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HOUSE BILL 1969

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State of Washington                      65th Legislature                      2017 Regular Session

By Representative Klippert

Read first time 02/06/17. Referred to Committee on Judiciary.

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, 26.19.035, and 26.19.075; adding a new section to chapter  
4 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.**    (1) The legislature recognizes the need  
7 and value of postsecondary educational support for children of both  
8 married and divorced families. The legislature encourages all parents  
9 to assist their children, both financially and emotionally, with  
10 their postsecondary education. The legislature declares that the  
11 determination of a child's best interest with regard to postsecondary  
12 educational support shall be the sole and exclusive prerogative of  
13 that child's parents and, further, that it is the inalienable right  
14 of parents to structure the kind, amount, and timing of such support,  
15 based upon the parents' singular and superior knowledge of their  
16 child's individuality, in a way that maximizes the child's individual  
17 potential. The legislature hereby expressly disapproves of the ruling  
18 in *Childers v. Childers*, 89 Wn.2d 592 (1978), and cases that have  
19 followed the ruling in *Childers v. Childers*, as contrary to sound  
20 public policy with regard to postsecondary educational support.

1 (2) Therefore, the legislature finds that ordering divorced  
2 parents to financially assist toward postsecondary education is  
3 unduly burdensome and infringes on the right of the divorced parent  
4 to choose the level of assistance they would otherwise provide if  
5 they remained married.

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

8 A court may not order either or both parents to pay support for  
9 postsecondary education of a child over eighteen years of age.

10 **Sec. 3.** RCW 26.09.170 and 2010 c 279 s 1 are each amended to  
11 read as follows:

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

23 (2) Unless otherwise agreed in writing or expressly provided in  
24 the decree the obligation to pay future maintenance is terminated  
25 upon the death of either party or the remarriage of the party  
26 receiving maintenance or registration of a new domestic partnership  
27 of the party receiving maintenance.

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

32 (4) Unless expressly provided by an order of the superior court  
33 or a court of comparable jurisdiction, provisions for the support of  
34 a child are terminated upon the marriage or registration of a  
35 domestic partnership to each other of parties to a paternity order,  
36 or upon the remarriage or registration of a domestic partnership to  
37 each other of parties to a decree of dissolution. The remaining

1 provisions of the order, including provisions establishing paternity,  
2 remain in effect.

3 (5)(a) A party to an order of child support may petition for a  
4 modification based upon a showing of substantially changed  
5 circumstances at any time.

6 (b) An obligor's voluntary unemployment or voluntary  
7 underemployment, by itself, is not a substantial change of  
8 circumstances.

9 (6) An order of child support may be modified one year or more  
10 after it has been entered without a showing of substantially changed  
11 circumstances:

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

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

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

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

23 (7)(a) If twenty-four months have passed from the date of the  
24 entry of the order or the last adjustment or modification, whichever  
25 is later, the order may be adjusted without a showing of  
26 substantially changed circumstances based upon:

27 (i) Changes in the income of the parents; or

28 (ii) Changes in the economic table or standards in chapter 26.19  
29 RCW.

30 (b) Either party may initiate the adjustment by filing a motion  
31 and child support worksheets.

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

39 (8)(a) The department of social and health services may file an  
40 action to modify or adjust an order of child support if public

1 assistance money is being paid to or for the benefit of the child and  
2 the child support order is at least twenty-five percent above or  
3 below the appropriate child support amount set forth in the standard  
4 calculation as defined in RCW 26.19.011 and reasons for the deviation  
5 are not set forth in the findings of fact or order.

6 (b) The department of social and health services may file an  
7 action to modify or adjust an order of child support in a  
8 nonassistance case if:

9 (i) The child support order is at least twenty-five percent above  
10 or below the appropriate child support amount set forth in the  
11 standard calculation as defined in RCW 26.19.011;

12 (ii) The department has determined the case meets the  
13 department's review criteria; and

14 (iii) A party to the order or another state or jurisdiction has  
15 requested a review.

