

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 13-0058.02 Brita Darling x2241

HOUSE BILL 13-1058

HOUSE SPONSORSHIP

McCann,

SENATE SPONSORSHIP

Kerr,

House Committees
Judiciary

Senate Committees
Judiciary

A BILL FOR AN ACT

101 **CONCERNING GUIDELINES FOR THE DETERMINATION OF SPOUSAL**
102 **MAINTENANCE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill creates a process, including guidelines as to amount and term, for determining an award for spousal maintenance at temporary or permanent orders in proceedings for dissolution of marriage, legal separation, or declaration of invalidity filed on or after January 1, 2014. Key points in the process include:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
March 19, 2013

HOUSE
3rd Reading Unamended
February 26, 2013

HOUSE
Amended 2nd Reading
February 22, 2013

- ! Initial findings of fact concerning each party's gross income, marital property, financial resources, and reasonable need as established during the marriage;
- ! Findings concerning the guideline amount and term of maintenance for marriages of at least 3 years where the parties' annual combined gross income does not exceed \$240,000; and
- ! Factors relating to the appropriate amount and term of maintenance.

The bill maintains the overall threshold standard of need contained in current law that the court must consider before entering a maintenance award.

The bill specifies that the maintenance guidelines as to the amount and term of maintenance do not create a presumption. The court maintains discretion to determine the maintenance award after making the required findings and considering all of the provisions of the law. The court must make written or oral findings in support of its maintenance award or a denial of maintenance.

Maintenance orders will be modified pursuant to the existing modification statute.

For dissolution of marriage, legal separation, or declaration of invalidity actions filed on or after January 1, 2014, maintenance awarded at permanent orders may be suspended, reduced, or modified based upon the cohabitation of the recipient spouse when the payor spouse can show that the recipient spouse has maintained a primary residence with another person as a couple for 6 months after the entry of the initial maintenance order. Maintenance may be reinstated upon the termination of the recipient spouse's cohabitation with another person, but shall not be reinstated beyond the original maintenance term.

The enactment of section 1 of the bill does not constitute a substantial and continuing change of circumstances for purposes of modifying existing maintenance orders.

The bill includes provisions for securing maintenance awards and for a party to waive maintenance, accept a reduced amount of maintenance, and to enter into agreements relating to maintenance.

Additionally, the bill defines "gross income" for purposes of applying the maintenance guidelines and for determining maintenance.

Finally, the bill amends the current statute for modification of maintenance by clarifying when maintenance terminates and by creating a presumption of good faith in favor of the payor spouse once he or she reaches full social security retirement age.

1 **SECTION 1.** In Colorado Revised Statutes, **recreate and**
2 **reenact, with amendments,** 14-10-114 as follows:

3 **14-10-114. Spousal maintenance - guidelines - legislative**
4 **declaration - definitions.** (1) **Legislative declaration.** (a) THE GENERAL
5 ASSEMBLY HEREBY FINDS THAT:

6 (I) THE ECONOMIC LIVES OF SPOUSES ARE FREQUENTLY CLOSELY
7 INTERTWINED IN MARRIAGE AND THAT IT IS OFTEN IMPOSSIBLE TO LATER
8 SEGREGATE THE RESPECTIVE DECISIONS AND CONTRIBUTIONS OF THE
9 SPOUSES; AND

10 (II) CONSEQUENTLY, AWARDED SPOUSAL MAINTENANCE MAY BE
11 APPROPRIATE IF A SPOUSE NEEDS SUPPORT AND THE OTHER SPOUSE HAS
12 THE ABILITY TO PAY SUPPORT.

13 (b) THE GENERAL ASSEMBLY FURTHER FINDS THAT:

14 (I) BECAUSE THE STATUTES PROVIDE LITTLE GUIDANCE TO THE
15 COURT CONCERNING MAINTENANCE AWARDS, THERE HAS BEEN
16 INCONSISTENCY IN THE AMOUNT AND TERM OF MAINTENANCE AWARDED
17 IN DIFFERENT JUDICIAL DISTRICTS ACROSS THE STATE IN CASES THAT
18 INVOLVE SIMILAR FACTUAL CIRCUMSTANCES; AND

19 (II) COURTS AND LITIGANTS WOULD BENEFIT FROM THE
20 ESTABLISHMENT OF A MORE DETAILED STATUTORY FRAMEWORK THAT
21 INCLUDES ADVISORY GUIDELINES TO BE CONSIDERED AS A STARTING POINT
22 FOR THE DETERMINATION OF FAIR AND EQUITABLE MAINTENANCE
23 AWARDS.

24 (c) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT IT IS
25 APPROPRIATE TO CREATE A STATUTORY FRAMEWORK FOR THE
26 DETERMINATION OF MAINTENANCE AWARDS, INCLUDING ADVISORY
27 GUIDELINES FOR THE AMOUNT AND TERM OF MAINTENANCE IN CERTAIN

1 CASES, THAT WILL ASSIST THE COURT AND THE PARTIES IN CRAFTING
2 MAINTENANCE AWARDS THAT ARE FAIR, EQUITABLE, AND MORE
3 CONSISTENT ACROSS JUDICIAL DISTRICTS.

4 (2) AT THE TIME OF PERMANENT ORDERS IN DISSOLUTION OF
5 MARRIAGE, LEGAL SEPARATION, OR DECLARATION OF INVALIDITY
6 PROCEEDINGS, AND UPON THE REQUEST OF EITHER PARTY, THE COURT MAY
7 ORDER THE PAYMENT OF MAINTENANCE FROM ONE SPOUSE TO THE OTHER
8 PURSUANT TO THE PROVISIONS OF THIS SECTION. AN AWARD OF
9 MAINTENANCE SHALL BE IN AN AMOUNT AND FOR A TERM THAT IS FAIR
10 AND EQUITABLE TO BOTH PARTIES AND SHALL BE MADE WITHOUT REGARD
11 TO MARITAL MISCONDUCT.

