

CHAPTER 151

CHILDREN AND DOMESTIC MATTERS

SENATE BILL 01-158

BY SENATOR(S) Pascoe, Gordon, Takis, Windels, and Linkhart;
also REPRESENTATIVE(S) Smith, Boyd, Coleman, Jahn, Plant, Veiga, Vigil, and Williams S.

AN ACT

CONCERNING SPOUSAL MAINTENANCE.

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

SECTION 1. 14-10-114, Colorado Revised Statutes, is amended to read:

14-10-114. Maintenance. (1) **Legislative declaration.** THE GENERAL ASSEMBLY HEREBY FINDS THAT THE ECONOMIC LIVES OF SPOUSES ARE FREQUENTLY CLOSELY INTERTWINED IN MARRIAGE AND THAT IT IS OFTEN IMPOSSIBLE TO LATER SEGREGATE THE RESPECTIVE DECISIONS AND CONTRIBUTIONS OF THE SPOUSES. THE GENERAL ASSEMBLY FURTHER FINDS THAT WHEN A DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION ACTION HAS BEEN FILED AND TEMPORARY ORDERS ARE TO BE DETERMINED PURSUANT TO SECTION 14-10-108, IT IS GENERALLY APPROPRIATE TO UTILIZE THE PERIOD OF TEMPORARY ORDERS AS A PERIOD OF ADJUSTMENT DURING WHICH THE MARITAL ARRANGEMENTS OF THE PARTIES MAY BE RECOGNIZED THROUGH A TEMPORARY BLENDING OF THE PARTIES' INCOMES. ACCORDINGLY, THE GENERAL ASSEMBLY DECLARES THAT FOR PURPOSES OF TEMPORARY ORDERS, IT IS APPROPRIATE IN MOST CASES TO APPLY A PRESUMPTIVE FORMULA TO THE DETERMINATION OF TEMPORARY MAINTENANCE.

(2) (a) IN EVERY PROCEEDING FOR DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION WHEN TEMPORARY MAINTENANCE IS REQUESTED BY A PARTY AND WHEN THE COMBINED ANNUAL GROSS INCOME OF THE TWO PARTIES IS SEVENTY-FIVE THOUSAND DOLLARS OR LESS, THERE SHALL BE A REBUTTABLE PRESUMPTION IN FAVOR OF A SPECIFIC AWARD OF TEMPORARY MAINTENANCE FROM THE HIGHER INCOME PARTY TO THE LOWER INCOME PARTY BASED UPON THE FORMULA SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (2). IN THOSE CASES IN WHICH THE COMBINED ANNUAL GROSS INCOME OF THE PARTIES EXCEEDS SEVENTY-FIVE THOUSAND DOLLARS, THE COURT MAY AWARD A MONTHLY AMOUNT OF TEMPORARY MAINTENANCE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

PURSUANT TO THE PROVISIONS OF SUBSECTIONS (3) AND (4) OF THIS SECTION.

(b) (I) (A) THE MONTHLY AMOUNT OF TEMPORARY MAINTENANCE IN CASES IN WHICH THE PARTIES' COMBINED ANNUAL GROSS INCOME IS SEVENTY-FIVE THOUSAND DOLLARS OR LESS SHALL BE EQUAL TO FORTY PERCENT OF THE HIGHER INCOME PARTY'S MONTHLY ADJUSTED GROSS INCOME LESS FIFTY PERCENT OF THE LOWER INCOME PARTY'S MONTHLY ADJUSTED GROSS INCOME. IF THE REMAINDER OF SUCH CALCULATION IS THE NUMBER ZERO OR A NEGATIVE NUMBER, THE PRESUMPTION SHALL BE THAT TEMPORARY MAINTENANCE SHALL NOT BE AWARDED. IF THE REMAINDER OF SUCH CALCULATION IS MORE THAN ZERO, THAT AMOUNT SHALL BE THE AMOUNT OF THE MONTHLY TEMPORARY MAINTENANCE.

