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15 *Bar News* deadline, November 1992 issue.

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The

by The Honorable **Anthony P. Wartnik** *&* **Larni Levy**

On May 21, 1991, subject to a partial veto, and on July 11, 1991, without veto, Governor Gardner signed into law two separate bills that established controversial amendments to the Child Support Schedule Act (act).[1] Among other changes, the amendments create a new economic table (new table) and a new uniform child support schedule which reduce child support payments by up to twenty-five percent. In addition, the amendments expressly repeal the economic table (commission table) that had been adopted by the Washington State Child Support Schedule Commission (commission) and incorporated into the Act by reference.[2] The new table was a clear legislative response to the political pressure exerted by interest groups which were composed primarily of divorced husbands and their second wives, who lobbied to reduce support payments.[3]

This article outlines the new changes to the act effective September 1, 1991[4] and discusses the implications of this law on the courts. Second, the article presents a political analysis of how the Governor and the Legislature arrived at this version of the law.

Brief History

In 1984 the state of Washington adopted child support legislation to address "an urgent need for vigorous enforcement of child support obligations" and to establish "stronger and more efficient statutory remedies...[to]...supplement and complement the remedies already provided for in certain other chapters." RCW 26.18.010 (Supp. 1984). Three years later, in 1987, the Legislature created the aforementioned commission[5] and directed it to develop a uniform system for setting child support, as required of each state by the Federal Child Support Enforcement Act.[6]

New Child Support Guidelines

Editor's note: Single copies of the new child support schedule are available at no charge from The Office of the Administrator for the Courts, P.O. Box 41170, Olympia, WA 98504-1170.

The Legislature, in 1988, adopted the statewide child support schedule, Chapter 26.19 RCW, recommended by the commission. The act incorporated, by reference, the commission table. The statement of legislative intent had shifted from enforcement of orders to ensuring "that child support orders are adequate to meet a child's basic needs and to provide additional child support commensurate with the parents' income, resources, and standard of living." RCW 26.19.001 (Supp. 1988). The act recognized the court's common-law responsibility to maintain the child's standard of living after a divorce, and also provided that "the child support obligation should be equitably apportioned between the parents." RCW 26.19.001 (Supp. 1988). Use of the commission table was presumptive. The act provided that, by majority vote, the superior court judges in individual counties could adopt, on a local option basis, an alternative presumptive economic table which could not deviate by more than 25 percent from the commission table. RCW 26.19.020. This provision was known as the "Hayner Amendment."[7] Repeal of the Hayner Amendment was a primary focus of the 1991 legislation.

Significant Amendments to the Child Support Law

The 1991 amendments to the act are a composite of two separate legislative bills. SB 5120 incorporates into law the new table which replaces the commission table. Consistent with this intent, SB 5996 revises the definition of an economic table. The amended definition describes the new table as "the child support table for the basic support obligation provided in RCW 26.19.020" which impliedly supplants the commission table. The new table is a major component of the amended law on which much debate has centered. In order to comply with federal regulations, the state of Washington was obligated to produce a child support schedule uniformly applicable to all counties in the state.[8] In other words, the Hayner Amendment, which expressly retained for the counties the right to devise their own economic tables, had to be repealed. In compliance with federal law, the 1991 legislation repeals the Hayner Amendment and creates the controversial but uniformly applicable new table.

Child support amounts set under the new table are generally 25 percent lower than those established under the commission table. However, the percentage decrease varies according to income. Low-income parents, whose net monthly income does not exceed $2,500, have not experienced any change in their child support obligations. The new table, however, gradually decreases support awards for families with net monthly income of between $2,600 and $3,700. As net income exceeds $3,700, support awards decrease by a flat 25 percent from the commission table.

Arguably, such a dramatic decline in basic child support indicates that the new table could not possibly take into account a family's cost of living. While support awards have decreased, the cost of living has actually risen 12.4 percent.[9] Thus, it appears that a strict adherence to the new table will result in lower standards of living for most children. This new table seemingly departs from the common-law doctrine and the express legislative policy of RCW 26.19.001, which require the courts to maintain the child's standard of living after a divorce and to consider the standard of living of the parents in setting child support, respectively. "A number of courts adopt the policy that a child should not suffer because the parents are divorced." *Childers v. Childers*, 89 Wn.2d 592, 602 (1978) quoting from R. Washburn, *Post-Majority Support: Oh Dad, Poor Dad,* 44 Temple L.Q. 319, 327, 329 (1971); *see also Puckett v. Puckett,* 76 Wn.2d 703 (1969). Even as early as 1973, the Legislature "allowed the courts to secure for the children what they would have received from their parents except for the divorce..." *Childers,* 89 Wn.2d at 603. It is clear that the courts and the Legislature have traditionally considered a child's standard of living in calculating a support award.

