

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 235

H.P. 190

House of Representatives, January 23, 2003

An Act Concerning the Treatment of Gross Income in Cases in Which Both Child Support and Spousal Support Are Considered

Reported by Representative NORBERT of Portland for the Family Law Advisory Commission pursuant to the Maine Revised Statutes, Title 19-A, section 354.

Reference to the Committee on Judiciary suggested and ordered printed under Joint Rule 218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

s it enacted by the People of the State of Maine as follows:

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4 **Sec. 1. 19-A MRSA §2001, sub-§5, ¶¶A and E**, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, are amended to read:

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8 A. Gross income includes income from an ongoing source, including, but not limited to, salaries, wages, commissions, royalties, bonuses, dividends, severance pay, pensions, interest, trust funds, annuities, capital gains, social security benefits, disability insurance benefits, prizes, workers' compensation benefits, spousal support actually received pursuant to a preexisting order from a spouse who is not the parent of the child for whom support is being determined, and educational grants, fellowships or subsidies that are available for personal living expenses. Gross income does not include child support received by either party for children other than ~~children~~ the child for whom support is being determined.

20 E. Gross income of an obligor does not include the amount of preexisting spousal maintenance to a former spouse who is not the parent of the child for whom support is being determined or a child support obligation actually paid pursuant to court or administrative order, or an appropriate amount of child support being voluntarily paid by a party who has a legal obligation to support that child.

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30 **SUMMARY**

32 This bill clarifies that spousal support is not considered as part of the gross income of the recipient of child support in the computation of child support for the children of the marriage in an initial child support order and in any subsequent child support computation on an ensuing motion for children of that marriage.

38 Spousal support from the child support payor to the recipient is not considered in the recipient's gross income in the initial computation of child support for children of the marriage because there is not a preexisting spousal support order. See the Maine Revised Statutes, Title 19-A, section 2001, subsection 5, paragraph A. Rather, the court first computes child support and then considers whether spousal support should also be ordered depending on the factors set forth in Title 19-A, section 951-A, subsection 5.

48 When child support is modified in a subsequent proceeding, however, there exists confusion over whether spousal support from

2 the payor of child support, established in the original order,
3 should be considered as gross income to the recipient of child
4 support in the new computation of child support for children of
5 the marriage. This confusion arises from existing language of
6 the child support law, Title 19-A, section 2001, subsection 5,
7 paragraph A, which includes in the child support payee's income
8 the amount of "spousal support actually received pursuant to a
9 preexisting order." This language gives rise to 2 opposite
10 possible interpretations. One interpretation is that this means
11 only spousal support from a different marriage unrelated to the
12 children for whom support is being determined is to be included
13 in the recipient's gross income. The other interpretation is that
14 all spousal support, whether from the marriage before the court
15 or from a different marriage, is included in the payee's income
16 prior to determining child support.

17 The same confusion exists in Title 19-A, section 2001,
18 subsection 5, paragraph E, which reduces the gross income of a
19 child support payor for the amount of "preexisting spousal
20 maintenance ...actually paid..." This language also gives rise to
21 similar opposite possible interpretations.

22 While existing law can therefore be interpreted to suggest
23 that spousal support as an inclusion or exclusion from gross
24 income might be treated differently at different times for the
25 purpose of calculating presumptive child support, there is no
26 logical reason to treat spousal support differently in the
27 initial child support proceeding than in a child support
28 modification proceeding.

29 The treatment of spousal support in the computation of gross
30 income should be clear and consistent from the entry of the
31 initial child support order to any amendment of that child
32 support order. This bill accomplishes that by clarifying that
33 the only spousal support that is to be considered in gross income
34 is spousal support paid or received pursuant to an order
35 established as the result of a marriage that does not involve the
36 children for whom child support is being computed. Not only does
37 this proposed change create uniformity of treatment at all stages
38 of the litigation, it is also consistent with the policy of the
39 spousal support statute requiring the court to consider the child
40 support payment when determining the spousal support payor's
41 ability to pay spousal support. See Title 19-A, section 951-A,
42 subsection 5 paragraph P, subparagraph (2).
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