

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-1206.02 Brita Darling x2241

HOUSE BILL 18-1385

HOUSE SPONSORSHIP

Roberts,

SENATE SPONSORSHIP

(None),

House Committees

Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING CHANGES TO FAMILY SUPPORT OBLIGATIONS IN
102 DOMESTIC RELATION ACTIONS DUE TO CHANGES IN THE
103 FEDERAL TAX LAWS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Prior to the enactment of federal tax legislation in December 2017, spousal maintenance was capable of being classified as deductible by the payor spouse for federal income tax purposes and taxable income to the recipient spouse. As a result of the 2017 federal tax legislation, commencing in 2019, spousal maintenance is not deductible by the payor

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

spouse and is not taxable income to the recipient spouse. The guideline advisory amount of maintenance in statute, and the definitions used for calculating gross income and adjusted gross income for maintenance and child support awards, reflects the anticipated tax consequences to the payor and recipient under prior law.

The bill adjusts downward the advisory guideline calculation of the amount of maintenance in circumstances where the maintenance awarded is not deductible by the payor spouse and is not taxable income to the recipient spouse. The bill also amends the definitions of "gross income" and "adjusted gross income" to properly reflect the tax implications of maintenance obligations.

In addition, the bill adjusts the definitions of "gross income" and "adjusted gross income" in calculating child support obligations to reflect the tax implications of maintenance obligations.

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

2 **SECTION 1.** In Colorado Revised Statutes, 14-10-114, **amend**
3 (1)(c), (3)(a)(I)(C), (3)(a)(I)(D), (3)(b) introductory portion, (3)(b)(I),
4 (3)(b)(II)(A), (3)(c)(XI), (3)(c)(XII), (8)(a), and (8)(c)(I)(Y); and **add**
5 (3)(a)(I)(E), (3)(c)(XIII), (3.5), (5)(c), and (8)(c)(VI) as follows:

6 **14-10-114. Spousal maintenance - advisory guidelines -**
7 **legislative declaration - definitions. (1) Legislative declaration.**
8 (c) Therefore, the general assembly declares that it is appropriate to
9 create a statutory framework for the determination of maintenance
10 awards, including advisory guidelines for the amount and term of
11 maintenance in certain cases, that will assist the court and the parties in
12 crafting maintenance awards that are fair, equitable, and more consistent
13 across judicial districts AND IN THEIR APPLICATION TO BOTH PARTIES.

14 (3) (a) (I) **Determination of maintenance.** When a party has
15 requested maintenance in a dissolution of marriage, legal separation, or
16 declaration of invalidity proceeding, prior to granting or denying an
17 award of maintenance, the court shall make initial written or oral findings

1 concerning:

2 (C) The financial resources of each party, including but not
3 limited to the actual or potential income from separate or marital
4 property; and

5 (D) Reasonable financial need as established during the marriage;
6 AND

7 (E) WHETHER MAINTENANCE AWARDED PURSUANT TO THIS
8 SECTION WOULD BE DEDUCTIBLE FOR FEDERAL INCOME TAX PURPOSES BY
9 THE PAYOR AND TAXABLE INCOME TO THE RECIPIENT.

10 (b) **Advisory guideline amount and term of maintenance.** If the
11 duration of the parties' marriage is at least three years and the parties'
12 combined, annual adjusted gross income does not exceed ~~the greater of~~
13 two hundred forty thousand dollars, ~~or the uppermost limits of the~~
14 ~~schedule of basic child support obligations set forth in section 14-10-115,~~
15 the court shall make additional oral or written findings concerning the
16 duration of the marriage in whole months and the ADVISORY guideline
17 amount and term of maintenance, calculated as follows:

18 (I) (A) IF THE MAINTENANCE AWARD IS DEDUCTIBLE FOR FEDERAL
19 INCOME TAX PURPOSES BY THE PAYOR AND TAXABLE INCOME TO THE
20 RECIPIENT, the amount of maintenance under the ADVISORY guidelines is
21 equal to forty percent of ~~the higher income party's monthly adjusted gross~~
22 ~~income less fifty percent of the lower income party's monthly adjusted~~
23 ~~gross income; except that, when added to the gross income of the~~
24 ~~recipient, shall not result in the recipient receiving in excess of forty~~
25 ~~percent of the parties' combined monthly adjusted gross income~~ THE
26 PARTIES' COMBINED, MONTHLY ADJUSTED GROSS INCOME MINUS THE
27 LOWER INCOME PARTY'S MONTHLY ADJUSTED GROSS INCOME. IF THE

