

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 35
Judiciary

(Delegates McConkey and Vitale)

Family Law - Child Support - Definition of Actual Income

This bill excludes specified wages from being considered for purposes of calculating child support by altering the definition of “actual income.” Wages received from overtime work or a second job that are paid for work in excess of 40 hours per week, averaged over a 12-month period, are excluded if the court finds that the parent worked the excess hours to pay off alimony or child support arrearages.

Fiscal Summary

State Effect: Potential minimal increase in special fund revenues to the extent that the bill increases the collection of child support arrearages for Temporary Cash Assistance (TCA) recipients that may be offset to the extent that wages used to pay off alimony arrearages are excluded from actual income for the purpose of calculating the basic child support obligation. No impact anticipated on State general fund revenues. The bill’s requirements can be handled with existing resources.

Local Effect: The bill is not expected to have an impact on local revenues.

Small Business Effect: None.

Analysis

Current Law: In a proceeding to establish or modify child support, the court is required to use the child support guidelines. The basic child support obligation is established in accordance with a schedule provided in statute. The current schedule uses the combined monthly “adjusted actual income” of both parents and the number of children for whom support is required to determine the basic child support obligation. “Adjusted actual

income” means “actual income” minus obligations specified in statute, such as preexisting reasonable child support obligations actually paid.

“Actual income” includes (1) salaries; (2) wages; (3) commissions; (4) bonuses; (5) income from dividends, pensions, interest, trust, and annuities; (6) benefits from Social Security, workers’ compensation, unemployment insurance, disability insurance; (7) alimony or maintenance received; and (8) expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business to the extent the reimbursements or payments reduce the parent’s personal living expenses. Actual income also includes, for the obligor (the person required to pay child support), any third-party payment paid to or for a minor child as a result of the obligor’s disability, retirement, or other compensable claim. A court is authorized to consider severance pay, capital gains, gifts, or prizes as actual income, depending on the circumstances of the case. “Actual income” does not include benefits received from means-tested public assistance programs.

Background: Some states consider second income differently in computing income for child support purposes. For example, the definition of “gross income” in Virginia specifically excludes income received by the obligor from secondary employment if the obligor obtained the income to discharge a child support arrearage established by a court order and the obligor is paying the arrearages pursuant to an order. Secondary income includes income from additional jobs, self-employment, or overtime. (*See* Va. Code Ann. § 20-108.2.)

In Delaware, income from a second job may be disregarded upon consideration of its history, purpose, amount, and effect on visitation. (*See* Fam. Ct. Civ. R. 502) For example, according to a 2006 report by the Family Court of the State of Delaware, income from a second job obtained to assist in supporting minor dependents currently living with the obligor is more likely to be excluded than second income used simply to increase the obligor’s standard of living. The report also indicated that the courts should consider whether working the second job decreases the amount of visitation the obligor is able to have with the child, which could potentially increase the other parent’s expenses.

State and Local Revenues: Special fund revenues may potentially increase minimally to the extent that the bill causes additional payments of child support arrearages for TCA recipients. However, this increase may also be offset by a potential minimal reduction in child support payments to the extent that the overtime wages specified in the bill are used to pay off alimony arrearages and, as a result, are excluded from actual income for the purpose of calculating the basic child support obligation for TCA recipients.

TCA recipients must assign their support payments to the State and federal governments as partial reimbursement for TCA payments made on behalf of the children of the

obligor; as a result, TCA child support collections are distributed 50% to the State and 50% to the federal government. Accordingly, the State and federal governments would share equally in any increase in collection revenues. Any such increase cannot be quantified due to the unavailability of data. The impact on collections, if any, is expected to be negligible.

No impact on State general fund or local tax revenues is anticipated. The use of overtime wages to pay off alimony arrearages is deductible from the income of the payor, but must be added to reportable income by the payee. While there may be a difference in the tax liabilities of the payor and the payee, any difference is not anticipated to cause an appreciable change in State general fund or local income tax collections.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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