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ENGROSSED SENATE BILL 5086

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State of Washington

55th Legislature

1997 Regular Session

By Senators Roach, McDonald, Schow, Swecker, Johnson, McCaslin, Oke and Long

Read first time 01/14/97. Referred to Committee on Law & Justice.

1 AN ACT Relating to prohibiting mandatory child support for  
2 postsecondary education of adult children; amending RCW 26.09.170,  
3 26.09.225, 26.18.210, 26.19.035, and 26.19.075; adding a new section to  
4 chapter 26.09 RCW; creating a new section; and repealing RCW 26.19.090.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature recognizes the need and  
7 value of postsecondary educational support for children of both married  
8 and divorced families. The legislature encourages all parents to  
9 assist their children, both financially and emotionally, with their  
10 postsecondary education. The legislature declares determining the  
11 amount of, if any, postsecondary support to be provided adult children  
12 is primarily the responsibility of the parents regardless of their  
13 marital status and should be the subject of judicial consideration only  
14 when extraordinary circumstances exist. Consequently, the legislature  
15 intends to modify the ruling in *Childers v. Childers*, 84 Wn. 2d 592  
16 (1978) and cases which follow the *Childers* precedent.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 26.09 RCW  
18 to read as follows:

1 A court shall not order either or both parents to pay support for  
2 postsecondary education of a child over eighteen years of age unless  
3 the court finds there are exceptional medical circumstances such as the  
4 existence of the child's developmental or chronic functional  
5 disability, in which case the court may enter an order for such amount  
6 and under such circumstances as are reasonable, considering the  
7 circumstances of all parties.

8 **Sec. 3.** RCW 26.09.170 and 1992 c 229 s 2 are each amended to read  
9 as follows:

10 (1) Except as otherwise provided in subsection (7) of RCW  
11 26.09.070, the provisions of any decree respecting maintenance or  
12 support may be modified: (a) Only as to installments accruing  
13 subsequent to the petition for modification or motion for adjustment  
14 except motions to compel court-ordered adjustments, which shall be  
15 effective as of the first date specified in the decree for implementing  
16 the adjustment; and, (b) except as otherwise provided in subsections  
17 (4), (5), (8), and (9) of this section, only upon a showing of a  
18 substantial change of circumstances. The provisions as to property  
19 disposition may not be revoked or modified, unless the court finds the  
20 existence of conditions that justify the reopening of a judgment under  
21 the laws of this state.

22 (2) Unless otherwise agreed in writing or expressly provided in the  
23 decree the obligation to pay future maintenance is terminated upon the  
24 death of either party or the remarriage of the party receiving  
25 maintenance.

26 (3) Unless otherwise agreed in writing or expressly provided in the  
27 decree, provisions for the support of a child are terminated by  
28 emancipation of the child or by the death of the parent obligated to  
29 support the child.

30 (4) An order of child support may be modified one year or more  
31 after it has been entered without showing a substantial change of  
32 circumstances:

33 (a) If the order in practice works a severe economic hardship on  
34 either party or the child;

35 (b) If a party requests an adjustment in an order for child support  
36 which was based on guidelines which determined the amount of support  
37 according to the child's age, and the child is no longer in the age  
38 category on which the current support amount was based;

1 (c) If a child is still in high school, upon a finding that there  
2 is a need to extend support beyond the eighteenth birthday to complete  
3 high school; or

4 (d) To add an automatic adjustment of support provision consistent  
5 with RCW 26.09.100.

6 (5) An order or decree entered prior to June 7, 1984, may be  
7 modified without showing a substantial change of circumstances if the  
8 requested modification is to:

9 (a) Require health insurance coverage for a child named therein; or

10 (b) Modify an existing order for health insurance coverage.

11 (6) An obligor's voluntary unemployment or voluntary  
12 underemployment, by itself, is not a substantial change of  
13 circumstances.

14 (7) The department of social and health services may file an action  
15 to modify an order of child support if public assistance money is being  
16 paid to or for the benefit of the child and the child support order is  
17 twenty-five percent or more below the appropriate child support amount  
18 set forth in the standard calculation as defined in RCW 26.19.011 and  
19 reasons for the deviation are not set forth in the findings of fact or  
20 order. The determination of twenty-five percent or more shall be based  
21 on the current income of the parties and the department shall not be  
22 required to show a substantial change of circumstances if the reasons  
23 for the deviations were not set forth in the findings of fact or order.

