

HOUSE BILL 422

D4

1lr1543

By: **Delegate Dumais**

Introduced and read first time: February 4, 2011

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Child Support – Adjusted Actual Income – Multi-Family Adjustment**

3 FOR the purpose of altering the definition of “adjusted actual income” under the child
4 support guidelines; providing for the calculation of a certain allowance required
5 to be deducted from adjusted actual income under the child support guidelines;
6 requiring that the amount of a certain allowance be subtracted from a parent’s
7 actual income before the court determines the amount of a child support award;
8 repealing a factor the court may consider in determining whether the
9 application of the child support guidelines would be unjust or inappropriate in a
10 particular case; and generally relating to child support.

11 BY repealing and reenacting, without amendments,
12 Article – Family Law
13 Section 12–201(a) and (b)
14 Annotated Code of Maryland
15 (2006 Replacement Volume and 2010 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Family Law
18 Section 12–201(c), 12–202(a), and 12–204(a)
19 Annotated Code of Maryland
20 (2006 Replacement Volume and 2010 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article – Family Law**

24 12–201.

25 (a) In this subtitle the following words have the meanings indicated.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) (1) “Actual income” means income from any source.

2 (2) For income from self–employment, rent, royalties, proprietorship of
3 a business, or joint ownership of a partnership or closely held corporation, “actual
4 income” means gross receipts minus ordinary and necessary expenses required to
5 produce income.

6 (3) “Actual income” includes:

7 (i) salaries;

8 (ii) wages;

9 (iii) commissions;

10 (iv) bonuses;

11 (v) dividend income;

12 (vi) pension income;

13 (vii) interest income;

14 (viii) trust income;

15 (ix) annuity income;

16 (x) Social Security benefits;

17 (xi) workers’ compensation benefits;

18 (xii) unemployment insurance benefits;

19 (xiii) disability insurance benefits;

20 (xiv) for the obligor, any third party payment paid to or for a
21 minor child as a result of the obligor’s disability, retirement, or other compensable
22 claim;

23 (xv) alimony or maintenance received; and

24 (xvi) expense reimbursements or in–kind payments received by a
25 parent in the course of employment, self–employment, or operation of a business to the
26 extent the reimbursements or payments reduce the parent’s personal living expenses.

27 (4) Based on the circumstances of the case, the court may consider the
28 following items as actual income:

- 1 (i) severance pay;
- 2 (ii) capital gains;
- 3 (iii) gifts; or
- 4 (iv) prizes.

5 (5) "Actual income" does not include benefits received from
 6 means-tested public assistance programs, including temporary cash assistance,
 7 Supplemental Security Income, food stamps, and transitional emergency, medical, and
 8 housing assistance.

9 (c) (1) "Adjusted actual income" means actual income [minus]:

10 (I) MINUS:

11 [(1)] 1. preexisting reasonable child support obligations actually
 12 paid; [and]

13 [(2)] 2. except as provided in § 12-204(a)(2) of this subtitle, alimony
 14 or maintenance obligations actually paid; AND

15 3. AN ALLOWANCE FOR SUPPORT FOR EACH CHILD
 16 LIVING IN A PARENT'S HOME FOR WHOM THE PARENT OWES A LEGAL DUTY OF
 17 SUPPORT, IF THE CHILD IS NOT SUBJECT TO THE SUPPORT ORDER; AND

18 (II) PLUS:

19 1. TAXES PAID ON A PARENT'S INCOME BY AN
 20 EMPLOYER, EXCLUDING AMOUNTS REQUIRED BY LAW TO BE PAID BY AN
 21 EMPLOYER FOR SOCIAL SECURITY AND MEDICARE; OR

22 2. IF THE INCOME IS NONTAXABLE, THE AMOUNT OF
 23 TAXES THAT WOULD BE PAID ON A PARENT'S INCOME IF THE INCOME WERE
 24 TAXABLE.