12 (3) (a) (I) **Determination of maintenance.** WHEN A PARTY HAS
13 REQUESTED MAINTENANCE IN A DISSOLUTION OF MARRIAGE, LEGAL
14 SEPARATION, OR DECLARATION OF INVALIDITY PROCEEDING, PRIOR TO
15 GRANTING OR DENYING AN AWARD OF MAINTENANCE, THE COURT SHALL
16 MAKE INITIAL WRITTEN OR ORAL FINDINGS CONCERNING:

17 (A) THE AMOUNT OF EACH PARTY'S GROSS INCOME;

18 (B) THE MARITAL PROPERTY APPORTIONED TO EACH PARTY;

19 (C) THE FINANCIAL RESOURCES OF EACH PARTY, INCLUDING BUT
20 NOT LIMITED TO THE ACTUAL OR POTENTIAL INCOME FROM SEPARATE OR
21 MARITAL PROPERTY; AND

22 (D) REASONABLE FINANCIAL NEED AS ESTABLISHED DURING THE
23 MARRIAGE.

24 (II) AFTER MAKING THE INITIAL FINDINGS DESCRIBED IN
25 SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), THE COURT SHALL DETERMINE
26 THE AMOUNT AND TERM OF THE MAINTENANCE AWARD, IF ANY, THAT IS
27 FAIR AND EQUITABLE TO BOTH PARTIES AFTER CONSIDERING:

1 (A) THE GUIDELINE AMOUNT AND TERM OF MAINTENANCE SET
2 FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (3), IF APPLICABLE, BASED
3 UPON THE DURATION OF THE MARRIAGE AND THE COMBINED GROSS
4 INCOMES OF THE PARTIES;

5 (B) THE FACTORS RELATING TO THE AMOUNT AND TERM OF
6 MAINTENANCE SET FORTH IN PARAGRAPH (c) OF THIS SUBSECTION (3); AND

7 (C) WHETHER THE PARTY SEEKING MAINTENANCE HAS MET THE
8 REQUIREMENT FOR A MAINTENANCE AWARD PURSUANT TO PARAGRAPH (d)
9 OF THIS SUBSECTION (3).

10 (b) **Guideline amount and term of maintenance - combined**
11 **gross income of up to two hundred forty thousand dollars and**
12 **duration of marriage of at least three years.** IF THE DURATION OF THE
13 PARTIES' MARRIAGE IS AT LEAST THREE YEARS AND THE PARTIES'
14 COMBINED, ANNUAL ADJUSTED GROSS INCOME DOES NOT EXCEED THE
15 GREATER OF TWO HUNDRED FORTY THOUSAND DOLLARS OR THE
16 UPPERMOST LIMITS OF THE SCHEDULE OF BASIC CHILD SUPPORT
17 OBLIGATIONS SET FORTH IN SECTION 14-10-115, THE COURT SHALL MAKE
18 ADDITIONAL ORAL OR WRITTEN FINDINGS CONCERNING THE DURATION OF
19 THE MARRIAGE IN WHOLE MONTHS AND THE GUIDELINE AMOUNT AND
20 TERM OF MAINTENANCE, CALCULATED AS FOLLOWS:

21 (I) **Guideline maintenance amount.** THE AMOUNT OF
22 MAINTENANCE UNDER THE GUIDELINES IS EQUAL TO FORTY PERCENT OF
23 THE HIGHER INCOME PARTY'S MONTHLY ADJUSTED GROSS INCOME LESS
24 FIFTY PERCENT OF THE LOWER INCOME PARTY'S MONTHLY ADJUSTED
25 GROSS INCOME; EXCEPT THAT, WHEN ADDED TO THE GROSS INCOME OF THE
26 RECIPIENT, SHALL NOT RESULT IN THE RECIPIENT RECEIVING IN EXCESS OF
27 FORTY PERCENT OF THE PARTIES' COMBINED MONTHLY ADJUSTED GROSS

1 INCOME.

2 (II) (A) THE TERM OF MAINTENANCE UNDER THE GUIDELINES,
3 CALCULATED IN WHOLE MONTHS, FOR MARRIAGES OF AT LEAST THREE
4 YEARS BUT NOT MORE THAN TWENTY YEARS, IS SET FORTH IN THE TABLE
5 CONTAINED IN SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (II).
6 WHEN THE DURATION OF THE PARTIES' MARRIAGE EXCEEDS TWENTY
7 YEARS, THE COURT MAY AWARD MAINTENANCE FOR A SPECIFIED TERM OF
8 YEARS OR FOR AN INDEFINITE TERM, BUT THE COURT SHALL NOT SPECIFY
9 A MAINTENANCE TERM THAT IS LESS THAN THE MAINTENANCE TERM
10 UNDER THE GUIDELINES FOR A TWENTY-YEAR MARRIAGE WITHOUT
11 MAKING SPECIFIC FINDINGS THAT SUPPORT A REDUCED TERM OF
12 MAINTENANCE.

