37.83%	29
78	38.00%	30
79	38.17%	30
80	38.33%	31
81	38.50%	31
82	38.67%	32
83	38.83%	32
84	39.00%	33
85	39.17%	33
86	39.33%	34
87	39.50%	34
88	39.67%	35
89	39.83%	35
90	40.00%	36
91	40.17%	37
92	40.33%	37
93	40.50%	38

94	40.67%	38
95	40.83%	39
96	41.00%	39
97	41.17%	40
98	41.33%	41
99	41.50%	41
100	41.67%	42
101	41.83%	42
102	42.00%	43
103	42.17%	43
104	42.33%	44
105	42.50%	45
106	42.67%	45
107	42.83%	46
108	43.00%	46
109	43.17%	47
110	43.33%	48
111	43.50%	48
112	43.67%	49
113	43.83%	50
114	44.00%	50
115	44.17%	51
116	44.33%	51
117	44.50%	52
118	44.67%	53
119	44.83%	53
120	45.00%	54
121	45.17%	55
122	45.33%	55
123	45.50%	56
124	45.67%	57
125	45.83%	57
126	46.00%	58
127	46.17%	59
128	46.33%	59
129	46.50%	60
130	46.67%	61
131	46.83%	61
132	47.00%	62
133	47.17%	63

134	47.33%	63
135	47.50%	64
136	47.67%	65
137	47.83%	66
138	48.00%	66
139	48.17%	67
140	48.33%	68
141	48.50%	68
142	48.67%	69
143	48.83%	70
144	49.00%	71
145	49.17%	71
146	49.33%	72
147	49.50%	73
148	49.67%	74
149	49.83%	74
150	50.00%	75
151	50.00%	76
152	50.00%	76
153	50.00%	77
154	50.00%	77
155	50.00%	78
156	50.00%	78
157	50.00%	79
158	50.00%	79
159	50.00%	80
160	50.00%	80
161	50.00%	81
162	50.00%	81
163	50.00%	82
164	50.00%	82
165	50.00%	83
166	50.00%	83
167	50.00%	84
168	50.00%	84
169	50.00%	85
170	50.00%	85
171	50.00%	86
172	50.00%	86
173	50.00%	87

174	50.00%	87
175	50.00%	88
176	50.00%	88
177	50.00%	89
178	50.00%	89
179	50.00%	90
180	50.00%	90
181	50.00%	91
182	50.00%	91
183	50.00%	92
184	50.00%	92
185	50.00%	93
186	50.00%	93
187	50.00%	94
188	50.00%	94
189	50.00%	95
190	50.00%	95
191	50.00%	96
192	50.00%	96
193	50.00%	97
194	50.00%	97
195	50.00%	98
196	50.00%	98
197	50.00%	99
198	50.00%	99
199	50.00%	100
200	50.00%	100
201	50.00%	101
202	50.00%	101
203	50.00%	102
204	50.00%	102
205	50.00%	103
206	50.00%	103
207	50.00%	104
208	50.00%	104
209	50.00%	105
210	50.00%	105
211	50.00%	106
212	50.00%	106
213	50.00%	107

214	50.00%	107
215	50.00%	108
216	50.00%	108
217	50.00%	109
218	50.00%	109
219	50.00%	110
220	50.00%	110
221	50.00%	111
222	50.00%	111
223	50.00%	112
224	50.00%	112
225	50.00%	113
226	50.00%	113
227	50.00%	114
228	50.00%	114
229	50.00%	115
230	50.00%	115
231	50.00%	116
232	50.00%	116
233	50.00%	117
234	50.00%	117
235	50.00%	118
236	50.00%	118
237	50.00%	119
238	50.00%	119
239	50.00%	120
240	50.00%	120

(c) **Factors affecting the amount and term of maintenance.** IN ANY PROCEEDING FOR MAINTENANCE, THE COURT SHALL CONSIDER ALL RELEVANT FACTORS, INCLUDING BUT NOT LIMITED TO:

(I) THE FINANCIAL RESOURCES OF THE RECIPIENT SPOUSE, INCLUDING THE ACTUAL OR POTENTIAL INCOME FROM SEPARATE OR MARITAL PROPERTY OR ANY OTHER SOURCE AND THE ABILITY OF THE RECIPIENT SPOUSE TO MEET HIS OR HER NEEDS INDEPENDENTLY;

