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**SUBSTITUTE HOUSE BILL 3016**

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**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 and 26.09.175.

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, the support provisions of the order  
12 are terminated upon the marriage or registration of a domestic  
13 partnership to each other of parties to a paternity order, or upon  
14 remarriage or registration of a domestic partnership to each other of  
15 parties to a decree of dissolution. The remaining provisions of the  
16 order, including provisions establishing paternity, remain in effect.

17 (5) An order of child support may be modified one year or more  
18 after it has been entered without showing a substantial change of  
19 circumstances:

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

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

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

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

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

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

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

36 (7) An obligor's voluntary unemployment or voluntary  
37 underemployment, by itself, is not a substantial change of  
38 circumstances.

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

12 (b) The department of social and health services may file an action  
13 to modify or adjust an order of child support in a nonassistance case  
14 when services have been requested by a party to the order or by another  
15 state or jurisdiction and the child support order is at least twenty-  
16 five percent above or below the appropriate child support amount set  
17 forth in the standard calculation as defined in RCW 26.19.011 and  
18 reasons for the deviation are not set forth in the findings of fact or  
19 order. The determination of twenty-five percent or more shall be based  
20 on the current income of the parties and the department shall not be  
21 required to show a substantial change of circumstances if the reasons  
22 for the deviations were not set forth in the findings of fact or order.

23 (c) At intervals required by federal law, the department of social  
24 and health services may file an action to modify or adjust an order of  
25 child support if the child support order is at least twenty-five  
26 percent above or below the appropriate child support amount set forth  
27 in the standard calculation as defined in RCW 26.19.011 and the  
28 department has determined the case meets the department's review  
29 criteria. For public assistance cases, the department may file an  
30 action without a request from the parties to the order. For  
31 nonassistance cases, the department may file an action when services  
32 have been requested by a party to the order or by another state or  
33 jurisdiction.

34 (9)(a) All child support decrees may be adjusted once every twenty-  
35 four months based upon changes in the income of the parents without a  
36 showing of substantially changed circumstances. Either party may  
37 initiate the adjustment by filing a motion and child support  
38 worksheets.

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

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

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

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

25 (f) The department of social and health services may file an action  
26 at any time to modify or adjust an order of child support in a  
27 nonassistance case pursuant to this section.

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

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

3           (1) A proceeding for the modification of an order of child support  
4 shall commence with the filing of a petition and worksheets. The  
5 petition shall be in the form prescribed by the administrator for the  
6 courts. There shall be a fee of twenty dollars for the filing of a  
7 petition for modification of dissolution.

8           (2)(a) The petitioner shall serve upon the other party the summons,  
9 a copy of the petition, and the worksheets in the form prescribed by  
10 the administrator for the courts. If the modification proceeding is  
11 the first action filed in this state, service shall be made by personal  
12 service. If the decree to be modified was entered in this state,  
13 service shall be by personal service or by any form of mail requiring  
14 a return receipt. Proof of service shall be filed with the court.

15           (b) If the support obligation has been assigned to the state  
16 pursuant to RCW 74.20.330 or the state has a subrogated interest under  
17 RCW 74.20A.030, the summons, petition, and worksheets shall also be  
18 served on the attorney general; except that notice shall be given to  
19 the office of the prosecuting attorney for the county in which the  
20 action is filed in lieu of the office of the attorney general in those  
21 counties and in the types of cases as designated by the office of the  
22 attorney general by letter sent to the presiding superior court judge  
23 of that county. ~~((Proof of service shall be filed with the court.))~~

24           (3) ~~((The))~~ As provided for under RCW 26.09.170, the department of  
25 social and health services may file an action to modify or adjust an  
26 order of child support if public assistance money is being paid to or  
27 for the benefit of the child. As provided for under RCW 26.09.170, the  
28 department of social and health services may file an action to modify  
29 or adjust an order of child support in a nonassistance case.

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

35           ~~((+4))~~ (5) At any time after responsive pleadings are filed,  
36 ~~((either))~~ any party may schedule the matter for hearing.

37           ~~((+5))~~ (6) Unless ~~((both))~~ all parties stipulate to arbitration or  
38 the presiding judge authorizes oral testimony pursuant to subsection

1 ((+6+)) (7) of this section, a petition for modification of an order of  
2 child support shall be heard by the court on affidavits, the petition,  
3 answer, and worksheets only.

4 ((+6+)) (7) A party seeking authority to present oral testimony on  
5 the petition to modify a support order shall file an appropriate motion  
6 not later than ten days after the time of notice of hearing.  
7 Affidavits and exhibits setting forth the reasons oral testimony is  
8 necessary to a just adjudication of the issues shall accompany the  
9 petition. The affidavits and exhibits must demonstrate the  
10 extraordinary features of the case. Factors which may be considered  
11 include, but are not limited to: (a) Substantial questions of  
12 credibility on a major issue; (b) insufficient or inconsistent  
13 discovery materials not correctable by further discovery; or (c)  
14 particularly complex circumstances requiring expert testimony.

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

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