

IMPUTED INCOME AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keven J. Stratton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the Utah Child Support Act.

Highlighted Provisions:

This bill:

► requires income to be imputed to a parent based on their actual work history during the marriage while children were in the home.

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.

(1) As used in the guidelines, "gross income" includes prospective income from any source, including earned and nonearned income sources which may include salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay,



28 pensions, interest, trust income, alimony from previous marriages, annuities, capital gains,
29 Social Security benefits, workers' compensation benefits, unemployment compensation,
30 income replacement disability insurance benefits, and payments from "nonmeans-tested"
31 government programs.

32 (2) Income from earned income sources is limited to the equivalent of one full-time
33 40-hour job. If and only if during the time prior to the original support order, the parent
34 normally and consistently worked more than 40 hours at the parent's job, the court may
35 consider this extra time as a pattern in calculating the parent's ability to provide child support.

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

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

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

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

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

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

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

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

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

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

59 underemployment or overemployment situation exists.

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

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

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

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

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

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

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

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

80 [or]

81 (iv) unusual emotional or physical needs of a child require the custodial parent's
82 presence in the home[?];

83 (v) a parent has primarily been a stay-at-home parent during the course of the marriage
84 while a child was in the home, and there is still a minor in the home; or

85 (vi) the parents agree to not impute income.

86 (8) (a) Gross income may not include the earnings of a minor child who is the subject
87 of a child support award nor benefits to a minor child in the child's own right such as
88 Supplemental Security Income.

89 (b) Social Security benefits received by a child due to the earnings of a parent shall be

90 credited as child support to the parent upon whose earning record it is based, by crediting the
91 amount against the potential obligation of that parent. Other unearned income of a child may
92 be considered as income to a parent depending upon the circumstances of each case.

Legislative Review Note
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Office of Legislative Research and General Counsel