

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 § 25-7-6.2 be amended to read as follows:

25-7-6.2. The child support obligation shall be established in accordance with the following schedule subject to such revisions or deviations as may be permitted pursuant to §§ 25-7-6.1 to 25-7-6.18, inclusive. Except as provided in this chapter, the combined monthly net incomes of both parents shall be used in determining the obligation and divided proportionately between the parents based upon their respective net incomes. The noncustodial parent's proportionate share establishes the amount of the child support order.

If the obligation using only the noncustodial parent's monthly net income is an obligation within the emboldened areas of the schedule, that amount shall be compared to the noncustodial parent's proportionate share using both parents' monthly net incomes. The lesser amount establishes the noncustodial parent's child support order.

Monthly Net Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
0-800	100	150	180	200	220	240
850	125	175	205	225	245	265
900	150	200	230	250	270	290
950	175	225	255	275	295	315
1,000	200	250	280	300	320	340
1,050	225	275	305	325	345	365
1,100	250	300	330	350	370	390

1,150	275	325	355	375	395	415
1,200	291	350	380	400	420	440
1,250	302	375	405	425	445	465
1,300	313	400	430	450	470	490
1,350	324	425	455	475	495	515
1,400	336	450	480	500	520	540
1,450	347	475	505	525	545	565
1,500	358	500	530	550	570	590
1,550	369	525	555	575	595	615
1,600	380	550	580	600	620	640
1,650	391	566	605	625	645	665
1,700	402	582	630	650	670	690
1,750	413	598	655	675	695	715
1,800	424	615	680	700	720	740
1,850	436	631	705	725	745	765
1,900	447	647	730	750	770	790
1,950	458	663	755	775	795	815
2,000	469	679	780	800	820	840
2,050	480	695	805	825	845	865
2,100	491	710	830	850	870	890
2,150	499	722	849	875	895	915
2,200	508	734	864	900	920	940
2,250	516	747	879	925	945	965
2,300	524	759	893	950	970	990
2,350	533	771	908	975	995	1,015
2,400	541	784	923	1,000	1,020	1,040
2,450	550	796	937	1,025	1,045	1,065
2,500	558	808	952	1,050	1,070	1,090
2,550	566	820	966	1,068	1,095	1,115

2,600	571	827	973	1,075	1,120	1,140
2,650	576	833	980	1,083	1,145	1,165
2,700	580	840	988	1,091	1,170	1,190
2,750	585	846	995	1,099	1,191	1,215
2,800	590	852	1,002	1,107	1,200	1,240
2,850	594	859	1,009	1,115	1,209	1,265
2,900	599	865	1,016	1,123	1,217	1,290
2,950	604	872	1,023	1,131	1,226	1,312
3,000	609	878	1,030	1,139	1,234	1,321
3,050	615	888	1,041	1,150	1,247	1,334
3,100	622	898	1,053	1,163	1,261	1,349
3,150	630	908	1,064	1,176	1,275	1,364
3,200	637	918	1,076	1,189	1,288	1,379
3,250	644	928	1,087	1,201	1,302	1,393
3,300	651	938	1,099	1,214	1,316	1,408
3,350	658	948	1,110	1,227	1,330	1,423
3,400	665	958	1,122	1,239	1,343	1,438
3,450	673	968	1,133	1,252	1,357	1,452
3,500	679	977	1,144	1,265	1,371	1,467
3,550	686	987	1,155	1,277	1,384	1,481
3,600	692	996	1,166	1,289	1,397	1,495
3,650	698	1,005	1,177	1,301	1,410	1,509
3,700	705	1,014	1,188	1,313	1,423	1,523
3,750	711	1,024	1,199	1,325	1,437	1,537
3,800	717	1,033	1,210	1,337	1,450	1,551
3,850	723	1,042	1,221	1,350	1,463	1,565
3,900	730	1,051	1,232	1,362	1,476	1,579
3,950	737	1,061	1,244	1,374	1,490	1,594
4,000	744	1,072	1,256	1,388	1,505	1,610

