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HOUSE BILL 2890

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State of Washington                      56th Legislature                      2000 Regular Session

By Representatives Talcott, Scott and Esser

Read first time 01/24/2000. Referred to Committee on Judiciary.

1            AN ACT Relating to child support obligations based on overtime or  
2 extraordinary income; amending RCW 26.19.071 and 26.09.170; and  
3 creating a new section.

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

5            NEW SECTION.    **Sec. 1.** The legislature finds and declares that a  
6 parent's first obligation is to his or her child and that the parent's  
7 presence in a child's life is one of the most important ways a parent  
8 can nurture and support a child. The legislature intends to offer some  
9 relief to those parents who are pressured to work extraordinary hours  
10 or second jobs, and as a result have less opportunity to be true  
11 participants in their children's lives.

12            **Sec. 2.** RCW 26.19.071 and 1997 c 59 s 4 are each amended to read  
13 as follows:

14            (1) **Consideration of all income.** All income and resources of each  
15 parent's household shall be disclosed and considered by the court when  
16 the court determines the child support obligation of each parent. Only  
17 the income of the parents of the children whose support is at issue  
18 shall be calculated for purposes of calculating the basic support

1 obligation. Income and resources of any other person shall not be  
2 included in calculating the basic support obligation.

3 (2) **Verification of income.** Tax returns for the preceding two  
4 years and current paystubs shall be provided to verify income and  
5 deductions. Other sufficient verification shall be required for income  
6 and deductions which do not appear on tax returns or paystubs.

7 (3) **Income sources included in gross monthly income.** Except as  
8 specifically excluded in subsection (4) of this section, monthly gross  
9 income shall include income from any source, including:

- 10 (a) Salaries;
- 11 (b) Wages;
- 12 (c) Commissions;
- 13 (d) Deferred compensation;
- 14 (e) (~~overtime~~) Mandatory overtime required as a condition of  
15 employment;
- 16 (f) Contract-related benefits;
- 17 (g) (~~Income from second jobs;~~
- 18 ~~h~~) Dividends;
- 19 (~~i~~) h Interest;
- 20 (~~j~~) i Trust income;
- 21 (~~k~~) j Severance pay;
- 22 (~~l~~) k Annuities;
- 23 (~~m~~) l Capital gains;
- 24 (~~n~~) m Pension retirement benefits;
- 25 (~~o~~) n Workers' compensation;
- 26 (~~p~~) o Unemployment benefits;
- 27 (~~q~~) p Spousal maintenance actually received;
- 28 (~~r~~) q Bonuses;
- 29 (~~s~~) r Social security benefits; and
- 30 (~~t~~) s Disability insurance benefits.

31 (4) **Income sources excluded from gross monthly income.** The  
32 following income and resources shall be disclosed but shall not be  
33 included in gross income:

34 (a) Income of a new spouse or income of other adults in the  
35 household;

36 (b) Voluntary overtime not required as a condition of employment.  
37 All overtime of the party is presumed to be mandatory overtime unless  
38 the party proves that the overtime is voluntary and not required as a  
39 condition of employment. The court must consider all evidence,

1 including but not limited to, employment contracts and pay stubs, the  
2 number of hours worked, how the employer classifies the hours worked,  
3 and the standard industry practice. The fact that the party's  
4 employment contract or employment manual does not explicitly require  
5 mandatory overtime for the party's employment position is not by itself  
6 proof that the overtime is voluntary and not required as a condition of  
7 employment. When accompanied by other corroborating evidence, a  
8 written statement from the employer that the disputed overtime is  
9 voluntary is proof that the overtime is voluntary. The court must not  
10 exclude overtime income from the computation of income under subsection  
11 (3) of this section if to do so would result in the inclusion of income  
12 of less than that of a forty-hour work week or a work week constituting  
13 full-time employment for the party's type of employment;

14 (c) Income from a second job or additional jobs if the parent has  
15 at least one full-time job that requires the parent to work a minimum  
16 of a forty-hour work week or a work week that constitutes full-time  
17 employment for the parent's type of employment;

18 (d) Child support received from other relationships;

19 ((+e)) (e) Gifts and prizes;

20 ((+d)) (f) Temporary assistance for needy families;

21 ((+e)) (g) Supplemental security income;

22 ((+f)) (h) General assistance; and

23 ((+g)) (i) Food stamps.

24 Receipt of income and resources from temporary assistance for needy  
25 families, supplemental security income, general assistance, and food  
26 stamps shall not be a reason to deviate from the standard calculation.

27 **(5) Determination of net income.** The following expenses shall be  
28 disclosed and deducted from gross monthly income to calculate net  
29 monthly income:

30 (a) Federal and state income taxes;

31 (b) Federal insurance contributions act deductions;

32 (c) Mandatory pension plan payments;

33 (d) Mandatory union or professional dues;

34 (e) State industrial insurance premiums;

35 (f) Court-ordered spousal maintenance to the extent actually paid;

36 (g) Up to two thousand dollars per year in voluntary pension  
37 payments actually made if the contributions were made for the two tax  
38 years preceding the earlier of the (i) tax year in which the parties

1 separated with intent to live separate and apart or (ii) tax year in  
2 which the parties filed for dissolution; and

3 (h) Normal business expenses and self-employment taxes for self-  
4 employed persons. Justification shall be required for any business  
5 expense deduction about which there is disagreement.