(II) THE FINANCIAL RESOURCES OF THE PAYOR SPOUSE, INCLUDING THE ACTUAL OR POTENTIAL INCOME FROM SEPARATE OR MARITAL PROPERTY OR ANY OTHER SOURCE AND THE ABILITY OF THE PAYOR SPOUSE TO MEET HIS

OR HER REASONABLE NEEDS WHILE PAYING MAINTENANCE;

(III) THE LIFESTYLE DURING THE MARRIAGE;

(IV) THE DISTRIBUTION OF MARITAL PROPERTY, INCLUDING WHETHER ADDITIONAL MARITAL PROPERTY MAY BE AWARDED TO REDUCE OR ALLEVIATE THE NEED FOR MAINTENANCE;

(V) BOTH PARTIES' INCOME, EMPLOYMENT, AND EMPLOYABILITY, OBTAINABLE THROUGH REASONABLE DILIGENCE AND ADDITIONAL TRAINING OR EDUCATION, IF NECESSARY, AND ANY NECESSARY REDUCTION IN EMPLOYMENT DUE TO THE NEEDS OF AN UNEMANCIPATED CHILD OF THE MARRIAGE OR THE CIRCUMSTANCES OF THE PARTIES;

(VI) WHETHER ONE PARTY HAS HISTORICALLY EARNED HIGHER OR LOWER INCOME THAN THE INCOME REFLECTED AT THE TIME OF PERMANENT ORDERS AND THE DURATION AND CONSISTENCY OF INCOME FROM OVERTIME OR SECONDARY EMPLOYMENT;

(VII) THE DURATION OF THE MARRIAGE;

(VIII) THE AMOUNT OF TEMPORARY MAINTENANCE AND THE NUMBER OF MONTHS THAT TEMPORARY MAINTENANCE WAS PAID TO THE RECIPIENT SPOUSE;

(IX) THE AGE AND HEALTH OF THE PARTIES, INCLUDING CONSIDERATION OF SIGNIFICANT HEALTH CARE NEEDS OR UNINSURED OR UNREIMBURSED HEALTH CARE EXPENSES;

(X) SIGNIFICANT ECONOMIC OR NONECONOMIC CONTRIBUTION TO THE MARRIAGE OR TO THE ECONOMIC, EDUCATIONAL, OR OCCUPATIONAL ADVANCEMENT OF A PARTY, INCLUDING BUT NOT LIMITED TO COMPLETING AN EDUCATION OR JOB TRAINING, PAYMENT BY ONE SPOUSE OF THE OTHER SPOUSE'S SEPARATE DEBTS, OR ENHANCEMENT OF THE OTHER SPOUSE'S PERSONAL OR REAL PROPERTY;

(XI) WHETHER THE CIRCUMSTANCES OF THE PARTIES AT THE TIME OF PERMANENT ORDERS WARRANT THE AWARD OF A NOMINAL AMOUNT OF MAINTENANCE IN ORDER TO PRESERVE A CLAIM OF MAINTENANCE IN THE FUTURE; AND

(XII) ANY OTHER FACTOR THAT THE COURT DEEMS RELEVANT.

(d) AFTER CONSIDERING THE PROVISIONS OF THIS SECTION AND MAKING THE REQUIRED FINDINGS OF FACT, THE COURT SHALL AWARD MAINTENANCE ONLY IF IT FINDS THAT THE SPOUSE SEEKING MAINTENANCE LACKS SUFFICIENT PROPERTY, INCLUDING MARITAL PROPERTY APPORTIONED TO HIM OR HER, TO PROVIDE FOR HIS OR HER REASONABLE NEEDS AND IS UNABLE TO SUPPORT HIMSELF OR HERSELF THROUGH APPROPRIATE EMPLOYMENT OR IS THE CUSTODIAN OF A CHILD WHOSE CONDITION OR CIRCUMSTANCES MAKE IT INAPPROPRIATE FOR THE SPOUSE TO BE REQUIRED TO SEEK EMPLOYMENT OUTSIDE THE HOME.