24 (8)(a) All child support decrees may be adjusted once every twenty-  
25 four months based upon changes in the income of the parents without a  
26 showing of substantially changed circumstances. Either party may  
27 initiate the adjustment by filing a motion and child support  
28 worksheets.

29 (b) A party may petition for modification in cases of substantially  
30 changed circumstances under subsection (1) of this section at any time.  
31 However, if relief is granted under subsection (1) of this section,  
32 twenty-four months must pass before a motion for an adjustment under  
33 (a) of this subsection may be filed.

34 (c) If, pursuant to (a) of this subsection or subsection (9) of  
35 this section, the court adjusts or modifies a child support obligation  
36 by more than thirty percent and the change would cause significant  
37 hardship, the court may implement the change in two equal increments,  
38 one at the time of the entry of the order and the second six months  
39 from the entry of the order. Twenty-four months must pass following

1 the second change before a motion for an adjustment under (a) of this  
2 subsection may be filed.

3 (d) A parent who is receiving transfer payments who receives a wage  
4 or salary increase may not bring a modification action pursuant to  
5 subsection (1) of this section alleging that increase constitutes a  
6 substantial change of circumstances.

7 (9) An order of child support may be adjusted twenty-four months  
8 from the date of the entry of the decree or the last adjustment or  
9 modification, whichever is later, based upon changes in the economic  
10 table or standards in chapter 26.19 RCW.

11 (10) A party may petition for modification of an existing order to  
12 pay postsecondary child support based on the repeal of RCW 26.19.090  
13 under chapter . . . , Laws of 1997 (this act) without showing a  
14 substantial change of circumstances. In the case of an existing order  
15 where the son or daughter is currently enrolled in an institution  
16 providing postsecondary education, the modification order shall be  
17 delayed one year or until the enrollment ends, whichever occurs first,  
18 unless the petitioner makes a showing of a substantial change of  
19 circumstances.

20 **Sec. 4.** RCW 26.09.225 and 1991 sp.s. c 28 s 3 are each amended to  
21 read as follows:

22 (1) Each parent shall have full and equal access to the education  
23 and health care records of the child absent a court order to the  
24 contrary. Neither parent may veto the access requested by the other  
25 parent.

26 (2) Educational records are limited to academic, attendance, and  
27 disciplinary records of public and private schools in all grades  
28 kindergarten through twelve and any form of alternative school for all  
29 periods for which child support is paid or the child is the dependent  
30 in fact of the parent requesting access to the records.

31 (3) Educational records of postsecondary educational institutions  
32 are limited to enrollment and academic records necessary to determine,  
33 establish, or continue support ordered pursuant to RCW 26.19.090 before  
34 the effective date of this section.

35 **Sec. 5.** RCW 26.18.210 and 1990 1st ex.s. c 2 s 22 are each amended  
36 to read as follows:

1 (1) The administrator for the courts shall develop a child support  
2 order summary report form to provide for the reporting of summary  
3 information in every case in which a child support order is entered or  
4 modified either judicially or administratively. The administrator for  
5 the courts shall attempt to the greatest extent possible to make the  
6 form simple and understandable by the parties. The form shall indicate  
7 the following:

8 (a) The county in which the order was entered and the cause number;

9 (b) Whether it was a judicial or administrative order;

10 (c) Whether the order is an original order or from a modification;

11 (d) The number of children of the parties and the children's ages;

12 (e) The combined monthly net income of parties;

13 (f) The monthly net income of the father as determined by the  
14 court;

15 (g) The monthly net income of the mother as determined by the  
16 court;

17 (h) The basic child support obligation for each child as determined  
18 from the economic table;

19 (i) Whether or not the court deviated from the child support for  
20 each child;

21 (j) The reason or reasons stated by the court for the deviation;

22 (k) The amount of child support after the deviation;

23 (l) Any amount awarded for day care;

24 (m) Any other extraordinary amounts in the order;

25 (n) ~~((Any amount ordered for postsecondary education;~~

26 ~~(+o)))~~ The total amount of support ordered;

27 ~~((+p)))~~ (o) In the case of a modification, the amount of support in  
28 the previous order;

29 ~~((+q)))~~ (p) If the change in support was in excess of thirty  
30 percent, whether the change was phased in;

31 ~~((+r)))~~ (q) The amount of the transfer payment ordered;

32 ~~((+s)))~~ (r) Which parent was ordered to make the transfer payment;

33 and

34 ~~((+t)))~~ (s) The date of the entry of the order.

