

**ALIMONY AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Cheryl K. Acton**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends provisions related to the imputation of income to a parent.

**Highlighted Provisions:**

This bill:

- ▶ amends the factors to be used regarding employment potential and probable earnings when imputing income to a parent;
- ▶ requires a factfinder imputing a greater or lesser income to enter specific findings of facts based on clear and convincing evidence; and
- ▶ makes 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

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*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 before 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 (4) 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) Incarceration of at least six months may not be treated as voluntary unemployment  
64 by the office in establishing or modifying a support order.

65 (7) Gross income includes income imputed to the parent under Subsection (8).

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

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

72 (i) employment opportunities;

73 (ii) work history;

74 (iii) occupation qualifications;

75 (iv) educational attainment;

76 (v) literacy;

77 (vi) age;

78 (vii) health;

79 (viii) criminal record;

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

81 (x) prevailing earnings and job availability for persons of substantially similar  
82 backgrounds in the community when considering the known factors described in this  
83 Subsection (8)(b).

84 (c) (i) If a parent has no recent or full-time work history in an occupation or a parent's  
85 occupation is unknown, that parent may be imputed an income at the federal minimum wage  
86 for a 40-hour work week.

87 (ii) To impute a greater or lesser income than described in Subsection (8)(c)(i), the  
88 judge in a judicial proceeding or the presiding officer in an administrative proceeding shall  
89 enter specific findings of fact as to the evidentiary basis for the imputation showing with clear

90 and convincing evidence that the parent would be able to immediately retain employment in the  
91 specified occupation earning at least the amount imputed.

92 (iii) The party affirmatively advancing the imputation of income bears the burden of:

93 (A) proving a fact by clear and convincing evidence; and

94 (B) providing all statistics relevant to the imputation of income.

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

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

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

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

101 or

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

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

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