(e) THE MAINTENANCE GUIDELINES SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (3) DO NOT CREATE A PRESUMPTIVE AMOUNT OR TERM OF MAINTENANCE. THE COURT HAS DISCRETION TO DETERMINE THE AWARD OF MAINTENANCE THAT IS FAIR AND EQUITABLE TO BOTH PARTIES BASED UPON THE TOTALITY OF THE CIRCUMSTANCES. THE COURT SHALL MAKE SPECIFIC WRITTEN OR ORAL FINDINGS IN SUPPORT OF THE AMOUNT AND TERM OF MAINTENANCE AWARDED PURSUANT TO THIS SECTION OR AN ORDER DENYING MAINTENANCE.

(f) THE COURT MAY AWARD ADDITIONAL MARITAL PROPERTY TO THE RECIPIENT SPOUSE OR OTHERWISE ADJUST THE DISTRIBUTION OF MARITAL PROPERTY OR DEBT TO ALLEVIATE THE NEED FOR MAINTENANCE OR TO REDUCE THE AMOUNT OR TERM OF MAINTENANCE AWARDED.

(g) THE COURT MAY RESERVE JURISDICTION TO ESTABLISH, REVIEW, OR MODIFY AN AWARD OF MAINTENANCE AT A LATER DATE PURSUANT TO THE PROVISIONS OF THIS SECTION BY SETTING FORTH:

(I) THE REASONS FOR RESERVING JURISDICTION;

(II) THE ASCERTAINABLE FUTURE EVENT THAT FORMS THE BASIS FOR RESERVING JURISDICTION; AND

(III) A REASONABLY SPECIFIC TIME WITHIN WHICH MAINTENANCE MAY BE CONSIDERED PURSUANT TO THIS SECTION.

(h) THE COURT MAY AWARD MAINTENANCE IN SHORT-TERM MARRIAGES, INCLUDING MARRIAGES OF LESS THAN THREE YEARS IN

DURATION, WHEN, GIVEN THE CIRCUMSTANCES OF THE PARTIES, THE DISTRIBUTION OF MARITAL PROPERTY IS INSUFFICIENT TO ACHIEVE AN EQUITABLE RESULT. IN DETERMINING THE AWARD OF MAINTENANCE, THE COURT MAY CONSIDER THE MAINTENANCE GUIDELINES AND THE RELEVANT FACTORS AFFECTING THE AMOUNT AND TERM OF MAINTENANCE SET FORTH IN THIS SUBSECTION (3). THE COURT SHALL MAKE WRITTEN OR ORAL FINDINGS PURSUANT TO PARAGRAPH (e) OF THIS SUBSECTION (3).

(i) NOTHING IN THIS SECTION PROHIBITS AN AWARD OF MAINTENANCE IN GROSS.

(4) **Temporary maintenance.** (a) (I) IN EVERY PROCEEDING FOR DISSOLUTION OF MARRIAGE, LEGAL SEPARATION, OR DECLARATION OF INVALIDITY WHERE TEMPORARY MAINTENANCE IS REQUESTED BY A PARTY, THE COURT MAY AWARD A MONTHLY AMOUNT OF TEMPORARY MAINTENANCE PURSUANT TO THE PROVISIONS OF SUBSECTION (3) OF THIS SECTION THAT ARE RELEVANT TO A DETERMINATION OF TEMPORARY MAINTENANCE.

(II) THE GUIDELINE TERM OF MAINTENANCE SET FORTH IN SUBPARAGRAPH (II) OF PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION DOES NOT APPLY TO TEMPORARY MAINTENANCE ORDERS. THE COURT SHALL DETERMINE THE TERM FOR PAYMENT OF TEMPORARY MAINTENANCE.

(III) IN ADDITION TO THE RELEVANT FACTORS SET FORTH IN PARAGRAPH (c) OF SUBSECTION (3) OF THIS SECTION, THE COURT SHALL CONSIDER ANY ADDITIONAL FACTORS SPECIFIC TO THE DETERMINATION OF TEMPORARY MAINTENANCE, INCLUDING THE PAYMENT OF FAMILY EXPENSES AND DEBTS.

(b) AFTER DETERMINING THE AMOUNT OF TEMPORARY MAINTENANCE PURSUANT TO THIS SUBSECTION (4) AND THE AMOUNT OF TEMPORARY CHILD SUPPORT PURSUANT TO SECTION 14-10-115, THE COURT SHALL CONSIDER THE RESPECTIVE FINANCIAL RESOURCES OF EACH PARTY AND DETERMINE THE TEMPORARY PAYMENT OF MARITAL DEBT AND THE TEMPORARY ALLOCATION OF MARITAL PROPERTY.

