

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 3016

61st Legislature
2010 Regular Session

Passed by the House March 8, 2010
Yeas 97 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 5, 2010
Yeas 48 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 3016** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 3016

AS AMENDED BY THE SENATE

Passed Legislature - 2010 Regular Session

State of Washington

61st Legislature

2010 Regular Session

By House Judiciary (originally sponsored by Representative Pedersen;
by request of Department of Social and Health Services)

READ FIRST TIME 02/02/10.

1 AN ACT Relating to updating provisions concerning the modification,
2 review, and adjustment of child support orders to improve access to
3 justice and to ensure compliance with federal requirements; and
4 amending RCW 26.09.170, 26.09.175, and 26.09.100.

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

6 **Sec. 1.** RCW 26.09.170 and 2008 c 6 s 1017 are each amended to read
7 as follows:

8 (1) Except as otherwise provided in (~~subsection (7) of~~) RCW
9 26.09.070(7), the provisions of any decree respecting maintenance or
10 support may be modified: (a) Only as to installments accruing
11 subsequent to the petition for modification or motion for adjustment
12 except motions to compel court-ordered adjustments, which shall be
13 effective as of the first date specified in the decree for implementing
14 the adjustment; and, (b) except as otherwise provided in (~~subsections~~
15 ~~(5), (6), (9), and (10) of~~) this section, only upon a showing of a
16 substantial change of circumstances. The provisions as to property
17 disposition may not be revoked or modified, unless the court finds the
18 existence of conditions that justify the reopening of a judgment under
19 the laws of this state.

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

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

10 (4) Unless expressly provided by an order of the superior court or
11 a court of comparable jurisdiction, provisions for the support
12 (~~(provisions of the order)~~) of a child are terminated upon the marriage
13 or registration of a domestic partnership to each other of parties to
14 a paternity order, or upon the remarriage or registration of a domestic
15 partnership to each other of parties to a decree of dissolution. The
16 remaining provisions of the order, including provisions establishing
17 paternity, remain in effect.

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

21 (b) An obligor's voluntary unemployment or voluntary
22 underemployment, by itself, is not a substantial change of
23 circumstances.

24 (6) An order of child support may be modified one year or more
25 after it has been entered without a showing (~~(a substantial change)~~) of
26 substantially changed circumstances:

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

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

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

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

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

- 4 ~~(a) Require health insurance coverage for a child named therein; or~~
5 ~~(b) Modify an existing order for health insurance coverage.~~

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

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

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

14 (ii) Changes in the economic table or standards in chapter 26.19
15 RCW.

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

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

25 (8)(a) The department of social and health services may file an
26 action to modify or adjust an order of child support if public
27 assistance money is being paid to or for the benefit of the child and
28 the child support order is at least twenty-five percent ((or more))
29 above or below the appropriate child support amount set forth in the
30 standard calculation as defined in RCW 26.19.011 and reasons for the
31 deviation are not set forth in the findings of fact or order. ((The
32 determination of twenty five percent or more shall be based on the
33 current income of the parties and the department shall not be required
34 to show a substantial change of circumstances if the reasons for the
35 deviations were not set forth in the findings of fact or order.

36 ~~(9)(a) All child support decrees may be adjusted once every twenty-~~
37 ~~four months based upon changes in the income of the parents without a~~

1 ~~showing of substantially changed circumstances. Either party may~~
2 ~~initiate the adjustment by filing a motion and child support~~
3 ~~worksheets.~~

4 ~~(b) A party may petition for modification in cases of substantially~~
5 ~~changed circumstances under subsection (1) of this section at any time.~~
6 ~~However, if relief is granted under subsection (1) of this section,~~
7 ~~twenty-four months must pass before a motion for an adjustment under~~
8 ~~(a) of this subsection may be filed.~~

9 ~~(c) If, pursuant to (a) of this subsection or subsection (10) of~~
10 ~~this section, the court adjusts or modifies a child support obligation~~
11 ~~by more than thirty percent and the change would cause significant~~
12 ~~hardship, the court may implement the change in two equal increments,~~
13 ~~one at the time of the entry of the order and the second six months~~
14 ~~from the entry of the order. Twenty-four months must pass following~~
15 ~~the second change before a motion for an adjustment under (a) of this~~
16 ~~subsection may be filed.~~

17 ~~(d) A parent who is receiving transfer payments who receives a wage~~
18 ~~or salary increase may not bring a modification action pursuant to~~
19 ~~subsection (1) of this section alleging that increase constitutes a~~
20 ~~substantial change of circumstances.~~

21 ~~(e) The department of social and health services may file an action~~
22 ~~at any time to modify an order of child support in cases of~~
23 ~~substantially changed circumstances if public assistance money is being~~
24 ~~paid to or for the benefit of the child. The determination of the~~
25 ~~existence of substantially changed circumstances by the department that~~
26 ~~lead to the filing of an action to modify the order of child support is~~
27 ~~not binding upon the court.~~

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

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

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

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

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

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

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

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

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

16 (c) Another state or jurisdiction has requested a modification of
17 the order.