16 (c) The determination of twenty-five percent or more shall be  
17 based on the current income of the parties and the department shall  
18 not be required to show a substantial change of circumstances if the  
19 reasons for the deviations were not set forth in the findings of fact  
20 or order.

21 (9) The department of social and health services may file an  
22 action to modify or adjust an order of child support under  
23 subsections (5) through (7) of this section if:

24 (a) Public assistance money is being paid to or for the benefit  
25 of the child;

26 (b) A party to the order in a nonassistance case has requested a  
27 review; or

28 (c) Another state or jurisdiction has requested a modification of  
29 the order.

30 (10) If testimony other than affidavit is required in any  
31 proceeding under this section, a court of this state shall permit a  
32 party or witness to be deposed or to testify under penalty of perjury  
33 by telephone, audiovisual means, or other electronic means, unless  
34 good cause is shown.

35 (11) After the effective date of this section, a party may  
36 petition for modification of an existing order to pay postsecondary  
37 child support ordered under RCW 26.19.090 without showing a  
38 substantial change of circumstances.

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

3       (1) Each parent shall have full and equal access to the education  
4 and health care records of the child absent a court order to the  
5 contrary. Neither parent may veto the access requested by the other  
6 parent.

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

12       (3) Educational records of postsecondary educational institutions  
13 are limited to enrollment and academic records necessary to  
14 determine, establish, or continue support ordered pursuant to RCW  
15 26.19.090 before the effective date of this section.

16       **Sec. 5.** RCW 26.19.035 and 2005 c 282 s 36 are each amended to  
17 read as follows:

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

20       (a) In each county of the state;

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

23       (c) In all proceedings in which child support is determined or  
24 modified;

25       (d) In setting temporary and permanent support;

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

28       (f)(i) In addition to proceedings in which child support is  
29 determined for minors, to adult children who are dependent on their  
30 parents and for whom support is ordered pursuant to RCW 26.09.100.

31       (ii) A court may not order either or both parents to pay support  
32 for postsecondary education of a child over eighteen years of age.

33       (iii) The provisions of this chapter for determining child  
34 support and reasons for deviation from the standard calculation shall  
35 be applied in the same manner by the court, presiding officers, and  
36 reviewing officers.

37       (iv) The child support schedule may not be utilized to order  
38 postsecondary educational support of a child.

1           (2) **Written findings of fact supported by the evidence.** An order  
2 for child support shall be supported by written findings of fact upon  
3 which the support determination is based and shall include reasons  
4 for any deviation from the standard calculation and reasons for  
5 denial of a party's request for deviation from the standard  
6 calculation. The court shall enter written findings of fact in all  
7 cases whether or not the court: (a) Sets the support at the  
8 presumptive amount, for combined monthly net incomes below five  
9 thousand dollars; (b) sets the support at an advisory amount, for  
10 combined monthly net incomes between five thousand and seven thousand  
11 dollars; or (c) deviates from the presumptive or advisory amounts.

12           (3) **Completion of worksheets.** Worksheets in the form developed by  
13 the administrative office of the courts shall be completed under  
14 penalty of perjury and filed in every proceeding in which child  
15 support is determined. The court shall not accept incomplete  
16 worksheets or worksheets that vary from the worksheets developed by  
17 the administrative office of the courts.

18           (4) **Court review of the worksheets and order.** The court shall  
19 review the worksheets and the order setting support for the adequacy  
20 of the reasons set forth for any deviation or denial of any request  
21 for deviation and for the adequacy of the amount of support ordered.  
22 Each order shall state the amount of child support calculated using  
23 the standard calculation and the amount of child support actually  
24 ordered. Worksheets shall be attached to the decree or order or if  
25 filed separately shall be initialed or signed by the judge and filed  
26 with the order.