One result of the new table may be increased requests for deviation from the schedule. The basis for these requests would likely be premised upon an assumption that some judges may perceive that there is a discrepancy between the standard of living consideration, established as public policy explicitly in RCW 26.19.001, and the new table when the net income exceeds $2,500. This, in turn, may precipitate greater appellate review of these decisions. If this argument survives a challenge on appeal, it is then reasonable to assume that the appellate courts will continue to review the trial courts' rulings on an abuse of discretion standard and maintain their traditional deference to the trial court. *See Id.* (Supreme Court affirms the trial court and finds no abuse of discretion); *Pippins v. Jankelson,* 110 Wn.2d 475 (1988); *Marriage of Ochsner,* 47 Wn.App. 520 (1987); *In re Marriage of Correia,* 47 Wn.App. 421 (1987); *Fernau v. Fernau,* 39 Wn.App. 695 (1984); *State ex rel. Partlow v. Law,* 39 Wn.App. 173 (1984); *Pessemier v. Pessemier,* 66 Wn.2d 117 (1965). This lengthy appeal process has the potential to create greater delays in the court system and result in a costly and less-efficient resolution of child support orders. On the other hand, it is questionable whether a trial judge would be affirmed for buying into the argument posed above, since it can be contended that the new table was

structured by the Legislature with RCW 26.19.001 in mind. This response would be based upon the fact that the Legislature attempted in SB 5120 to repeal the reference to standard of living in RCW 26.19.001, which was vetoed by the Governor, and then proceeded to create the new table in SB 5996 without overriding the veto.

Using the new table, the net monthly income of the parents would have to increase substantially in order to provide the same level of support that a child received under the commission table. For instance, a net monthly income of $4,100 under the commission table dictated basic child support of $831. To achieve a comparable support award under the new table, parents would have to increase their net monthly income by $1,600 to a level of $5,700.[10] This is a significant differential for a state whose child support orders have historically been "woefully inadequate" according to Professor Helen Donigan of Gonzaga University School of Law.[11] Her historical reference points are the Association of Superior Court Judges Guidelines (ASCJ) and its predecessors such as the King County Child Support Guidelines of the 1970s.[12] Some may argue that the new table gives disparate advantages to higher-income payor parents who, at least theoretically, could more comfortably afford to maintain a higher standard of living for their children. This contention would likely be based on the decrease in the new table from the commission table, as well as from one of the historic reference points. Since the new table is presumptive up to $5,000, however, it can be argued in response that such an alleged disparate advantage does not constitute a basis, standing by itself, for deviation.

Parents with incomes exceeding $3,700 a month, who were formerly paying about 20 percent of their monthly net income (less than one quarter) for child support, will now be paying only about 15 percent for the children. For a family earning a net monthly income of $4,000 (equivalent to a yearly income of $48,000), for example, the new table inures to the payor parent a savings of $203 a month (or $2,436 a year) as compared to what (s)he would have paid under the commission table. This also translates into a reduction to the child in this amount. In contrast, lower-income families continue to pay as much as 27 percent of their income in order to maintain a sufficient level of support for their children. In addition, the courts maintain the discretion to reduce the awards even further in consideration of second families. SB 5996, §6(1)(e).

These award amounts do not explicitly take into account the added burden of second families. In fact, language referring to "multiple families" was deleted from the second draft of this legislation. However, consideration of second families is provided for in SB 5996, §6(1)(e), which states that the court is allowed to deviate from the standard calculation when either or both of the parents have children from other relationships to whom the parent owes a duty of support. Upon periodic 24-month review of the support awards as mandated in RCW 26.09.170, the court

may take into account any new family the noncustodial parent must support, based upon the 1991 changes in the standards. SB 5996, §2(9). Since the provision is discretionary, courts may treat this deviation conservatively. Courts may rationalize that since the Legislature implicitly accounted for second families when it lowered support awards so significantly, there is no need to make further sacrifices on the part of the first family. This determination would obviously have to be made on a case-by-case basis according to individual circumstances. Unfortunately, the Legislature did not adopt the recommendations of the commission for treatment of blended families which could have provided guidance for resolution of mulitiple family issues.[13]

Generally, the new table is presumptive, requiring justification for deviation from the schedule. At incomes between $5,000 and $7,000, however, the new table is advisory, and justification is not required to exceed the established support amounts.[14] If the net income exceeds $7,000, however, it appears that the court has unlimited discretion to set support at a level commensurate with the $5,000 to $7,000 advisory table. On the other hand, to exceed those amounts, the court must provide written findings of fact.

