

CHAPTER 251

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 18-1385

BY REPRESENTATIVE(S) Roberts, Becker K., Benavidez, Exum, Gray, Hooton, Kraft-Tharp, Lee, Leonard, Liston, Michaelson Jenet, Van Winkle, Young;
also SENATOR(S) Coram, Tate.

AN ACT

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

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

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

14-10-114. Spousal maintenance - advisory guidelines - legislative declaration - definitions. (1) **Legislative declaration.** (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 AND IN THEIR APPLICATION TO BOTH PARTIES.

(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:

(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; AND

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

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

(b) **Advisory guideline amount and term of maintenance.** 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 ADVISORY guideline amount and term of maintenance, calculated as follows:

(I) (A) IF THE MAINTENANCE AWARD IS DEDUCTIBLE FOR FEDERAL INCOME TAX PURPOSES BY THE PAYOR AND TAXABLE INCOME TO THE RECIPIENT, ~~the amount of maintenance under the ADVISORY 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~~ THE PARTIES' COMBINED, MONTHLY ADJUSTED GROSS INCOME MINUS THE LOWER INCOME PARTY'S MONTHLY ADJUSTED GROSS INCOME. IF THE CALCULATION RESULTS IN A NEGATIVE NUMBER, THE AMOUNT OF MAINTENANCE IS ZERO.

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

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

(II) (A) The ADVISORY 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)~~ SUBSECTION (3)(b)(II)(B) OF THIS SECTION. 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.

(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:

(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.~~ WHETHER THE MAINTENANCE IS DEDUCTIBLE FOR FEDERAL INCOME TAX PURPOSES BY THE PAYOR AND TAXABLE INCOME TO THE RECIPIENT, AND ANY ADJUSTMENTS TO THE AMOUNT OF MAINTENANCE TO EQUITABLY ALLOCATE THE TAX BURDEN BETWEEN THE PARTIES; AND

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

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

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

(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)~~ SUBSECTION (8)(c) OF THIS SECTION, less preexisting court-ordered child support obligations actually paid by a party, preexisting court-ordered alimony or maintenance obligations actually paid by a party, AS ADJUSTED, IF APPLICABLE, PURSUANT TO SUBSECTION (8)(a)(III) OF THIS SECTION, and the adjustment to a party's income as determined pursuant to section 14-10-115 (6)(b) 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)~~ SUBSECTION (8)(a), "income" means the actual gross income of a party, if employed to full capacity, or potential income, if unemployed or underemployed.

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

(B) IF THE PREEXISTING COURT-ORDERED ALIMONY OR MAINTENANCE OBLIGATIONS ACTUALLY PAID BY A PARTY ARE NOT DEDUCTIBLE FOR FEDERAL

INCOME TAX PURPOSES BY THAT PARTY, THEN THE AMOUNT OF PREEXISTING COURT-ORDERED ALIMONY OR MAINTENANCE THAT IS DEDUCTED FROM THAT PARTY'S GROSS INCOME IS THE AMOUNT ACTUALLY PAID BY THAT PARTY MULTIPLIED BY 1.25.

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

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

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

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

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

(a) (I) "Adjusted gross income" means gross income, as specified in subsection (5) of this section, less preexisting child support obligations and less alimony or maintenance actually paid by a parent, AS DESCRIBED IN SUBSECTION (3)(a)(II) OF THIS SECTION.

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

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

(I) "Gross income" includes income from any source, except as otherwise

provided in ~~subparagraph (H) of this paragraph (a)~~ SUBSECTION (5)(a)(II) OF THIS SECTION, and includes, but is not limited to:

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

(I.5) FOR PURPOSES OF SUBSECTION (5)(a)(I)(Y) OF THIS SECTION, IF THE ALIMONY OR MAINTENANCE ACTUALLY RECEIVED BY A PARENT IS TAXABLE INCOME TO THAT PARENT FOR FEDERAL INCOME TAX PURPOSES, THEN THE ACTUAL AMOUNT OF ALIMONY OR MAINTENANCE RECEIVED IS INCLUDED IN THAT PARENT'S GROSS INCOME. IF THE ALIMONY OR MAINTENANCE ACTUALLY RECEIVED BY A PARENT IS NOT TAXABLE INCOME TO THAT PARENT FOR FEDERAL INCOME TAX PURPOSES, THEN THE AMOUNT OF ALIMONY OR MAINTENANCE THAT IS INCLUDED IN THAT PARENT'S GROSS INCOME IS THE AMOUNT OF ALIMONY OR MAINTENANCE RECEIVED BY THAT PARENT MULTIPLIED BY 1.25.

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2018, if adjournment sine die is on May 9, 2018); 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 such period, 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 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 24, 2018