13 (B) **Table of guideline maintenance term (in whole months)**

14	MONTHS OF	PERCENTAGE	GUIDELINE TERM
15	MARRIAGE		OF MAINTENANCE
16	36	31.00%	11
17	37	31.17%	12
18	38	31.33%	12
19	39	31.50%	12
20	40	31.67%	13
21	41	31.83%	13
22	42	32.00%	13
23	43	32.17%	14
24	44	32.33%	14
25	45	32.50%	15
26	46	32.67%	15
27	47	32.83%	15

1	48	33.00%	16
2	49	33.17%	16
3	50	33.33%	17
4	51	33.50%	17
5	52	33.67%	18
6	53	33.83%	18
7	54	34.00%	18
8	55	34.17%	19
9	56	34.33%	19
10	57	34.50%	20
11	58	34.67%	20
12	59	34.83%	21
13	60	35.00%	21
14	61	35.17%	21
15	62	35.33%	22
16	63	35.50%	22
17	64	35.67%	23
18	65	35.83%	23
19	66	36.00%	24
20	67	36.17%	24
21	68	36.33%	25
22	69	36.50%	25
23	70	36.67%	26
24	71	36.83%	26
25	72	37.00%	27
26	73	37.17%	27
27	74	37.33%	28

1	75	37.50%	28
2	76	37.67%	29
3	77	37.83%	29
4	78	38.00%	30
5	79	38.17%	30
6	80	38.33%	31
7	81	38.50%	31
8	82	38.67%	32
9	83	38.83%	32
10	84	39.00%	33
11	85	39.17%	33
12	86	39.33%	34
13	87	39.50%	34
14	88	39.67%	35
15	89	39.83%	35
16	90	40.00%	36
17	91	40.17%	37
18	92	40.33%	37
19	93	40.50%	38
20	94	40.67%	38
21	95	40.83%	39
22	96	41.00%	39
23	97	41.17%	40
24	98	41.33%	41
25	99	41.50%	41
26	100	41.67%	42
27	101	41.83%	42

1	102	42.00%	43
2	103	42.17%	43
3	104	42.33%	44
4	105	42.50%	45
5	106	42.67%	45
6	107	42.83%	46
7	108	43.00%	46
8	109	43.17%	47
9	110	43.33%	48
10	111	43.50%	48
11	112	43.67%	49
12	113	43.83%	50
13	114	44.00%	50
14	115	44.17%	51
15	116	44.33%	51
16	117	44.50%	52
17	118	44.67%	53
18	119	44.83%	53
19	120	45.00%	54
20	121	45.17%	55
21	122	45.33%	55
22	123	45.50%	56
23	124	45.67%	57
24	125	45.83%	57
25	126	46.00%	58
26	127	46.17%	59
27	128	46.33%	59

1	129	46.50%	60
2	130	46.67%	61
3	131	46.83%	61
4	132	47.00%	62
5	133	47.17%	63
6	134	47.33%	63
7	135	47.50%	64
8	136	47.67%	65
9	137	47.83%	66
10	138	48.00%	66
11	139	48.17%	67
12	140	48.33%	68
13	141	48.50%	68
14	142	48.67%	69
15	143	48.83%	70
16	144	49.00%	71
17	145	49.17%	71
18	146	49.33%	72
19	147	49.50%	73
20	148	49.67%	74
21	149	49.83%	74
22	150	50.00%	75
23	151	50.00%	76
24	152	50.00%	76
25	153	50.00%	77
26	154	50.00%	77
27	155	50.00%	78

1	156	50.00%	78
2	157	50.00%	79
3	158	50.00%	79
4	159	50.00%	80
5	160	50.00%	80
6	161	50.00%	81
7	162	50.00%	81
8	163	50.00%	82
9	164	50.00%	82
10	165	50.00%	83
11	166	50.00%	83
12	167	50.00%	84
13	168	50.00%	84
14	169	50.00%	85
15	170	50.00%	85
16	171	50.00%	86
17	172	50.00%	86
18	173	50.00%	87
19	174	50.00%	87
20	175	50.00%	88
21	176	50.00%	88
22	177	50.00%	89
23	178	50.00%	89
24	179	50.00%	90
25	180	50.00%	90
26	181	50.00%	91
27	182	50.00%	91

1	183	50.00%	92
2	184	50.00%	92
3	185	50.00%	93
4	186	50.00%	93
5	187	50.00%	94
6	188	50.00%	94
7	189	50.00%	95
8	190	50.00%	95
9	191	50.00%	96
10	192	50.00%	96
11	193	50.00%	97
12	194	50.00%	97
13	195	50.00%	98
14	196	50.00%	98
15	197	50.00%	99
16	198	50.00%	99
17	199	50.00%	100
18	200	50.00%	100
19	201	50.00%	101
20	202	50.00%	101
21	203	50.00%	102
22	204	50.00%	102
23	205	50.00%	103
24	206	50.00%	103
25	207	50.00%	104
26	208	50.00%	104
27	209	50.00%	105

1	210	50.00%	105
2	211	50.00%	106
3	212	50.00%	106
4	213	50.00%	107
5	214	50.00%	107
6	215	50.00%	108
7	216	50.00%	108
8	217	50.00%	109
9	218	50.00%	109
10	219	50.00%	110
11	220	50.00%	110
12	221	50.00%	111
13	222	50.00%	111
14	223	50.00%	112
15	224	50.00%	112
16	225	50.00%	113
17	226	50.00%	113
18	227	50.00%	114
19	228	50.00%	114
20	229	50.00%	115
21	230	50.00%	115
22	231	50.00%	116
23	232	50.00%	116
24	233	50.00%	117
25	234	50.00%	117
26	235	50.00%	118
27	236	50.00%	118

1	237	50.00%	119
2	238	50.00%	119
3	239	50.00%	120
4	240	50.00%	120
5			

6 **(c) Factors affecting the amount and term of maintenance.** IN
7 ANY PROCEEDING FOR MAINTENANCE, THE COURT SHALL CONSIDER ALL
8 RELEVANT FACTORS, INCLUDING BUT NOT LIMITED TO:

9 (I) THE FINANCIAL RESOURCES OF THE RECIPIENT SPOUSE,
10 INCLUDING THE ACTUAL OR POTENTIAL INCOME FROM SEPARATE OR
11 MARITAL PROPERTY OR ANY OTHER SOURCE AND THE ABILITY OF THE
12 RECIPIENT SPOUSE TO MEET HIS OR HER NEEDS INDEPENDENTLY;

