

HOUSE BILL 386

D4

8lr0034

By: **Chair, Judiciary Committee (By Request – Departmental – Human Services)**
Introduced and read first time: January 24, 2018
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Child Support – Potential Income – Definition**

3 FOR the purpose of altering the definition of “potential income” under the Maryland Child
4 Support Guidelines; and generally relating to child support.

5 BY repealing and reenacting, with amendments,
6 Article – Family Law
7 Section 12–201
8 Annotated Code of Maryland
9 (2012 Replacement Volume and 2017 Supplement)

10 BY repealing and reenacting, without amendments,
11 Article – Family Law
12 Section 12–204(b)
13 Annotated Code of Maryland
14 (2012 Replacement Volume and 2017 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
16 That the Laws of Maryland read as follows:

Article – Family Law

18 12–201.

19 (a) In this subtitle the following words have the meanings indicated.

20 (b) (1) “Actual income” means income from any source.

21 (2) For income from self–employment, rent, royalties, proprietorship of a
22 business, or joint ownership of a partnership or closely held corporation, “actual income”
23 means gross receipts minus ordinary and necessary expenses required to produce income.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (3) “Actual income” includes:
- 2 (i) salaries;
- 3 (ii) wages;
- 4 (iii) commissions;
- 5 (iv) bonuses;
- 6 (v) dividend income;
- 7 (vi) pension income;
- 8 (vii) interest income;
- 9 (viii) trust income;
- 10 (ix) annuity income;
- 11 (x) Social Security benefits;
- 12 (xi) workers’ compensation benefits;
- 13 (xii) unemployment insurance benefits;
- 14 (xiii) disability insurance benefits;
- 15 (xiv) for the obligor, any third party payment paid to or for a minor
- 16 child as a result of the obligor’s disability, retirement, or other compensable claim;
- 17 (xv) alimony or maintenance received; and
- 18 (xvi) expense reimbursements or in-kind payments received by a
- 19 parent in the course of employment, self-employment, or operation of a business to the
- 20 extent the reimbursements or payments reduce the parent’s personal living expenses.
- 21 (4) Based on the circumstances of the case, the court may consider the
- 22 following items as actual income:
- 23 (i) severance pay;
- 24 (ii) capital gains;
- 25 (iii) gifts; or

1 (iv) prizes.

2 (5) “Actual income” does not include benefits received from means–tested
3 public assistance programs, including temporary cash assistance, Supplemental Security
4 Income, food stamps, and transitional emergency, medical, and housing assistance.

5 (c) “Adjusted actual income” means actual income minus:

6 (1) preexisting reasonable child support obligations actually paid; and

7 (2) except as provided in § 12–204(a)(2) of this subtitle, alimony or
8 maintenance obligations actually paid.

9 (d) “Adjusted basic child support obligation” means an adjustment of the basic
10 child support obligation for shared physical custody.

11 (e) “Basic child support obligation” means the base amount due for child support
12 based on the combined adjusted actual incomes of both parents.

13 (f) “Combined adjusted actual income” means the combined monthly adjusted
14 actual incomes of both parents.

15 (g) (1) “Extraordinary medical expenses” means uninsured expenses over
16 \$100 for a single illness or condition.

17 (2) “Extraordinary medical expenses” includes uninsured, reasonable, and
18 necessary costs for orthodontia, dental treatment, asthma treatment, physical therapy,
19 treatment for any chronic health problem, and professional counseling or psychiatric
20 therapy for diagnosed mental disorders.

21 (h) “Health insurance” includes medical insurance, dental insurance, prescription
22 drug coverage, and vision insurance.

23 (i) “Income” means:

24 (1) actual income of a parent, if the parent is employed to full capacity; or

25 (2) potential income of a parent, if the parent is voluntarily impoverished.

26 (j) “Obligee” means any person who is entitled to receive child support.

27 (k) “Obligor” means an individual who is required to pay child support under a
28 court order.

29 (l) “Ordinary and necessary expenses” does not include amounts allowable by the
30 Internal Revenue Service for the accelerated component of depreciation expenses or
31 investment tax credits or any other business expenses determined by the court to be

1 inappropriate for determining actual income for purposes of calculating child support.

2 (m) "Potential income" means income attributed to a parent determined by:

3 (1) the parent's employment potential and probable earnings level based
4 on, but not limited to[, recent work history, occupational qualifications, prevailing job
5 opportunities, and earnings levels in the community]:

6 (I) THE PARENT'S:

7 1. AGE;

8 2. MENTAL AND PHYSICAL CONDITION;

9 3. EDUCATIONAL ATTAINMENT;

10 4. SPECIAL TRAINING OR SKILLS;

11 5. LITERACY;

12 6. RESIDENCE;

13 7. OCCUPATIONAL QUALIFICATIONS AND JOB SKILLS;

14 8. EMPLOYMENT AND EARNINGS HISTORY;

15 9. RECORD OF EFFORTS TO OBTAIN AND RETAIN
16 EMPLOYMENT; AND

17 10. CRIMINAL RECORD AND OTHER EMPLOYMENT
18 BARRIERS; AND

19 (II) EMPLOYMENT OPPORTUNITIES IN THE COMMUNITY WHERE
20 THE PARENT LIVES, INCLUDING:

21 1. THE STATUS OF THE JOB MARKET;

22 2. PREVAILING EARNINGS LEVELS; AND

23 3. THE AVAILABILITY OF EMPLOYERS WILLING TO HIRE
24 THE PARENT;

25 (2) THE PARENT'S ASSETS;

1 **(3) THE PARENT’S ACTUAL INCOME FROM ANY SOURCE; AND**

2 **(4) ANY OTHER FACTOR BEARING ON THE PARENT’S ABILITY TO**
3 **OBTAIN FUNDS FOR CHILD SUPPORT.**

4 (n) (1) “Shared physical custody” means that each parent keeps the child or
5 children overnight for more than 35% of the year and that both parents contribute to the
6 expenses of the child or children in addition to the payment of child support.

7 (2) Subject to paragraph (1) of this subsection, the court may base a child
8 support award on shared physical custody:

9 (i) solely on the amount of visitation awarded; and

10 (ii) regardless of whether joint custody has been granted.

11 12–204.

12 (b) (1) Except as provided in paragraph (2) of this subsection, if a parent is
13 voluntarily impoverished, child support may be calculated based on a determination of
14 potential income.

15 (2) A determination of potential income may not be made for a parent who:

16 (i) is unable to work because of a physical or mental disability; or

17 (ii) is caring for a child under the age of 2 years for whom the parents
18 are jointly and severally responsible.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2018.