

**HOUSE BILL 2154**

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**State of Washington**

**52nd Legislature**

**1991 Regular Session**

**By Representative Appelwick.**

Read first time March 1, 1991. Referred to Committee on Judiciary.

1       AN ACT Relating to child support and maintenance; and amending RCW  
2 26.09.010, 26.09.170, 26.09.175, 26.09.225, and 26.09.280.

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

4       **Sec. 1.** RCW 26.09.010 and 1989 c 375 s 1 are each amended to read  
5 as follows:

6       (1) Except as otherwise specifically provided herein, the practice  
7 in civil action shall govern all proceedings under this chapter, except  
8 that trial by jury is dispensed with.

9       (2) A proceeding for dissolution of marriage, legal separation or  
10 a declaration concerning the validity of a marriage shall be entitled  
11 "In re the marriage of ..... and .....". Such proceeding may  
12 be filed in the superior court of the county where the petitioner  
13 resides.

1       (3) In cases where there has been no prior proceeding in this state  
2 involving the marital status of the parties or support obligations for  
3 a minor child, a separate parenting and support proceeding between the  
4 parents shall be entitled "In re the parenting and support of  
5 .....". Such proceeding may be filed in the superior court of the  
6 county where the petitioner resides.

7       (4) The initial pleading in all proceedings under this chapter  
8 shall be denominated a petition. A responsive pleading shall be  
9 denominated a response. Other pleadings, and all pleadings in other  
10 matters under this chapter shall be denominated as provided in the  
11 civil rules for superior court.

12       (5) In this chapter, "decree" includes "judgment".

13       (6) A decree of dissolution, of legal separation, or a declaration  
14 concerning the validity of a marriage shall not be awarded to one of  
15 the parties, but shall provide that it affects the status previously  
16 existing between the parties in the manner decreed.

17       **Sec. 2.** RCW 26.09.170 and 1990 1st ex.s. c 2 s 2 are each amended  
18 to read as follows:

19       (1) Except as otherwise provided in subsection (7) of RCW  
20 26.09.070, the provisions of any decree respecting maintenance or  
21 support ((may)) shall be modified ((only)) as to installments accruing  
22 subsequent to the filing of the motion for modification only and,  
23 except as otherwise provided in subsections (4), (5), and (8) of this  
24 section, only upon a showing of a substantial change of circumstances.  
25 The provisions as to property disposition may not be revoked or  
26 modified, unless the court finds the existence of conditions that  
27 justify the reopening of a judgment under the laws of this state.

28       (2) Unless otherwise agreed in writing or expressly provided in the  
29 decree the obligation to pay future maintenance is terminated upon the

1 death of either party or the remarriage of the party receiving  
2 maintenance.

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

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

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

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

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

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

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

24 (a) Require health insurance coverage for a child named therein; or  
25 (b) Modify an existing order for health insurance coverage.

26 (6) An obligor's voluntary unemployment or voluntary  
27 underemployment, by itself, is not a substantial change of  
28 circumstances.

29 (7) The department of social and health services may file an action  
30 to modify an order of child support if public assistance money is being

1 paid to or for the benefit of the child and the child support order is  
2 twenty-five percent or more below the appropriate child support amount  
3 set forth in the standard calculation as defined in section 4(2) of  
4 this act and reasons for the deviation are not set forth in the  
5 findings of fact or order. The determination of twenty-five percent or  
6 more shall be based on the current income of the parties and the  
7 department shall not be required to show a substantial change of  
8 circumstances if the reasons for the deviations were not set forth in  
9 the findings of fact or order.

10 (8)(a) Except as provided in (b) and (c) of this subsection, all  
11 child support decrees may be adjusted once every twenty-four months  
12 based upon changes in the income of the parents without a showing of  
13 substantially changed circumstances. Either party may initiate the  
14 modification pursuant to procedures of RCW 26.09.175.

15 (b) Parents whose decrees are entered before ((the effective date  
16 of this act)) July 1, 1990, may petition the court for a modification  
17 after twelve months has expired from the entry of the decree or the  
18 most recent modification setting child support, whichever is later.  
19 However, if a party is granted relief under this provision, twenty-four  
20 months must pass before another petition for modification may be filed  
21 pursuant to (a) of this subsection.

22 (c) A party may petition for modification in cases of substantially  
23 changed circumstances, under subsection (1) of this section, at any  
24 time. However, if relief is granted under subsection (1) of this  
25 section, twenty-four months must pass before a petition for  
26 modification under (a) of this subsection may be filed.

27 (d) If, pursuant to (a) of this subsection, the court modifies a  
28 child support obligation by more than thirty percent and the change  
29 would cause significant hardship, the court may implement the change in  
30 two equal increments, one at the time of the entry of the order and the

1 second six months from the entry of the order. Twenty-four months must  
2 pass following the second change before a petition for modification  
3 under (a) of this subsection may be filed.