When net income exceeds $7,000, it may be contended that an inequity exists which favors the payor parent over the interests of the child, since the court can order support at a level below that called for at the $7,000 net income level without giving reasons, but cannot exceed the $7,000 level for the same family unless reasons are provided.[15] SB 5996, §21. This legal constraint, arguably, makes it more onerous for a court to increase support awards while facilitating orders for lower amounts of support.

A second inequity, which gives disadvantages to the payor parent in this system, can be argued when courts can exceed the $7,000 table for parents earning a net income of $5,000 without any written justification while findings of fact are required for a similar award when net income is above $7,000.[16] For example, parents earning a net monthly income of $5,000 can be required to pay $1,000 (one-fifth of their income) without justification; however, the court must justify similar awards to parents earning as much as $10,000 a month although the $1,000 award constitutes only one-tenth of their net income.[17] The stricter standard imposed on parents in the higher income bracket may pose an equal-protection problem if the proponent of this position can persuade the court that similarly situated parents are treated differently. *See Sonitrol v. Seattle,* 84 Wn.2d 588 (1974) and *State ex rel. Bacich v. Huse,* 187 Wash. 75 (1936). The apparent result is that it becomes easier—and consequently more likely—for a parent in a slightly lower income bracket to pay greater child support than the parent earning twice as much.

The act, as amended in 1991, is more permissive and explicitly extensive in the kinds of income which can be counted to determine the parents' monthly net income. For example, deferred compensation, contract-related benefits, income from second jobs, pension retirement benefits, and alimony are now included in the calculation of monthly gross income in addition to the other previously acknowledged categories. The act now expressly excludes gifts and prizes from gross monthly income. However, it now includes deductions of state income taxes, state industrial insurance premiums, voluntary pension payments actually made up to $2,000, and normal business expenses and self-employment taxes for self-employed persons. The act now permits the imputing of income to a full-time employed parent if underemployed. It appears likely that these changes, in some cases, will compensate for the lower awards by moving families into higher income brackets. At the same time, certain individuals will be able to take advantage of the state income tax deduction to decrease their support payments. It is difficult to predict the ultimate effect of these income calculation changes on the general population of payor parents.

With the passage of SB 5996, the Legislature anticipated a flood of litigation from payor parents to modify support awards calculated under the commission table. To curb this onslaught, the legislation provides for periodic 24-month review of all child support calculations where there are grounds to justify such a review. The change to the new table qualifies as a ground for modification. Therefore, all decrees which were entered prior to September 1, 1991 are subject to revision based on the provisions of the new law. In addition, the law makes a special accommodation for all decrees entered prior to July 1, 1990. For those orders, one may seek modification 12 months from the date of entry of the decree or 12 months from the most recent modification setting child support, whichever is later. By strictly adhering to these dates, the courts will avoid the rush for revision which would have otherwise occurred starting September 1, 1991, when the amended Act went into effect.

Political Development of the 1991 Child Support Amendments

This section explores SB 5120, the Governor's partial veto of it, and SB 5996, which resulted from the

Legislature's inability to override the Governor's veto of SB 5120. SB 5120 went through several drafts and revised several sections of the Domestic Relations Act including portions of Chapter 26.09 RCW (Dissolution of Marriage), Chapter 26.12 RCW (Family Court), Chapter 26.19 RCW (Child Support Schedule), Chapter 26.21 RCW (Uniform Reciprocal Enforcement of Support Act), and other related sections. Although this article is primarily concerned with the amendments to Chapter 26.19 RCW, it also addresses the Legislature's revision of other sections. As a group, these revisions illustrate the Legislature's responsiveness to Governor Gardner's section veto. On almost every issue, the Legislature redrafted the bill to be consistent with the Governor's intent.