1 CALCULATION RESULTS IN A NEGATIVE NUMBER, THE AMOUNT OF
2 MAINTENANCE IS ZERO.

3 (B) IF THE MAINTENANCE AWARD IS NOT DEDUCTIBLE FOR
4 FEDERAL INCOME TAX PURPOSES BY THE PAYOR AND NOT TAXABLE
5 INCOME TO THE RECIPIENT, THE AMOUNT OF MAINTENANCE UNDER THE
6 ADVISORY GUIDELINES FOR PARTIES WITH A COMBINED, MONTHLY
7 ADJUSTED GROSS INCOME OF TEN THOUSAND DOLLARS OR LESS IS EQUAL
8 TO EIGHTY PERCENT OF THE AMOUNT CALCULATED PURSUANT TO
9 SUBSECTION (3)(b)(I)(A) OF THIS SECTION.

10 (C) IF THE MAINTENANCE AWARD IS NOT DEDUCTIBLE FOR
11 FEDERAL INCOME TAX PURPOSES BY THE PAYOR SPOUSE AND NOT TAXABLE
12 INCOME TO THE RECIPIENT SPOUSE, THE AMOUNT OF MAINTENANCE UNDER
13 THE ADVISORY GUIDELINES FOR PARTIES WITH A COMBINED, MONTHLY
14 ADJUSTED GROSS INCOME OF MORE THAN TEN THOUSAND DOLLARS BUT
15 NOT MORE THAN TWENTY THOUSAND DOLLARS IS EQUAL TO SEVENTY-FIVE
16 PERCENT OF THE AMOUNT CALCULATED PURSUANT TO SUBSECTION
17 (3)(b)(I)(A) OF THIS SECTION.

18 (II) (A) The ADVISORY term of maintenance under the guidelines,
19 calculated in whole months, for marriages of at least three years but not
20 more than twenty years, is set forth in the table contained in
21 ~~sub-subparagraph (B) of this subparagraph (H)~~ SUBSECTION (3)(b)(II)(B)
22 OF THIS SECTION. When the duration of the parties' marriage exceeds
23 twenty years, the court may award maintenance for a specified term of
24 years or for an indefinite term, but the court shall not specify a
25 maintenance term that is less than the maintenance term under the
26 guidelines for a twenty-year marriage without making specific findings
27 that support a reduced term of maintenance.

1 (c) **Factors affecting the amount and term of maintenance.** In
2 any proceeding for maintenance, the court shall consider all relevant
3 factors, including but not limited to:

4 (XI) Whether the circumstances of the parties at the time of
5 permanent orders warrant the award of a nominal amount of maintenance
6 in order to preserve a claim of maintenance in the future; ~~and~~

7 (XII) ~~Any other factor that the court deems relevant.~~ WHETHER
8 THE MAINTENANCE IS DEDUCTIBLE FOR FEDERAL INCOME TAX PURPOSES
9 BY THE PAYOR AND TAXABLE INCOME TO THE RECIPIENT, AND ANY
10 ADJUSTMENTS TO THE AMOUNT OF MAINTENANCE TO EQUITABLY
11 ALLOCATE THE TAX BURDEN BETWEEN THE PARTIES; AND

12 (XIII) ANY OTHER FACTOR THAT THE COURT DEEMS RELEVANT.

13 (3.5) **Combined annual adjusted gross income in excess of**
14 **advisory guideline amount.** IF THE PARTIES' COMBINED, ANNUAL
15 ADJUSTED GROSS INCOME EXCEEDS TWO HUNDRED FORTY THOUSAND
16 DOLLARS, THE CALCULATION METHODOLOGY DESCRIBED IN SUBSECTION
17 (3)(b)(I) OF THIS SECTION FOR DETERMINING THE ADVISORY GUIDELINE
18 AMOUNT OF MAINTENANCE DOES NOT APPLY, AND THE COURT SHALL
19 INSTEAD CONSIDER THE FACTORS SET FORTH IN SUBSECTION (3)(c) OF THIS
20 SECTION IN DETERMINING THE AMOUNT OF MAINTENANCE. THE COURT
21 MAY CONSIDER THE ADVISORY GUIDELINE TERM OF MAINTENANCE SET
22 FORTH IN SUBSECTION (3)(b)(II) OF THIS SECTION.

