

INCOME SHARES AND TECHNICAL CORRECTIONS BILL – CLEAN COPY

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- See: <http://www.ilga.gov/legislation/100/SB/PDF/10000SB0069lv.pdf>
 - SB0069. Status:
<http://www.ilga.gov/legislation/BillStatus.asp?DocNum=0069&GAID=14&DocTypeID=SB&LegID=99521&SessionID=91&SpecSess=&Session=&GA=100>
100th Ill. Gen. Assem., Senate Bill 0069 (introduced 1/1/17 and arrived in House 4/5/17, Assigned to Judiciary 5/3/17 - current as of 5/3/17)
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Sec. 505. **Child support; contempt; penalties.**

(a) ***

For purposes of this Section, the term "obligor" means the parent obligated to pay support to the other parent.

(1) **Child support guidelines.** The Illinois Department of Healthcare and Family Services shall adopt rules establishing child support guidelines which include worksheets to aid in the calculation of the child support obligations and a schedule of basic child support obligations table that reflects the percentage of combined net income that parents living in the same household in this State ordinarily spend on their child.

The child support guidelines have the following **purposes**:

- (A) to establish as State policy an adequate standard of support for a child, subject to the ability of parents to pay;
- (B) to make child support obligations more equitable by ensuring more consistent treatment of parents in similar circumstances;
- (C) to improve the efficiency of the court process by promoting settlements and giving courts and the parties guidance in establishing levels of child support;
- (D) to calculate child support based upon the parents' combined net income estimated to have been allocated for the support of the child if the parents and child were living in an intact household;
- (E) to adjust the child support based upon the needs of the child; and
- (F) to allocate the amount of child support to be paid by each parent based upon a parent's net income and the child's physical care arrangements.

(1.5) **Computation of basic child support obligation.**

The court shall compute the basic child support obligation by taking the following steps:

- (A) determine each parent's monthly net income;

- (B) add the parents' monthly net incomes together to determine the combined monthly net income of the parents;
- (C) select the corresponding appropriate amount from the schedule of basic child support obligations based on the parties' combined monthly net income and number of children of the parties; and
- (D) calculate each parent's percentage share of the basic child support obligation.

Although a monetary obligation is computed for each parent as child support, the receiving parent's share is not payable to the other parent and is presumed to be spent directly on the child.

(2) **Duty of support.** The court shall determine child support in each case by applying the child support guidelines unless the court makes a finding that application of the guidelines would be inappropriate, after considering best interests of the child and evidence which shows relevant factors including, but not limited to, one or more of the following:

- (A) the financial resources and needs of the child;
- (B) the financial resources and needs of the parents;
- (C) the standard of living the child would have enjoyed had the marriage or civil union not been dissolved; and
- (D) the physical and emotional condition of the child and his or her educational needs.

(3) **Income.**

(A) As used in this Section, "**gross income**" means the total of all income from all sources, except "gross income" does not include (i) benefits received by the parent from means-tested public assistance programs, including, but not limited to, Temporary Assistance to Needy Families, Supplemental Security Income, and the Supplemental Nutrition Assistance Program or (ii) benefits and income received by the parent for other children in the household, including, but not limited to, child support, survivor benefits, and foster care payments. Social security disability and retirement benefits paid for the benefit of the subject child must be included in the disabled or retired parent's gross income for purposes of calculating the parent's child support obligation, but the parent is entitled to a child support credit for the amount of benefits paid to the other party for the child. "Gross income" also includes spousal maintenance received pursuant to a court order in the pending proceedings or any other proceedings that must be included in the recipient's gross income for purposes of calculating the parent's child support obligation.

(B) As used in this Section, "**net income**" means gross income minus either the standardized tax amount calculated pursuant to subparagraph (C) of this paragraph (3) or the individualized tax amount calculated pursuant to subparagraph (D) of this paragraph (3), and minus any adjustments pursuant to subparagraph (F) of this paragraph (3). The standardized tax amount shall be used unless the requirements for an individualized tax amount set forth in subparagraph (E) of this paragraph (3) are met.

(C) As used in this Section, "**standardized tax amount**" means the total of federal and state income taxes for a single person claiming the standard tax deduction, one personal exemption, and the applicable number of dependency exemptions for the minor child of the parties, and Social Security and Medicare tax calculated at the Federal Insurance Contributions Act rate.

(I) Unless a court has determined otherwise or the parties otherwise agree, the party with the majority of parenting time shall be deemed entitled to claim the dependency exemption for the parties' minor child.

(II) The Illinois Department of Healthcare and Family Services shall promulgate a standardized net income conversion table that computes net income by deducting the standardized tax amount from gross income.