35 (2) The administrator for the courts shall make the form available  
36 to the parties.

37 **Sec. 6.** RCW 26.19.035 and 1992 c 229 s 6 are each amended to read  
38 as follows:

1 (1) **Application of the child support schedule.** The child support  
2 schedule shall be applied:

3 (a) In each county of the state;

4 (b) In judicial and administrative proceedings under this title or  
5 Title 13 or 74 RCW;

6 (c) In all proceedings in which child support is determined or  
7 modified;

8 (d) In setting temporary and permanent support;

9 (e) In automatic modification provisions or decrees entered  
10 pursuant to RCW 26.09.100; and

11 (f) In addition to proceedings in which child support is determined  
12 for minors, to adult children who are dependent on their parents and  
13 for whom support is ordered pursuant to RCW 26.09.100. A court shall  
14 not order either or both parents to pay support for postsecondary  
15 education of a child over eighteen years of age.

16 The provisions of this chapter for determining child support and  
17 reasons for deviation from the standard calculation shall be applied in  
18 the same manner by the court, presiding officers, and reviewing  
19 officers.

20 The child support schedule shall not be utilized to order  
21 postsecondary educational support of a child.

22 (2) **Written findings of fact supported by the evidence.** An order  
23 for child support shall be supported by written findings of fact upon  
24 which the support determination is based and shall include reasons for  
25 any deviation from the standard calculation and reasons for denial of  
26 a party's request for deviation from the standard calculation. The  
27 court shall enter written findings of fact in all cases whether or not  
28 the court: (a) Sets the support at the presumptive amount, for  
29 combined monthly net incomes below five thousand dollars; (b) sets the  
30 support at an advisory amount, for combined monthly net incomes between  
31 five thousand and seven thousand dollars; or (c) deviates from the  
32 presumptive or advisory amounts.

33 (3) **Completion of worksheets.** Worksheets in the form developed by  
34 the office of the administrator for the courts shall be completed under  
35 penalty of perjury and filed in every proceeding in which child support  
36 is determined. The court shall not accept incomplete worksheets or  
37 worksheets that vary from the worksheets developed by the office of the  
38 administrator for the courts.

1       (4) **Court review of the worksheets and order.** The court shall  
2 review the worksheets and the order setting support for the adequacy of  
3 the reasons set forth for any deviation or denial of any request for  
4 deviation and for the adequacy of the amount of support ordered. Each  
5 order shall state the amount of child support calculated using the  
6 standard calculation and the amount of child support actually ordered.  
7 Worksheets shall be attached to the decree or order or if filed  
8 separately shall be initialed or signed by the judge and filed with the  
9 order.

10       **Sec. 7.** RCW 26.19.075 and 1993 c 358 s 5 are each amended to read  
11 as follows:

12       (1) Reasons for deviation from the standard calculation include but  
13 are not limited to the following:

14       (a) **Sources of income and tax planning.** The court may deviate from  
15 the standard calculation after consideration of the following:

16       (i) Income of a new spouse if the parent who is married to the new  
17 spouse is asking for a deviation based on any other reason. Income of  
18 a new spouse is not, by itself, a sufficient reason for deviation;

19       (ii) Income of other adults in the household if the parent who is  
20 living with the other adult is asking for a deviation based on any  
21 other reason. Income of the other adults in the household is not, by  
22 itself, a sufficient reason for deviation;

23       (iii) Child support actually received from other relationships;

24       (iv) Gifts;

25       (v) Prizes;

26       (vi) Possession of wealth, including but not limited to savings,  
27 investments, real estate holdings and business interests, vehicles,  
28 boats, pensions, bank accounts, insurance plans, or other assets;

29       (vii) Extraordinary income of a child; or

30       (viii) Tax planning considerations. A deviation for tax planning  
31 may be granted only if the child would not receive a lesser economic  
32 benefit due to the tax planning.