(c) A DETERMINATION OF TEMPORARY MAINTENANCE DOES NOT PREJUDICE THE RIGHTS OF EITHER PARTY AT PERMANENT ORDERS.

(5) **Modification or termination of maintenance.** (a) EXCEPT UPON WRITTEN AGREEMENT OF THE PARTIES, AN AWARD OF MAINTENANCE ENTERED PURSUANT TO THIS SECTION MAY BE MODIFIED OR TERMINATED PURSUANT TO THE PROVISIONS OF SECTION 14-10-122. THE COURT MAY CONSIDER THE GUIDELINE AMOUNT AND TERM OF MAINTENANCE AND THE STATUTORY FACTORS SET FORTH IN SUBSECTION (3) OF THIS SECTION ONLY IN A MODIFICATION OR TERMINATION PROCEEDING CONCERNING A MAINTENANCE AWARD ENTERED ON OR AFTER JANUARY 1, 2014.

(b) THE ENACTMENT OF THIS SECTION DOES NOT CONSTITUTE A SUBSTANTIAL AND CONTINUING CHANGE OF CIRCUMSTANCE FOR PURPOSES OF MODIFYING MAINTENANCE ORDERS ENTERED BEFORE JANUARY 1, 2014.

(6) **Security for the payment of maintenance.** (a) THE COURT MAY REQUIRE THE PAYOR SPOUSE TO PROVIDE REASONABLE SECURITY FOR THE PAYMENT OF MAINTENANCE IN THE EVENT OF THE PAYOR SPOUSE'S DEATH PRIOR TO THE END OF THE MAINTENANCE TERM.

(b) REASONABLE SECURITY MAY INCLUDE, BUT NEED NOT BE LIMITED TO, MAINTENANCE OF LIFE INSURANCE FOR THE BENEFIT OF THE RECIPIENT SPOUSE. IN ENTERING AN ORDER TO MAINTAIN LIFE INSURANCE, THE COURT SHALL CONSIDER:

(I) THE AGE AND INSURABILITY OF THE PAYOR SPOUSE;

(II) THE COST OF THE LIFE INSURANCE;

(III) THE AMOUNT AND TERM OF THE MAINTENANCE;

(IV) WHETHER THE PARTIES CARRIED LIFE INSURANCE DURING THE MARRIAGE;

(V) PREVAILING INTEREST RATES AT THE TIME OF THE ORDER; AND

(VI) OTHER OBLIGATIONS OF THE PAYOR SPOUSE.

(c) ORDERS TO MAINTAIN SECURITY MAY BE MODIFIED OR TERMINATED PURSUANT TO SECTION 14-10-122.

(7) **Maintenance agreements - waiver - unrepresented parties.**

(a) EITHER OR BOTH OF THE PARTIES MAY AGREE IN WRITING OR ORALLY IN COURT TO WAIVE MAINTENANCE CONSISTENT WITH THE PROVISIONS OF SECTION 14-10-112. THE PARTIES MAY ALSO AGREE TO WAIVE MAINTENANCE IN A MARITAL AGREEMENT CONSISTENT WITH THE PROVISIONS OF THE "COLORADO MARITAL AGREEMENT ACT", CREATED IN PART 3 OF ARTICLE 2 OF THIS TITLE. THE ENFORCEABILITY OF MAINTENANCE PROVISIONS IN A MARITAL AGREEMENT IS DETERMINED PURSUANT TO THE PROVISIONS OF SECTION 14-2-307.

(b) IN ANY PROCEEDING THAT FALLS WITHIN THE MAINTENANCE GUIDELINES SET FORTH IN SUBSECTION (3) OF THIS SECTION, AT THE TIME OF EITHER TEMPORARY ORDERS OR PERMANENT ORDERS, IF EITHER PARTY IS NOT REPRESENTED BY AN ATTORNEY, THE COURT SHALL NOT APPROVE AN AGREEMENT WAIVING MAINTENANCE OR AGREEING TO AN AMOUNT OR TERM OF MAINTENANCE THAT DOES NOT FOLLOW THE MAINTENANCE GUIDELINES UNLESS THE UNREPRESENTED PARTY HAS INDICATED THAT HE OR SHE IS AWARE OF THE MAINTENANCE GUIDELINES PURSUANT TO THIS SECTION.