The Governor derives his power to veto sections of a bill from Article 3, §12 (Amend. 62) of the State Constitution which allows the Governor to "object to one or more sections... provided that he may not object to less than an entire section." By eliminating certain sections of SB 5120 the Governor essentially ensured that: (1) support shall be adjusted fairly if the payee parent receives an increase in income; (2) modification of support orders is limited to every 24 months, and court intervention cannot affect the frequency of those modifications; (3) military duty in the Gulf will not interfere with the payor parent's obligation to pay support (i.e., a child's needs can not be suspended even during times of war); (4) the fact that the parties may suffer a lower standard of living during a divorce should not be considered as a justification to lower support awards; (5) calculation of parental income should include parents' overtime, contract-related benefits, second-job income, social security benefits, and disability insurance benefits; and (6) there is no mandatory maximum amount that limits the payor parent's payments towards a child's college tuition expenses. The Legislature, unable to override the Governor's veto, complied with his will by eliminating from the final draft any language which conflicted with the directives listed above. This deferential response by the Legislature illustrates the power of the gubernatorial veto, at least to the extent that the Governor is empowered to exercise it.

Despite his liberal use of the section veto, the Governor chose not to eliminate the most contentious section of SB 5120 (§25), which included both the new table and the repeal of the Hayner Amendment. Section 25 posed a dilemma for Governor Gardner. If he did not eliminate the Hayner Amendment, the Governor would have jeopardized approximately $70 million in federal funds that flow into the state annually and are used to fund the state's child support collection system. Thus, the veto of §25 was not politically feasible. On the other hand, if §25 were enacted into law along with the rest of SB 5120, the Governor would have allowed the passage of what many organizations and individuals contended was a grossly inadequate child support schedule. The Governor chose a third option. He did not veto §25, but instead attempted to nullify the effect of the new table by vetoing the definitions (§24) in which the new table was described as the child support table. The veto of this definition section left the old definitions and the commission table in the act. "Where an act or part of an act repeals or amends an existing act, the veto of the act or part thereof prevents the intended repeal or amendment from taking effect. The original act or part of an act, which was the subject of the repeal or amendment, remains valid and in force for want of an effective repeal or amendment thereof." *State ex. rel. Ruoff v. Rosellini,* 55 Wn.2d 554 (1960). Therefore, the old definition of the economic table, as that "which is adopted by the commission," remained in force after the veto of §24 even though it conflicted with the new table as set forth in the bill. After the veto, the new table remained in the midst of the law without any references to it.[18]

Before 1988, this predicament would most likely not have existed. The Governor would have been able to veto the new table without affecting the repeal of the Hayner Amendment, since they constitute two separate and distinct subject matters.[19] A long line of case law established that a section, as defined in Constit. Art. 3, §12, is construed as any portion of a bill with separate, distinct, and independent subject matter. *Rosellini,* 55 Wn.2d 554; *Cascade Tel. Co. v. State Tax Commission,* 176 Wash. 616 (1934); *Washington Association of Apartment Associations v. Evans,* 88 Wn.2d 563 (1977); *Fain v. Chapman,* 94 Wn.2d 684 (1980). However, in a 1988 decision, *Motorcycle Dealers v. State,* 111 Wn.2d 667 (1988), our Supreme Court reexamined

the issue of sectional definitions. In this precedential case, the court held that a section is exclusively defined by the Legislature, rather than by a subjective subject test, and that a Governor has the option of vetoing a section in its entirety or not at all.[20] The court correctly addresses this issue as a power struggle between the executive and legislative branches of government. In fact, the judiciary is also implicated in this balancing-of-power act. In *Fain,* which was overruled by *Motorcycle Dealers,* the court expressly reserved for itself the ultimate right to interpret what constitutes the same subject matter. "A section is a question of law to be determined by the courts, and although the section divisions contained within each legislation are entitled to considerable weight, they are not necessarily dispositive." *Fain,* 94 Wn.2d 684; *Groves v. Meyers,* 35 Wn.2d 403 (1950). *Motorcycle Dealers* reallocates this power to the legislative branch, which may be considered the most representative branch of government. Implicit in this power is the ability to create a political imbroglio, such as in the instant case, when the Legislature defines a section in its own manner irrespective of whether it includes one subject matter or combines several. The Governor, in turn, is bound by the parameters set by the representative body no matter how incongruous. Thus, the court, in *Motorcycle Dealers,* has self-sacrificingly (or perhaps selfishly given the court's caseload) shifted the center of power away from itself and towards the Legislature.