33       (b) **Nonrecurring income.** The court may deviate from the standard  
34 calculation based on a finding that a particular source of income  
35 included in the calculation of the basic support obligation is not a  
36 recurring source of income. Depending on the circumstances,  
37 nonrecurring income may include overtime, contract-related benefits,  
38 bonuses, or income from second jobs. Deviations for nonrecurring

1 income shall be based on a review of the nonrecurring income received  
2 in the previous two calendar years.

3 (c) **Debt and high expenses.** The court may deviate from the  
4 standard calculation after consideration of the following expenses:

5 (i) Extraordinary debt not voluntarily incurred;

6 (ii) A significant disparity in the living costs of the parents due  
7 to conditions beyond their control;

8 (iii) Special needs of disabled children;

9 (iv) Special medical, educational, or psychological needs of the  
10 children. Special educational needs shall not be construed to include  
11 postsecondary education of a child; or

12 (v) Costs incurred or anticipated to be incurred by the parents in  
13 compliance with court-ordered reunification efforts under chapter 13.34  
14 RCW or under a voluntary placement agreement with an agency supervising  
15 the child.

16 (d) **Residential schedule.** The court may deviate from the standard  
17 calculation if the child spends a significant amount of time with the  
18 parent who is obligated to make a support transfer payment. The court  
19 may not deviate on that basis if the deviation will result in  
20 insufficient funds in the household receiving the support to meet the  
21 basic needs of the child or if the child is receiving aid to families  
22 with dependent children. When determining the amount of the deviation,  
23 the court shall consider evidence concerning the increased expenses to  
24 a parent making support transfer payments resulting from the  
25 significant amount of time spent with that parent and shall consider  
26 the decreased expenses, if any, to the party receiving the support  
27 resulting from the significant amount of time the child spends with the  
28 parent making the support transfer payment.

29 (e) **Children from other relationships.** The court may deviate from  
30 the standard calculation when either or both of the parents before the  
31 court have children from other relationships to whom the parent owes a  
32 duty of support.

33 (i) The child support schedule shall be applied to the mother,  
34 father, and children of the family before the court to determine the  
35 presumptive amount of support.

36 (ii) Children from other relationships shall not be counted in the  
37 number of children for purposes of determining the basic support  
38 obligation and the standard calculation.



1 (iii) When considering a deviation from the standard calculation  
2 for children from other relationships, the court may consider only  
3 other children to whom the parent owes a duty of support. The court  
4 may consider court-ordered payments of child support for children from  
5 other relationships only to the extent that the support is actually  
6 paid.

7 (iv) When the court has determined that either or both parents have  
8 children from other relationships, deviations under this section shall  
9 be based on consideration of the total circumstances of both  
10 households. All child support obligations paid, received, and owed for  
11 all children shall be disclosed and considered.

12 (2) All income and resources of the parties before the court, new  
13 spouses, and other adults in the households shall be disclosed and  
14 considered as provided in this section. The presumptive amount of  
15 support shall be determined according to the child support schedule.  
16 Unless specific reasons for deviation are set forth in the written  
17 findings of fact and are supported by the evidence, the court shall  
18 order each parent to pay the amount of support determined by using the  
19 standard calculation.

20 (3) The court shall enter findings that specify reasons for any  
21 deviation or any denial of a party's request for any deviation from the  
22 standard calculation made by the court. The court shall not consider  
23 reasons for deviation until the court determines the standard  
24 calculation for each parent.

25 (4) When reasons exist for deviation, the court shall exercise  
26 discretion in considering the extent to which the factors would affect  
27 the support obligation.

28 (5) Agreement of the parties is not by itself adequate reason for  
29 any deviations from the standard calculation.

30 NEW SECTION. **Sec. 8.** RCW 26.19.090 and 1991 sp.s. c 28 s 7 & 1990  
31 1st ex.s. c 2 s 9 are each repealed.

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