

Second Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted  
on Second Reading in the Second House*

LLS NO. 18-1206.02 Brita Darling x2241

**HOUSE BILL 18-1385**

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**HOUSE SPONSORSHIP**

**Roberts,**

**SENATE SPONSORSHIP**

**Coram,**

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**House Committees**  
Judiciary

**Senate Committees**  
Finance

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**A BILL FOR AN ACT**

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

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

SENATE  
2nd Reading Unamended  
May 3, 2018

HOUSE  
3rd Reading Unamended  
April 27, 2018

HOUSE  
2nd Reading Unamended  
April 26, 2018

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

spouse and is not taxable income to the recipient spouse. The guideline advisory amount of maintenance in statute, and the definitions used for calculating gross income and adjusted gross income for maintenance and child support awards, reflects the anticipated tax consequences to the payor and recipient under prior law.

The bill adjusts downward the advisory guideline calculation of the amount of maintenance in circumstances where the maintenance awarded is not deductible by the payor spouse and is not taxable income to the recipient spouse. The bill also amends the definitions of "gross income" and "adjusted gross income" to properly reflect the tax implications of maintenance obligations.

In addition, the bill adjusts the definitions of "gross income" and "adjusted gross income" in calculating child support obligations to reflect the tax implications of maintenance obligations.

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

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

6           **14-10-114. Spousal maintenance - advisory guidelines -**  
7           **legislative declaration - definitions.** (1) **Legislative declaration.**  
8     (c) Therefore, the general assembly declares that it is appropriate to  
9     create a statutory framework for the determination of maintenance  
10    awards, including advisory guidelines for the amount and term of  
11    maintenance in certain cases, that will assist the court and the parties in  
12    crafting maintenance awards that are fair, equitable, and more consistent  
13    across judicial districts AND IN THEIR APPLICATION TO BOTH PARTIES.

14           (3) (a) (I) **Determination of maintenance.** When a party has  
15    requested maintenance in a dissolution of marriage, legal separation, or  
16    declaration of invalidity proceeding, prior to granting or denying an  
17    award of maintenance, the court shall make initial written or oral findings

1 concerning:

2 (C) The financial resources of each party, including but not  
3 limited to the actual or potential income from separate or marital  
4 property; and

5 (D) Reasonable financial need as established during the marriage;  
6 AND

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

10 (b) **Advisory guideline amount and term of maintenance.** If the  
11 duration of the parties' marriage is at least three years and the parties'  
12 combined, annual adjusted gross income does not exceed ~~the greater of~~  
13 two hundred forty thousand dollars, ~~or the uppermost limits of the~~  
14 ~~schedule of basic child support obligations set forth in section 14-10-115,~~  
15 the court shall make additional oral or written findings concerning the  
16 duration of the marriage in whole months and the ADVISORY guideline  
17 amount and term of maintenance, calculated as follows:

18 (I) (A) IF THE MAINTENANCE AWARD IS DEDUCTIBLE FOR FEDERAL  
19 INCOME TAX PURPOSES BY THE PAYOR AND TAXABLE INCOME TO THE  
20 RECIPIENT, the amount of maintenance under the ADVISORY guidelines is  
21 equal to forty percent of ~~the higher income party's monthly adjusted gross~~  
22 ~~income less fifty percent of the lower income party's monthly adjusted~~  
23 ~~gross income; except that, when added to the gross income of the~~  
24 ~~recipient, shall not result in the recipient receiving in excess of forty~~  
25 ~~percent of the parties' combined monthly adjusted gross income THE~~  
26 ~~PARTIES' COMBINED, MONTHLY ADJUSTED GROSS INCOME MINUS THE~~  
27 ~~LOWER INCOME PARTY'S MONTHLY ADJUSTED GROSS INCOME. IF THE~~

1       CALCULATION RESULTS IN A NEGATIVE NUMBER, THE AMOUNT OF  
2       MAINTENANCE IS ZERO.

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

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

18               (II) (A) The ADVISORY term of maintenance under the guidelines,  
19       calculated in whole months, for marriages of at least three years but not  
20       more than twenty years, is set forth in the table contained in  
21       ~~sub-subparagraph (B) of this subparagraph (II) SUBSECTION (3)(b)(II)(B)~~  
22       OF THIS SECTION. When the duration of the parties' marriage exceeds  
23       twenty years, the court may award maintenance for a specified term of  
24       years or for an indefinite term, but the court shall not specify a  
25       maintenance term that is less than the maintenance term under the  
26       guidelines for a twenty-year marriage without making specific findings  
27       that support a reduced term of maintenance.