The effect of *Motorcycle Dealers* is to give the Legislature extraordinary leverage over the executive branch of government. It can effectively coerce the Governor, through carefully designed legislative drafting, into signing certain undesirable portions of a bill, as it did with the child support legislation. The Legislature designed SB 5120, §25 so that it contained language which the Governor had to sign into law (repeal of the Hayner Amendment) along with language the Governor would have otherwise choosen to veto (new table.)[21] Some may argue that the decision in *Motorcycle Dealers* reaffirms the constitutional checks and balances in our system of government by requiring the executive to be responsive to the boundaries established by the popularly elected Legislature. In addition, one might argue, as the court does in *Motorcycle Dealers,* that most other states do not accord the Governor the luxury of a section veto in non-appropriation matters. Other state governors are bound to accept or veto nonappropriation legislation in its entirety, thus eliminating any executive discretion to selectively veto. Finally, it may be preferable to avoid the time-consuming, costly, and inefficient use of court resources to adjudicate allegedly subjective definitions of a section of a bill each time the Legislature and the Governor diverge. On the other hand, a strong argument can be made that the court in *Motorcycle Dealers* abrogated the judiciary's responsibility and traditional role in our system of checks and balances.

In other ways, the pre-*Motorcycle Dealers* section veto was valuable in creating a more efficient system. It provided a means for the Governor to express his specific intent without vetoing an entire bill. In response, the Legislature had the option of redrafting portions of the bill to concur with the Governor's intent or mustering enough votes to override the veto, as argued by Justice Dolliver in his dissent in *Motorcycle Dealers.* The pre-1988 cases, which allowed the courts to define a section by subject matter, had the advantage of allowing the Governor to circumvent any political antics by the Legislature. If, in the instant case, the Governor could have successfully argued to the court that these represented separate and distinct subject matters and should be categorized as different sections, he would have been empowered to veto the new table while passing the repeal of the Hayner Amendment. The advantage of granting the Governor extra leeway in determining the boundaries of any single section is the facilitation of productive communication between the Governor and Legislature and expedition of the resolution of any conflicting intents.

If the Legislature had accepted SB 5120 after the exercise of the partial veto, replete with its inconsistencies (the new table and reference to the commission table), the court would have had to devise legislative intent as to which table should be in use or whether both are applicable. Legislative intent in this instance is not evident, since the courts would have to construe the divergent views of both the Governor and the Legislature. The Governor acts in a legislative capacity, holding one-third of the votes, when exercising his veto. *See State Employees v. State,* 101 Wn.2d 536 (1984)

and *Shelton Hotel Co., Inc. v. Bates,* 4 Wn.2d 498 (1940). Thus the fact that the Governor's intent to alleviate the new table differs from the rest of the Legislature's intent to incorporate it becomes important.

When construing legislative intent, we examine the law after the Governor's partial veto of SB 5120. "The Governor's veto of a portion of a measure, if the veto is not overridden, removes the vetoed material from the legislation as effectively as though it had never been considered by the Legislature." *Hallin v. Trent,* 94 Wn.2d 671, 677 (1980); *Fain,* 94 Wn.2d at 688. If the Legislature had accepted the Governor's veto (without redrafting parts of the amendments in SB 5996), it might have been evidence that the Legislature tacitly adopted the ambiguities which could lead to the continued use of the commission table.[22] On the other hand, if one accepts that the Legislature's intent to create a new table was clear, it is questionable whether the Governor could use his veto power to frustrate the intent by deliberately creating an ambiguity.

Furthermore, the courts are generally hesitant to deviate from what appears to be the obvious interpretation of a statute because of a technicality or poor draftsmanship. A thing within the letter of the law, but not within its spirit, may be held inoperative where it would lead to an absurd conclusion. *State ex. rel. P.U.D. etc. v. Wylie,* 28 Wn.2d 113 (1947). It is possible for an appellate court to conclude that the existence of an economic table in the new law shows a clear intent that it should be used to set child support awards even though the Legislature may have inadvertently created language implicating the commission table.[23] *Shelton,* 4 Wn.2d 498 (1940), may stand for the proposition that a definition is not controlling in light of more specific language; however, it also stands for the rule that the language of a statute must be held to mean exactly what it says when it is plain and free from ambiguity and that there is no occasion for the application of any rules of construction in the absence of ambiguity. Thus, if the mere existence of the new table (and the language following the table describing it as presumptive) is sufficiently explicit to establish its validity, then the definition section of the bill could be construed as less controlling than the table itself. On the other hand, if the mere existence of the new table is not sufficiently explicit, it can be argued that the statutory definition of economic table as the table adopted by the commission is plain and free from ambiguity and thus controlling without resort to the rules of statutory construction.