25 (2) FOR PURPOSES OF PARAGRAPH (1)(I)3 OF THIS SUBSECTION,
 26 THE AMOUNT OF THE ALLOWANCE SHALL BE CALCULATED IN THE FOLLOWING
 27 MANNER:

28 (I) THE BASIC CHILD SUPPORT OBLIGATION FOR EACH
 29 ADDITIONAL CHILD IN THE PARENT'S HOME SHALL BE DETERMINED IN

1 ACCORDANCE WITH § 12-204 OF THIS SUBTITLE, USING ONLY THE INCOME OF
2 THE PARENT ENTITLED TO THE DEDUCTION; AND

3 (II) THE AMOUNT DETERMINED UNDER ITEM (I) OF THIS
4 PARAGRAPH SHALL BE MULTIPLIED BY 75%.

5 12-202.

6 (a) (1) Subject to the provisions of paragraph (2) of this subsection, in any
7 proceeding to establish or modify child support, whether pendente lite or permanent,
8 the court shall use the child support guidelines set forth in this subtitle.

9 (2) (i) There is a rebuttable presumption that the amount of child
10 support which would result from the application of the child support guidelines set
11 forth in this subtitle is the correct amount of child support to be awarded.

12 (ii) The presumption may be rebutted by evidence that the
13 application of the guidelines would be unjust or inappropriate in a particular case.

14 (iii) In determining whether the application of the guidelines
15 would be unjust or inappropriate in a particular case, the court may consider[:

16 1.] the terms of any existing separation or property
17 settlement agreement or court order, including any provisions for payment of
18 mortgages or marital debts, payment of college education expenses, the terms of any
19 use and possession order or right to occupy the family home under an agreement, any
20 direct payments made for the benefit of the children required by agreement or order,
21 or any other financial considerations set out in an existing separation or property
22 settlement agreement or court order[; and

23 2. the presence in the household of either parent of other
24 children to whom that parent owes a duty of support and the expenses for whom that
25 parent is directly contributing].

26 (iv) [The presumption may not be rebutted solely on the basis of
27 evidence of the presence in the household of either parent of other children to whom
28 that parent owes a duty of support and the expenses for whom that parent is directly
29 contributing.

30 (v)] 1. If the court determines that the application of the
31 guidelines would be unjust or inappropriate in a particular case, the court shall make
32 a written finding or specific finding on the record stating the reasons for departing
33 from the guidelines.

34 2. The court's finding shall state:

1 A. the amount of child support that would have been
2 required under the guidelines;

3 B. how the order varies from the guidelines;

4 C. how the finding serves the best interests of the child;
5 and

6 D. in cases in which items of value are conveyed instead
7 of a portion of the support presumed under the guidelines, the estimated value of the
8 items conveyed.

9 12-204.

10 (a) (1) The basic child support obligation shall be determined in
11 accordance with the schedule of basic child support obligations in subsection (e) of this
12 section. The basic child support obligation shall be divided between the parents in
13 proportion to their adjusted actual incomes.

14 (2) (i) If one or both parents have made a request for alimony or
15 maintenance in the proceeding in which a child support award is sought, the court
16 shall decide the issue and amount of alimony or maintenance before determining the
17 child support obligation under these guidelines.

18 (ii) If the court awards alimony or maintenance, the amount of
19 alimony or maintenance awarded shall be considered actual income for the recipient of
20 the alimony or maintenance and shall be subtracted from the income of the payor of
21 the alimony or maintenance under [§ 12-201(c)(2)] **§ 12-201(C)(1)(I)2** of this subtitle
22 before the court determines the amount of a child support award.

23 **(3) THE AMOUNT OF THE ALLOWANCE FOR THE SUPPORT OF**
24 **ADDITIONAL CHILDREN LIVING IN A PARENT'S HOME DESCRIBED IN §**
25 **12-201(C)(1)(I)3 OF THIS SUBTITLE SHALL BE SUBTRACTED FROM THE**
26 **PARENT'S ACTUAL INCOME BEFORE THE COURT DETERMINES THE AMOUNT OF A**
27 **CHILD SUPPORT AWARD.**

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2011.