13 (II) THE FINANCIAL RESOURCES OF THE PAYOR SPOUSE, INCLUDING
14 THE ACTUAL OR POTENTIAL INCOME FROM SEPARATE OR MARITAL
15 PROPERTY OR ANY OTHER SOURCE AND THE ABILITY OF THE PAYOR SPOUSE
16 TO MEET HIS OR HER REASONABLE NEEDS WHILE PAYING MAINTENANCE;

17 (III) THE LIFESTYLE DURING THE MARRIAGE;

18 (IV) THE DISTRIBUTION OF MARITAL PROPERTY, INCLUDING
19 WHETHER ADDITIONAL MARITAL PROPERTY MAY BE AWARDED TO REDUCE
20 OR ALLEVIATE THE NEED FOR MAINTENANCE;

21 (V) BOTH PARTIES' INCOME, EMPLOYMENT, AND EMPLOYABILITY,
22 OBTAINABLE THROUGH REASONABLE DILIGENCE AND ADDITIONAL
23 TRAINING OR EDUCATION, IF NECESSARY, AND ANY NECESSARY
24 REDUCTION IN EMPLOYMENT DUE TO THE NEEDS OF AN UNEMANCIPATED
25 CHILD OF THE MARRIAGE OR THE CIRCUMSTANCES OF THE PARTIES;

26 (VI) WHETHER ONE PARTY HAS HISTORICALLY EARNED HIGHER OR
27 LOWER INCOME THAN THE INCOME REFLECTED AT THE TIME OF

1 PERMANENT ORDERS AND THE DURATION AND CONSISTENCY OF INCOME
2 FROM OVERTIME OR SECONDARY EMPLOYMENT;

3 (VII) THE DURATION OF THE MARRIAGE;

4 (VIII) THE AMOUNT OF TEMPORARY MAINTENANCE AND THE
5 NUMBER OF MONTHS THAT TEMPORARY MAINTENANCE WAS PAID TO THE
6 RECIPIENT SPOUSE;

7 (IX) THE AGE AND HEALTH OF THE PARTIES, INCLUDING
8 CONSIDERATION OF SIGNIFICANT HEALTH CARE NEEDS OR UNINSURED OR
9 UNREIMBURSED HEALTH CARE EXPENSES;

10 (X) SIGNIFICANT ECONOMIC OR NONECONOMIC CONTRIBUTION TO
11 THE MARRIAGE OR TO THE ECONOMIC, EDUCATIONAL, OR OCCUPATIONAL
12 ADVANCEMENT OF A PARTY, INCLUDING BUT NOT LIMITED TO COMPLETING
13 AN EDUCATION OR JOB TRAINING, PAYMENT BY ONE SPOUSE OF THE OTHER
14 SPOUSE'S SEPARATE DEBTS, OR ENHANCEMENT OF THE OTHER SPOUSE'S
15 PERSONAL OR REAL PROPERTY;

16 (XI) WHETHER THE CIRCUMSTANCES OF THE PARTIES AT THE TIME
17 OF PERMANENT ORDERS WARRANT THE AWARD OF A NOMINAL AMOUNT OF
18 MAINTENANCE IN ORDER TO PRESERVE A CLAIM OF MAINTENANCE IN THE
19 FUTURE; AND

20 (XII) ANY OTHER FACTOR THAT THE COURT DEEMS RELEVANT.

21 (d) AFTER CONSIDERING THE PROVISIONS OF THIS SECTION AND
22 MAKING THE REQUIRED FINDINGS OF FACT, THE COURT SHALL AWARD
23 MAINTENANCE ONLY IF IT FINDS THAT THE SPOUSE SEEKING MAINTENANCE
24 LACKS SUFFICIENT PROPERTY, INCLUDING MARITAL PROPERTY
25 APPORTIONED TO HIM OR HER, TO PROVIDE FOR HIS OR HER REASONABLE
26 NEEDS AND IS UNABLE TO SUPPORT HIMSELF OR HERSELF THROUGH
27 APPROPRIATE EMPLOYMENT OR IS THE CUSTODIAN OF A CHILD WHOSE

1 CONDITION OR CIRCUMSTANCES MAKE IT INAPPROPRIATE FOR THE SPOUSE
2 TO BE REQUIRED TO SEEK EMPLOYMENT OUTSIDE THE HOME.

3 (e) THE MAINTENANCE GUIDELINES SET FORTH IN PARAGRAPH (b)
4 OF THIS SUBSECTION (3) DO NOT CREATE A PRESUMPTIVE AMOUNT OR
5 TERM OF MAINTENANCE. THE COURT HAS DISCRETION TO DETERMINE THE
6 AWARD OF MAINTENANCE THAT IS FAIR AND EQUITABLE TO BOTH PARTIES
7 BASED UPON THE TOTALITY OF THE CIRCUMSTANCES. THE COURT SHALL
8 MAKE SPECIFIC WRITTEN OR ORAL FINDINGS IN SUPPORT OF THE AMOUNT
9 AND TERM OF MAINTENANCE AWARDED PURSUANT TO THIS SECTION OR AN
10 ORDER DENYING MAINTENANCE.

11 (f) THE COURT MAY AWARD ADDITIONAL MARITAL PROPERTY TO
12 THE RECIPIENT SPOUSE OR OTHERWISE ADJUST THE DISTRIBUTION OF
13 MARITAL PROPERTY OR DEBT TO ALLEVIATE THE NEED FOR MAINTENANCE
14 OR TO REDUCE THE AMOUNT OR TERM OF MAINTENANCE AWARDED.