(B) IN ANY ACTION TO ESTABLISH OR MODIFY TEMPORARY MAINTENANCE PURSUANT TO THIS SUBSECTION (2), THE FORMULA SET FORTH IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I) SHALL BE USED AS A REBUTTABLE PRESUMPTION FOR THE ESTABLISHMENT OR MODIFICATION OF THE AMOUNT OF TEMPORARY MAINTENANCE. COURTS SHALL DEVIATE FROM THE FORMULA WHERE ITS APPLICATION WOULD BE INEQUITABLE OR UNJUST. ANY SUCH DEVIATION SHALL BE ACCOMPANIED BY WRITTEN OR ORAL FINDINGS BY THE COURT SPECIFYING THE REASONS FOR THE DEVIATION AND THE PRESUMED AMOUNT UNDER THE FORMULA WITHOUT DEVIATION.

(C) THE PARTIES MAY AGREE IN WRITING TO WAIVE TEMPORARY MAINTENANCE UNDER THIS SUBSECTION (2) WHERE ONE PARTY IS OTHERWISE ENTITLED TO TEMPORARY MAINTENANCE UNDER THE FORMULA OR THE PARTIES MAY AGREE IN WRITING TO DEVIATE FROM THE PRESUMPTIVE AMOUNT OF TEMPORARY MAINTENANCE. ANY SUCH AGREEMENT TO WAIVE TEMPORARY MAINTENANCE OR TO DEVIATE FROM THE PRESUMPTIVE AMOUNT SHALL INCLUDE THE REASON OR CONSIDERATION FOR THE WAIVER OR DEVIATION. THE COURT SHALL HAVE JURISDICTION TO REVIEW SUCH AGREEMENT AND TO DECLINE TO APPROVE SUCH AGREEMENT IF THE COURT DETERMINES THAT THE AGREEMENT IS UNCONSCIONABLE.

(II) AT THE TIME OF THE INITIAL ESTABLISHMENT OF TEMPORARY MAINTENANCE PURSUANT TO THIS SUBSECTION (2), OR IN ANY PROCEEDING TO MODIFY A TEMPORARY MAINTENANCE ORDER PURSUANT TO THIS SUBSECTION (2), IF A PARTY IS UNDER AN OBLIGATION TO PAY MAINTENANCE OR ALIMONY PURSUANT TO A PRIOR VALID COURT ORDER, AN ADJUSTMENT SHALL BE MADE REVISING SUCH PARTY'S INCOME BY THE AMOUNT OF SUCH MAINTENANCE OR ALIMONY ACTUALLY PAID PRIOR TO CALCULATING THE AMOUNT OF TEMPORARY MAINTENANCE.

(III) AT THE TIME OF THE INITIAL ESTABLISHMENT OF TEMPORARY MAINTENANCE PURSUANT TO THIS SUBSECTION (2), OR IN ANY PROCEEDING TO MODIFY A TEMPORARY MAINTENANCE ORDER PURSUANT TO THIS SUBSECTION (2), IF A PARTY IS LEGALLY RESPONSIBLE FOR THE SUPPORT OF OTHER CHILDREN WHO ARE NOT THE CHILDREN OF THE PARTIES AND FOR WHOM THE PARTIES DO NOT SHARE JOINT LEGAL RESPONSIBILITY, AN ADJUSTMENT SHALL BE MADE REVISING SUCH PARTY'S INCOME BY THE AMOUNT OF SUCH CHILD SUPPORT PAID PRIOR TO CALCULATING THE AMOUNT OF TEMPORARY MAINTENANCE.

(IV) (A) FOR PURPOSES OF THIS SECTION, "INCOME" SHALL HAVE THE SAME MEANING AS THAT TERM IS DESCRIBED IN SECTION 14-10-115 (7).