4,050	752	1,082	1,268	1,401	1,519	1,626
4,100	759	1,093	1,281	1,415	1,534	1,641
4,150	767	1,104	1,293	1,429	1,549	1,657
4,200	774	1,114	1,305	1,442	1,563	1,673
4,250	782	1,125	1,317	1,456	1,578	1,688
4,300	789	1,136	1,330	1,469	1,593	1,704
4,350	797	1,146	1,342	1,483	1,607	1,720
4,400	804	1,157	1,354	1,496	1,622	1,735
4,450	811	1,166	1,365	1,508	1,635	1,749
4,500	817	1,176	1,376	1,520	1,648	1,763
4,550	824	1,185	1,387	1,533	1,661	1,778
4,600	830	1,194	1,398	1,545	1,674	1,792
4,650	837	1,204	1,409	1,557	1,688	1,806
4,700	843	1,213	1,420	1,569	1,701	1,820
4,750	850	1,222	1,431	1,581	1,714	1,834
4,800	856	1,232	1,442	1,593	1,727	1,848
4,850	863	1,241	1,453	1,606	1,740	1,862
4,900	869	1,251	1,464	1,618	1,754	1,876
4,950	876	1,260	1,475	1,630	1,767	1,891
5,000	882	1,269	1,486	1,642	1,780	1,905
5,050	889	1,279	1,497	1,654	1,793	1,919
5,100	895	1,288	1,508	1,666	1,806	1,932
5,150	900	1,295	1,517	1,676	1,817	1,944
5,200	905	1,303	1,526	1,686	1,828	1,956
5,250	910	1,310	1,535	1,696	1,839	1,968
5,300	915	1,318	1,544	1,706	1,850	1,979
5,350	920	1,325	1,553	1,717	1,861	1,991
5,400	925	1,332	1,563	1,727	1,872	2,003
5,450	930	1,340	1,572	1,737	1,883	2,014

5,500	934	1,347	1,581	1,747	1,894	2,026
5,550	939	1,355	1,590	1,757	1,905	2,038
5,600	944	1,362	1,599	1,767	1,916	2,050
5,650	949	1,370	1,608	1,777	1,927	2,061
5,700	954	1,377	1,618	1,787	1,938	2,073
5,750	959	1,384	1,627	1,797	1,948	2,085
5,800	964	1,392	1,636	1,808	1,959	2,097
5,850	969	1,399	1,645	1,818	1,970	2,108
5,900	974	1,407	1,654	1,828	1,981	2,120
5,950	979	1,414	1,663	1,838	1,992	2,132
6,000	984	1,422	1,672	1,848	2,003	2,143
6,050	990	1,430	1,683	1,860	2,016	2,157
6,100	996	1,440	1,694	1,872	2,029	2,171
6,150	1,002	1,449	1,705	1,884	2,042	2,185
6,200	1,009	1,458	1,716	1,896	2,055	2,199
6,250	1,015	1,468	1,727	1,908	2,068	2,213
6,300	1,022	1,477	1,738	1,920	2,081	2,227
6,350	1,028	1,486	1,749	1,932	2,094	2,241
6,400	1,034	1,495	1,760	1,944	2,108	2,255
6,450	1,041	1,505	1,770	1,956	2,121	2,269
6,500	1,047	1,514	1,781	1,968	2,134	2,283
6,550	1,054	1,523	1,792	1,981	2,147	2,297
6,600	1,060	1,532	1,803	1,993	2,160	2,311
6,650	1,066	1,542	1,814	2,005	2,173	2,325
6,700	1,073	1,551	1,825	2,017	2,186	2,339
6,750	1,079	1,560	1,836	2,029	2,199	2,353
6,800	1,086	1,569	1,847	2,041	2,212	2,367
6,850	1,092	1,579	1,858	2,053	2,226	2,381
6,900	1,098	1,588	1,869	2,065	2,239	2,395

6,950	1,105	1,597	1,880	2,077	2,252	2,410
7,000	1,111	1,607	1,891	2,089	2,265	2,424
7,050	1,118	1,616	1,902	2,102	2,278	2,438
7,100	1,124	1,625	1,913	2,114	2,291	2,452
7,150	1,130	1,634	1,924	2,126	2,304	2,466
7,200	1,137	1,644	1,935	2,138	2,317	2,480
7,250	1,143	1,653	1,946	2,150	2,331	2,494
7,300	1,150	1,662	1,957	2,162	2,344	2,508
7,350	1,156	1,671	1,968	2,174	2,357	2,522
7,400	1,162	1,681	1,979	2,186	2,370	2,536
7,450	1,169	1,690	1,989	2,198	2,383	2,550
7,500	1,175	1,699	2,000	2,210	2,396	2,564
7,550	1,182	1,709	2,011	2,223	2,409	2,578
7,600	1,188	1,718	2,022	2,235	2,422	2,592
7,650	1,194	1,727	2,033	2,247	2,435	2,606
7,700	1,201	1,736	2,044	2,259	2,449	2,620
7,750	1,207	1,746	2,055	2,271	2,462	2,634
7,800	1,214	1,755	2,066	2,283	2,475	2,648
7,850	1,220	1,764	2,077	2,295	2,488	2,662
7,900	1,226	1,772	2,087	2,306	2,500	2,675
7,950	1,231	1,780	2,096	2,316	2,511	2,687
8,000	1,237	1,788	2,105	2,327	2,522	2,699
8,050	1,242	1,796	2,115	2,337	2,533	2,710
8,100	1,247	1,804	2,124	2,347	2,544	2,722
8,150	1,253	1,812	2,133	2,357	2,555	2,734
8,200	1,258	1,820	2,143	2,368	2,567	2,746
8,250	1,263	1,827	2,152	2,378	2,578	2,758
8,300	1,269	1,835	2,161	2,388	2,589	2,770
8,350	1,274	1,843	2,171	2,398	2,600	2,782