(8) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) (I) "ADJUSTED GROSS INCOME" MEANS GROSS INCOME AS DEFINED IN PARAGRAPH (c) OF THIS SUBSECTION (8), LESS PREEXISTING COURT-ORDERED CHILD SUPPORT OBLIGATIONS ACTUALLY PAID BY A PARTY, PREEXISTING COURT-ORDERED ALIMONY OR MAINTENANCE OBLIGATIONS ACTUALLY PAID BY A PARTY, AND THE ADJUSTMENT TO A PARTY'S INCOME AS DETERMINED PURSUANT TO SECTION 14-10-115 (6) (b) (I), FOR ANY CHILDREN WHO ARE NOT CHILDREN OF THE MARRIAGE FOR WHOM THE PARTY HAS A LEGAL RESPONSIBILITY TO SUPPORT.

(II) FOR PURPOSES OF THIS PARAGRAPH (a), "INCOME" MEANS THE ACTUAL GROSS INCOME OF A PARTY, IF EMPLOYED TO FULL CAPACITY, OR POTENTIAL INCOME, IF UNEMPLOYED OR UNDEREMPLOYED.

(b) "DURATION OF MARRIAGE" MEANS THE NUMBER OF WHOLE MONTHS, BEGINNING FROM THE FIRST DAY OF THE MONTH FOLLOWING THE DATE OF THE PARTIES' MARRIAGE UNTIL THE DATE OF DECREE OR THE DATE OF THE HEARING ON DISPOSITION OF PROPERTY IF SUCH HEARING PRECEDES THE DATE OF THE DECREE.

(c) (I) "GROSS INCOME" MEANS INCOME FROM ANY SOURCE AND INCLUDES, BUT IS NOT LIMITED TO:

(A) INCOME FROM SALARIES;

(B) WAGES, INCLUDING TIPS DECLARED BY THE INDIVIDUAL FOR PURPOSES OF REPORTING TO THE FEDERAL INTERNAL REVENUE SERVICE OR TIPS IMPUTED TO BRING THE EMPLOYEE'S GROSS EARNINGS TO THE MINIMUM WAGE FOR THE NUMBER OF HOURS WORKED, WHICHEVER IS GREATER;

(C) COMMISSIONS;

(D) PAYMENTS RECEIVED AS AN INDEPENDENT CONTRACTOR FOR LABOR OR SERVICES, WHICH PAYMENTS MUST BE CONSIDERED INCOME FROM SELF-EMPLOYMENT;

(E) BONUSES;

(F) DIVIDENDS;

(G) SEVERANCE PAY;

(H) PENSION PAYMENTS AND RETIREMENT BENEFITS ACTUALLY RECEIVED THAT HAVE NOT PREVIOUSLY BEEN DIVIDED AS PROPERTY IN THIS ACTION, INCLUDING BUT NOT LIMITED TO THOSE PAID PURSUANT TO ARTICLES 51, 54, 54.5, AND 54.6 OF TITLE 24, C.R.S., AND ARTICLE 30 OF TITLE 31, C.R.S.;

(I) ROYALTIES;

(J) RENTS;

(K) INTEREST;

(L) TRUST INCOME AND DISTRIBUTIONS;

(M) ANNUITY PAYMENTS;

(N) CAPITAL GAINS;

(O) ANY MONEYS DRAWN BY A SELF-EMPLOYED INDIVIDUAL FOR PERSONAL USE THAT ARE DEDUCTED AS A BUSINESS EXPENSE, WHICH MONEYS MUST BE CONSIDERED INCOME FROM SELF-EMPLOYMENT;

(P) SOCIAL SECURITY BENEFITS, INCLUDING SOCIAL SECURITY BENEFITS ACTUALLY RECEIVED BY A PARTY AS A RESULT OF THE DISABILITY OF THAT PARTY;

(Q) WORKERS' COMPENSATION BENEFITS;

(R) UNEMPLOYMENT INSURANCE BENEFITS;

(S) DISABILITY INSURANCE BENEFITS;

(T) FUNDS HELD IN OR PAYABLE FROM ANY HEALTH, ACCIDENT, DISABILITY, OR CASUALTY INSURANCE TO THE EXTENT THAT SUCH INSURANCE REPLACES WAGES OR PROVIDES INCOME IN LIEU OF WAGES;

