

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION BY SENATE

FLOOR AMENDMENT

No. _____

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 652, by striking the title, enacting clause and entire body of the bill and substituting the attached floor substitute.

Submitted by:

Senator Allen

Allen-TEK-FS-Req#1560
2/24/2011 3:31 PM

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 FLOOR SUBSTITUTE
4 FOR

5 SENATE BILL NO. 652

By: Allen of the Senate

and

Bennett of the House

6
7
8
9 FLOOR SUBSTITUTE

10 An Act relating to child support calculation;
11 amending Section 3, Chapter 407, O.S.L. 2008 (43 O.S.
12 Supp. 2010, Section 118B), which relates to
13 computation of gross income; deleting certain forms
14 of income eligible for child support calculation; and
15 providing an effective date.

16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

17 SECTION 1. AMENDATORY Section 3, Chapter 407, O.S.L.
18 2008 (43 O.S. Supp. 2010, Section 118B), is amended to read as
19 follows:

20 Section 118B. A. As used in ~~this act~~ Section 118 et seq. of
21 this title:

22 1. "Gross income" includes earned and passive income from ~~any~~ a
23 recurring source, except as excluded in this section;

1 2. "Earned income" is defined as income received from labor or
2 the sale of goods or services and includes, but is not limited to,
3 income from:

- 4 a. salaries,
- 5 b. wages,
- 6 c. tips
- 7 d. commissions,
- 8 e. bonuses, and
- 9 f. ~~severance pay, and~~
- 10 g. ~~military pay, including hostile fire or imminent~~
11 ~~danger pay, combat pay, Basic Allowance for~~
12 Subsistence, family separation pay, or hardship duty
13 location pay, but not to include hostile fire or
14 imminent danger pay or combat pay; and

15 3. "Passive income" is defined as all other income and
16 includes, but is not limited to, income from:

- 17 a. dividends,
- 18 b. pensions,
- 19 c. rent,
- 20 d. interest income,
- 21 e. trust income,
- 22 f. support alimony being received from someone other than
23 the other parent in this case,
- 24 g. annuities,

- 1 h. social security benefits,
- 2 i. workers' compensation benefits,
- 3 j. unemployment insurance benefits,
- 4 k. disability insurance benefits,
- 5 l. gifts,
- 6 m. prizes,
- 7 n. gambling winnings,
- 8 o. lottery winnings, and
- 9 p. royalties.

10 B. Income specifically excluded is:

11 1. Actual child support received for children not before the
12 court;

13 2. Adoption Assistance subsidy paid by the Department of Human
14 Services;

15 3. Benefits received from means-tested public assistance
16 programs including, but not limited to:

17 a. Temporary Assistance for Needy Families (TANF),

18 b. Supplemental Security Income (SSI),

19 c. Food Stamps, and

20 d. General Assistance and State Supplemental Payments for
21 Aged, Blind and the Disabled;

22 4. The income of the child from any source, including, but not
23 limited to, trust income and social security benefits drawn on the
24 disability of the child; and

1 5. Payments received by the parent for the care of foster
2 children.

3 C. 1. For purposes of computing gross income of the parents,
4 gross income shall include for each parent whichever is the most
5 equitable of:

6 a. all actual monthly income described in this section,
7 ~~plus such overtime and supplemental income as the~~
8 ~~court deems equitable,~~

9 b. the average of the gross monthly income for the time
10 actually employed during the previous three (3) years,

11 c. the minimum wage paid for a forty-hour week, or

12 d. gross monthly income imputed as set forth in
13 subsection D of this section.

14 2. If a parent is permanently physically or mentally
15 incapacitated, the child support obligation shall be computed on the
16 basis of actual monthly gross income.

17 D. Imputed income.

18 1. Instead of using the actual or average income of a parent,
19 the court may impute gross income to a parent under the provisions
20 of this section if equitable.

