



2022 South Dakota Legislature
House Bill 1279
ENROLLED

AN ACT

ENTITLED An Act to revise certain provisions relating to child support.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 25-7-6.4 be AMENDED:

25-7-6.4. Except as provided in § 25-7-6.26, it is presumed for the purposes of determination of child support that a parent is capable of being employed a minimum of one thousand eight hundred twenty hours per year, and the parent's child support obligation must be calculated at a rate not less than one thousand eight hundred twenty hours at the state minimum wage.

Section 2. That § 25-7-6.7 be AMENDED:

25-7-6.7. Deductions from monthly gross income must be allowed as follows:

- (1) Income taxes payable based on the applicable tax rate for a single taxpayer and a monthly payroll period rather than the actual tax rate;
- (2) Social security and Medicare taxes based on the applicable tax rate for an employee or a self-employed taxpayer;
- (3) Contributions to an IRS qualified retirement plan not exceeding ten percent of gross income;
- (4) Actual business expenses of an employee, incurred for the benefit of his employer, not reimbursed;
- (5) Payments made on other support and maintenance orders.

Section 3. That § 25-7-6.10 be AMENDED:

25-7-6.10. Deviation from the schedule in § 25-7-6.2 must be considered if raised by either party and made only upon the entry of specific findings based upon any of the following factors:

- (1) The income of a subsequent spouse or contribution of a third party to the income or expenses of that parent but only if the application of the schedule works a financial hardship on either parent;
- (2) Any financial condition of either parent that would make application of the schedule inequitable. If the total amount of the child support obligation, including any adjustments for health insurance and child care costs, exceeds fifty percent of the obligor's monthly net income, it is presumed that the amount of the obligation imposes a financial hardship on the obligor. This presumption may be rebutted based upon other factors set forth in this section;
- (3) Any necessary education or health care special needs of the child;
- (4) The effect of agreements between the parents regarding extra forms of support for the direct benefit of the child;
- (5) The obligation of either parent to provide for subsequent natural children, adopted children, or stepchildren. However, an existing support order may not be modified solely for this reason; or
- (6) The voluntary and unreasonable act of a parent that causes the parent to be unemployed or underemployed, consistent with the provisions of § 25-7-6.26.

Section 4. That § 25-7-6.13 be AMENDED:

25-7-6.13. All orders for support entered and in effect prior to July 1, 2022, may be modified in accordance with this chapter without requiring a showing of a change in circumstances from the entry of the order.

Section 5. That § 25-7-6.14 be AMENDED:

25-7-6.14. If the child resides with the obligor six or more nights in a month pursuant to a custody order, the court may, if deemed appropriate under the circumstances, grant an abatement of not less than thirty-eight percent nor more than sixty-six percent of the basic child support obligation for the nights the child resides with the obligor. It shall be presumed that the parenting time is exercised.

In deciding whether an abatement is appropriate, the court or child support referee shall consider the fixed obligations of the custodial parent that are attributable to the child and to the increased non-duplicated costs of the noncustodial parent that are associated with the child's time with the noncustodial parent. The burden is on the noncustodial parent to demonstrate the increased costs that the noncustodial parent incurs for non-

duplicated fixed expenditures, including routine clothing costs, costs for extra-curricular activities, school supplies, and other similar non-duplicated fixed expenditures.

The order granting the abatement must specify the number of nights that the abatement is allowed and the amount of the abatement. To calculate an abatement, the court or child support referee shall:

- (1) Determine the basic child support calculation, excluding additional costs including health insurance or child care, and annualize the same;
- (2) Divide the annual amount in subdivision (1) by three hundred sixty-five days to calculate the daily child support amount;
- (3) Multiply the daily child support amount in subdivision (2) by the number of overnights the child spends with the noncustodial parent on a monthly basis; and
- (4) Multiply the amount in subdivision (3) by the abatement percentage utilized. The figure must be annualized and subtracted from the monthly child support obligation.

No abatement may exceed the child support cross credit allowed under § 25-7-6.27.

If the noncustodial parent does not exercise the extended parenting time during a particular year, the noncustodial parent is required to repay the abated amount of child support to the custodial parent.