(D) As used in this Section, "**individualized tax amount**" means the aggregate of the following taxes:

- (I) federal income tax (properly calculated withholding or estimated payments);
- (II) State income tax (properly calculated withholding or estimated payments); and
- (III) Social Security or self-employment tax, if applicable (or, if none, mandatory retirement contributions required by law or as a condition of employment) and Medicare tax calculated at the Federal Insurance Contributions Act rate.

(E) In lieu of a standardized tax amount, a determination of an individualized tax amount may be made under items (I), (II), or (III) below. If an individualized tax amount determination is made under this subparagraph (E), all relevant tax attributes (including filing status, allocation of dependency exemptions, and whether a party is to claim the standard deduction or itemized deductions for federal income tax purposes) shall be as the parties agree or as the court determines. To determine a party's reported income, the court may order the party to complete an Internal Revenue Service Form 4506-T, Request for Tax Transcript.

(I) **Agreement.** Irrespective of whether the parties agree on any other issue before the court, if they jointly stipulate for the record their concurrence on a method for the individualized tax amount that is different from the method set forth under subparagraph (D), the stipulated method shall be used by the court unless the court rejects the proposed stipulated method for good cause.

(II) **Summary hearing.** If the court determines child support in a summary hearing under Section 501 and an eligible party opts in to the individualized tax amount computation method under this item (II), the individualized tax amount shall be determined by the court on the basis of information contained in one or both parties' Supreme Court approved Financial Affidavit (Family & Divorce Cases) and relevant supporting documents under applicable court rules. No party, however, is eligible to opt in unless the party, under applicable court rules, has served the other party with the required Supreme Court approved Financial Affidavit (Family & Divorce Cases) and has substantially produced supporting documents required by the applicable court rules.

(III) **Evidentiary hearing.** If the court determines child support in an evidentiary hearing, whether for purposes of a temporary order or at the conclusion of a proceeding, item (II) of this subparagraph (E) does not apply. In each such case (unless item (I) governs), the individualized tax amount shall be as determined by the court on the basis of the record established.

(F) **Adjustments to income.**

(I) **Multi-family adjustment. [Deduction from Net Income]** If a parent is also legally responsible for support of a child not shared with the other parent and not subject to the present proceeding, there shall be an *adjustment to net income* as follows:

(i) **Multi-family adjustment with court order.** The court shall deduct from the parent's net income the amount of child support actually paid by the parent pursuant to a support order unless the court makes a finding that it would cause economic hardship to the child.

(ii) **Multi-family adjustment without court order.** Upon the request or application of a parent ~~having~~ [actually supporting]¹ a presumed, acknowledged, or adjudicated child living in or outside of that parent's household, there shall be an adjustment to child support. The court shall deduct from the parent's net income the amount of financial support actually paid by the parent for the child or 75% of the support the parent should pay under the child support guidelines (before this adjustment), whichever is less, unless the court makes a finding that it would cause economic hardship to the child. The adjustment shall be calculated using that parent's income alone.

(II) Spousal Maintenance adjustment [Deduction from Gross Income]

Obligations pursuant to a court order for spousal maintenance in the pending proceeding actually paid or payable to the same party to whom child support is to be payable or actually paid to a former spouse pursuant to a court order shall be deducted *from the parent's gross income*.

(3.1) **Business income.** For purposes of calculating child support, net business income from the operation of a business means gross receipts minus ordinary and necessary expenses required to carry on the trade or business. As used in this paragraph, "business" includes, but is not limited to, sole proprietorships, closely held corporations, partnerships, other flow-through business entities, and self-employment. The court shall apply the following:

(A) The accelerated component of depreciation and any business expenses determined either judicially or administratively to be inappropriate or excessive shall be excluded from the total of ordinary and necessary business expenses to be deducted in the determination of net business income from gross business income.

(B) Any item of reimbursement or in-kind payment received by a parent from a business, including, but not limited to, a company car, reimbursed meals, free housing, or a housing allowance, shall be counted as income if not otherwise included in the recipient's gross income, if the item is significant in amount and reduces personal expenses.

(3.2) **Unemployment or underemployment.** If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income. A determination of potential income shall be made by determining employment potential and probable earnings level based on the obligor's work history, occupational qualifications, prevailing job opportunities, the ownership by a parent of a substantial non-income producing asset, and earnings levels in the community. If there is insufficient work history to determine employment potential and probable earnings level, there shall be a rebuttable presumption that the parent's potential income is 75% of the most recent United States Department of Health and Human Services Federal Poverty Guidelines for a family of one person.

¹Amendment to SB 69.

(3.3) Rebuttable presumption in favor of guidelines. There is a rebuttable presumption in any judicial or administrative proceeding for child support that the amount of the child support obligation that would result from the application of the child support guidelines is the correct amount of child support.