21 2. The following factors may be considered by the court when
22 making a determination of willful and voluntary underemployment or
23 unemployment:

24

- 1 a. whether a parent has been determined by the court to
2 be willfully or voluntarily underemployed or
3 unemployed, including whether unemployment or
4 underemployment for the purpose of pursuing additional
5 training or education is reasonable in light of the
6 obligation of the parent to support his or her
7 children and, to this end, whether the training or
8 education will ultimately benefit the child in the
9 case immediately under consideration by increasing the
10 parent's level of support for that child in the
11 future,
- 12 b. when there is no reliable evidence of income,
- 13 c. the past and present employment of the parent,
- 14 d. the education, training, and ability to work of the
15 parent,
- 16 e. the lifestyle of the parent, including ownership of
17 valuable assets and resources, whether in the name of
18 the parent or the current spouse of the parent, that
19 appears inappropriate or unreasonable for the income
20 claimed by the parent, or
- 21 f. the role of the parent as caretaker of a handicapped
22 or seriously ill child of that parent, or any other
23 handicapped or seriously ill relative for whom that
24 parent has assumed the role of caretaker which

1 eliminates or substantially reduces the ability of the
2 parent to work outside the home, and the need of that
3 parent to continue in that role in the future, ~~or~~
4 ~~g. any additional factors deemed relevant to the~~
5 ~~particular circumstances of the case.~~

6 E. Self-employment income.

7 1. Income from self-employment includes income from, but not
8 limited to, business operations, work as an independent contractor
9 or consultant, sales of goods or services, and rental properties,
10 less ordinary and reasonable expenses necessary to produce such
11 income.

12 2. A determination of business income for tax purposes shall
13 not control for purposes of determining a child support obligation.
14 Amounts allowed by the Internal Revenue Service for ~~accelerated~~
15 ~~depreciation or~~ investment tax credits shall not be considered
16 reasonable expenses.

17 3. The district or administrative court shall deduct from self-
18 employment gross income an amount equal to the employer contribution
19 for F.I.C.A. tax which an employer would withhold from an employee's
20 earnings on an equivalent gross income amount.

21 F. ~~Fringe benefits.~~

22 ~~1. Fringe benefits for inclusion as income or in kind~~
23 ~~remuneration received by a parent in the course of employment, or~~
24

1 ~~operation of a trade or business, shall be counted as income if they~~
2 ~~significantly reduce personal living expenses.~~

3 ~~2. Such fringe benefits might include, but are not limited to,~~
4 ~~company car, housing, or room and board.~~

5 ~~3. Basic Allowance for Housing, Basic Allowance for~~
6 ~~Subsistence, and Variable Housing Allowances for service members are~~
7 ~~considered income for the purposes of determining child support.~~

8 ~~4. Fringe benefits do not include employee benefits that are~~
9 ~~typically added to the salary, wage, or other compensation that a~~
10 ~~parent may receive as a standard added benefit, such as employer~~
11 ~~contributions to portions of health insurance premiums or employer~~
12 ~~contributions to a retirement or pension plan.~~

13 ~~G. Social Security Title II benefits.~~

14 1. Social Security Title II benefits received by a child shall
15 be included as income to the parent on whose account the benefit of
16 the child is drawn and applied against the support obligation
17 ordered to be paid by that parent. If the benefit of the child is
18 drawn from the disability of the child, the benefit of the child is
19 not added to the income of either parent and not deducted from the
20 obligation of either parent.

21 2. Child support greater than social security benefit.

22 If the child support award due after calculating the child
23 support guidelines is greater than the social security benefit
24 received on behalf of the child, the obligor shall be required to

1 pay the amount exceeding the social security benefit as part of the
2 child support award in the case.

3 3. Child support equal to or less than social security
4 benefits.

5 a. If the child support award due after calculating the
6 child support guidelines is less than or equal to the
7 social security benefit received on behalf of the
8 child, the child support obligation of that parent is
9 met and no additional child support amount must be
10 paid by that parent.

11 b. Any social security benefit amounts which are greater
12 than the support ordered by the court shall be
13 retained by the caretaker for the benefit of the child
14 and shall not be used as a reason for decreasing the
15 child support order or reducing arrearages.

16 c. The child support computation form shall include a
17 notation regarding the use of social security benefits
18 as offset.

19 4. a. Calculation of child support ~~as provided in subsection~~
20 ~~F of this section~~ shall be effective no earlier than
21 the date on which the motion to modify was filed.

22 b. The court may determine if, under the circumstances of
23 the case, it is appropriate to credit social security
24 benefits paid to the custodial person prior to a

1 modification of child support against the past-due
2 child support obligation of the noncustodial parent.

3 c. The noncustodial parent shall not receive credit for
4 any social security benefits paid directly to the
5 child.

6 d. Any credit granted by the court pursuant to
7 subparagraph b of this paragraph shall be limited to
8 the time period during which the social security
9 benefit was paid, or the time period covered by a lump
10 sum for past social security benefits.

11 SECTION 2. This act shall become effective November 1, 2011.

12
13 53-1-1560 TEK 2/24/2011 3:31:40 PM
14
15
16
17
18
19
20
21
22
23
24