23 (5) **Modification or termination of maintenance.** (c) THE
24 ENACTMENT OF THE DECEMBER 2017 "TAX CUTS AND JOBS ACT", PUB.L.
25 115-97, FEDERAL TAX LEGISLATION, DOES NOT CONSTITUTE A
26 SUBSTANTIAL AND CONTINUING CHANGE OF CIRCUMSTANCE FOR PURPOSES
27 OF MODIFYING MAINTENANCE ORDERS ENTERED PRIOR TO THE EFFECTIVE

1 DATE OF THAT LAW.

2 (8) **Definitions.** As used in this section, unless the context
3 otherwise requires:

4 (a) (I) "Adjusted gross income" means gross income as defined in
5 ~~paragraph (c) of this subsection (8)~~ SUBSECTION (8)(c) OF THIS SECTION,
6 less preexisting court-ordered child support obligations actually paid by
7 a party, preexisting court-ordered alimony or maintenance obligations
8 actually paid by a party, AS ADJUSTED, IF APPLICABLE, PURSUANT TO
9 SUBSECTION (8)(a)(III) OF THIS SECTION, and the adjustment to a party's
10 income as determined pursuant to section 14-10-115 (6)(b) for any
11 children who are not children of the marriage for whom the party has a
12 legal responsibility to support.

13 (II) For purposes of this ~~paragraph (a)~~ SUBSECTION (8)(a),
14 "income" means the actual gross income of a party, if employed to full
15 capacity, or potential income, if unemployed or underemployed.

16 (III) (A) FOR PURPOSES OF THIS SUBSECTION (8)(a), IF THE
17 PREEXISTING COURT-ORDERED ALIMONY OR MAINTENANCE OBLIGATIONS
18 ACTUALLY PAID BY A PARTY ARE DEDUCTIBLE FOR FEDERAL INCOME TAX
19 PURPOSES BY THAT PARTY, THEN THE FULL AMOUNT OF ALIMONY OR
20 MAINTENANCE ACTUALLY PAID MUST BE DEDUCTED FROM THAT PARTY'S
21 GROSS INCOME.

22 (B) IF THE PREEXISTING COURT-ORDERED ALIMONY OR
23 MAINTENANCE OBLIGATIONS ACTUALLY PAID BY A PARTY ARE NOT
24 DEDUCTIBLE FOR FEDERAL INCOME TAX PURPOSES BY THAT PARTY, THEN
25 THE AMOUNT OF PREEXISTING COURT-ORDERED ALIMONY OR
26 MAINTENANCE THAT IS DEDUCTED FROM THAT PARTY'S GROSS INCOME IS
27 THE AMOUNT ACTUALLY PAID BY THAT PARTY MULTIPLIED BY 1.25.

1 (c) (I) "Gross income" means income from any source and
2 includes, but is not limited to:

3 (Y) Alimony or maintenance received PURSUANT TO A
4 PREEXISTING COURT ORDER WITH A PAYOR WHO IS NOT A PARTY TO THE
5 ACTION, AS ADJUSTED, IF APPLICABLE, PURSUANT TO SUBSECTION
6 (8)(c)(VI) OF THIS SECTION; and

7 (VI) FOR PURPOSES OF SUBSECTION (8)(c)(I)(Y) OF THIS SECTION,
8 IF ALIMONY OR MAINTENANCE RECEIVED BY A PARTY PURSUANT TO A
9 PREEXISTING COURT ORDER IS TAXABLE INCOME TO THAT PARTY FOR
10 FEDERAL INCOME TAX PURPOSES, THEN THE ACTUAL AMOUNT OF ALIMONY
11 OR MAINTENANCE RECEIVED IS INCLUDED IN THAT PARTY'S GROSS INCOME.
12 IF THE ALIMONY OR MAINTENANCE RECEIVED BY A PARTY PURSUANT TO
13 A PREEXISTING COURT ORDER IS NOT TAXABLE INCOME TO THAT PARTY
14 FOR FEDERAL INCOME TAX PURPOSES, THEN THE AMOUNT OF ALIMONY OR
15 MAINTENANCE THAT IS INCLUDED IN THAT PARTY'S GROSS INCOME IS THE
16 AMOUNT OF ALIMONY OR MAINTENANCE RECEIVED MULTIPLIED BY 1.25.

