

Regular Session, 2009

HOUSE BILL NO. 600

BY REPRESENTATIVE JOHNSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

FAMILY LAW: Provides for the determination of income for support purposes

1 AN ACT

2 To amend and reenact R.S. 9:315.2(A) and to enact R.S. 9:315.1.1 and 326, relative to
3 support; to provide for the determination of income for the payment of child and
4 spousal support obligations; to provide for redirected income; to provide for deferred
5 income; to provide for the admissibility of evidence of income; to provide for
6 required documentation; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 9:315.2(A) is hereby amended and reenacted and R.S. 9:315.1.1 and
9 326 are hereby enacted to read as follows:

10 §315.1.1. Determination of income; evidence

11 A. When a party alleges that income is being concealed or underreported, the
12 court shall admit evidence relevant to establishing the actual income of the party,
13 including but not limited to the following:

14 (1) Redirected income. (a) Loans to the obligor by a business in which the
15 obligor has an ownership interest and whether the loans will be repaid. There shall
16 be a presumption that such loans are income of the obligor which may be rebutted
17 if the obligor demonstrates there is a history of similar past loans being made and
18 repaid in a timely manner with market interest rates, or the current loan is at market
19 interest rates and is fully paid in accordance with a commercially reasonable time.

1 The amount by which a commercially reasonable repayment amount exceeds the
2 amount actually repaid shall be treated as income.

3 (b) Payment made by the obligor or by a business in which the obligor has
4 an ownership interest to a person related by blood or affinity in the form of wages
5 or salary. There shall be a presumption that such payments are income of the
6 obligor, which may be rebutted if the obligor demonstrates there is a history of
7 payments preceding the separation of the parties or the filing of an action to establish
8 or modify child support or that the payments are fair market value for services
9 actually performed.

10 (2) Deferred income. Recent reductions in distributions of income, such as
11 salary, bonuses, dividends, or management fees as a percentage of gross income of
12 the business of the obligor. There shall be a presumption that past distributions of
13 income will continue, which may be rebutted if the obligor demonstrates business
14 conditions justify a reduction in distributions.

15 (3) Standard of living and assets. The standard of living and assets of the
16 obligor both prior and subsequent to the establishment of a child support order, to
17 establish the actual income if the amount claimed is inconsistent with his lifestyle.

18 B. When the income of an obligor cannot be sufficiently established,
19 evidence of wage and earnings surveys distributed by government agencies for the
20 purpose of attributing income to the obligor is admissible.

21 §315.2. Calculation of basic child support obligation

22 A. Each party shall provide to the court a verified income statement showing
23 gross income and adjusted gross income, together with documentation of current and
24 past earnings. Spouses of the parties shall also provide any relevant information with
25 regard to the source of payments of household expenses upon request of the court or
26 the opposing party, provided such request is filed in a reasonable time prior to the
27 hearing. Failure to timely file the request shall not be grounds for a continuance.
28 Suitable documentation of current earnings shall include but not be limited to pay
29 ~~stubs, stubs or employer statements, or receipts and expenses if self-employed.~~ The

1 documentation shall include a copy of the party's most recent federal tax return. A
 2 copy of the statement and documentation shall be provided to the other party. When
 3 an obligor has an ownership interest in a business, suitable documentation shall
 4 include but is not limited to the last three personal and business state and federal
 5 income tax returns, including all attachments and all schedules, specifically K-1 and
 6 W-2 forms, 1099 forms, and amendments, the most recent profit and loss statements,
 7 balance sheets, financial statements, quarterly sales tax reports, personal and
 8 business bank account statements, receipts, and expenses. A copy of all statements
 9 and documentation shall be provided to the other party.

10 * * *

11 §326. Determination of income for spousal support; evidence

12 A. Each party shall provide to the court a verified income statement showing
 13 gross income and adjusted gross income, together with documentation of current and
 14 past earnings. Suitable documentation of current earnings shall include but not be
 15 limited to pay stubs or employer statements. The documentation shall include a copy
 16 of the party's most recent federal tax return. A copy of the statement and
 17 documentation shall be provided to the other party. When an obligor has an
 18 ownership interest in a business, suitable documentation shall include but is not
 19 limited to the last three personal and business state and federal income tax returns,
 20 including all attachments and all schedules, specifically K-1 and W-2 forms, 1099
 21 forms, and amendments, the most recent profit and loss statements, balance sheets,
 22 financial statements, quarterly sales tax reports, personal and business bank account
 23 statements, receipts, and expenses. A copy of all statements and documentation shall
 24 be provided to the other party.

25 B. When a party alleges that income is being concealed or underreported, the
 26 court shall admit evidence relevant to establishing the actual income of the party,
 27 including but not limited to all of the following:

28 (1) Redirected income. (a) Loans to the obligor by a business in which the
 29 obligor has an ownership interest and whether the loans will be repaid. There shall

1 be a presumption that the loans are income of the obligor which may be rebutted if
2 the obligor demonstrates there is a history of similar past loans being made and
3 repaid in a timely manner with market interest rates, or the current loan is at market
4 interest rates and is fully paid in accordance with a commercially reasonable time.
5 The amount by which a commercially reasonable repayment amount exceeds the
6 amount actually repaid shall be treated as income.

7 (b) Payment made by the obligor or by a business in which the obligor has
8 an ownership interest to a person related by blood or affinity in the form of wages
9 or salary. There shall be a presumption that the payments are income of the obligor,
10 which may be rebutted if the obligor demonstrates there is a history of payments
11 preceding the separation of the parties or the filing of an action to establish or modify
12 spousal support or that the payments are fair market value for services actually
13 performed.

14 (2) Deferred income. Recent reductions in distributions of income, such as
15 salary, bonuses, dividends, or management fees as a percentage of gross income of
16 the business of the obligor. There shall be a presumption that past distributions of
17 income will continue, which may be rebutted if the obligor demonstrates business
18 conditions justify a reduction in distributions.

19 (3) Standard of living and assets. The current standard of living and assets
20 of the obligor both prior and subsequent to the establishment of a spousal support
21 order, to establish the actual income if the amount claimed is inconsistent with his
22 lifestyle.

23 C. When the income of an obligor cannot be sufficiently established,
24 evidence of wage and earnings surveys distributed by government agencies for the
25 purpose of attributing income to the obligor is admissible.

26 Section 2. The Louisiana State Law Institute is hereby directed to prepare comments
27 to the provisions of this Act.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Johnson

HB No. 600

Abstract: Provides for the determination of income for child or spousal support when the obligor has an ownership interest in a business.

Proposed law provides that when income is concealed or underreported for the purpose of calculating child or spousal support, the court shall admit evidence of redirected income, deferred income, and the standard of living and assets of the obligor.

Proposed law provides that the court may admit as evidence the wage and earnings survey distributed by the government for attributing income to the obligor.

Present law requires the parties in a child support proceeding to submit to the court a verified income statement, including pay stubs and employer statements as suitable documentation.

Proposed law retains present law and additionally provides that when an obligor in a child or spousal support proceeding has an ownership interest in a business, suitable documentation includes such items as income tax returns, K-1 and W-2 forms, 1099 forms, profit and loss statements, balance sheets, financial statements, tax reports, and bank account statements.

(Amends R.S. 9:315.2(A); Adds R.S. 9:315.1.1 and 326)