A general rule of statutory construction states that "where different parts or sections of the same statute are in conflict, the latest in order of position will prevail." *State ex. rel. Olympia Credit bur. v. Ayer,* 9 Wn.2d 188, 194 (1941); *State ex. rel Tacoma R. & P. Co. v. Public Service Commission,* 101 Wash. 601 (1918). This would imply that the new table supersedes the commission table.

"...[W]here different parts of sections of the same statute are in conflict, the latest in order will prevail."

However, the rule also provides for the exception when "the first of conflicting clauses is clear and explicit, and the other less so, the former, notwithstanding its position, will prevail over the latter." *Ayer,* 9 Wn.2d at 194; *State v. San Juan County,* 102 Wn.2d 311, 320 (1984); *Williams v. Pierce Cy.,* 13 Wn.App. 755 (1975) (in the event of conflicting provisions, the more clearly expressed will control). Therefore, the definition which clearly defines the commission table may supersede a table nebulously placed in the middle of a bill without any references to it. If however, the court were to find that the intent with reference to the new table is clearly expressed by its mere presence in the bill, then it would be controlling. In any case, such an interpretation would have been confined to the realm of the appellate courts but became unnecessary when the Governor chose to sign SB 5996 into law. By approving SB 5996 without vetoing the definitions, the Governor avoided this process of appellate construction of legislative intent or the revisitation of *Motorcycle Dealers.* It may well be that the Governor concluded that the establishment of the commission table as the sole means of setting child support in this state, at this late date, would have created an unjustifiable hardship for the payor parents in the 60 percent of the counties that had adopted the Hayner Amendment. This group of payor parents would have been faced with an increased support obligation within the next two years based solely on the repeal of the Hayner Amendment and retention of the commission table.

Conclusion

Once the Governor signed SB 5996 into law, he eliminated any ambiguities as to which economic table would be effective. Therefore, it became unnecessary to challenge the validity of *Motorcycle Dealers* and ask the court to return to the pre-1988 caselaw. Although such a challenge may not have been effective, the struggle over the child support amendments points out the problems generated by this decision. The Legislature now has unlimited discretion to draft legislation that effectively limits the Governor's veto power as it was given to him in Amendment 62 of the State Constitution. Of course, the Governor can always veto a section even though he is only in partial disagreement and then express his dissension to the Legislature in his veto address. The disadvantage to this process is that it creates an extra step and sets up a contentious situation between the Legislature and the Governor. If *Fain* were the dominant caselaw today, the Legislature would not be able to manipulate the Governor by indiscriminately including two separate and distinct concepts within the same section. If it did so, the Governor (assuming affirmation by the courts) could separate out the individual subjects and veto them accordingly. In this particular case, however, the Legislature won the political battle and succeeded in passing both the new table and the repeal of the Hayner Amendment. *Motorcycle Dealers* reduces the amount of control the Governor has, but it does not abolish his discretionary use

of the section veto.

The pre-1988 law could conceivably create the opposite problem, where the Governor frustrates legislative intent by vetoing portions of a bill which were not designated as separate sections by the Legislature. However, in this case, the judiciary exists to check the Governor's power to make such decisions in accordance with the law as it should also exist to check the Legislature's power to render the constitutional veto power of the Governor ineffective other than through the use of the veto override. The same is not true under *Motorcycle Dealers* in which the legislative definition of a section prevails without any judicial review.

The law which emerged as a result of this debate is, nevertheless, at least in part, a useful improvement over the prior law. It creates a single uniform economic table which must be used to calculate the basic child support obligation in every case.[24] It expands upon and clarifies the list of revenue items that constitute income for purposes of completing the child support worksheets. It appears to establish a reasonable rule for when petitions to modify child support based upon changes in the table or standards can be filed and provides for periodic adjustment of support without requiring the parties to access the court.[25] It returns discretion to the court as to when and how residential credit deviations should be made. It clarifies and improves upon the standards for post-secondary educational support awards, how parental contributions shall be made, and the rights of parental access to the child's educational records.