4 (XI) Whether the circumstances of the parties at the time of  
5 permanent orders warrant the award of a nominal amount of maintenance  
6 in order to preserve a claim of maintenance in the future; and

7 (XII) Any other factor that the court deems relevant. WHETHER  
8 THE MAINTENANCE IS DEDUCTIBLE FOR FEDERAL INCOME TAX PURPOSES  
9 BY THE PAYOR AND TAXABLE INCOME TO THE RECIPIENT, AND ANY  
10 ADJUSTMENTS TO THE AMOUNT OF MAINTENANCE TO EQUITABLY  
11 ALLOCATE THE TAX BURDEN BETWEEN THE PARTIES; AND

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

1 DATE OF THAT LAW.

2 (8) **Definitions.** As used in this section, unless the context  
3 otherwise requires:

4 (a) (I) "Adjusted gross income" means gross income as defined in  
5 ~~paragraph (c) of this subsection (8)~~ SUBSECTION (8)(c) OF THIS SECTION,  
6 less preexisting court-ordered child support obligations actually paid by  
7 a party, preexisting court-ordered alimony or maintenance obligations  
8 actually paid by a party, AS ADJUSTED, IF APPLICABLE, PURSUANT TO  
9 SUBSECTION (8)(a)(III) OF THIS SECTION, and the adjustment to a party's  
10 income as determined pursuant to section 14-10-115 (6)(b) for any  
11 children who are not children of the marriage for whom the party has a  
12 legal responsibility to support.

13 (II) For purposes of this ~~paragraph (a)~~ SUBSECTION (8)(a),  
14 "income" means the actual gross income of a party, if employed to full  
15 capacity, or potential income, if unemployed or underemployed.

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

22 (B) IF THE PREEXISTING COURT-ORDERED ALIMONY OR  
23 MAINTENANCE OBLIGATIONS ACTUALLY PAID BY A PARTY ARE NOT  
24 DEDUCTIBLE FOR FEDERAL INCOME TAX PURPOSES BY THAT PARTY, THEN  
25 THE AMOUNT OF PREEXISTING COURT-ORDERED ALIMONY OR  
26 MAINTENANCE THAT IS DEDUCTED FROM THAT PARTY'S GROSS INCOME IS  
27 THE AMOUNT ACTUALLY PAID BY THAT PARTY MULTIPLIED BY 1.25.

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

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

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

20                   **14-10-115. Child support guidelines - purpose - determination**  
21                   **of income - schedule of basic child support obligations - adjustments**  
22                   **to basic child support - additional guidelines - child support**  
23                   **commission - definitions.** (3) **Definitions.** As used in this section, unless  
24                   the context otherwise requires:

25 (a) (I) "Adjusted gross income" means gross income, as specified  
26 in subsection (5) of this section, less preexisting child support obligations  
27 and less alimony or maintenance actually paid by a parent, AS DESCRIBED

1       IN SUBSECTION (3)(a)(II) OF THIS SECTION.

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

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

16           (I) "Gross income" includes income from any source, except as  
17       otherwise provided in subparagraph (II) of this paragraph (a) SUBSECTION  
18       (5)(a)(II) OF THIS SECTION, and includes, but is not limited to:

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

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

1       AMOUNT OF ALIMONY OR MAINTENANCE THAT IS INCLUDED IN THAT  
2       PARENT'S GROSS INCOME IS THE AMOUNT OF ALIMONY OR MAINTENANCE  
3       RECEIVED BY THAT PARENT MULTIPLIED BY 1.25.

4           **SECTION 3. Act subject to petition - effective date.** This act  
5       takes effect at 12:01 a.m. on the day following the expiration of the  
6       ninety-day period after final adjournment of the general assembly (August  
7       8, 2018, if adjournment sine die is on May 9, 2018); except that, if a  
8       referendum petition is filed pursuant to section 1 (3) of article V of the  
9       state constitution against this act or an item, section, or part of this act  
10      within such period, then the act, item, section, or part will not take effect  
11      unless approved by the people at the general election to be held in  
12      November 2018 and, in such case, will take effect on the date of the  
13      official declaration of the vote thereon by the governor.