6 Items deducted from gross income under this subsection shall not be  
7 a reason to deviate from the standard calculation.

8 (6) **Imputation of income.** The court shall impute income to a  
9 parent when the parent is voluntarily unemployed or voluntarily  
10 underemployed. The court shall determine whether the parent is  
11 voluntarily underemployed or voluntarily unemployed based upon that  
12 parent's work history, education, health, and age, or any other  
13 relevant factors. A court shall not impute income to a parent who is  
14 gainfully employed on a full-time basis, unless the court finds that  
15 the parent is voluntarily underemployed and finds that the parent is  
16 purposely underemployed to reduce the parent's child support  
17 obligation. Income shall not be imputed for an unemployable parent.  
18 Income shall not be imputed to a parent to the extent the parent is  
19 unemployed or significantly underemployed due to the parent's efforts  
20 to comply with court-ordered reunification efforts under chapter 13.34  
21 RCW or under a voluntary placement agreement with an agency supervising  
22 the child. In the absence of information to the contrary, a parent's  
23 imputed income shall be based on the median income of year-round full-  
24 time workers as derived from the United States bureau of census,  
25 current populations reports, or such replacement report as published by  
26 the bureau of census.

27 **Sec. 3.** RCW 26.09.170 and 1997 c 58 s 910 are each amended to read  
28 as follows:

29 (1) Except as otherwise provided in subsection (7) of RCW  
30 26.09.070, the provisions of any decree respecting maintenance or  
31 support may be modified: (a) Only as to installments accruing  
32 subsequent to the petition for modification or motion for adjustment  
33 except motions to compel court-ordered adjustments, which shall be  
34 effective as of the first date specified in the decree for implementing  
35 the adjustment; and, (b) except as otherwise provided in subsections  
36 (4), (5), (8), and (9) of this section, only upon a showing of a  
37 substantial change of circumstances. The provisions as to property  
38 disposition may not be revoked or modified, unless the court finds the

1 existence of conditions that justify the reopening of a judgment under  
2 the laws of this state.

3 (2) Unless otherwise agreed in writing or expressly provided in the  
4 decree the obligation to pay future maintenance is terminated upon the  
5 death of either party or the remarriage of the party receiving  
6 maintenance.

7 (3) Unless otherwise agreed in writing or expressly provided in the  
8 decree, provisions for the support of a child are terminated by  
9 emancipation of the child or by the death of the parent obligated to  
10 support the child.

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

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

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

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

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

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

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

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

30 (6) An obligor's voluntary unemployment or voluntary  
31 underemployment, by itself, is not a substantial change of  
32 circumstances. It shall not be considered voluntary unemployment or  
33 voluntary underemployment, and it may be considered a substantial  
34 change in circumstances, if an obligor: (a) Has a support obligation  
35 calculated on a work week that is longer than a forty-hour work week or  
36 longer than the work week constituting full-time employment for the  
37 obligor's type of employment; (b) there are subsequent changes to the  
38 obligor's employment or work week resulting in a decrease in salary,  
39 wages, or income; and (c) the decrease is not less than that of a

1 forty-hour work week or the work week constituting full-time employment  
2 for the obligor's type of employment.

3 (7) The department of social and health services may file an action  
4 to modify an order of child support if public assistance money is being  
5 paid to or for the benefit of the child and the child support order is  
6 twenty-five percent or more below the appropriate child support amount  
7 set forth in the standard calculation as defined in RCW 26.19.011 and  
8 reasons for the deviation are not set forth in the findings of fact or  
9 order. The determination of twenty-five percent or more shall be based  
10 on the current income of the parties and the department shall not be  
11 required to show a substantial change of circumstances if the reasons  
12 for the deviations were not set forth in the findings of fact or order.

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

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

23 (c) If, pursuant to (a) of this subsection or subsection (9) of  
24 this section, the court adjusts or modifies a child support obligation  
25 by more than thirty percent and the change would cause significant  
26 hardship, the court may implement the change in two equal increments,  
27 one at the time of the entry of the order and the second six months  
28 from the entry of the order. Twenty-four months must pass following  
29 the second change before a motion for an adjustment under (a) of this  
30 subsection may be filed.

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

35 (e) The department of social and health services may file an action  
36 at any time to modify an order of child support in cases of  
37 substantially changed circumstances if public assistance money is being  
38 paid to or for the benefit of the child. The determination of the  
39 existence of substantially changed circumstances by the department that

1 lead to the filing of an action to modify the order of child support is  
2 not binding upon the court.

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

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