8,400	1,280	1,851	2,180	2,409	2,611	2,794
8,450	1,285	1,859	2,189	2,419	2,622	2,806
8,500	1,290	1,867	2,198	2,429	2,633	2,818
8,550	1,296	1,874	2,208	2,440	2,644	2,830
8,600	1,301	1,882	2,217	2,450	2,656	2,842
8,650	1,307	1,890	2,226	2,460	2,667	2,853
8,700	1,312	1,898	2,236	2,470	2,678	2,865
8,750	1,317	1,906	2,245	2,481	2,689	2,877
8,800	1,323	1,914	2,254	2,491	2,700	2,889
8,850	1,328	1,922	2,263	2,501	2,711	2,901
8,900	1,333	1,929	2,273	2,511	2,722	2,913
8,950	1,339	1,937	2,282	2,522	2,734	2,925
9,000	1,344	1,945	2,291	2,532	2,745	2,937
9,050	1,350	1,953	2,301	2,542	2,756	2,949
9,100	1,355	1,961	2,310	2,552	2,767	2,961
9,150	1,360	1,969	2,319	2,563	2,778	2,973
9,200	1,366	1,977	2,329	2,573	2,789	2,984
9,250	1,371	1,984	2,338	2,583	2,800	2,996
9,300	1,377	1,992	2,347	2,594	2,812	3,008
9,350	1,382	2,000	2,356	2,604	2,823	3,020
9,400	1,387	2,008	2,366	2,614	2,834	3,032
9,450	1,393	2,016	2,375	2,624	2,845	3,044
9,500	1,398	2,024	2,384	2,635	2,856	3,056
9,550	1,403	2,031	2,394	2,645	2,867	3,068
9,600	1,409	2,039	2,403	2,655	2,878	3,080
9,650	1,414	2,047	2,412	2,665	2,889	3,092
9,700	1,420	2,055	2,422	2,676	2,901	3,104
9,750	1,425	2,063	2,431	2,686	2,912	3,116
9,800	1,430	2,071	2,440	2,696	2,923	3,127

9,850	1,436	2,079	2,449	2,707	2,934	3,139
9,900	1,441	2,086	2,459	2,717	2,945	3,151
9,950	1,447	2,094	2,468	2,727	2,956	3,163
10,000	1,452	2,102	2,477	2,737	2,967	3,175

The share of the custodial parent is presumed to be spent directly for the benefit of the child.

Section 2. That § 25-7-6.14 be amended to read as follows:

25-7-6.14. As used in this section, basic visitation means a parenting plan whereby one parent has physical custody and the other parent has visitation with the child of the parties. In a basic visitation situation, unless the parties otherwise agree and the agreement is approved by the court, the court may, if deemed appropriate under the circumstances, order an abatement of not less than thirty- eight percent nor more than sixty-six percent of the child support if:

- (1) A child spends ten or more days in a month with the obligor; and
- (2) The days of visitation and the abatement amount are specified in the court order.

The court shall allow the abatement to the obligor in the month in which the visitation is exercised, unless otherwise ordered. The abatement shall be pro-rated to the days of visitation. It shall be presumed that the visitation is exercised. If the visitation exercised substantially deviates from the visitation ordered, either party may file a petition for modification without showing any other change in circumstances.