The act, as amended, also retains the responsibility of the court to protect the standard of living of the child. It provides for stabilization of the current law by mandating that the Legislature review the child support schedule every four years, as opposed to the past practice of doing so every year at the behest of special interest groups. It clarifies the fact that the income of new spouses and other adults in the household, child support from other relationships, gifts and prizes are not included in the basic definition of income, can be used only as a basis for deviation, and provides that the income of a new spouse by itself is not a reason for deviation. It permits deviation based on the impact of children of other relationships upon the economics of the parents. It clarifies the fact that aid to families of dependent children, supplemental-security income, general assistance and food stamps cannot be bases for deviation and are not to be included in the calculation of gross income. It provides for deduction from gross income of spousal maintenance that is actually paid.[26] It recognizes the right of self-employed parents to be treated the same as employee parents with reference to deductibility of payments actually made into retirement or pension plans to the extent of $2,000 a year based upon a prior two-year history of payment. Finally, it eliminates the prior presumption that a person is not under-employed if employed full time and provides that the court may impute income to a parent who is employed full time if that parent is voluntarily under-employed or purposely under-employed to reduce his or her support obligation.

In conclusion, the amended act does not so much add areas of discretion or increase the court's discretionary powers, but rather it clarifies and more specifically identifies areas of discretion that were already provided for both explicitly and by inference. The important thing now is to let the dust settle for a sufficient period of time so that some common law can form around the act that will be useful and precedential. If the Legislature continues to make major changes every year based on pressure from special-interest groups, chaos will reign, and stability will be unattainable.

Endnotes:

[1]Senate Child Support Bill No. E2SSB 5120 (SB 5120) and No. ESSB 5996 (SB 5996) respectively.

[2]The commission table and the new table are the same up to the $2,500 combined monthly net income (net income) level; thereafter, the new table has a slower rate of progression than the commission table.

[3]Some of the groups that lobbied for these and other changes from time to time include POPS (Parents Opposed to Punitive Support), DADD (Dads Against Dirty Divorce) and United Fathers of America.

[4]For an exhaustive analysis of the history of the Washington State Child Support law through 1990, see Donigan, *Calculating and Documenting Child Support Awards Under Washington Law,* 26 Gonzaga L. Rev. 13 (1991). See also Nickerson, *The Washington State Child Support Schedule: Judicial Discretion and Deviations from the Standard Calculation,* 26 Gonzaga L. Rev. 71 (1991) for a

discussion of the economic aspects of the child support schedule.

[5]The Child Support Schedule Commission was originally composed of 11 members, eight of whom were appointed by the Governor for three-year terms. Subsequently, the commission was expanded by two additional members appointed by the Governor and the terms of all commissioners were then staggered.

[6]Pub. L. No. 98-378, 98 Stat. 13405, 1321-22 (codified as amended at 42 U.S.C. §667 (1988).

[7]The most widely adopted local-option economic table was the one created by the Clark County judges. It is this table that was enacted into law when the Governor signed SB 5120 and which is referred to throughout this article as the new table.

[8]Approximately $70 million of federal money used to fund the state's child support collection system is in jeopardy if the state does not comply with federal regulations.

[9]Consumer Price Index, Seattle-Tacoma. This cumulative increase covers the period from 1988 to 1990. From the first half of 1990 to the first half of 1991, the index rose another 7.1 percent. In light of these significant cost-of-living increases, the statutory 25 percent reduction in support awards for net income that exceeds $2,500 appears even more dramatic.

[10]Under the new table, parents with net monthly income of $5,700 would pay $825 basic child support for one child.

[11] Donigan, *supra* note 3, at 16.

[12]Under the ASCJ guidelines for one child, basic support was modestly less than support outlined in the new table. For example, at the net monthly income level of $4,100, the new table is $44 higher than the ASCJ guidelines. If the King County guidelines were carried out, based on the flat rate used therein, to the $5,700 level, they would have dictated monthly support amounts of $984 and $1,368, at net monthly income levels of $4,100 and $5,700 respectively, which would have exceeded the amounts called for by the new table.

[13]See the Washington State Child Support Schedule Commission, *Report on Use of Support Schedule for Blended Families,* December 1989. This report contains formulas which could be used to adjust child support in blended family situations. The report is available through Michael Curtis at the Office for the Administrator of the Courts in Olympia.

[14]The table creates a presumptive floor at the $5,000 level. In other words, for all monthly incomes above $5,000, the courts must still provide "a reason to deviate" below the amount established by the economic table at the $5,000 level.

[15]The following is an illustration of this principle. A court may order a one-child family with a net monthly income of $10,000 to pay $738 (the amount set at $5,000) without justification. However, the court must provide reasons to award any amount in excess of $986 (the amount set at $7,000) which might be a more appropriate sum given the child's standard of living in this high-income household.