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

23 **Sec. 2.** RCW 26.09.175 and 2002 c 199 s 2 are each amended to read
24 as follows:

25 (1) A proceeding for the modification of an order of child support
26 shall commence with the filing of a petition and worksheets. The
27 petition shall be in the form prescribed by the administrator for the
28 courts. There shall be a fee of twenty dollars for the filing of a
29 petition for modification of dissolution.

30 (2)(a) The petitioner shall serve upon the other party the summons,
31 a copy of the petition, and the worksheets in the form prescribed by
32 the administrator for the courts. If the modification proceeding is
33 the first action filed in this state, service shall be made by personal
34 service. If the decree to be modified was entered in this state,
35 service shall be by personal service or by any form of mail requiring
36 a return receipt. Proof of service shall be filed with the court.

1 **(b)** If the support obligation has been assigned to the state
2 pursuant to RCW 74.20.330 or the state has a subrogated interest under
3 RCW 74.20A.030, the summons, petition, and worksheets shall also be
4 served on the attorney general; except that notice shall be given to
5 the office of the prosecuting attorney for the county in which the
6 action is filed in lieu of the office of the attorney general in those
7 counties and in the types of cases as designated by the office of the
8 attorney general by letter sent to the presiding superior court judge
9 of that county. ~~((Proof of service shall be filed with the court.))~~

10 **(3)** ~~((The))~~ As provided for under RCW 26.09.170, the department of
11 social and health services may file an action to modify or adjust an
12 order of child support if:

13 **(a)** Public assistance money is being paid to or for the benefit of
14 the child;

15 **(b)** A party to the order in a nonassistance case has requested a
16 review; or

17 **(c)** Another state or jurisdiction has requested a modification of
18 the order.

19 **(4)** A responding party's answer and worksheets shall be served and
20 the answer filed within twenty days after service of the petition or
21 sixty days if served out of state. ~~((The))~~ A responding party's
22 failure to file an answer within the time required shall result in
23 entry of a default judgment for the petitioner.

24 ~~((+4))~~ **(5)** At any time after responsive pleadings are filed,
25 ~~((either))~~ any party may schedule the matter for hearing.

26 ~~((+5))~~ **(6)** Unless ~~((both))~~ all parties stipulate to arbitration or
27 the presiding judge authorizes oral testimony pursuant to subsection
28 ~~((+6))~~ **(7)** of this section, a petition for modification of an order of
29 child support shall be heard by the court on affidavits, the petition,
30 answer, and worksheets only.

31 ~~((+6))~~ **(7)** A party seeking authority to present oral testimony on
32 the petition to modify a support order shall file an appropriate motion
33 not later than ten days after the time of notice of hearing.
34 Affidavits and exhibits setting forth the reasons oral testimony is
35 necessary to a just adjudication of the issues shall accompany the
36 petition. The affidavits and exhibits must demonstrate the
37 extraordinary features of the case. Factors which may be considered
38 include, but are not limited to: (a) Substantial questions of

1 credibility on a major issue; (b) insufficient or inconsistent
2 discovery materials not correctable by further discovery; or (c)
3 particularly complex circumstances requiring expert testimony.

4 (8) If testimony other than affidavit is required in any proceeding
5 under this section, a court of this state shall permit a party or
6 witness to be deposed or to testify under penalty of perjury by
7 telephone, audiovisual means, or other electronic means, unless good
8 cause is shown.

9 **Sec. 3.** RCW 26.09.100 and 2008 c 6 s 1013 are each amended to read
10 as follows:

11 (1) In a proceeding for dissolution of marriage or domestic
12 partnership, legal separation, declaration of invalidity, maintenance,
13 or child support, after considering all relevant factors but without
14 regard to misconduct, the court shall order either or both parents
15 owing a duty of support to any child of the marriage or the domestic
16 partnership dependent upon either or both spouses or domestic partners
17 to pay an amount determined under chapter 26.19 RCW.

18 (2) The court may require automatic periodic adjustments or
19 modifications of child support. That portion of any decree that
20 requires periodic adjustments or modifications of child support shall
21 use the provisions in chapter 26.19 RCW as the basis for the adjustment
22 or modification. Provisions in the decree for periodic adjustment or
23 modification shall not conflict with RCW 26.09.170 except that the
24 decree may require periodic adjustments or modifications of support
25 more frequently than the time periods established pursuant to RCW
26 26.09.170.

27 (3) Upon motion of a party and without a substantial change of
28 circumstances, the court shall modify the decree to comply with
29 subsection (2) of this section as to installments accruing subsequent
30 to entry of the court's order on the motion for modification.

31 (4) The adjustment or modification provision may be modified by the
32 court due to economic hardship consistent with the provisions of RCW
33 26.09.170(~~(+5)~~) (6)(a).

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