

1 **SENATE FLOOR VERSION**

2 February 22, 2011

3 As Amended

4 SENATE BILL NO. 652

5 By: Allen of the Senate

6 and

7 Bennett of the House

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

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

14 SECTION 1. AMENDATORY Section 3, Chapter 407, O.S.L.
15 2008 (43 O.S. Supp. 2010, Section 118B), is amended to read as
16 follows:

17 Section 118B. A. As used in this act:

18 1. "Gross income" includes earned and passive income from any
19 source, except as excluded in this section;

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

23 a. salaries,

24 b. wages,

- 1 c. tips
- 2 d. commissions,
- 3 e. ~~bonuses,~~
- 4 ~~f.~~ severance pay, and
- 5 ~~g.~~
- 6 f. military pay, including hostile fire or imminent
- 7 danger pay, combat pay, family separation pay, or
- 8 hardship duty location pay; and

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

- 11 a. dividends,
- 12 b. pensions,
- 13 c. rent,
- 14 d. interest income,
- 15 e. trust income,
- 16 f. support alimony being received from someone other than
- 17 the other parent in this case,
- 18 g. annuities,
- 19 h. social security benefits,
- 20 i. workers' compensation benefits,
- 21 j. unemployment insurance benefits,
- 22 k. disability insurance benefits,
- 23 l. gifts,
- 24 m. prizes,

- n. gambling winnings,
- o. lottery winnings, and
- p. royalties.

B. Income specifically excluded is:

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

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

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

a. Temporary Assistance for Needy Families (TANF),

b. Supplemental Security Income (SSI),

c. Food Stamps, and

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

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

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

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

1 a. all actual monthly income described in this section,
2 ~~plus such overtime and supplemental income as the~~
3 ~~court deems equitable,~~

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

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

7 d. gross monthly income imputed as set forth in
8 subsection D of this section.

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

12 D. Imputed income.

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

16 2. The following factors may be considered by the court when
17 making a determination of willful and voluntary underemployment or
18 unemployment:

19 a. whether a parent has been determined by the court to
20 be willfully or voluntarily underemployed or
21 unemployed, including whether unemployment or
22 underemployment for the purpose of pursuing additional
23 training or education is reasonable in light of the
24 obligation of the parent to support his or her

1 children and, to this end, whether the training or
2 education will ultimately benefit the child in the
3 case immediately under consideration by increasing the
4 parent's level of support for that child in the
5 future,

6 b. when there is no reliable evidence of income,

7 c. the past and present employment of the parent,

8 d. the education, training, and ability to work of the
9 parent,

10 e. the lifestyle of the parent, including ownership of
11 valuable assets and resources, whether in the name of
12 the parent or the current spouse of the parent, that
13 appears inappropriate or unreasonable for the income
14 claimed by the parent,

15 f. the role of the parent as caretaker of a handicapped
16 or seriously ill child of that parent, or any other
17 handicapped or seriously ill relative for whom that
18 parent has assumed the role of caretaker which
19 eliminates or substantially reduces the ability of the
20 parent to work outside the home, and the need of that
21 parent to continue in that role in the future, or

22 g. any additional factors deemed relevant to the
23 particular circumstances of the case.

24 E. Self-employment income.

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

6 2. A determination of business income for tax purposes shall
7 not control for purposes of determining a child support obligation.
8 Amounts allowed by the Internal Revenue Service for accelerated
9 depreciation or investment tax credits shall not be considered
10 reasonable expenses.

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

15 F. Fringe benefits.

16 1. Fringe benefits for inclusion as income or in-kind
17 remuneration received by a parent in the course of employment, or
18 operation of a trade or business, shall be counted as income if they
19 significantly reduce personal living expenses.

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

22 3. Basic Allowance for Housing, Basic Allowance for
23 Subsistence, and Variable Housing Allowances for service members are
24 considered income for the purposes of determining child support.

1 4. Fringe benefits do not include employee benefits that are
2 typically added to the salary, wage, or other compensation that a
3 parent may receive as a standard added benefit, such as employer
4 contributions to portions of health insurance premiums or employer
5 contributions to a retirement or pension plan.

6 G. Social Security Title II benefits.

7 1. Social Security Title II benefits received by a child shall
8 be included as income to the parent on whose account the benefit of
9 the child is drawn and applied against the support obligation
10 ordered to be paid by that parent. If the benefit of the child is
11 drawn from the disability of the child, the benefit of the child is
12 not added to the income of either parent and not deducted from the
13 obligation of either parent.

14 2. Child support greater than social security benefit.

15 If the child support award due after calculating the child
16 support guidelines is greater than the social security benefit
17 received on behalf of the child, the obligor shall be required to
18 pay the amount exceeding the social security benefit as part of the
19 child support award in the case.

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

22 a. If the child support award due after calculating the
23 child support guidelines is less than or equal to the
24 social security benefit received on behalf of the

1 child, the child support obligation of that parent is
2 met and no additional child support amount must be
3 paid by that parent.

4 b. Any social security benefit amounts which are greater
5 than the support ordered by the court shall be
6 retained by the caretaker for the benefit of the child
7 and shall not be used as a reason for decreasing the
8 child support order or reducing arrearages.

9 c. The child support computation form shall include a
10 notation regarding the use of social security benefits
11 as offset.

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

15 b. The court may determine if, under the circumstances of
16 the case, it is appropriate to credit social security
17 benefits paid to the custodial person prior to a
18 modification of child support against the past-due
19 child support obligation of the noncustodial parent.

20 c. The noncustodial parent shall not receive credit for
21 any social security benefits paid directly to the
22 child.

23 d. Any credit granted by the court pursuant to
24 subparagraph b of this paragraph shall be limited to

1 the time period during which the social security
2 benefit was paid, or the time period covered by a lump
3 sum for past social security benefits.

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

5 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-15-11 - DO
6 PASS, As Amended and Coauthored.

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