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

8 **Sec. 3.** RCW 26.09.175 and 1990 1st ex.s. c 2 s 3 are each amended  
9 to read as follows:

10 (1) A proceeding for the modification of an order of child support  
11 shall commence with the filing of a petition((~~, a supporting financial~~  
12 ~~affidavit,~~) and worksheets or by service of a copy of a summons  
13 together with a copy of the petition on the person responding to the  
14 modification action. The petition and ((affidavit)) worksheets shall  
15 be in ((substantially)) the form prescribed by the administrator for  
16 the courts. There shall be a fee of twenty dollars for the filing of  
17 a petition for modification of dissolution. If a proceeding was  
18 commenced by service upon the person responding to the modification  
19 action, upon written demand by the responding party, the person seeking  
20 the modification shall pay the filing fee and file the summons,  
21 petition, and worksheets within fourteen days after service of the  
22 demand or the service shall be void. The state of Washington shall not  
23 be required to pay the filing fee as provided in RCW 74.20.300.

24 (2) If the proceeding has been commenced by the filing of a  
25 petition, the ((petitioner)) party seeking modification shall serve  
26 upon the other party the summons, a copy of the petition and  
27 ((affidavit)) worksheets, and a blank ((copy of a financial affidavit  
28 and the)) set of worksheets in the form prescribed by the administrator  
29 for the courts. If the modification proceeding is the first action

1 filed in this state, service shall be made by personal service. If the  
2 decree to be modified was entered in this state, service shall be by  
3 personal service or by any form of mail requiring a return receipt. If  
4 the support obligation has been assigned to the state pursuant to RCW  
5 74.20.330 ((and notice has been filed with the court)) or the state has  
6 a subrogated interest under RCW 74.20A.030, the summons, petition,  
7 ((affidavit,)) and worksheets shall also be served on the attorney  
8 general. Proof of service shall be filed with the court.

9       (3) If the proceeding was commenced by filing of a petition, the  
10 responding party's written answer and completed ((financial affidavit  
11 and)) worksheets shall be served upon the person signing the summons  
12 and the answer filed within twenty days after service of the summons  
13 and petition or sixty days if served out of state. If the proceeding  
14 was commenced by service of a summons together with a copy of the  
15 petition, the responding party shall respond to the summons and  
16 petition by serving a copy of the written response on the person  
17 signing the summons within twenty days after the date the summons was  
18 served on the responding party or sixty days if served out of state.  
19 The responding party's failure to file an answer within the time  
20 required shall result in entry of a default judgment for the  
21 petitioner.

22       (4) At any time after responsive pleadings are filed, either party  
23 may schedule the matter for hearing.

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

29       (6) A party seeking authority to present oral testimony on the  
30 petition to modify a support order shall file an appropriate motion not

1 later than ten days after the time of notice of hearing. Affidavits  
2 and exhibits setting forth the reasons oral testimony is necessary to  
3 a just adjudication of the issues shall accompany the petition. The  
4 affidavits and exhibits must demonstrate the extraordinary features of  
5 the case. Factors which may be considered include, but are not limited  
6 to: (a) Substantial questions of credibility on a major issue; (b)  
7 insufficient or inconsistent discovery materials not correctable by  
8 further discovery; or (c) particularly complex circumstances requiring  
9 expert testimony.

10 (7) The administrator for the courts shall develop and prepare, in  
11 consultation with interested persons, model forms or notices for the  
12 use of the procedure provided by this section, including a notice  
13 advising of the right of a party to proceed with or without benefit of  
14 counsel.

15 **Sec. 4.** RCW 26.09.225 and 1990 1st ex.s. c 2 s 18 are each amended  
16 to read as follows:

17 Each parent shall have full and equal access to the education and  
18 health care records of the child absent a court order to the contrary.  
19 Educational records include records of public and private schools in  
20 all grades kindergarten through twelve and any form of alternative  
21 school or postsecondary educational institution for all periods for  
22 which child support is paid or the child is the dependent in fact of  
23 the parent requesting access to the records. Neither parent may veto  
24 the access requested by the other parent and neither parent nor child  
25 nor any educational institution nor health care provider may assert a  
26 privilege on behalf of the child.

27 **Sec. 5.** RCW 26.09.280 and 1987 c 460 s 20 are each amended to read  
28 as follows:

1       ((Hereafter)) Every action or proceeding to change, modify, or  
2 enforce any final order, judgment, or decree ((heretofore or  
3 hereafter)) entered in any dissolution or legal separation or  
4 declaration concerning the validity of a marriage, whether under this  
5 chapter or prior law, ((in relation to)) regarding the parenting plan  
6 or child support for the minor children of the marriage may be brought  
7 in the county where ((said)) the minor children are then residing, or  
8 in the court in which ((said)) the final order, judgment, or decree was  
9 entered, or in the county where the parent or other person who has the  
10 care, custody, or control of the ((said)) children is then residing.