(U) MONETARY GIFTS;

(V) MONETARY PRIZES, EXCLUDING LOTTERY WINNINGS NOT REQUIRED BY THE RULES OF THE COLORADO LOTTERY COMMISSION TO BE PAID ONLY AT THE LOTTERY OFFICE;

(W) INCOME FROM GENERAL PARTNERSHIPS, LIMITED PARTNERSHIPS, CLOSELY HELD CORPORATIONS, OR LIMITED LIABILITY COMPANIES; EXCEPT THAT, IF A PARTY IS A PASSIVE INVESTOR, HAS A MINORITY INTEREST IN THE COMPANY, AND DOES NOT HAVE ANY MANAGERIAL DUTIES OR INPUT, THEN THE INCOME TO BE RECOGNIZED MAY BE LIMITED TO ACTUAL CASH DISTRIBUTIONS RECEIVED;

(X) EXPENSE REIMBURSEMENTS OR IN-KIND PAYMENTS RECEIVED BY A PARTY IN THE COURSE OF EMPLOYMENT, SELF-EMPLOYMENT, OR OPERATION OF A BUSINESS IF THEY ARE SIGNIFICANT AND REDUCE PERSONAL LIVING EXPENSES;

(Y) ALIMONY OR MAINTENANCE RECEIVED; AND

(Z) OVERTIME PAY, ONLY IF THE OVERTIME IS REQUIRED BY THE EMPLOYER AS A CONDITION OF EMPLOYMENT.

(II) "GROSS INCOME" DOES NOT INCLUDE:

(A) CHILD SUPPORT PAYMENTS RECEIVED;

(B) BENEFITS RECEIVED FROM MEANS-TESTED PUBLIC ASSISTANCE PROGRAMS, INCLUDING BUT NOT LIMITED TO ASSISTANCE PROVIDED UNDER THE COLORADO WORKS PROGRAM, AS DESCRIBED IN PART 7 OF ARTICLE 2 OF TITLE 26, C.R.S., SUPPLEMENTAL SECURITY INCOME, FOOD STAMPS, AND GENERAL ASSISTANCE;

(C) INCOME FROM ADDITIONAL JOBS THAT RESULT IN THE EMPLOYMENT OF THE OBLIGOR MORE THAN FORTY HOURS PER WEEK OR MORE THAN WHAT WOULD OTHERWISE BE CONSIDERED TO BE FULL-TIME EMPLOYMENT; AND

(D) SOCIAL SECURITY BENEFITS RECEIVED BY A PARENT ON BEHALF OF A MINOR CHILD AS A RESULT OF THE DEATH OR DISABILITY OF A PARENT OR STEPPARENT.

(E) EARNINGS OR GAINS ON RETIREMENT ACCOUNTS, INCLUDING INDIVIDUAL RETIREMENT ACCOUNTS; EXCEPT THAT SUCH EARNINGS OR GAINS SHALL NOT BE INCLUDED AS INCOME UNLESS A PARTY TAKES A DISTRIBUTION FROM THE ACCOUNT. IF A PARTY MAY TAKE A DISTRIBUTION FROM THE ACCOUNT WITHOUT BEING SUBJECT TO A FEDERAL TAX PENALTY FOR EARLY DISTRIBUTION AND THE PARTY CHOOSES NOT TO TAKE A DISTRIBUTION, THE COURT MAY CONSIDER THE DISTRIBUTION THAT COULD HAVE BEEN TAKEN IN DETERMINING THE PARTY'S GROSS INCOME.

(III) (A) FOR INCOME FROM SELF-EMPLOYMENT, RENT, ROYALTIES, PROPRIETORSHIP OF A BUSINESS, OR JOINT OWNERSHIP OF A PARTNERSHIP OR CLOSELY HELD CORPORATION, "GROSS INCOME" EQUALS GROSS RECEIPTS MINUS ORDINARY AND NECESSARY EXPENSES, AS DEFINED IN SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (III), REQUIRED TO PRODUCE SUCH INCOME.