27           **Sec. 6.** RCW 26.19.075 and 2009 c 84 s 4 are each amended to read  
28 as follows:

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

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

33           (i) Income of a new spouse or new domestic partner if the parent  
34 who is married to the new spouse or in a partnership with a new  
35 domestic partner is asking for a deviation based on any other reason.  
36 Income of a new spouse or new domestic partner is not, by itself, a  
37 sufficient reason for deviation;

38           (ii) Income of other adults in the household if the parent who is  
39 living with the other adult is asking for a deviation based on any

1 other reason. Income of the other adults in the household is not, by  
2 itself, a sufficient reason for deviation;

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

4 (iv) Gifts;

5 (v) Prizes;

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

9 (vii) Extraordinary income of a child;

10 (viii) Tax planning considerations. A deviation for tax planning  
11 may be granted only if the child would not receive a lesser economic  
12 benefit due to the tax planning; or

13 (ix) Income that has been excluded under RCW 26.19.071(4)((~~h~~))  
14 (i) if the person earning that income asks for a deviation for any  
15 other reason.

16 (b) **Nonrecurring income.** The court may deviate from the standard  
17 calculation based on a finding that a particular source of income  
18 included in the calculation of the basic support obligation is not a  
19 recurring source of income. Depending on the circumstances,  
20 nonrecurring income may include overtime, contract-related benefits,  
21 bonuses, or income from second jobs. Deviations for nonrecurring  
22 income shall be based on a review of the nonrecurring income received  
23 in the previous two calendar years.

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

26 (i) Extraordinary debt not voluntarily incurred;

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

29 (iii) Special needs of disabled children;

30 (iv) Special medical, educational, or psychological needs of the  
31 children. Special educational needs may not be construed to include  
32 postsecondary education of a child; or

33 (v) Costs incurred or anticipated to be incurred by the parents  
34 in compliance with court-ordered reunification efforts under chapter  
35 13.34 RCW or under a voluntary placement agreement with an agency  
36 supervising the child.

37 (d) **Residential schedule.** The court may deviate from the standard  
38 calculation if the child spends a significant amount of time with the  
39 parent who is obligated to make a support transfer payment. The court  
40 may not deviate on that basis if the deviation will result in

1 insufficient funds in the household receiving the support to meet the  
2 basic needs of the child or if the child is receiving temporary  
3 assistance for needy families. When determining the amount of the  
4 deviation, the court shall consider evidence concerning the increased  
5 expenses to a parent making support transfer payments resulting from  
6 the significant amount of time spent with that parent and shall  
7 consider the decreased expenses, if any, to the party receiving the  
8 support resulting from the significant amount of time the child  
9 spends with the parent making the support transfer payment.

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

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

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

20 (iii) When considering a deviation from the standard calculation  
21 for children from other relationships, the court may consider only  
22 other children to whom the parent owes a duty of support. The court  
23 may consider court-ordered payments of child support for children  
24 from other relationships only to the extent that the support is  
25 actually paid.

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

31 (2) All income and resources of the parties before the court, new  
32 spouses or new domestic partners, and other adults in the households  
33 shall be disclosed and considered as provided in this section. The  
34 presumptive amount of support shall be determined according to the  
35 child support schedule. Unless specific reasons for deviation are set  
36 forth in the written findings of fact and are supported by the  
37 evidence, the court shall order each parent to pay the amount of  
38 support determined by using the standard calculation.

39 (3) The court shall enter findings that specify reasons for any  
40 deviation or any denial of a party's request for any deviation from



1 the standard calculation made by the court. The court shall not  
2 consider reasons for deviation until the court determines the  
3 standard calculation for each parent.

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

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

9 NEW SECTION. **Sec. 7.** RCW 26.19.090 (Standards for postsecondary  
10 educational support awards) and 1991 sp.s. c 28 s 7 & 1990 1st ex.s.  
11 c 2 s 9 are each repealed.

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