Section 6. That § 25-7-6.16 be AMENDED:

25-7-6.16. The court shall enter an order addressing how the child's health care needs will be met by medical support. The medical support order must include a provision for medical insurance if the insurance is accessible for the child and available to a parent at reasonable cost. Enrollment in public health coverage does not satisfy the medical support obligation if medical insurance is available to one or both of the parents at a reasonable cost and is accessible for the child. Medical insurance is considered accessible if a medical insurance benefit plan is available and provides coverage for the child residing within the geographic area covered by the insurance policy. Medical insurance is considered reasonable in cost if the cost attributable to the child is equal to or less than eight percent of the parent's net income as determined under this chapter, after proportionate medical support credit is applied, and the amount must be specified in the order for support.

The cost of the insurance attributable to the child is the cost of adding the child to existing coverage, the cost of private medical insurance for the child, or the cost

attributable to the child under family coverage. The cost attributable to the child under family coverage is the cost to the parent to obtain family coverage divided by the number of individuals enrolled in the family coverage. The cost so computed must be apportioned between the parents on the basis of income or income imputed as provided in this chapter. If one parent pays the entire amount, that parent shall either be reimbursed by the other parent for that parent's portion of the payment or shall receive a credit against the support obligation, whichever is appropriate. Any additional, reasonable health care costs, including medical, optometric, dental or orthodontic, or counseling costs for each minor child that exceed two hundred fifty dollars in any year and are not covered by insurance, must be apportioned between the parents in proportion to the support obligation of each parent. The parent that has primary physical custody of the child is responsible for the first two hundred fifty dollars of health care costs each calendar year.

Section 7. That § 25-7-6.26 be AMENDED:

25-7-6.26. If a parent in a child support establishment or modification proceeding fails to furnish income or other financial information, the parent is in default. Income not actually earned by a parent may be imputed to the parent pursuant to this section. Except in cases of physical or mental disability or incarceration for one hundred eighty days or more, it is presumed for the purpose of determining child support in an establishment or modification proceeding that a parent is capable of being employed a minimum of one thousand eight hundred twenty hours per year at the state minimum wage, absent evidence to the contrary. Evidence to rebut this presumption may be presented by either parent.

Income may be imputed to a parent when the parent is unemployed, underemployed, fails to produce sufficient proof of income, has an unknown employment status, or is a full-time or part-time student, whose education or retraining will result, within a reasonable time, in an economic benefit to the child for whom the support obligation is determined, unless the actual income is greater.

In all cases where imputed income is appropriate, the amount imputed must be based upon the following:

- (1) The parent's residence;
- (2) The parent's recent work and earnings history;
- (3) The parent's occupational, educational, and professional qualifications;
- (4) Existing job opportunities and associated earning levels in the community or the local trade area;

- (5) The parent's age, literacy, health, criminal record, record of seeking work, and other employment barriers;
- (6) The availability of employers willing to hire the parent; and
- (7) Other relevant background factors.

Income is not imputed to a parent who is physically or mentally disabled to the extent that the parent cannot earn income; who is incarcerated for more than one hundred eighty days; who has made diligent efforts to find and accept suitable work or to return to customary self-employment, to no avail; or when the court makes a finding that other circumstances exist that make the imputation inequitable, in which case the imputed income may only be decreased to the extent required to remove such inequity.

Imputed income may be in addition to actual income and is not required to reflect the same rate of pay as actual income.

Section 8. That chapter 25-7 be amended with a NEW SECTION:

A written finding for the establishment or modification of a child support order that the application of the child support schedule in § 25-7-6.2 would be unjust or inappropriate in a case is sufficient to rebut the presumption in that case. The best interest of the child must be taken into consideration. Findings to rebut application of the child support schedule must state the amount of support that would have been required under the schedule and include a justification of why the order deviates from the schedule.

Section 9. That § 25-4-43 be REPEALED.

An Act to revise certain provisions relating to child support.

I certify that the attached Act originated in the:
House as Bill No. 1279

Received at this Executive Office this ____ day of _____, 2022 at _____ M.

Chief Clerk

By _____ for the Governor

Speaker of the House

The attached Act is hereby approved this _____ day of _____, A.D., 2022

Attest:

Chief Clerk

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

President of the Senate

Attest:

Filed _____, 2022 at _____ o'clock __ M.

Secretary of the Senate

Secretary of State

House Bill No. 1279
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State