17 **SECTION 2.** In Colorado Revised Statutes, 14-10-115, **amend**
18 (3)(a), (5)(a)(I) introductory portion, and (5)(a)(I)(Y); and **add** (5)(a)(I.5)
19 as follows:

20 **14-10-115. Child support guidelines - purpose - determination**
21 **of income - schedule of basic child support obligations - adjustments**
22 **to basic child support - additional guidelines - child support**
23 **commission - definitions. (3) Definitions.** As used in this section, unless
24 the context otherwise requires:

25 (a) (I) "Adjusted gross income" means gross income, as specified
26 in subsection (5) of this section, less preexisting child support obligations
27 and less alimony or maintenance actually paid by a parent, AS DESCRIBED

1 IN SUBSECTION (3)(a)(II) OF THIS SECTION.

2 (II) FOR PURPOSES OF THIS SUBSECTION (3)(a), IF THE ALIMONY OR
3 MAINTENANCE ACTUALLY PAID BY A PARENT IS DEDUCTIBLE FOR FEDERAL
4 INCOME TAX PURPOSES BY THAT PARENT, THEN THE ACTUAL AMOUNT OF
5 ALIMONY OR MAINTENANCE PAID BY THAT PARENT MUST BE DEDUCTED
6 FROM THAT PARENT'S GROSS INCOME. IF THE ALIMONY OR MAINTENANCE
7 ACTUALLY PAID BY A PARENT IS NOT DEDUCTIBLE FOR FEDERAL INCOME
8 TAX PURPOSES BY THAT PARENT, THEN THE AMOUNT OF ALIMONY OR
9 MAINTENANCE DEDUCTED FROM THAT PARENT'S GROSS INCOME IS THE
10 AMOUNT OF ALIMONY OR MAINTENANCE ACTUALLY PAID BY THAT PARENT
11 MULTIPLIED BY 1.25.

12 (5) **Determination of income.** (a) For the purposes of the child
13 support guidelines and schedule of basic child support obligations
14 specified in this section, the gross income of each parent shall be
15 determined according to the following guidelines:

16 (I) "Gross income" includes income from any source, except as
17 otherwise provided in ~~subparagraph (II) of this paragraph (a)~~ SUBSECTION
18 (5)(a)(II) OF THIS SECTION, and includes, but is not limited to:

19 (Y) Alimony or maintenance received, AS ADJUSTED, IF
20 APPLICABLE, PURSUANT TO SUBSECTION (5)(a)(I.5) OF THIS SECTION; and

21 (I.5) FOR PURPOSES OF SUBSECTION (5)(a)(I)(Y) OF THIS SECTION,
22 IF THE ALIMONY OR MAINTENANCE ACTUALLY RECEIVED BY A PARENT IS
23 TAXABLE INCOME TO THAT PARENT FOR FEDERAL INCOME TAX PURPOSES,
24 THEN THE ACTUAL AMOUNT OF ALIMONY OR MAINTENANCE RECEIVED IS
25 INCLUDED IN THAT PARENT'S GROSS INCOME. IF THE ALIMONY OR
26 MAINTENANCE ACTUALLY RECEIVED BY A PARENT IS NOT TAXABLE
27 INCOME TO THAT PARENT FOR FEDERAL INCOME TAX PURPOSES, THEN THE

1 AMOUNT OF ALIMONY OR MAINTENANCE THAT IS INCLUDED IN THAT
2 PARENT'S GROSS INCOME IS THE AMOUNT OF ALIMONY OR MAINTENANCE
3 RECEIVED BY THAT PARENT MULTIPLIED BY 1.25.

4 **SECTION 3. Act subject to petition - effective date.** This act
5 takes effect at 12:01 a.m. on the day following the expiration of the
6 ninety-day period after final adjournment of the general assembly (August
7 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
8 referendum petition is filed pursuant to section 1 (3) of article V of the
9 state constitution against this act or an item, section, or part of this act
10 within such period, then the act, item, section, or part will not take effect
11 unless approved by the people at the general election to be held in
12 November 2018 and, in such case, will take effect on the date of the
13 official declaration of the vote thereon by the governor.