[16]The somewhat cryptic language at the end of §25 of SB 5120 provides that "the economic table is presumptive for combined monthly net incomes up to and including $5,000. When combined monthly net income exceeds $5,000, support shall not be set at an amount lower than the presumptive amount of support set for combined monthly net incomes of $5,000 unless the court finds a reason to deviate below that amount. The economic table is advisory but not presumptive for combined monthly net incomes that exceed $5,000. When combined monthly net income exceeds $7,000, the court may set support at an advisory amount for combined monthly net incomes between $5,000 and $7,000, or the court may exceed the advisory amount of support set for combined monthly net incomes of $7,000 upon written findings of fact."

[17]This analysis is based on the new table which establishes the following awards for a family with one young child:

Net Monthly Income	*Support Award*
$5,000	$738
$7,000	$986

[18]This bill appears to comport with the constitutional requirement that an act revised or section amended shall be set forth at full length. Constit. Art. II, §37. *State ex. rel. Gebhardt v. Superior Court,* 15 Wn.2d 673, 686 (1942). Each section is complete in and of itself. Any section

which is not entitled "new section" explicitly amends a section of the current law. By vetoing the repealer, §50 (in which the Legislature listed all of the section of the existing law it repealed), the Governor explicitly did *not* repeal RCW 26.19.010, which sets forth the definition of an economic table as that which is adopted by the commission.

This legislation is clearly an amendment of the child support law rather than a reference statute or an entirely new statute which might supplement the current law.

[19]The conclusion that, on an objective standard, the Legislature incorporated two distinct subject matters into §25 of SB 5120 is based on the following: (1) the economic table and Hayner Amendment were two separate sections of Chapter 26.19 RCW before they were indiscriminately lumped together by the Legislature into §25 and (2) the political elimination of a local option alternative is separate and distinct from the economic creation of a new statutory table.

[20]As opposed to the single-subject-matter test, which was rejected by the Court in *Motorcycle Dealers* as being subjective, §25 of SB 5120 is subject to an objective single-subject-matter challenge based on the considerations identified in footnote 20.

[21]The Governor's intent to eliminate the new table from the bill is evident by the form of his veto as well as by his veto message in which he stated his support for the commission table. In his address to the Senate on May 21, 1991, he affirmed that current support awards, which average 26 percent of the noncustodial parent's income are "not unreasonable." He asserted, "I had these facts in mind when I reviewed this legislation, and I heard from numerous individuals and groups. I also had in mind the jeopardy our state faces with the potential loss of $70 million in federal funds if we do not adopt a uniform economic table." Thus, the Governor gives the distinct impression that he signed the new table into law in spite of his disregard for it because of his obligation to "rectify the legal problems we have with the federal government." He explained that the use of the veto was limited to three reasons, one of which is to avoid any legislation that lowers "support to children unjustifiably." The Governor perceived the new table as a detriment to the children and tried to eliminate it surreptitiously without jeopardizing the economic safety of the state.

Although I am not persuaded by the evidence, it can conversely be argued that the Governor intended to create a uniform table by substituting the commission table for the new table. In his veto message, he clearly stated, "[S]ection 25, the new economic table, is signed into law. This uniform schedule will rectify the legal problems we have with the federal government."

[22]A Governor's veto message is indicative of legislative intent. *See Rozner v. Bellevue,* 116 Wn.2d 342 (1991). Thus, it can conversely be argued that the Governor, as part of the Legislature, intended to create a uniform table by substituting the commission table for the new table. (See note 21, *supra.*)

[23]It is questionable, however, whether the inclusion of language implicating the commission table in this case was, in fact, an inadvertent creation of the Legislature.

[24]It should be noted, however, that the commission table included the first five percent of health care expenses incurred for children, which is not the case with the new table once net income exceeds $2,500. The Legislature has failed to provide a method or any other guidance for the calculation of extraordinary health care expenses beyond the $2,500 net income.

[25]At a Family and Juvenile Committee meeting of the Association of Superior Court Judges held at the state's annual judicial conference on August 27, 1991, Representative Marlin Applewick indicated that due to legislative oversight in the drafting of §2 of SB 5996, there is a question as to which applies, the 24-month window or the 12-month window.

[26]It is not clear whether this includes payments made pursuant to a temporary maintenance order, or whether it applies only to maintenance being paid to a prior spouse. Nor is it clear if it applies to the setting of permanent maintenance and child support in the same proceeding.

On the King County Superior Court bench since 1980, **Anthony P. Wartnik** has served as chair of both its Family Law Department and Family Law Committee; he also has served as a member of the Family Law and Juvenile Law committees of the Association of Superior Court Judges (ASCJ) since 1981.

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