(3.3a) Minimum child support obligation. There is a rebuttable presumption that a minimum child support obligation of \$40 per month, per child, will be entered for an obligor who has actual or imputed gross income at or less than 75% of the most recent United States Department of Health and Human Services Federal Poverty Guidelines for a family of one person, with a maximum total child support obligation for that obligor of \$120 per month to be divided equally among all of the obligor's children.

(3.3b) Zero dollar child support order. For parents with no gross income, who receive only means-tested assistance, or who cannot work due to a medically proven disability, incarceration, or institutionalization, there is a rebuttable presumption that the \$40 per month minimum support order is inapplicable inappropriate and a zero dollar order shall be entered.

(3.4) Deviation factors. In any action to establish or modify child support, whether pursuant to a temporary or final administrative or court order the child support guidelines shall be used as a rebuttable presumption for the establishment or modification of the amount of child support. The court may deviate from the child support guidelines if the application would be inequitable, unjust, or inappropriate. Any deviation from the guidelines shall be accompanied by written findings by the court specifying the reasons for the deviation and the presumed amount under the child support guidelines without a deviation. These reasons may include:

- (A) extraordinary medical expenditures necessary to preserve the life or health of a party or a child of either or both of the parties;
- (B) additional expenses incurred for a child subject to the child support order who has special medical, physical, or developmental needs; and
- (C) any other factor the court determines should be applied upon a finding that the application of the child support guidelines would be inappropriate, after considering the best interest of the child.

(3.5) Income in excess of the schedule of basic child support obligation. A court may use its discretion to determine child support if the *combined* adjusted² net income of the parties exceeds the highest level of the schedule of basic child support obligation except that the basic child support obligation shall not be less than the highest level of combined net income set forth in the schedule of basic child support obligation.

(3.6) Extracurricular activities and school expenses. The court, in its discretion, in addition to the basic child support obligation, may order either or both parents owing a duty of support to the child to contribute to the reasonable school and extracurricular activity expenses incurred which are intended to enhance the educational, athletic, social, or cultural development of the child.

²Note the reference to “combined adjusted net” here. Other references to “adjusted income” were eliminated from the income sharing amendments. The only adjustments in the statutory scheme were the multi-family adjustment per (F)(1) and the “spousal maintenance adjustment” per F(2). The question is whether throughout the statutory scheme there is the intended use of the “net incomes” or “adjusted net incomes.”

(3.7) **Child care expenses.** The court, in its discretion, in addition to the basic child support obligation, may order either or both parents owing a duty of support to the child to contribute to the reasonable child care expenses of the child. The child care expenses shall be made payable directly to a party or directly to the child care provider at the time of child care services.

(A) "Child care expenses" means actual expenses reasonably necessary to enable a parent or non-parent custodian to be employed, to attend educational or vocational training programs to improve employment opportunities, or to search for employment. "Child care expenses" also includes deposits for securing placement in a child care program, the cost of before and after school care, and camps when school is not in session. A child's special needs shall be a consideration in determining reasonable child care expenses.

(B) Child care expenses shall be prorated in proportion to each parent's percentage share of combined net income, and may be added to the basic child support obligation if not paid directly by each parent to the provider of child care services. The obligor's and obligee's portion of actual child care expenses shall appear in the support order. If allowed, the value of the federal income tax credit for child care shall be subtracted from the actual cost to determine the net child care costs.

(C) The amount of child care expenses shall be adequate to obtain reasonable and necessary child care. The actual child care expenses shall be used to calculate the child care expenses contributions, if available. When actual child care expenses vary, the actual child care expenses may be averaged over the most recent 12-month period. When a parent is temporarily unemployed or temporarily not attending educational or vocational training programs, future child care expenses shall be based upon prospective expenses to be incurred upon return to employment or educational or vocational training programs.

(D) An order for child care expenses may be modified upon a showing of a substantial change in circumstances. The party incurring child care expenses shall notify the other party within 14 days of any change in the amount of child care expenses that would affect the annualized child care amount as determined in the support order.

(3.8) **Shared physical care.** If each parent exercises 146 or more overnights per year with the child, the basic child support obligation is multiplied by 1.5 to calculate the shared care child support obligation. The court shall determine each parent's share of the shared care child support obligation based on the parent's percentage share of combined net income. The child support obligation is then computed for each parent by multiplying that parent's portion of the shared care support obligation by the percentage of time the child spends with the other parent. The respective child support obligations are then offset, with the parent owing more child support paying the difference between the child support amounts. The Illinois Department of Healthcare and Family Services shall promulgate a worksheet to calculate child support in cases in which the parents have shared physical care and use the standardized tax amount to determine net income.

(3.9) **Split physical care.** When there is more than one child and each parent has physical care of at least one but not all of the children situation, the support is calculated by using 2 child support worksheets to determine the support each parent owes the other. The support shall be calculated as follows:

(A) compute the support the first parent would owe to other parent as if the child in his or her care was the only child of the parties; then

(B) compute the support the other parent would owe to the first parent as if the child in his or her care were the only child of the parties; then

(C) subtract the lesser support obligation from the greater.

