



State of Wisconsin
1997 - 1998 LEGISLATURE

LRBs0586/2
PJK:kmg:ijs

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1997 ASSEMBLY BILL 191**

March 12, 1998 - Offered by Representative AINSWORTH.

1 **AN ACT** *to renumber and amend* 767.32 (1r); *to create* 767.32 (1r) (a), 767.32
2 (1r) (b), 767.32 (1r) (c), 767.32 (1r) (d), 767.32 (1r) (e) and 767.32 (1r) (f) of the
3 statutes; and *to affect* 1997 Wisconsin Act 27, section 5031 and 1997 Wisconsin
4 Act 27, section 9426 (8); **relating to:** granting credit against child or family
5 support.

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

6 **SECTION 1.** 767.32 (1r) of the statutes is renumbered 767.32 (1r) (intro.) and
7 amended to read:
8 767.32 (**1r**) (intro.) In an action under sub. (1) to revise a judgment or order with
9 respect to child support or family support, the court may ~~not~~ grant credit to the payer
10 against support due prior to the date on which the ~~action is commenced~~ petition,
11 motion or order to show cause is served for payments made by the payer ~~on behalf~~
12 of the ~~child~~ other than payments made to the ~~clerk of court or support collection~~

1 designee under as provided in s. 767.265 or 767.29 or ~~as otherwise ordered by the~~
2 ~~court.~~, in any of the following circumstances:

3 **SECTION 2.** 767.32 (1r) (a) of the statutes is created to read:

4 767.32 (1r) (a) The payee agrees to the credit, either in person in court or by
5 a notarized statement.

6 **SECTION 3.** 767.32 (1r) (b) of the statutes is created to read:

7 767.32 (1r) (b) The payer shows by documentary evidence that the payments
8 were made directly to the payee by cash, check or money order, and shows by a
9 preponderance of the evidence that the payments were intended for support and not
10 intended as a gift to or on behalf of the child or for the payment of some other
11 obligation to the payee.

12 **SECTION 4.** 767.32 (1r) (c) of the statutes is created to read:

13 767.32 (1r) (c) The payer proves by a preponderance of the evidence that the
14 payee expressly agreed to accept the payments in lieu of child or family support paid
15 as provided in s. 767.265 or 767.29, not including normal gifts or contributions for
16 entertainment.

17 **SECTION 5.** 767.32 (1r) (d) of the statutes is created to read:

18 767.32 (1r) (d) The payer proves by documentary evidence that, for a period
19 during which unpaid support accrued, the child received benefits under 42 USC 402
20 (d) based on the payer's entitlement to federal disability insurance benefits under 42
21 USC 401 to 433. Any credit granted under this paragraph shall be limited to the
22 amount of unpaid support that accrued during the period for which the benefits
23 under 42 USC 402 (d) were paid.

24 **SECTION 6.** 767.32 (1r) (e) of the statutes is created to read:

1 767.32 (1r) (e) The payer proves by a preponderance of the evidence that the
2 child lived with the payer, with the agreement of the payee, for more than 60 days
3 beyond a court-ordered period of physical placement. Credit may not be granted
4 under this paragraph if, with respect to the time that the child lived with the payer
5 beyond the court-ordered period of physical placement, the payee sought to enforce
6 the physical placement order through civil or criminal process or if the payee shows
7 that the child's relocation to the payer's home was not mutually agreed to by both
8 parents.

9 **SECTION 7.** 767.32 (1r) (f) of the statutes is created to read:

10 767.32 (1r) (f) The payer proves by a preponderance of the evidence that the
11 payer and payee resumed living together with the child and that, during the period
12 for which a credit is sought, the payer directly supported the family by paying
13 amounts at least equal to the amount of unpaid court-ordered support that accrued
14 during that period.

15 **SECTION 8.** 1997 Wisconsin Act 27, section 5031 is repealed.

16 **SECTION 9.** 1997 Wisconsin Act 27, section 9426 (8) is amended to read:

17 [1997 Wisconsin Act 27] Section 9426 (8) CENTRALIZED RECEIPT AND
18 DISBURSEMENT OF SUPPORT AND MAINTENANCE. The treatment of sections 20.445 (3) (a),
19 (ja), (k), (q) and (r), 20.855 (7) (j), 25.17 (1) (tm), 25.68, 49.24 (1) (by SECTION 1882n),
20 49.855 (1), (2), (3) (by SECTION 1992m), (4), (4m) (b) (by SECTION 1995m) and (c) and
21 (5), 565.30 (5), 767.001 (7), 767.025 (3) and (4), 767.25 (4m) (c) 1. and (6) (intro.) and
22 (a), 767.261 (intro.) and (1), 767.262 (4) (b), 767.263, 767.265 (1), (2r), (3h), (6) (a) and
23 (b) and (7), 767.267 (1), (2) and (5), 767.29 (1m) (intro.) and (d) and (2), ~~767.32 (1r)~~,
24 767.51 (3m) (c) 1. and (5p) (intro.) and (a), 769.319 and 814.61 (12) (cm) of the
25 statutes, the repeal of sections 20.445 (3) (g), 59.40 (2) (h), 59.53 (5m), 814.61 (12) (b)

1 and 814.612 of the statutes, the renumbering and amendment of sections 59.53 (5)
2 and 767.29 (1) of the statutes, the amendment of section 49.175 (1) (intro.) of the
3 statutes, the creation of sections 59.53 (5) (b) and 767.29 (1) (b), (d) and (f) of the
4 statutes and SECTION 9226 (1) of this act take effect on the date stated in the notice
5 published by the department of workforce development in the Wisconsin
6 Administrative Register under section 767.29 (1) (f) of the statutes, as created by this
7 act, or on October 1, 1999, whichever is earlier.

8 **SECTION 10. Initial applicability.**

9 (1) This act first applies to arrearages existing and child or family support
10 payments past due on the effective date of this subsection, regardless of when the
11 judgment or order under which the arrearages accrued or the child or family support
12 is owed was entered.

13 (END)