

HOUSE BILL ANALYSIS

ESB 5086

Title: An act relating to prohibiting mandatory child support for postsecondary education of adult children.

Brief Description: Prohibiting mandatory child support for postsecondary education of adult children.

Sponsors: Senators Roach, McDonald, Schow, Swecker, Johnson, McCaslin, Oke and Long.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Trudes Hutcheson (786-7384).

Background: A court generally establishes a child support order using Washington's child support schedule. Unless the parents agree in writing or the court decree orders otherwise, provisions for child support are terminated by emancipation of the child. Emancipation generally occurs when the child reaches majority, or earlier, if some event terminates the child's economic dependence. In Washington, the age of majority is 18.

Washington's current child support schedule gives the court the discretion to order parents to pay postsecondary educational support. This is probably a codification of early case law. In 1978, the state supreme court held that judges have the discretion to order a parent to pay postsecondary educational support when the child is over the age of 18 but remains dependent. *Childers v. Childers*, 89 Wn.2d 592, 601 (1978).

The child support schedule lists the following factors the court must consider when determining whether postsecondary educational support should be ordered and how long it should continue: (1) the age of the child; (2) the child's needs; (3) the expectations of the parties for their children when the parents were together; (4) the child's prospects, desires, aptitudes, abilities, or disabilities; (5) the nature of the education sought; (6) the parents' level of education, standard of living, and current and future resources; and (7) the amount and type of support the child would have been afforded had the parents stayed together.

The court cannot order the payment of postsecondary educational expenses beyond the child's 23rd birthday, except for exceptional circumstances, such as mental, physical, or emotional disabilities. The child has the obligation to enroll in an accredited academic or vocational school, actively pursue a course of study, be in good academic

standing, and make all academic records and grades available to both parents. Payments should be made directly to the educational institution if feasible or to the child.

Except under certain circumstances, a parent may seek to modify an existing child support order only upon a showing of a substantial change of circumstances.

Summary of Bill: The Legislature declares that the determination of the amount, if any, of postsecondary educational support to be provided is primarily the responsibility of the parents regardless of their marital status, and should be the subject of judicial consideration only when extraordinary circumstances exist.

A court may not order a parent to pay postsecondary educational support of a child over the age of 18 unless the court finds there are exceptional medical circumstances such as the existence of the child's developmental or chronic functional disability, in which case the court may enter an order for a reasonable amount after considering the parties' circumstances. The existing postsecondary educational support provisions in the child support schedule are repealed.

A parent currently paying postsecondary educational support under a court order may petition the court to modify the order to reflect the repeal without showing a substantial change in circumstances. However, if the child is currently enrolled in a postsecondary educational institution, the modification order shall be delayed one year or until the enrollment ends, whichever occurs first, unless the parent makes a showing of a substantial change of circumstances.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Office of Program Research