(B) FOR PURPOSES OF CALCULATING THE FORMULA SET FORTH IN THIS PARAGRAPH (b), "MONTHLY ADJUSTED GROSS INCOME" MEANS GROSS INCOME LESS PREEXISTING MAINTENANCE OR ALIMONY OBLIGATIONS ACTUALLY PAID BY A PARTY AS DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (b) AND LESS THE AMOUNT OF CHILD SUPPORT PAID BY A PARTY, AS DESCRIBED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (b).

(c) THE PERIOD OF TIME COVERED BY ANY TEMPORARY MAINTENANCE ORDERED PURSUANT TO THIS SUBSECTION (2), UPON THE REQUEST OF A PARTY, SHALL BEGIN AT THE TIME OF THE PARTIES' PHYSICAL SEPARATION OR FILING OF THE PETITION OR SERVICE UPON THE RESPONDENT, WHICHEVER OCCURS LAST, TAKING INTO CONSIDERATION PAYMENTS MADE BY EITHER PARTY DURING SUCH PERIOD.

(d) BECAUSE SPOUSAL MAINTENANCE AWARDS ENTERED AT TEMPORARY ORDERS PURSUANT TO THIS SUBSECTION (2) ARE MADE UNDER DIFFERENT STANDARDS AND FOR DIFFERENT REASONS THAN SPOUSAL MAINTENANCE AWARDS ENTERED AT PERMANENT ORDERS, THE TEMPORARY MAINTENANCE FORMULA SET FORTH IN THIS SUBSECTION (2) SHALL NOT BE USED FOR THE DETERMINATION OF SPOUSAL MAINTENANCE ORDERS TO BE ENTERED AT PERMANENT ORDERS AND ANY TEMPORARY MAINTENANCE ORDER ENTERED PURSUANT TO THIS SUBSECTION (2) SHALL NOT PREJUDICE THE RIGHTS OF EITHER PARTY AT PERMANENT ORDERS.

(e) AFTER DETERMINING THE PRESUMPTIVE AMOUNT OF TEMPORARY MAINTENANCE PURSUANT TO THIS SUBSECTION (2) AND THE AMOUNT OF TEMPORARY CHILD SUPPORT PURSUANT TO SECTION 14-10-115, THE COURT SHALL CONSIDER THE RESPECTIVE FINANCIAL RESOURCES OF EACH PARTY AND DETERMINE THE TEMPORARY PAYMENT OF MARITAL DEBT AND THE TEMPORARY ALLOCATION OF MARITAL PROPERTY.

(+) (3) In a proceeding for dissolution of marriage or legal separation or a proceeding for maintenance following dissolution of marriage by a court, the court may grant a TEMPORARY MAINTENANCE ORDER WHEN THE PARTIES' COMBINED ANNUAL GROSS INCOME IS MORE THAN SEVENTY-FIVE THOUSAND DOLLARS OR A maintenance order AT THE TIME OF PERMANENT ORDERS for either spouse only if it finds that the spouse seeking maintenance:

(a) Lacks sufficient property, including marital property apportioned to him OR HER, to provide for his OR HER reasonable needs; and

(b) Is unable to support himself OR HERSELF through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(-) (4) ~~The~~ A TEMPORARY MAINTENANCE ORDER IN THOSE CIRCUMSTANCES IN WHICH THE PARTIES' COMBINED ANNUAL GROSS INCOME IS MORE THAN SEVENTY-FIVE THOUSAND DOLLARS OR A maintenance order ENTERED AT THE TIME OF PERMANENT ORDERS shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant factors including:

(a) The financial resources of the party seeking maintenance, including marital

property apportioned to such party, and the party's ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and that party's future earning capacity;

(c) The standard of living established during the marriage;

(d) The duration of the marriage;

(e) The age and the physical and emotional condition of the spouse seeking maintenance; and

(f) The ability of the spouse from whom maintenance is sought to meet his OR HER needs while meeting those of the spouse seeking maintenance.

SECTION 2. Effective date - applicability. This act shall take effect July 1, 2001, and shall apply to causes of action and motions for modifications of temporary maintenance filed on or after said date.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 30, 2001