The parent who owes the greater obligation shall be ordered to pay the difference in support to the other parent, unless the court determines, pursuant to other provisions of this Section, that it should deviate from the guidelines.

(4) Health care.

(A) [Portion of Basic Support Obligation Covers Ordinary Out of Pocket Expenses and Health Care Coverage Generally] A portion of the basic child support obligation is intended to cover basic ordinary out-of-pocket medical expenses. The court, in its discretion, in addition to the basic child support obligation, shall also provide for the child's current and future medical needs by ordering either or both parents to initiate health insurance coverage for the child through currently effective health insurance policies held by the parent or parents, purchase one or more or all health, dental, or vision insurance policies for the child, or provide for the child's current and future medical needs through some other manner.

(B) [Contribution to Reasonable Health Care Needs Not Covered by Insurance] The court, in its discretion, may order either or both parents to contribute to the reasonable health care needs of the child not covered by insurance, including, but not limited to, unreimbursed medical, dental, orthodontic, or vision expenses and any prescription medication for the child not covered under the child's health insurance.

(C) [Neither parent with access to private health care insurance] If neither parent has access to appropriate private health insurance coverage, the court may order:

(I) one or both parents to provide health insurance coverage at any time it becomes available at a reasonable cost; or

(II) the parent or non-parent custodian with primary physical responsibility for the child to apply for public health insurance coverage for the child and require either or both parents to pay a reasonable amount of the cost of health insurance for the child.

The order may also provide that any time private health insurance care coverage is available at a reasonable cost to that party it will be provided instead of cash medical support. As used in this Section, "cash medical support" means an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another person through employment or otherwise or for other medical costs not covered by insurance.

(D) [Amount added to Basic Support Obligation is Total Premium Attributable to Child Subject to Court Order] The amount to be added to the basic child support obligation shall be the actual amount of the total health insurance premium that is attributable to the child who is the subject of the order. If this amount is not available or cannot be verified, the total cost of the health insurance premium shall be divided by the total number of persons covered by the policy. The cost per person derived from this calculation shall be multiplied by the number of children who are the subject of the order and who are covered under the health insurance policy. This amount shall be added to the basic

child support obligation and shall be allocated between the parents in proportion to their respective net incomes.

(E) [Deduction for Health Insurance Premium] After the health insurance premium for the child is added to the basic child support obligation and allocated between the parents in proportion to their respective incomes for child support purposes, if the obligor is paying the premium, the amount calculated for the obligee's share of the health insurance premium for the child shall be deducted from the obligor's share of the total child support obligation. If the obligee is paying for private health insurance for the child, the child support obligation shall be increased by the obligor's share of the premium payment. The obligor's and obligee's portion of health insurance costs shall appear in the support order.

(F) [Requisite Proof of Health Insurance to be Allowed "Adjustment"] Prior to allowing the health insurance adjustment, the parent requesting the adjustment must submit proof that the child has been enrolled in a health insurance plan and must submit proof of the cost of the premium. The court shall require the parent receiving the adjustment to annually submit proof of continued coverage of the child to the other parent, or as designated by the court.

(G) [Reasonable Cost Not to Exceed 5% of Gross and No Court Imposed Obligation If Net Income Below 133% of Poverty Guidelines] A reasonable cost for providing health insurance care coverage for the child may not exceed 5% of the providing parent's gross income. Parents with a net income below 133% of the most recent United States Department of Health and Human Services Federal Poverty Guidelines or whose child is covered by Medicaid based on that parent's income may not be ordered to contribute toward or provide private coverage, unless private coverage is obtainable without any financial contribution by that parent.

(H) [Dental and Vision at Discretion of Court if Not Included as Party of Employer's Medical Plan] If dental or vision insurance is included as part of the employer's medical plan, the coverage shall be maintained for the child. If not included in the employer's medical plan, adding the dental or vision insurance for the child is at the discretion of the court.

(I) [Credit for Health Insurance by Spouse] If a parent has been directed to provide health insurance pursuant to this paragraph and that parent's spouse or legally recognized partner provides the insurance for the benefit of the child either directly or through employment, a credit on the child support worksheet shall be given to that parent in the same manner as if the premium were paid by that parent.

(Source: PA 99-90, eff. 1-1-16; 99-763, eff. 1-1-17; 99-764, eff. 7-1-17.)

Section 510 Amendment:

*** The court may grant a petition for modification that seeks to apply the changes made to subsection (a) of Section 505 by Public Act 99-764 to an order entered before the effective date of Public Act 99-764 only upon a finding of a substantial change in circumstances that warrants application of the changes. The enactment of Public Act 99-764 itself does not constitute a substantial change in circumstances warranting a modification. ***

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