



2005 SENATE BILL 182

April 20, 2005 – Introduced by Senators PLALE, BROWN, GROTHMAN, DARLING, WIRCH, A. LASEE and LASSA, cosponsored by Representatives MUSSER, SUDER, STASKUNAS, AINSWORTH, ZEPNICK, HAHN, TRAVIS, SHERIDAN, JESKEWITZ, KESTELL, ALBERS, NASS, OTT, F. LASEE, J. FITZGERALD, SEIDEL, GUNDRUM, SINICKI and KLEEFISCH. Referred to Committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform.

1 **AN ACT to amend** 767.263 (1), 767.265 (1), 767.303 (1), 767.33 (5) (a), 767.51 (6)
2 and 808.075 (4) (d) 4.; and **to create** 767.321 of the statutes; **relating to:**
3 temporary revision of child or family support when payer is on active military
4 duty.

Analysis by the Legislative Reference Bureau

Under current law, a person who is ordered by a court to pay child or family support may have the amount of support revised if there has been a substantial change in circumstances. A substantial change in circumstances includes such events as a change in the payer's earning capacity or a change in the needs of the child. Certain events, such as the expiration of 33 months since the support order was entered or last revised, constitute rebuttable presumptions that there has been a substantial change in circumstances. Even if the court finds that there has been a substantial change in circumstances, the court is not required to revise the support amount. If the court does revise support, however, it must use the percentage standard for setting the amount or, if the court determines that using the percentage standard would be unfair to the child or either of the parties, the court may modify the amount that would result from using the percentage standard on the basis of factors set out in the statutes. (The percentage standard is a percentage of the payer's gross income. The percentage varies with the number of children for which the support is paid and with the amount of time that the payer has physical placement with the children.)

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This bill requires a court to revise the amount of child or family support that a payer is obligated to pay if the payer is a member of the national guard or of a reserve unit of the U.S. armed forces, is called into active duty in the U.S. armed forces, and files a motion for the revision within 180 days after he or she is discharged from active duty. The revised amount of support must bear the same proportion to the amount the payer is currently obligated to pay as the payer's military pay bears to the payer's income while not on active duty. The revision applies to the period beginning on the date on which the payer begins serving on active duty and ending on the date on which the payer is discharged from active duty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 767.263 (1) of the statutes is amended to read:

2 767.263 (1) Each order for child support, family support, or maintenance
3 payments shall include an order that the payer and payee notify the county child
4 support agency under s. 59.53 (5) of any change of address within 10 business days
5 of such change. Each order for child support, family support, or maintenance
6 payments shall also include an order that the payer notify the county child support
7 agency under s. 59.53 (5) and the payee, within 10 business days, of any change of
8 employer and of any substantial change in the amount of his or her income, including
9 receipt of bonus compensation, such that his or her ability to pay child support,
10 family support, or maintenance is affected. The order shall also include a statement
11 that clarifies that notification of any substantial change in the amount of the payer's
12 income will not result in a change of the order unless a revision of the order under
13 s. 767.32 or 767.321 or an annual adjustment of the child or family support amount
14 under s. 767.33 is sought.

15 **SECTION 2.** 767.265 (1) of the statutes is amended to read:

16 767.265 (1) Each order for child support under this chapter, for maintenance
17 payments under s. 767.23 or 767.26, for family support under this chapter, for costs

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1 ordered under s. 767.51 (3) or 767.62 (4), for support by a spouse under s. 767.02 (1)
2 (f), or for maintenance payments under s. 767.02 (1) (g), each order for or obligation
3 to pay the annual receiving and disbursing fee under s. 767.29 (1) (d), each order for
4 a revision in a judgment or order with respect to child support, maintenance, or
5 family support payments under s. 767.32, each order for a temporary revision in a
6 judgment or order with respect to child or family support payments under s. 767.321,
7 each stipulation approved by the court or a circuit court commissioner for child
8 support under this chapter, and each order for child or spousal support entered under
9 s. 948.22 (7) constitutes an assignment of all commissions, earnings, salaries, wages,
10 pension benefits, benefits under ch. 102 or 108, lottery prizes that are payable in
11 installments, and other money due or to be due in the future to the department or
12 its designee. The assignment shall be for an amount sufficient to ensure payment
13 under the order, obligation, or stipulation and to pay any arrearages due at a periodic
14 rate not to exceed 50% of the amount of support due under the order, obligation, or
15 stipulation so long as the addition of the amount toward arrearages does not leave
16 the party at an income below the poverty line established under 42 USC 9902 (2).

17 **SECTION 3.** 767.303 (1) of the statutes is amended to read:

18 767.303 (1) If a person fails to pay a payment ordered for support under s.
19 767.077, support under s. 767.08, child support or family support under s. 767.23,
20 child support under s. 767.25, family support under s. 767.261, revised child or
21 family support under s. 767.32 or 767.321, child support under s. 767.458 (3), child
22 support under s. 767.477, child support under s. 767.51, child support under s. 767.62
23 (4), child support under ch. 769, or child support under s. 948.22 (7), the payment is
24 90 or more days past due, and the court finds that the person has the ability to pay
25 the amount ordered, the court may suspend the person's operating privilege, as

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1 defined in s. 340.01 (40), until the person pays all arrearages in full or makes
2 payment arrangements that are satisfactory to the court, except that the suspension
3 period may not exceed 2 years. If otherwise eligible, the person is eligible for an
4 occupational license under s. 343.10 at any time.

5 **SECTION 4.** 767.321 of the statutes is created to read:

6 **767.321 Temporary revision of child or family support while payer is**
7 **on active military duty. (1)** (a) Notwithstanding s. 767.32, if a member of the
8 national guard or of a reserve unit of the U.S. armed forces is obligated to pay child
9 or family support and is called into active duty in the U.S. armed forces, the court
10 shall revise the child or family support to an amount that bears the same proportion
11 to the child or family support amount that the payer is obligated to pay when the
12 payer is called into active duty as the payer's military pay bears to the payer's income
13 while not on active duty.

14 (b) Notwithstanding s. 767.32 (1m), the revision in child or family support
15 under par. (a) shall apply for the period beginning on the date on which the payer
16 begins to serve on active duty in the U.S. armed forces and ending on the date on
17 which the payer is discharged from active duty.

18 **(2)** The court is required to revise child or family support as provided under
19 sub. (1) only if a party files a motion for revision not more than 180 days after the
20 payer is discharged from active duty in the U.S. armed forces.

21 **SECTION 5.** 767.33 (5) (a) of the statutes is amended to read:

22 **767.33 (5)** (a) Nothing in this section affects a party's right to file at any time
23 a motion, petition, or order to show cause under s. 767.32 for revision of a judgment
24 or order with respect to an amount of child or family support or to file a motion under

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1 s. 767.321 for temporary revision of a judgment or order with respect to child or
2 family support.

3 **SECTION 6.** 767.51 (6) of the statutes is amended to read:

4 767.51 (6) Sections 767.24, 767.245, 767.263, 767.265, 767.267, 767.29,
5 767.293, 767.30, 767.305, 767.31, 767.32, 767.321, and 767.325, where applicable,
6 shall apply to a judgment or order under this section.

7 **SECTION 7.** 808.075 (4) (d) 4. of the statutes is amended to read:

8 808.075 (4) (d) 4. Revision of judgment or order for child support, maintenance
9 payments, or family support payments under s. 767.32, 767.321, or 767.51.

10 **SECTION 8. Initial applicability.**

11 (1) The treatment of section 767.263 (1) of the statutes first applies to orders
12 for child support, family support, or maintenance that are entered on the effective
13 date of this subsection.

14 (END)