15 (g) THE COURT MAY RESERVE JURISDICTION TO ESTABLISH,
16 REVIEW, OR MODIFY AN AWARD OF MAINTENANCE AT A LATER DATE
17 PURSUANT TO THE PROVISIONS OF THIS SECTION BY SETTING FORTH:

18 (I) THE REASONS FOR RESERVING JURISDICTION;

19 (II) THE ASCERTAINABLE FUTURE EVENT THAT FORMS THE BASIS
20 FOR RESERVING JURISDICTION; AND

21 (III) A REASONABLY SPECIFIC TIME WITHIN WHICH MAINTENANCE
22 MAY BE CONSIDERED PURSUANT TO THIS SECTION.

23 (h) THE COURT MAY AWARD MAINTENANCE IN SHORT-TERM
24 MARRIAGES, INCLUDING MARRIAGES OF LESS THAN THREE YEARS IN
25 DURATION, WHEN, GIVEN THE CIRCUMSTANCES OF THE PARTIES, THE
26 DISTRIBUTION OF MARITAL PROPERTY IS INSUFFICIENT TO ACHIEVE AN
27 EQUITABLE RESULT. IN DETERMINING THE AWARD OF MAINTENANCE, THE

1 COURT MAY CONSIDER THE MAINTENANCE GUIDELINES AND THE RELEVANT
2 FACTORS AFFECTING THE AMOUNT AND TERM OF MAINTENANCE SET FORTH
3 IN THIS SUBSECTION (3). THE COURT SHALL MAKE WRITTEN OR ORAL
4 FINDINGS PURSUANT TO PARAGRAPH (e) OF THIS SUBSECTION (3).

5 (i) NOTHING IN THIS SECTION PROHIBITS AN AWARD OF
6 MAINTENANCE IN GROSS.

7 (4) **Temporary maintenance.** (a) (I) IN EVERY PROCEEDING FOR
8 DISSOLUTION OF MARRIAGE, LEGAL SEPARATION, OR DECLARATION OF
9 INVALIDITY WHERE TEMPORARY MAINTENANCE IS REQUESTED BY A PARTY,
10 THE COURT MAY AWARD A MONTHLY AMOUNT OF TEMPORARY
11 MAINTENANCE PURSUANT TO THE PROVISIONS OF SUBSECTION (3) OF THIS
12 SECTION THAT ARE RELEVANT TO A DETERMINATION OF TEMPORARY
13 MAINTENANCE.

14 (II) THE GUIDELINE TERM OF MAINTENANCE SET FORTH IN
15 SUBPARAGRAPH (II) OF PARAGRAPH (b) OF SUBSECTION (3) OF THIS
16 SECTION DOES NOT APPLY TO TEMPORARY MAINTENANCE ORDERS. THE
17 COURT SHALL DETERMINE THE TERM FOR PAYMENT OF TEMPORARY
18 MAINTENANCE.

19 (III) IN ADDITION TO THE RELEVANT FACTORS SET FORTH IN
20 PARAGRAPH (c) OF SUBSECTION (3) OF THIS SECTION, THE COURT SHALL
21 CONSIDER ANY ADDITIONAL FACTORS SPECIFIC TO THE DETERMINATION OF
22 TEMPORARY MAINTENANCE, INCLUDING THE PAYMENT OF FAMILY
23 EXPENSES AND DEBTS.

24 (b) AFTER DETERMINING THE AMOUNT OF TEMPORARY
25 MAINTENANCE PURSUANT TO THIS SUBSECTION (4) AND THE AMOUNT OF
26 TEMPORARY CHILD SUPPORT PURSUANT TO SECTION 14-10-115, THE
27 COURT SHALL CONSIDER THE RESPECTIVE FINANCIAL RESOURCES OF EACH

1 PARTY AND DETERMINE THE TEMPORARY PAYMENT OF MARITAL DEBT AND
2 THE TEMPORARY ALLOCATION OF MARITAL PROPERTY.

3 (c) A DETERMINATION OF TEMPORARY MAINTENANCE DOES NOT
4 PREJUDICE THE RIGHTS OF EITHER PARTY AT PERMANENT ORDERS.

5 (5) **Modification or termination of maintenance.** (a) EXCEPT
6 UPON WRITTEN AGREEMENT OF THE PARTIES, AN AWARD OF MAINTENANCE
7 ENTERED PURSUANT TO THIS SECTION MAY BE MODIFIED OR TERMINATED
8 PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (5) AND THE
9 PROVISIONS OF SECTION 14-10-122. THE COURT MAY CONSIDER THE
10 GUIDELINE AMOUNT AND TERM OF MAINTENANCE AND THE STATUTORY
11 FACTORS SET FORTH IN SUBSECTION (3) OF THIS SECTION ONLY IN A
12 MODIFICATION OR TERMINATION PROCEEDING CONCERNING A
13 MAINTENANCE AWARD ENTERED ON OR AFTER JANUARY 1, 2014.

14 _____ _____ (b) THE ENACTMENT OF THIS SECTION DOES NOT
15 CONSTITUTE A SUBSTANTIAL AND CONTINUING CHANGE OF CIRCUMSTANCE
16 FOR PURPOSES OF MODIFYING MAINTENANCE ORDERS ENTERED BEFORE
17 JANUARY 1, 2014.

18 (6) **Security for the payment of maintenance.** (a) THE COURT
19 MAY REQUIRE THE PAYOR SPOUSE TO PROVIDE REASONABLE SECURITY FOR
20 THE PAYMENT OF MAINTENANCE IN THE EVENT OF THE PAYOR SPOUSE'S
21 DEATH PRIOR TO THE END OF THE MAINTENANCE TERM.

22 (b) REASONABLE SECURITY MAY INCLUDE, BUT NEED NOT BE
23 LIMITED TO, MAINTENANCE OF LIFE INSURANCE FOR THE BENEFIT OF THE
24 RECIPIENT SPOUSE. IN ENTERING AN ORDER TO MAINTAIN LIFE INSURANCE,
25 THE COURT SHALL CONSIDER:

26 (I) THE AGE AND INSURABILITY OF THE PAYOR SPOUSE;

27 (II) THE COST OF THE LIFE INSURANCE;

- 1 (III) THE AMOUNT AND TERM OF THE MAINTENANCE;
- 2 (IV) WHETHER THE PARTIES CARRIED LIFE INSURANCE DURING THE
- 3 MARRIAGE;
- 4 (V) PREVAILING INTEREST RATES AT THE TIME OF THE ORDER; AND
- 5 (VI) OTHER OBLIGATIONS OF THE PAYOR SPOUSE.

6 (c) ORDERS TO MAINTAIN SECURITY MAY BE MODIFIED OR
7 TERMINATED PURSUANT TO SECTION 14-10-122.

8 (7) **Maintenance agreements - waiver - unrepresented parties.**

9 (a) EITHER OR BOTH OF THE PARTIES MAY AGREE IN WRITING OR ORALLY
10 IN COURT TO WAIVE MAINTENANCE CONSISTENT WITH THE PROVISIONS OF
11 SECTION 14-10-112. THE PARTIES MAY ALSO AGREE TO WAIVE
12 MAINTENANCE IN A MARITAL AGREEMENT CONSISTENT WITH THE
13 PROVISIONS OF THE "COLORADO MARITAL AGREEMENT ACT", CREATED
14 IN PART 3 OF ARTICLE 2 OF THIS TITLE. THE ENFORCEABILITY OF
15 MAINTENANCE PROVISIONS IN A MARITAL AGREEMENT IS DETERMINED
16 PURSUANT TO THE PROVISIONS OF SECTION 14-2-307.

17 (b) IN ANY PROCEEDING THAT FALLS WITHIN THE MAINTENANCE
18 GUIDELINES SET FORTH IN SUBSECTION (3) OF THIS SECTION, AT THE TIME
19 OF EITHER TEMPORARY ORDERS OR PERMANENT ORDERS, IF EITHER PARTY
20 IS NOT REPRESENTED BY AN ATTORNEY, THE COURT SHALL NOT APPROVE
21 AN AGREEMENT WAIVING MAINTENANCE OR AGREEING TO AN AMOUNT OR
22 TERM OF MAINTENANCE THAT DOES NOT FOLLOW THE MAINTENANCE
23 GUIDELINES UNLESS THE UNREPRESENTED PARTY HAS INDICATED THAT HE
24 OR SHE IS AWARE OF THE MAINTENANCE GUIDELINES PURSUANT TO THIS
25 SECTION.

26 (8) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT
27 OTHERWISE REQUIRES:

1 (a) (I) "ADJUSTED GROSS INCOME" MEANS GROSS INCOME AS
2 DEFINED IN PARAGRAPH (c) OF THIS SUBSECTION (8), LESS PREEXISTING
3 COURT-ORDERED CHILD SUPPORT OBLIGATIONS ACTUALLY PAID BY A
4 PARTY, PREEXISTING COURT-ORDERED ALIMONY OR MAINTENANCE
5 OBLIGATIONS ACTUALLY PAID BY A PARTY, AND THE ADJUSTMENT TO A
6 PARTY'S INCOME AS DETERMINED PURSUANT TO SECTION 14-10-115 (6) (b)
7 (I), FOR ANY CHILDREN WHO ARE NOT CHILDREN OF THE MARRIAGE FOR
8 WHOM THE PARTY HAS A LEGAL RESPONSIBILITY TO SUPPORT.

9 (II) FOR PURPOSES OF THIS PARAGRAPH (a), "INCOME" MEANS THE
10 ACTUAL GROSS INCOME OF A PARTY, IF EMPLOYED TO FULL CAPACITY, OR
11 POTENTIAL INCOME, IF UNEMPLOYED OR UNDEREMPLOYED.

12 (b) "DURATION OF MARRIAGE" MEANS THE NUMBER OF WHOLE
13 MONTHS, BEGINNING FROM THE FIRST DAY OF THE MONTH FOLLOWING THE
14 DATE OF THE PARTIES' MARRIAGE UNTIL THE DATE OF DECREE OR THE
15 DATE OF THE HEARING ON DISPOSITION OF PROPERTY IF SUCH HEARING
16 PRECEDES THE DATE OF THE DECREE.

17 (c) (I) "GROSS INCOME" MEANS INCOME FROM ANY SOURCE AND
18 INCLUDES, BUT IS NOT LIMITED TO:

19 (A) INCOME FROM SALARIES;

20 (B) WAGES, INCLUDING TIPS DECLARED BY THE INDIVIDUAL FOR
21 PURPOSES OF REPORTING TO THE FEDERAL INTERNAL REVENUE SERVICE OR
22 TIPS IMPUTED TO BRING THE EMPLOYEE'S GROSS EARNINGS TO THE
23 MINIMUM WAGE FOR THE NUMBER OF HOURS WORKED, WHICHEVER IS
24 GREATER;

25 (C) COMMISSIONS;

26 (D) PAYMENTS RECEIVED AS AN INDEPENDENT CONTRACTOR FOR
27 LABOR OR SERVICES, WHICH PAYMENTS MUST BE CONSIDERED INCOME

1 FROM SELF-EMPLOYMENT;
2 (E) BONUSES;
3 (F) DIVIDENDS;
4 (G) SEVERANCE PAY;
5 (H) PENSION PAYMENTS AND RETIREMENT BENEFITS ACTUALLY
6 RECEIVED THAT HAVE NOT PREVIOUSLY BEEN DIVIDED AS PROPERTY IN
7 THIS ACTION, INCLUDING BUT NOT LIMITED TO THOSE PAID PURSUANT TO
8 ARTICLES 51, 54, 54.5, AND 54.6 OF TITLE 24, C.R.S., AND ARTICLE 30 OF
9 TITLE 31, C.R.S.;

10 (I) ROYALTIES;
11 (J) RENTS;
12 (K) INTEREST;
13 (L) TRUST INCOME AND DISTRIBUTIONS;
14 (M) ANNUITY PAYMENTS;
15 (N) CAPITAL GAINS;
16 (O) ANY MONEYS DRAWN BY A SELF-EMPLOYED INDIVIDUAL FOR
17 PERSONAL USE THAT ARE DEDUCTED AS A BUSINESS EXPENSE, WHICH
18 MONEYS MUST BE CONSIDERED INCOME FROM SELF-EMPLOYMENT;

19 (P) SOCIAL SECURITY BENEFITS, INCLUDING SOCIAL SECURITY
20 BENEFITS ACTUALLY RECEIVED BY A PARTY AS A RESULT OF THE
21 DISABILITY OF THAT PARTY;

22 (Q) WORKERS' COMPENSATION BENEFITS;
23 (R) UNEMPLOYMENT INSURANCE BENEFITS;
24 (S) DISABILITY INSURANCE BENEFITS;
25 (T) FUNDS HELD IN OR PAYABLE FROM ANY HEALTH, ACCIDENT,
26 DISABILITY, OR CASUALTY INSURANCE TO THE EXTENT THAT SUCH
27 INSURANCE REPLACES WAGES OR PROVIDES INCOME IN LIEU OF WAGES;

1 (U) MONETARY GIFTS;

2 (V) MONETARY PRIZES, EXCLUDING LOTTERY WINNINGS NOT
3 REQUIRED BY THE RULES OF THE COLORADO LOTTERY COMMISSION TO BE
4 PAID ONLY AT THE LOTTERY OFFICE;

5 (W) INCOME FROM GENERAL PARTNERSHIPS, LIMITED
6 PARTNERSHIPS, CLOSELY HELD CORPORATIONS, OR LIMITED LIABILITY
7 COMPANIES; EXCEPT THAT, IF A PARTY IS A PASSIVE INVESTOR, HAS A
8 MINORITY INTEREST IN THE COMPANY, AND DOES NOT HAVE ANY
9 MANAGERIAL DUTIES OR INPUT, THEN THE INCOME TO BE RECOGNIZED MAY
10 BE LIMITED TO ACTUAL CASH DISTRIBUTIONS RECEIVED;

11 (X) EXPENSE REIMBURSEMENTS OR IN-KIND PAYMENTS RECEIVED
12 BY A PARTY IN THE COURSE OF EMPLOYMENT, SELF-EMPLOYMENT, OR
13 OPERATION OF A BUSINESS IF THEY ARE SIGNIFICANT AND REDUCE
14 PERSONAL LIVING EXPENSES;

15 (Y) ALIMONY OR MAINTENANCE RECEIVED; AND

16 (Z) OVERTIME PAY, ONLY IF THE OVERTIME IS REQUIRED BY THE
17 EMPLOYER AS A CONDITION OF EMPLOYMENT.

18 (II) "GROSS INCOME" DOES NOT INCLUDE:

19 (A) CHILD SUPPORT PAYMENTS RECEIVED;

20 (B) BENEFITS RECEIVED FROM MEANS-TESTED PUBLIC ASSISTANCE
21 PROGRAMS, INCLUDING BUT NOT LIMITED TO ASSISTANCE PROVIDED
22 UNDER THE COLORADO WORKS PROGRAM, AS DESCRIBED IN PART 7 OF
23 ARTICLE 2 OF TITLE 26, C.R.S., SUPPLEMENTAL SECURITY INCOME, FOOD
24 STAMPS, AND GENERAL ASSISTANCE;

25 (C) INCOME FROM ADDITIONAL JOBS THAT RESULT IN THE
26 EMPLOYMENT OF THE OBLIGOR MORE THAN FORTY HOURS PER WEEK OR
27 MORE THAN WHAT WOULD OTHERWISE BE CONSIDERED TO BE FULL-TIME

1 EMPLOYMENT; AND

2 (D) SOCIAL SECURITY BENEFITS RECEIVED BY A PARENT ON
3 BEHALF OF A MINOR CHILD AS A RESULT OF THE DEATH OR DISABILITY OF
4 A PARENT OR STEPPARENT.

5 (E) EARNINGS OR GAINS ON RETIREMENT ACCOUNTS, INCLUDING
6 INDIVIDUAL RETIREMENT ACCOUNTS; EXCEPT THAT SUCH EARNINGS OR
7 GAINS SHALL NOT BE INCLUDED AS INCOME UNLESS A PARTY TAKES A
8 DISTRIBUTION FROM THE ACCOUNT. IF A PARTY MAY TAKE A DISTRIBUTION
9 FROM THE ACCOUNT WITHOUT BEING SUBJECT TO A FEDERAL TAX PENALTY
10 FOR EARLY DISTRIBUTION AND THE PARTY CHOOSES NOT TO TAKE A
11 DISTRIBUTION, THE COURT MAY CONSIDER THE DISTRIBUTION THAT COULD
12 HAVE BEEN TAKEN IN DETERMINING THE PARTY'S GROSS INCOME.

13 (III) (A) FOR INCOME FROM SELF-EMPLOYMENT, RENT, ROYALTIES,
14 PROPRIETORSHIP OF A BUSINESS, OR JOINT OWNERSHIP OF A PARTNERSHIP
15 OR CLOSELY HELD CORPORATION, "GROSS INCOME" EQUALS GROSS
16 RECEIPTS MINUS ORDINARY AND NECESSARY EXPENSES, AS DEFINED IN
17 SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (III), REQUIRED TO
18 PRODUCE SUCH INCOME.

19 (B) "ORDINARY AND NECESSARY EXPENSES", AS USED IN
20 SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (III), DOES NOT INCLUDE
21 AMOUNTS ALLOWABLE BY THE INTERNAL REVENUE SERVICE FOR THE
22 ACCELERATED COMPONENT OF DEPRECIATION EXPENSES OR INVESTMENT
23 TAX CREDITS OR ANY OTHER BUSINESS EXPENSES DETERMINED BY THE
24 COURT TO BE INAPPROPRIATE FOR DETERMINING GROSS INCOME FOR
25 PURPOSES OF CALCULATING MAINTENANCE.

26 (IV) IF A PARTY IS VOLUNTARILY UNEMPLOYED OR
27 UNDEREMPLOYED, MAINTENANCE SHALL BE CALCULATED BASED ON A

1 DETERMINATION OF POTENTIAL INCOME; EXCEPT THAT A DETERMINATION
2 OF POTENTIAL INCOME SHALL NOT BE MADE FOR A PARTY WHO IS
3 PHYSICALLY OR MENTALLY INCAPACITATED OR IS CARING FOR A CHILD
4 UNDER THE AGE OF THIRTY MONTHS FOR WHOM THE PARTIES OWE A JOINT
5 LEGAL RESPONSIBILITY OR FOR AN INCARCERATED PARENT SENTENCED TO
6 ONE YEAR OR MORE.

7 (V) FOR THE PURPOSES OF THIS SECTION, A PARTY SHALL NOT BE
8 DEEMED "UNDEREMPLOYED" IF:

9 (A) THE EMPLOYMENT IS TEMPORARY AND IS REASONABLY
10 INTENDED TO RESULT IN HIGHER INCOME WITHIN THE FORESEEABLE
11 FUTURE; OR

12 (B) THE EMPLOYMENT IS A GOOD FAITH CAREER CHOICE; OR

13 (C) THE PARTY IS ENROLLED IN AN EDUCATIONAL PROGRAM THAT
14 IS REASONABLY INTENDED TO RESULT IN A DEGREE OR CERTIFICATION
15 WITHIN A REASONABLE PERIOD OF TIME AND THAT WILL RESULT IN A
16 HIGHER INCOME, SO LONG AS THE EDUCATIONAL PROGRAM IS A GOOD
17 FAITH CAREER CHOICE.

18 (9) **Application.** THE PROVISIONS OF THIS SECTION APPLY ONLY TO
19 ACTIONS IN WHICH A PETITION FOR DISSOLUTION, LEGAL SEPARATION, OR
20 DECLARATION OF INVALIDITY, OR AN ACTION FOR THE INITIAL
21 ESTABLISHMENT OF MAINTENANCE IS FILED ON OR AFTER JANUARY 1,
22 2014.

23 **SECTION 2.** In Colorado Revised Statutes, 14-10-122, **amend**
24 (2) as follows:

25 **14-10-122. Modification and termination of provisions for**
26 **maintenance, support, and property disposition - automatic lien.**

27 (2) (a) Unless otherwise agreed in writing or expressly provided in the

1 decree, the obligation to pay future maintenance is terminated upon THE
2 EARLIER OF:

- 3 (I) The death of either party; or
- 4 (II) THE END OF THE MAINTENANCE TERM, UNLESS A MOTION FOR
5 MODIFICATION IS FILED PRIOR TO THE EXPIRATION OF THE TERM;
- 6 (III) The remarriage of the party receiving maintenance; OR
- 7 (IV) A COURT ORDER TERMINATING MAINTENANCE.

8 (b) A PAYOR SPOUSE WHOSE INCOME IS REDUCED OR TERMINATED
9 DUE TO HIS OR HER RETIREMENT AFTER REACHING FULL RETIREMENT AGE
10 IS ENTITLED TO A REBUTTABLE PRESUMPTION THAT THE RETIREMENT IS IN
11 GOOD FAITH.

12 (c) FOR PURPOSES OF THIS SUBSECTION (2), "FULL RETIREMENT
13 AGE" MEANS THE PAYOR'S USUAL OR ORDINARY RETIREMENT AGE WHEN
14 HE OR SHE WOULD BE ELIGIBLE FOR FULL UNITED STATES SOCIAL
15 SECURITY BENEFITS, REGARDLESS OF WHETHER HE OR SHE IS INELIGIBLE
16 FOR SOCIAL SECURITY BENEFITS FOR SOME REASON OTHER THAN
17 ATTAINING FULL RETIREMENT AGE. "FULL RETIREMENT AGE" SHALL NOT
18 MEAN "EARLY RETIREMENT AGE" IF EARLY RETIREMENT IS AVAILABLE TO
19 THE PAYOR SPOUSE, NOR SHALL IT MEAN "MAXIMUM BENEFIT RETIREMENT
20 AGE" IF ADDITIONAL BENEFITS ARE AVAILABLE AS A RESULT OF DELAYED
21 RETIREMENT.

22 **SECTION 3. Act subject to petition - effective date.** This act
23 takes effect January 1, 2014; except that, if a referendum petition is filed
24 pursuant to section 1 (3) of article V of the state constitution against this
25 act or an item, section, or part of this act within the ninety-day period
26 after final adjournment of the general assembly, then the act, item,
27 section, or part will not take effect unless approved by the people at the

1 general election to be held in November 2014 and, in such case, will take
2 effect on the date of the official declaration of the vote thereon by the
3 governor.