As used in this section, shared responsibility means a parenting plan whereby each parent provides a suitable home for the child of the parties, the court order allows the child to spend at least one hundred twenty days in a calendar year in each home, and the parents share the duties, responsibilities, and expenses of parenting. In a shared responsibility situation, unless the parties otherwise agree and the agreement is approved by the court, the court may, if deemed appropriate under the circumstances, order a shared responsibility cross credit. The cross credit shall be calculated

by multiplying the combined child support obligation using both parents' monthly net incomes by 1.5 to arrive at a shared custody child support obligation. The shared custody child support obligation shall be apportioned to each parent according to his or her net income. A child support obligation is computed for each parent by multiplying that parent's portion of the shared custody child support obligation by the percentage of time the child spends with the other parent. The respective child support obligations are offset, with the parent owing more child support paying the difference between the two amounts. It shall be presumed that the shared responsibility parenting plan is exercised. If the parenting plan exercised substantially deviates from the parenting plan ordered, either party may file a petition for modification without showing any other change in circumstances.

The court shall consider each case individually before granting either the basic visitation or shared responsibility adjustment to insure that the adjustment does not place an undue hardship on the custodial parent or have a substantial negative effect on the child's standard of living.

Section 3. That § 25-7-6.7 be amended to read as follows:

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

- (1) Income taxes withheld figured on the basis of two dependent exemptions for a single taxpayer paid monthly rather than actual amount withheld;
- (2) Estimated income taxes payable, prorated monthly;
- (3) FICA taxes withheld from wages or salary;
- (4) Retirement fund amounts withheld or paid directly to an IRS qualified retirement plan, in a reasonable amount;
- (5) Actual business expenses of an employee, incurred for the benefit of his employer, not reimbursed;
- (6) Payments made on other support and maintenance orders.

Section 4. That chapter 25-7 be amended by adding thereto a NEW SECTION to read as follows:

If, at any time, unpaid child support arrearages exist, the court may order the support obligor to pay towards the arrearages such sums as are ordered by the court, in addition to any other remedies of the support obligee.

Section 5. That § 25-7-6.3 be amended to read as follows:

25-7-6.3. The monthly net income of each parent shall be determined by the parent's gross income less allowable deductions, as set forth herein. The monthly gross income of each parent includes amounts received from the following sources:

- (1) Compensation paid to an employee for personal services, whether salary, wages, commissions, bonus, or otherwise designated;
- (2) Self-employment income including gain, profit, or loss from a business, farm, or profession;
- (3) Periodic payments from pensions or retirement programs, including social security or veteran's benefits, disability payments or insurance contracts;
- (4) Interest, dividends, rentals, royalties, or other gain derived from investment of capital assets;
- (5) Gain or loss from the sale, trade, or conversion of capital assets;
- (6) Unemployment insurance benefits; and
- (7) Worker's compensation benefits;
- (8) Benefits in lieu of compensation including military pay allowances.

If the income of the parents is derived from seasonal employment, or received in payments other than regular, recurring payments, such income shall be annualized to determine a monthly average income.

Section 6. That § 25-5-18.1 be amended to read as follows:

25-5-18.1. The parents of any child are under a legal duty to support their child in accordance

with the provisions of § 25-7-6.1, until the child attains the age of eighteen, or until the child attains the age of nineteen if the child is a full-time student in a secondary school. If it is determined by the court that the child support obligation survives the death of the parent, the amount due may be modified, revoked, or commuted to a lump sum payment by the court, taking into consideration all factors deemed relevant, including the financial resources of the child and the other parent and the needs of the decedent's family.

Section 7. That § 25-7-6.10 be amended to read as follows:

25-7-6.10. Deviation from the schedule in § 25-7-6.2 shall 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 which would make application of the schedule inequitable;
- (3) The federal income tax consequences arising from claiming the child as a dependent;
- (4) Any special needs of the child;
- (5) For agreements entered into prior to July 1, 1986, if it is established by clear and convincing evidence, that debts or property were exchanged for child support and it appears equitable to continue such arrangement;
- (6) The effect of agreements between the parents regarding extra forms of support for the direct benefit of the child;
- (7) The obligation of either parent to provide for subsequent natural children or stepchildren. However, an existing support order may not be modified solely for this reason; or
- (8) The voluntary act of either parent which reduces that parent's income.

Section 8. That § 25-7-6.13 be amended to read as follows:

25-7-6.13. All orders for support entered and in effect prior to July 1, 2001, may be modified in accordance with this chapter without requiring a showing of a change in circumstances from the entry of the order.

An Act to revise certain provisions relating to child support.

I certify that the attached Act originated in the

HOUSE as Bill No. 1032

Chief Clerk

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1032
File No. _____
Chapter No. _____

Received at this Executive Office this ____ day of _____,

20__ at _____ M.

By _____
for the Governor

The attached Act is hereby approved this _____ day of _____, A.D., 20__

Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State