

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 may 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. The court
16 may consider that the loans are income of the obligor unless the obligor demonstrates
17 there is a history of similar past loans being made and repaid in a timely manner with
18 market interest rates, or the current loan is at market interest rates and is fully paid
19 in accordance with a commercially reasonable time. The amount by which a

1 commercially reasonable repayment amount exceeds the amount actually repaid shall
2 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. The court may consider the payments income of the obligor, if there is no
6 history of payments preceding the separation of the parties or the filing of an action
7 to establish or modify child support or it is shown that the payments are not fair
8 market value for services actually performed.

9 (2) Deferred income. Recent reductions in distributions of income, such as
10 salary, bonuses, dividends, or management fees as a percentage of gross income of
11 the business of the obligor. The court may find that past distributions of income will
12 continue, unless the obligor demonstrates business conditions justify a reduction in
13 distributions.

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

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

20 §315.2. Calculation of basic child support obligation

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

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

9 * * *

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

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

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

27 (1) Redirected income. (a) Loans to the obligor by a business in which the
 28 obligor has an ownership interest and whether the loans will be repaid. The court
 29 may consider that the loans are income of the obligor unless the obligor

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

6 (b) Payment made by the obligor or by a business in which the obligor has
7 an ownership interest to a person related by blood or affinity in the form of wages
8 or salary. The court may consider the payments income of the obligor, if there is no
9 history of payments preceding the separation of the parties or the filing of an action
10 to establish or modify spousal support or it is shown that the payments are not fair
11 market value for services actually performed.

12 (2) Deferred income. Recent reductions in distributions of income, such as
13 salary, bonuses, dividends, or management fees as a percentage of gross income of
14 the business of the obligor. The court may find that past distributions of income will
15 continue, unless the obligor demonstrates business conditions justify a reduction in
16 distributions.

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

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

24 Section 2. The Louisiana State Law Institute is hereby directed to prepare comments
25 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 may consider 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, Schedule 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)

Summary of Amendments Adopted by House

House Floor Amendments to the engrossed bill.

1. Changes proposed law from mandatory to permissive.
2. Deletes the presumptions regarding certain types of income.