(B) "ORDINARY AND NECESSARY EXPENSES", AS USED IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (III), DOES NOT INCLUDE AMOUNTS ALLOWABLE BY THE INTERNAL REVENUE SERVICE FOR THE ACCELERATED COMPONENT OF DEPRECIATION EXPENSES OR INVESTMENT TAX CREDITS OR ANY OTHER BUSINESS EXPENSES DETERMINED BY THE

COURT TO BE INAPPROPRIATE FOR DETERMINING GROSS INCOME FOR PURPOSES OF CALCULATING MAINTENANCE.

(IV) IF A PARTY IS VOLUNTARILY UNEMPLOYED OR UNDEREMPLOYED, MAINTENANCE SHALL BE CALCULATED BASED ON A DETERMINATION OF POTENTIAL INCOME; EXCEPT THAT A DETERMINATION OF POTENTIAL INCOME SHALL NOT BE MADE FOR A PARTY WHO IS PHYSICALLY OR MENTALLY INCAPACITATED OR IS CARING FOR A CHILD UNDER THE AGE OF THIRTY MONTHS FOR WHOM THE PARTIES OWE A JOINT LEGAL RESPONSIBILITY OR FOR AN INCARCERATED PARENT SENTENCED TO ONE YEAR OR MORE.

(V) FOR THE PURPOSES OF THIS SECTION, A PARTY SHALL NOT BE DEEMED "UNDEREMPLOYED" IF:

(A) THE EMPLOYMENT IS TEMPORARY AND IS REASONABLY INTENDED TO RESULT IN HIGHER INCOME WITHIN THE FORESEEABLE FUTURE; OR

(B) THE EMPLOYMENT IS A GOOD FAITH CAREER CHOICE; OR

(C) THE PARTY IS ENROLLED IN AN EDUCATIONAL PROGRAM THAT IS REASONABLY INTENDED TO RESULT IN A DEGREE OR CERTIFICATION WITHIN A REASONABLE PERIOD OF TIME AND THAT WILL RESULT IN A HIGHER INCOME, SO LONG AS THE EDUCATIONAL PROGRAM IS A GOOD FAITH CAREER CHOICE.

(9) **Application.** THE PROVISIONS OF THIS SECTION APPLY ONLY TO ACTIONS IN WHICH A PETITION FOR DISSOLUTION, LEGAL SEPARATION, OR DECLARATION OF INVALIDITY, OR AN ACTION FOR THE INITIAL ESTABLISHMENT OF MAINTENANCE IS FILED ON OR AFTER JANUARY 1, 2014.

SECTION 2. In Colorado Revised Statutes, 14-10-122, **amend** (2) as follows:

14-10-122. Modification and termination of provisions for maintenance, support, and property disposition - automatic lien.

(2) (a) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon THE EARLIER OF:

(I) The death of either party; or

(II) THE END OF THE MAINTENANCE TERM, UNLESS A MOTION FOR MODIFICATION IS FILED PRIOR TO THE EXPIRATION OF THE TERM;

(III) The remarriage of the party receiving maintenance; OR

(IV) A COURT ORDER TERMINATING MAINTENANCE.

(b) A PAYOR SPOUSE WHOSE INCOME IS REDUCED OR TERMINATED DUE TO HIS OR HER RETIREMENT AFTER REACHING FULL RETIREMENT AGE IS ENTITLED TO A REBUTTABLE PRESUMPTION THAT THE RETIREMENT IS IN GOOD FAITH.

(c) FOR PURPOSES OF THIS SUBSECTION (2), "FULL RETIREMENT AGE" MEANS THE PAYOR'S USUAL OR ORDINARY RETIREMENT AGE WHEN HE OR SHE WOULD BE ELIGIBLE FOR FULL UNITED STATES SOCIAL SECURITY BENEFITS, REGARDLESS OF WHETHER HE OR SHE IS INELIGIBLE FOR SOCIAL SECURITY BENEFITS FOR SOME REASON OTHER THAN ATTAINING FULL RETIREMENT AGE. "FULL RETIREMENT AGE" SHALL NOT MEAN "EARLY RETIREMENT AGE" IF EARLY RETIREMENT IS AVAILABLE TO THE PAYOR SPOUSE, NOR SHALL IT MEAN "MAXIMUM BENEFIT RETIREMENT AGE" IF ADDITIONAL BENEFITS ARE AVAILABLE AS A RESULT OF DELAYED RETIREMENT.

SECTION 3. Act subject to petition - effective date. This act takes effect January 1, 2014; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be

held in November 2014 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

John P. Morse
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO