

2001 DRAFTING REQUEST**Senate Substitute Amendment (SSA-SB106)**

Received: 05/08/2001

Received By: kahlepj

Wanted: Soon

Identical to LRB:

For: Workforce Development

By/Representing: Connie Chesnick

This file may be shown to any legislator: NO

Drafter: kahlepj

May Contact:

Addl. Drafters:

Subject: Dom. Rel. - child support

Extra Copies:

Submit via email: NO

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Allowing percentage-expressed child support orders in certain cases and providing for annual adjustments to fixed-sum child support orders

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P2	kahlepj 05/17/2001	csicilia 05/18/2001	haugeca 05/18/2001		lrb docadmin 05/18/2001		
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FE Sent For:

<END>

Kahler, Pam

From: Chesnik, Constance
Sent: Tuesday, May 08, 2001 8:43 AM
To: Kahler, Pam
Subject: RE: PEO's-SB 106

Pam, I agree that a sub would probably be easier to follow. As for your other question, my thought is yes, except that I'd leave the first sentence of 767.27 (2m) in-In every action... the court...shall require the party who is ordered to pay...to annually furnish his or her ...tax return to the other party. Then I'd go on to say the manner of and time limits for exchange of tax returns.... My reasoning is that the Bar wanted to eliminate the language in 767.27 requiring the payer to furnish the financial disclosure form, so I think we need to be specific about what income information is being exchanged. Also, the county child support agencies want to make sure that exchange is between the parties and not allowing the court the option of requiring that the information be provided to the child support agency. As an aside, someone asked whether every reference to 'court' should also reference 'fcc'? Thanks, Pam.

Connie M. Chesnik

Attorney, Dept. of Workforce Development
(608) 267-7295

-----Original Message-----

From: Kahler, Pam
Sent: Monday, May 07, 2001 5:27 PM
To: Chesnik, Constance
Subject: RE: PEO's-SB 106

Connie:

I have a couple of questions. Do you think that a sub, rather than a simple amendment, would be better because it might be easier to see the language as a whole?

I assume that we need to get rid of the treatment of s. 767.27 (2) and (2m) in SB 106, right? I think it was intended to go with the annual adjustment and if under the state bar's version the court determines what information the parties must exchange, the changes to those subsections in SB 106 might not be appropriate.

Thanks, Pam.

-----Original Message-----

From: Chesnik, Constance
Sent: Monday, May 07, 2001 2:19 PM
To: Kahler, Pam
Subject: PEO's-SB 106

Hi Pam, per my voice mail, DWD would like you to draft as an amendment to SB 106 and AB 248, the Bar's proposal as you discussed it with Lucy Cooper and Linda Barth with three modifications:

1. Change the date by which someone would have to ask for a modification from 11/5 to 9/1.
2. Retain the existing provisions in SB 106 at ss. 13-15.
3. Include language that would allow parties in non IV-D cases to stipulate to PEO's if they only have one order and if all the debts in that order are expressed as a percentage.

As an aside, Lucy mentioned to me that her intent was that someone would only be able to get either a retroactive or a prospective adjustment-not both. In other words, someone gets a big bonus in Sep, 2000. By Sep, 2001, the payee requests an adjustment. The court could either determine that the bonus was a one time thing and just set an arrearage based on it, or they could prospectively adjust the order, effective January 1, 2000.

Would you please let me know when you think you might have a draft? A lot of the agreements we're reaching are conceptual in nature-people will need to see the actual language before they commit. Thanks.

Connie M. Chesnik

2001

Date (time) needed

Thurs. pm, if possible (Fri, if not possible)
LRBs 0112, PI

**SUBSTITUTE AMENDMENT
[TO A BILL]**

PJK : gjs : _____

Use the appropriate components and routines developed for substitute amendments.

S ~~A~~ **SUBSTITUTE AMENDMENT**
TO 2001 **SB** AB 106 (LRB-_____)

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the statutes; relating to:

.....
.....
.....
.....
.....

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

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

SECTION #.





2001 SENATE BILL 106

March 22, 2001 - Introduced by Senators GEORGE, COWLES and ROESSLER, cosponsored by Representatives KESTELL, DUFF, MUSSER, OTT, J. LEHMAN, ALBERS and RILEY, by request of Department of Workforce Development. Referred to Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform.

1 **AN ACT to renumber and amend 767.33 (2); to amend 767.08 (2) (b), 767.23 (1)**
 2 **(c), 767.25 (1) (a), 767.265 (3m), 767.27 (2), 767.27 (2m), 767.32 (1) (a), 767.33**
 3 **(1), 767.33 (1m) (a), 767.33 (1m) (b) and 808.075 (4) (d) 3; and to create 767.32**
 4 **(1) (d), 767.33 (2) (c) 1., 767.33 (2) (c) 2. and 767.33 (2) (c) 3. of the statutes;**
 5 **relating to:** expressing child support as a fixed sum, requiring child support
 6 payers annually to furnish copies of tax returns, and providing for annual
 7 adjustments in child support.

Analysis by the Legislative Reference Bureau

Under current law, child or family support may be expressed in a judgment or order as a fixed sum, as a percentage of a parent's income, or as a combination of the two in the alternative by requiring payment of the greater or lesser of either a percentage of a parent's income or a fixed sum. In order to revise a judgment or order with respect to an amount of child or family support, the court must find that there has been a substantial change in the circumstances of at least one of the parties. This bill requires that child or family support be expressed as a fixed sum in a judgment or order, including a temporary order. The bill also provides that the court is not required to make a finding of a substantial change in circumstances to change the manner of expressing the amount of child or family support to a fixed sum in a judgment or order in which the amount of child or family support is expressed as a percentage, or as a percentage or a fixed sum in the alternative.

expressing child support as a

stitutions

SENATE BILL 106

Under current law, the parties to an action affecting the family are required to disclose all of their assets, including income, on a financial disclosure form. If the court orders child or family support in the action, the court must order the party who must pay support to furnish a financial disclosure form annually, and may order that party to furnish copies of his or her most recently filed state and federal income tax returns annually, to the payee of the support and, if the state is a real party in interest, such as when a dependent child involved in the action is receiving medical assistance, to the county child support agency. The bill eliminates the requirement that the court order the support payer to furnish a financial disclosure form to the payee of the support and to the county child support agency but requires, instead of authorizes, the court to order the support payer to furnish copies of his or her most recently filed state and federal income tax returns annually to the payee of the support.

Finally, current law provides that a child support order that is expressed as a fixed sum may provide for an annual adjustment in the support amount, based on a change in the payer's income. The adjustment is not automatic, however; the payee of the support must apply to the family court commissioner for the actual adjustment. The bill requires every child or family support order that is expressed as a fixed sum to provide for an annual adjustment in the support amount, based on a change in the payer's income, and still requires application to the family court commissioner for the adjustment to take effect. Since an adjustment would be a decrease in the support amount if the payer's income decreased, the bill provides that either party, not just the payee, may apply for the adjustment. If the family court commissioner receives an application for an adjustment, the family court commissioner must send notice to the other party, who may request a hearing on whether the adjustment should go into effect. If a hearing is held, the family court commissioner may direct that all or part of the adjustment not go into effect until such time as directed by the family court commissioner if: 1) as under current law, the payer establishes that extraordinary circumstances beyond his or her control prevent fulfillment of the adjustment; 2) the payee establishes that the payer has voluntarily and unreasonably reduced his or her income below his or her earning capacity; or 3) the party who requested the hearing establishes that the adjustment would be unfair to the child.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

- 1 **SECTION 1.** 767.08 (2) (b) of the statutes is amended to read:
- 2 767.08 (2) (b) The court in the action shall, as provided under s. 767.25 or
- 3 767.26, determine and adjudge the amount, if any, the person should reasonably

SENATE BILL 106

Except as provided in s. 767.25(1c), this

1 contribute to the support and maintenance of the spouse or child and how the sum
2 should be paid. ^{Strike} This amount may must be expressed as a percentage of the person's
3 income or as a fixed sum, or as a combination of both in the alternative by requiring
4 payment of the greater or lesser of either a percentage of the person's income or a
5 fixed sum. The amount so ordered to be paid may be changed or modified by the court
6 upon notice of motion or order to show cause by either party upon sufficient evidence.

SECTION 2. 767.23 (1) (c) of the statutes is amended to read:

8 767.23 (1) (c) Subject to s. 767.477, requiring either party or both parties to
9 make payments for the support of minor children, which payment amounts may
10 must be expressed as a percentage of parental income or as a fixed sum, or as a
11 combination of both in the alternative by requiring payment of the greater or lesser
12 of either a percentage of parental income or a fixed sum.

except as provided in s. 767.25(1c)

SECTION 3. 767.25 (1) (a) of the statutes is amended to read:

14 767.25 (1) (a) Order either or both parents to pay an amount reasonable or
15 necessary to fulfill a duty to support a child. The support amount may must be
16 expressed as a percentage of parental income or as a fixed sum, or as a combination
17 of both in the alternative by requiring payment of the greater or lesser of either a
18 percentage of parental income or a fixed sum.

Insert 3-18

SECTION 4. 767.265 (3m) of the statutes is amended to read:

20 767.265 (3m) Benefits under ch. 108 may be assigned and withheld only in the
21 manner provided in s. 108.13 (4). ^{Strike} Any order to withhold benefits under ch. 108 may
22 shall be for a percentage of benefits payable or for a fixed sum, or for a combination
23 of both in the alternative by requiring the withholding of the greater or lesser of
24 either a percentage of benefits payable or a fixed sum. When money is to be withheld

Insert 3-24

Except as provided in s. 767.25(1c), any

SENATE BILL 106

SECTION 4

1 from these benefits, no fee may be deducted from the amount withheld and no fine
2 may be levied for failure to withhold the money.

3 SECTION 5. 767.27 (2) of the statutes is amended to read:

4 767.27 (2) ~~Except as provided in sub. (2m),~~ disclosure Disclosure forms
5 required under this section shall be filed within 90 days after the service of summons
6 or the filing of a joint petition or at such other time as ordered by the court or family
7 court commissioner. Information contained on such forms shall be updated on the
8 record to the date of hearing.

9 SECTION 6. 767.27 (2m) of the statutes is amended to read:

10 767.27 (2m) In every action in which the court has ordered a party to pay child
11 support under s. 767.25, 767.51 or 767.62 (4) or family support under s. 767.261 and
12 the circumstances specified in s. 767.075 (1) apply this chapter, including an action
13 to revise a judgment or order under s. 767.32, the court shall require the party who
14 is ordered to pay the support to annually furnish ~~the disclosure form required under~~
15 ~~this section and may require that party to annually furnish a copy of his or her most~~
16 ~~recently filed state and federal income tax returns to the county child support agency~~
17 ~~under s. 59.53 (5) for the county in which the order was entered. In any action in~~
18 ~~which the court has ordered a party to pay child support under s. 767.25, 767.51 or~~
19 ~~767.62 (4) or family support under s. 767.261, the court may require the party who~~
20 ~~is ordered to pay the support to annually furnish the disclosure form required under~~
21 ~~this section and a copy of his or her most recently filed state and federal income tax~~
22 ~~returns to the party for whom the support has been awarded. A party who fails to~~
23 ~~furnish the information as required by the court under this subsection may be~~
24 ~~proceeded against for contempt of court under ch. 785. If the court finds that a party~~
25 ~~has failed to furnish the information required under this subsection, the court shall~~

SENATE BILL 106

1 award to the party bringing the action costs and, notwithstanding s. 814.04 (1),
2 reasonable attorney fees.

3 SECTION 7. 767.32 (1) (a) of the statutes is amended to read:

4 767.32 (1) (a) After a judgment or order providing for child support under this
5 chapter or s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b)
6 4., 938.357 (5m) (a), 938.363 (2), or 948.22 (7), maintenance payments under s.
7 767.26, or family support payments under this chapter, or for the appointment of
8 trustees under s. 767.31, the court may, from time to time, on the petition, motion,
9 or order to show cause of either of the parties, or upon the petition, motion, or order
10 to show cause of the department, a county department under s. 46.215, 46.22, or
11 46.23, or a county child support agency under s. 59.53 (5) if an assignment has been
12 made under s. 46.261, 48.57 (3m) (b) 2. or (3n) (b) 2., 49.19 (4) (h), or 49.45 (19) or if
13 either party or their minor children receive aid under s. 48.57 (3m) or (3n) or ch. 49,
14 and upon notice to the family court commissioner, revise and alter such judgment or
15 order respecting the amount of such maintenance or child support and the payment
16 thereof, and also respecting the appropriation and payment of the principal and
17 income of the property so held in trust, and may make any judgment or order
18 respecting any of the matters that such court might have made in the original action,
19 except that a judgment or order that waives maintenance payments for either party
20 shall not thereafter be revised or altered in that respect nor shall the provisions of
21 a judgment or order with respect to final division of property be subject to revision
22 or modification. ~~A~~ Except as provided in par. (d), a revision, under this section, of
23 a judgment or order with respect to an amount of child or family support may be made
24 only upon a finding of a substantial change in circumstances. In any action under
25 this section to revise a judgment or order with respect to maintenance payments, a

SENATE BILL 106

1 substantial change in the cost of living by either party or as measured by the federal
2 bureau of labor statistics may be sufficient to justify a revision of judgment or order
3 with respect to the amount of maintenance, except that a change in an obligor's cost
4 of living is not in itself sufficient if payments are expressed as a percentage of income.

5 SECTION 8. 767.32 (1) (d) of the statutes is created to read:

6 767.32 (1) (d) In an action under this section to revise a judgment or order with
7 respect to child or family support, the court is not required to make a finding of a
8 substantial change in circumstances to change to a fixed sum the manner in which
9 the amount of child or family support is expressed in the judgment or order.

10 SECTION 9. 767.33 (1) of the statutes is amended to read:

11 767.33 (1) An order for child or family support under s. ~~767.23 or 767.25~~ may
12 this chapter, including an order revising child or family support under s. 767.32, shall
13 provide for an adjustment in the amount to be paid based on a change in the obligor's
14 income, as reported on ~~the disclosure form~~ his or her most recently filed state and
15 federal tax returns furnished under s. 767.27 (2m) or as disclosed under s. 49.22 (2m)
16 to the department or county child support agency under s. 59.53 (5). The order may
17 specify the date on which the annual adjustment becomes effective. No adjustment
18 may be made unless the order so provides and either the obligor or the party receiving
19 payments applies for an adjustment as provided in sub. (2) (a). An adjustment under
20 this section may be made only once in any year.

21 SECTION 10. 767.33 (1m) (a) of the statutes is amended to read:

22 767.33 (1m) (a) Except as provided in par. (b), this section applies only to an
23 a child or family support order under s. ~~767.23 or 767.25~~ this chapter in which
24 payment is expressed as a fixed sum. It does not apply to such an order in which
25 payment is expressed as a percentage of parental income.

then delete all of p. 7

SENATE BILL 106

SECTION 12

1 ~~prevent fulfillment of the adjusted child support obligation, the family court~~
2 ~~commissioner may direct that all or part of the adjustment not take effect until the~~
3 ~~obligor is able to fulfill the adjusted obligation. If at the hearing the obligor does not~~
4 ~~establish that extraordinary circumstances beyond his or her control prevent~~
5 ~~fulfillment of the adjusted obligation, the such time as the family court commissioner~~
6 ~~directs, if any of the following applies:~~

7 ~~(d) If none of the conditions specified in par. (c) 1. to 3. is satisfied, the~~
8 ~~adjustment shall take effect as of the date it would have become effective had no~~
9 ~~hearing been requested. Either party may, within 15 working days of the date of the~~
10 ~~decision by the family court commissioner under this subsection, seek review of the~~
11 ~~decision by the court with jurisdiction over the action.~~

12 **SECTION 13.** 767.33 (2) (c) 1. of the statutes is created to read:

13 767.33 (2) (c) 1. The obligor requested the hearing and establishes that
14 extraordinary circumstances beyond his or her control prevent fulfillment of the
15 adjusted child support obligation.

16 **SECTION 14.** 767.33 (2) (c) 2. of the statutes is created to read:

17 767.33 (2) (c) 2. The party receiving payments requested the hearing and
18 establishes that the obligor voluntarily and unreasonably reduced his or her income
19 below his or her earning capacity.

20 **SECTION 15.** 767.33 (2) (c) 3. of the statutes is created to read:

21 767.33 (2) (c) 3. The party who requested the hearing establishes that the
22 adjustment would be unfair to the child.

23 **SECTION 16.** 808.075 (4) (d) 3. of the statutes is amended to read:

24 808.075 (4) (d) 3. Annual adjustment of child or family support under s. 767.33.

25 **SECTION 17. Initial applicability.**

Insert 8-23

Insert 8-25

SENATE BILL 106

767.32 (1m),

and (1c), 767.263(1)

and 814.04 (intro.)

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17

(1) The treatment of sections 767.08 (2) (b), 767.23 (1) (c), 767.25 (1) (a), 767.265 (3m), ~~and 767.33~~ of the statutes first applies to judgments and orders, including revision orders under section 767.32 of the statutes, as affected by this act, and temporary orders, granted on the effective date of this subsection.

(2) The treatment of section 767.32 (1) (a) and (d) of the statutes first applies to actions under section 767.32 of the statutes to revise a judgment or order with respect to child or family support that are commenced on the effective date of this subsection.

(3) The treatment of section 767.27 (2) and (2m) of the statutes first applies to actions in which a child or family support order under chapter 767 of the statutes, as affected by this act, including a revision order under section 767.32 of the statutes, as affected by this act, is granted on the effective date of this subsection.

(4) The renumbering and amendment of section 767.33 (2) of the statutes and the creation of section 767.33 (2) (c) 1., 2., and 3. of the statutes first apply to adjustments under section 767.33 of the statutes, as affected by this act, that are applied for on the effective date of this subsection.

(END)

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0112/?ins
PJK.....

INSERT 3-18

log 2

1 SECTION 1. 767.25 (1) (a) of the statutes is amended to read:

2 767.25 (1) (a) Order either or both parents to pay an amount reasonable or
3 necessary to fulfill a duty to support a child. The Except as provided in sub. (1c), the
4 support amount may ~~must~~ be expressed as a percentage of parental income or as a
5 fixed sum, or as a combination of both in the alternative by requiring payment of the
6 greater or lesser of either a percentage of parental income or a fixed sum.

History: 1971 c. 157; 1977 c. 29, 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.25; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 27, 37, 355, 413; 1989 a. 31, 212; 1991 a. 39; 1993 a. 481; 1995 a. 27 ss. 7101, 7102, 7126 (19); 1995 a. 201, 279, 404; 1997 a. 27, 35, 191; 1999 a. 9, 32.

7 SECTION 2. 767.25 (1c) of the statutes is created to read:

8 767.25 (1c) Child support payments may be expressed in an order as a
9 percentage of parental income if all of the following apply:

10 (a) The state is not a real party in interest in the action under any of the
11 circumstances specified in s. 767.075 (1).

12 (b) The parties have stipulated to expressing the support amount as a
13 percentage of parental income.

14 (c) The payer is not subject to any other order, in any other action, for the
15 payment of child or family support or maintenance.

16 (d) All payment obligations included in the order are expressed as a percentage
17 of the payer's income.

18 SECTION 3. 767.263 (1) of the statutes is amended to read:

19 767.263 (1) Each order for child support, family support, or maintenance
20 payments shall include an order that the payer and payee notify the county child
21 support agency under s. 59.53 (5) of any change of address within 10 business days
22 of such change. Each order for child support, family support, or maintenance
23 payments shall also include an order that the payer notify the county child support



Ins. 3-18 cont'd 2 of 2

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

History: 1977 c. 105; 1979 c. 32 s. 50; Stats. 1979 s. 767.263; 1989 a. 212; 1995 a. 279; 1997 a. 27, 191.
 (END OF INSERT 3-18)

INSERT 3-24

8 *wof* If s. 767.25 (1c) applies, an order to withhold benefits under ch. 108 shall be for a
 9 percentage of benefits payable.

(END OF INSERT 3-24)

Insert 8-23

100 8

note ->

*LPS:
Note that
this insert (8-23)
uses parts of
LRBa 0492/P1 and
LRBa 0480/P1
(+ fee board
forth)*

come will not
767.32 or an
3 is sought."
ending with

1 notification of any substantial
2 result in a change of the order
3 annual adjustment of the child
4 **2.** Page 6, line 10: delete
5 page 8, line 22, and substitute:

6 ~~SECTION 11m.~~ **SECTION 767.32 (1m)** of the statutes is amended to read:

7 **767.32 (1m)** In an action under sub. (1) to revise a judgment or order with
8 respect to child support, maintenance payments, or family support payments, the
9 court may not revise the amount of child support, maintenance payments, or family
10 support payments due, or an amount of arrearages in child support, maintenance
11 payments, or family support payments that has accrued, prior to the date that notice
12 of the action is given to the respondent, except to correct previous errors in
13 calculations. This subsection does not apply to an annual adjustment under s.
14 767.33.

15 ~~SECTION 12m.~~ **SECTION 767.33** of the statutes is repealed and recreated to read:

16 **767.33 Annual adjustments in support orders.** (1) (a) An order for child
17 or family support under this chapter may provide for an annual adjustment in the
18 amount to be paid based on a change in the payer's income if the amount of child or
19 family support is expressed in the order as a fixed sum and based on the percentage
20 standard established by the department under s. 49.22 (9). No adjustment may be
21 made under this section unless the order provides for the adjustment and includes
22 written notice that the adjustment may apply to support that was paid before the
23 adjustment is ordered by the court or family court commissioner *as provided in this*

24 ~~section~~

as provided in this section,



Insert 8-23 cont'd 2 of 8

1 (b) An adjustment under this section may not be made more than once in a year,
2 shall be determined on the basis of the percentage standard established by the
3 department under s. 49.22 (9), and shall be effective as of January 1 of the year after
4 the year in which the payer's income changes.

5 (c) In the order the court or family court commissioner shall specify what
6 information the parties must exchange to determine whether the payer's income has
7 changed, and shall specify the manner and timing of the information exchange.

8 (2) If the court or family court commissioner provides for an annual
9 adjustment, the court or family court commissioner shall make available to the
10 parties, including the state if the state is a real party in interest under s. 767.075,
11 a form approved by the court or family court commissioner for the parties to use in
12 stipulating to an adjustment of the amount of child or family support and
13 modification of any applicable income-withholding order. The form shall include an
14 order, to be signed by a judge or family court commissioner, for approval of the
15 stipulation of the parties.

Handwritten mark: a scribble with an arrow pointing to line 10 and a circled (1) below it.

16 (3) (a) If the payer's income changes from the amount found by the court or
17 family court commissioner or stipulated to by the parties for the current child or
18 family support order, the parties may implement an adjustment under this section
19 by stipulating, on the form under sub. (2), to the changed income amount and the
20 adjusted child or family support amount, subject to sub. (1) (b).

21 (b) If the parties are implementing an annual adjustment under this section
22 after January 1 in the year after the year in which the payer's income changed, the
23 parties shall determine the difference between the adjusted amount of child or family
24 support that should have been paid since January 1 and the amount that the payer
25 actually paid since that date. If the amount that should have been paid is greater



Insert 8-23 contd

3078

1 than the amount actually paid, the difference shall be included in the stipulation as
2 an arrearage owed by the payer. If the amount that should have been paid is less
3 than the amount actually paid, the difference shall be included in the stipulation as
4 a credit owed to the payer. The parties shall, in the stipulation, provide for how a
5 credit or arrearage shall be paid and whether an arrearage shall accrue interest.

6 (c) The stipulation form must be signed by all parties and filed with the court.
7 If the stipulation is approved, the order shall be signed by a judge or family court
8 commissioner and implemented in the same manner as an order for a revision under
9 s. 767.32.

10 (4) (a) 1. If a party refuses to provide the information required by the court or
11 family court commissioner under sub. (1) (c), or if the payer's income changes but a
12 party refuses to sign the stipulation for an adjustment, either party, or the county
13 child support agency under s. 59.53 (5) on behalf of a party, may have an annual
14 adjustment implemented by filing, no later than July 1 of the year in which the
15 adjustment is to take effect, an affidavit of the party seeking the adjustment. The
16 affidavit shall state the amount by which the current child or family support amount
17 should be increased or decreased, the facts supporting a reasonable basis on which
18 the adjusted amount was determined, whether the other party has unreasonably
19 failed to provide the information required under sub. (1) (c) or unreasonably refused
20 to sign the stipulation for an adjustment, and the facts supporting a reasonable basis
21 for that assertion. The affidavit may state the payer's current income and the facts
22 supporting a reasonable basis on which the payer's current income was determined.

23 2. Not later than 60 days after filing the affidavit under subd. 1., the affiant
24 or county child support agency on behalf of the affiant shall serve the affidavit and
25 notice described in this subdivision on the other party in the manner provided in s.

Insert 8-23 cont'd 4 of 8

1 basis of the percentage standard established by the

2 The adjustment shall be effective as of the date on wh

3 (b) The parties shall determine the difference b

4 child or family support that should have been paid sinc

5 income changed and the amount that the payer actua

6 amount that should have been paid is greater than the amount actually paid, the

7 difference shall be included in the stipulation as an arrearage owed by the payer. If

8 the amount that should have been paid is less than the amount actually paid, the

9 difference shall be included in the stipulation as a credit owed to the payer.

10 (c) The stipulation form must be signed by all parties and filed with the court.

11 If the stipulation is approved, the order shall be signed by a judge or family court

12 commissioner and implemented in the same manner as an order for a revision under

13 s. 767.32.

14 (4) (a) Subject to par. (b), either party may file a motion, petition, or order to
15 show cause for implementation of an annual adjustment under this section if any of
16 the following applies:

17 1. A party refuses to provide the information required by the court under sub.

18 (1) (c).

19 2. The payer's income changes, but a party refuses to sign the stipulation for
20 an adjustment in the amount of child or family support.

21 (b) For implementation of an annual adjustment under this subsection, a party

22 may not file a motion, petition, or order to show cause after ~~the first day~~ of the year

23 following the year for which the adjustment is sought. ~~No annual adjustment under~~

24 this subsection may apply to child or family support owed before January 1 of the

25 year for which the adjustment is sought.

note
change



September 1



after the year in which the payer's
income changed.

note →

508 8

e

1 801.11 (1) (a) or (b) or by sending the affidavit
 2 last-known address of the other party. The notice
 3 ~~party, within 20 days after the date of the notice~~
 4 ~~adjustment or the amount of the adjustment, the~~
 5 ~~may enter an order adjusting the amount of the~~
 6 ~~the amount stated in the affidavit and may provide notice of assignment under s.~~
 7 ~~767.265. The notice shall include the mailing address to which the request for~~
 8 ~~hearing must be mailed or delivered in order to schedule a hearing under par. (b).~~
 9 3. The affiant or county child support agency on behalf of the affiant shall file
 10 with the court proof of service of the affidavit and notice on the other party.

*note
change*



11 ~~(b) If the other party makes a timely request for a hearing, the court or family~~
 12 ~~court commissioner shall, within 10 days, schedule a hearing. If the court or family~~
 13 ~~court commissioner determines after a hearing that an adjustment should be made,~~
 14 ~~the court or family court commissioner shall enter an order adjusting the child or~~
 15 ~~family support payments by the amount determined by the court or family court~~
 16 ~~commissioner, subject to sub. (1) (b) and any said notice of assignment under s.~~

17 ~~(b)~~ The court or family court commissioner may, however, direct that all or part
 18 of the adjustment not take effect until such time as the court or family court
 19 commissioner directs, if any of the following applies:

20 1. The payee was seeking an adjustment and the payer establishes that
 21 extraordinary circumstances beyond his or her control prevent fulfillment of the
 22 adjusted child or family support obligation.

23 2. The payer was seeking an adjustment and the payee establishes that the
 24 payer voluntarily and unreasonably reduced his or her income below his or her
 25 earning capacity.

608

1 3. The payer was seeking an adjustment and the payee establishes that the
2 adjustment would be unfair to the child.

3 (c) If the affiant or county child support agency under s. 59.53 (5) on behalf of
4 the affiant serves the affidavit and notice under par. (a) 2. and the other party fails
5 ~~to make a timely request for a hearing, the court or family court commissioner, if the~~
6 ~~affidavit demonstrates to the satisfaction of the court or family court commissioner~~
7 ~~that an adjustment to the child or family support payments should be made, shall~~
8 ~~enter an order adjusting the child or family support payments by the amount~~
9 ~~determined by the court or family court commissioner, subject to sub. (1) (b), and may~~
10 ~~send notice of assignment under s. 767.265. The court or family court commissioner~~
11 ~~shall send the order to the other party's last-known address and shall inform the~~
12 ~~other party whether an assignment is in effect and that the other party may, within~~
13 ~~a 10-day period, by motion request a hearing on the issue of whether the order should~~
14 ~~be vacated or the assignment should be withdrawn.~~

15 (d) If the court or family court commissioner implements an adjustment under
16 par. ~~(c)~~ (c) after January 1 of the year after the year in which the payer's income
17 changed and determines that the payer has an arrearage or a credit due on the basis
18 of the difference between what the payer actually paid in child or family support
19 since January 1 and what the payer should have paid since January 1, the court or
20 family court commissioner shall provide for how such credit or arrearage shall be
21 paid and whether such arrearage shall accrue interest.

22 (e) If ~~the court or family court commissioner determines~~
23 that a party has unreasonably failed to provide the information required under sub.
24 (1) (c) or to provide the information on a timely basis, or unreasonably failed or
25 refused to sign a stipulation for an annual adjustment, the court or family court

in an action under this subsection

Insert 8-23 contd

7 of 8

1 commissioner shall award to the aggrieved party actual costs, including service
2 costs, any costs attributable to time missed from employment, the cost of travel to
3 and from court, and reasonable attorney fees.

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

7 ~~3. Page 9, line 2: delete "and 767.33 (1) and (1m) (a) and (b)" and substitute
8 "767.32 (1m), and 767.33".~~

9 ~~4. Page 9, line 13: delete lines 13 to 16.~~

10 (END)



note →
insert 8-23 cont'd 8088

1 (c) If the court adjusts a child or family s
2 and determines that the payer has an arrearage
3 difference between what the payer actually p
4 paid from the date of the payer's income change
5 credit or arrearage shall be paid and whether s

note
down ↗

6 (d) If in an action under this subsection th
7 unreasonably failed to provide the information under sub. (1) (c) or to provide the
8 information on a timely basis, or unreasonably failed or refused to sign a stipulation
9 for an annual adjustment, the court shall award to the other party actual costs,
10 including service costs, any costs attributable to time missed from employment, the
11 cost of travel to and from court, and reasonable attorney fees.

12 (5) ~~an~~ increase or decrease in the payer's income results from a single
13 occurrence that is not expected to be ongoing, such as a bonus, an adjustment under
14 sub. (3) or (4) may consist of an arrearage or a credit without any prospective
15 adjustment in the child or family support amount.

16 (6) Nothing in this section affects a party's right to file at any time a motion,
17 petition, or order to show cause under s. 767.32 for revision of a judgment or order
18 with respect to an amount of child or family support."

19 2. Page 9, line 2: delete "and 767.33 (1) and (1m) (a) and (b)" and substitute
20 "767.32 (1m), and 767.33".

21 3. Page 9, line 13: delete lines 13 to 16.

22 (END)
of insert 8-23)

*Notwithstanding subs. (1) (b), (3) (a) and (b), and
= (4) (c) and (d), if*

Insert 8-25

¶ Section #. 814.04 (intro.) of the statutes is amended to read:

767.33 (4) (e),

¶ **814.04 Items of costs** (intro.) Except as provided in ss. 93.20, 100.30 (5m), 106.50 (6) (i) and (6m) (a), 115.80 (9), 769.313, 814.025, 814.245, 895.035 (4), 895.10 (3), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212 (2) (b), 943.245 (2) (d) and 943.51 (2) (b), when allowed costs shall be as follows:

NOTE: Section 814.04 (intro.) is shown as affected by two acts of the 1999 legislature and as merged by the revisor under s. 13.93 (2) (c).

History: Sup. Ct. Order, 50 Wis. 2d vii (1971); 1971 c. 141; Sup. Ct. Order, 67 Wis. 2d 585, 761, 780 (1975); Stats. 1975 s. 814.04; 1977 c. 209; 1979 c. 110 s. 60 (13); 1979 c. 271, 355; 1981 c. 123, 317; 1985 a. 52, 311; 1987 a. 348; 1991 a. 39, 65, 189, 295; 1993 a. 98, 326, 486, 490, 491; 1995 a. 24, 27, 133, 149, 262, 417; 1997 a. 55, 164, 254; 1999 a. 32, 82, 122, 190; s. 13.93 (2) (c).

(end of ins 8-25)

281.36(2)(b)1.5

↑
PLAIN TEXT

as affected by
2001 Wisconsin Act 6,

Connie Chesnick 5-16 + 5-17

changes to make:

1) cannot be retroactive to Jan 1 (feds
will not approve)

2) include cross-reference to food stamp
receipt in 767.075 (99-0535/11)

3) make the effective date, for stip: dated
signed by judge (for at com
for hearing: date person
served or notified

4) make sure state can file motion, pet, otsc

5) place stip requirements in 767.10



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBs0112/12
PJK:cjs:jf

P2
r m s run

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION / stays
SENATE SUBSTITUTE AMENDMENT,
TO 2001 SENATE BILL 106

Fri, if possible
D-note

and making the state a real party
in interest in an action
affecting the family if a party
is receiving food stamps

regenerate

1 AN ACT to amend 767.08 (2) (b), 767.23 (1) (c), 767.25 (1) (a), 767.263 (1), 767.265
2 (3m), 767.27 (2), 767.27 (2m), 767.32 (1) (a), 767.32 (1m), 808.075 (4) (d) 3. and
3 814.04 (intro.); to repeal and recreate 767.33; and to create 767.25 (1c) and
4 767.32 (1) (d) of the statutes; relating to: expressing child support as a fixed
5 sum, expressing child support as a percentage of income in certain situations,
6 requiring child support payers annually to furnish copies of tax returns, and
7 providing for annual adjustments in child support.

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

8 SECTION 1. 767.08 (2) (b) of the statutes is amended to read:
9 767.08 (2) (b) The court in the action shall, as provided under s. 767.25 or
10 767.26, determine and adjudge the amount, if any, the person should reasonably
11 contribute to the support and maintenance of the spouse or child and how the sum

Sub 1-8

plain
↓

Insert 2-19

Insert 2-6

1 should be paid. ~~This fixed sum as provided in s. 767.23 (1) (c)~~ amount ~~may~~ must be
 2 expressed as a ~~percentage of the person's income or as a fixed sum, or as a~~
 3 combination of both in the alternative by requiring payment of the greater or lesser
 4 of either a percentage of the person's income or a fixed sum. The amount so ordered
 5 to be paid may be changed or modified by the court upon notice of motion or order to
 6 show cause by either party upon sufficient evidence.

SECTION 2. 767.23 (1) (c) of the statutes is amended to read:

7
 8 767.23 (1) (c) Subject to s. 767.477, requiring either party or both parties to
 9 make payments for the support of minor children, which payment amounts ~~may~~
 10 must be expressed as a ~~percentage of parental income or as a fixed sum, or as a~~
 11 combination of both in the alternative by requiring payment of the greater or lesser
 12 of either a percentage of parental income or a fixed sum ~~as provided in s. 767.23 (1) (c)~~

Insert 2-19

SECTION 3. 767.25 (1) (a) of the statutes is amended to read:

plain

13
 14
 15 767.25 (1) (a) Order either or both parents to pay an amount reasonable or
 16 necessary to fulfill a duty to support a child. ~~The fixed sum as provided in s. 767.25 (1) (a)~~
 17 support amount may must be expressed as a percentage of parental income or as a
 18 fixed sum, or as a combination of both in the alternative by requiring payment of the
 19 greater or lesser of either a percentage of parental income or a fixed sum.

Insert 2-19

SECTION 4. 767.25 (1c) of the statutes is created to read:

20
 21 767.25 (1c) Child support payments may be expressed in an order as a
 22 percentage of parental income if all of the following apply:
 23 (a) The state is not a real party in interest in the action under any of the
 24 circumstances specified in s. 767.075 (1).

1 (b) The parties have stipulated to expressing the support amount as a
2 percentage of parental income.

3 (c) The payer is not subject to any other order, in any other action, for the
4 payment of child or family support or maintenance.

5 (d) All payment obligations included in the order are expressed as a percentage
6 of the payer's income.

7 **SECTION 5.** 767.263 (1) of the statutes is amended to read:

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

20 **SECTION 6.** 767.265 (3m) of the statutes is amended to read:

Pain
21 ~~767.265 (3m)~~ Benefits under ch. 108 may be assigned and withheld only in the
22 manner provided in s. 108.13 (4). ~~Any benefits provided in s. 767.265 (3m) order~~
23 to withhold benefits under ch. 108 ~~may~~ shall be for a percentage of benefits payable
24 or for a fixed sum, or for a combination of both in the alternative by requiring the
25 withholding of the greater or lesser of either a percentage of benefits payable or a

1

fixed sum ~~of \$1,500~~ ^{inset 4-1} an order to withhold benefits under ch. 108 shall

2

be for a percentage of benefits payable. When money is to be withheld from these

3

benefits, no fee may be deducted from the amount withheld and no fine may be levied

4

for failure to withhold the money.

5

SECTION 7. 767.27[✓] (2) of the statutes is amended to read:

6

767.27 (2) ~~Except as provided in sub. (2m), disclosure~~ Disclosure forms required under this section shall be filed within 90 days after the service of summons or the filing of a joint petition or at such other time as ordered by the court or family court commissioner. Information contained on such forms shall be updated on the record to the date of hearing.

11

SECTION 8. 767.27[✓] (2m) of the statutes is amended to read:

12

767.27 (2m) In every action in which the court has ordered a party to pay child support under s. 767.25, 767.51 or 767.62 (4) or family support under s. 767.261 and the circumstances specified in s. 767.075 (1) apply this chapter, including an action to revise a judgment or order under s. 767.32, the court shall require the party who is ordered to pay the support to annually furnish the disclosure form required under this section and may require that party to annually furnish a copy of his or her most recently filed state and federal income tax returns to the county child support agency under s. 59.53 (5) for the county in which the order was entered. In any action in which the court has ordered a party to pay child support under s. 767.25, 767.51 or 767.62 (4) or family support under s. 767.261, the court may require the party who is ordered to pay the support to annually furnish the disclosure form required under this section and a copy of his or her most recently filed state and federal income tax returns to the party for whom the support has been awarded. A party who fails to furnish the information as required by the court under this subsection may be

25

1 proceeded against for contempt of court under ch. 785. If the court finds that a party
2 has failed to furnish the information required under this subsection, the court shall
3 award to the party bringing the action costs and, notwithstanding s. 814.04 (1),
4 reasonable attorney fees.

5 SECTION 9. 767.32 (1) (a) of the statutes is amended to read:

6 767.32 (1) (a) After a judgment or order providing for child support under this
7 chapter or s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b)
8 4., 938.357 (5m) (a), 938.363 (2), or 948.22 (7), maintenance payments under s.
9 767.26, or family support payments under this chapter, or for the appointment of
10 trustees under s. 767.31, the court may, from time to time, on the petition, motion,
11 or order to show cause of either of the parties, or upon the petition, motion, or order
12 to show cause of the department, a county department under s. 46.215, 46.22, or
13 46.23, or a county child support agency under s. 59.53 (5) if an assignment has been
14 made under s. 46.261, 48.57 (3m) (b) 2. or (3n) (b) 2., 49.19 (4) (h), or 49.45 (19) or if
15 either party or their minor children receive aid under s. 48.57 (3m) or (3n) or ch. 49,
16 and upon notice to the family court commissioner, revise and alter such judgment or
17 order respecting the amount of such maintenance or child support and the payment
18 thereof, and also respecting the appropriation and payment of the principal and
19 income of the property so held in trust, and may make any judgment or order
20 respecting any of the matters that such court might have made in the original action,
21 except that a judgment or order that waives maintenance payments for either party
22 shall not thereafter be revised or altered in that respect nor shall the provisions of
23 a judgment or order with respect to final division of property be subject to revision
24 or modification. ~~A~~ Except as provided in par. (d), a revision, under this section, of
25 a judgment or order with respect to an amount of child or family support may be made

1 only upon a finding of a substantial change in circumstances. In any action under
2 this section to revise a judgment or order with respect to maintenance payments, a
3 substantial change in the cost of living by either party or as measured by the federal
4 bureau of labor statistics may be sufficient to justify a revision of judgment or order
5 with respect to the amount of maintenance, except that a change in an obligor's cost
6 of living is not in itself sufficient if payments are expressed as a percentage of income.

7 **SECTION 10.** 767.32[✓] (1) (d) of the statutes is created to read:

8 767.32 (1) (d) In an action under this section to revise a judgment or order with
9 respect to child or family support, the court is not required to make a finding of a
10 substantial change in circumstances to change to a fixed sum the manner in which
11 the amount of child or family support is expressed in the judgment or order.

12 **SECTION 11.** 767.32[✓] (1m) of the statutes is amended to read:

13 767.32 (1m) In an action under sub. (1) to revise a judgment or order with
14 respect to child support, maintenance payments, or family support payments, the
15 court may not revise the amount of child support, maintenance payments, or family
16 support payments due, or an amount of arrearages in child support, maintenance
17 payments, or family support payments that has accrued, prior to the date that notice
18 of the action is given to the respondent, except to correct previous errors in
19 calculations. This subsection does not apply to an annual adjustment under s.
20 767.33.

21 **SECTION 12.** 767.33[✓] of the statutes is repealed and recreated to read:

22 **767.33 Annual adjustments in support orders.** (1) (a) An order for child
23 or family support under this chapter may provide for an annual adjustment in the
24 amount to be paid based on a change in the payer's income if the amount of child or
25 family support is expressed in the order as a fixed sum and based on the percentage

1 standard established by the department under s. 49.22 (9). No adjustment may be
 2 made under this section unless the order provides for the adjustment and includes
 3 written notice that the adjustment may apply, as provided in this section, to support
 4 that was paid before the adjustment is ordered by the court or family court
 5 commissioner

6 (b) An adjustment under this section may not be made more than once in a year
 7 shall be determined on the basis of the percentage standard established by the
 8 department under s. 49.22 (9) and shall be effective as of January 1 of the year after
 9 the year in which the payer's income changes

10 (c) In the order the court or family court commissioner shall specify what
 11 information the parties must exchange to determine whether the payer's income has
 12 changed, and shall specify the manner and timing of the information exchange.

13 (2) If the court or family court commissioner provides for an annual
 14 adjustment, the court or family court commissioner shall make available to the
 15 parties, including the state if the state is a real party in interest under s. 767.075 (1),
 16 a form approved by the court or family court commissioner for the parties to use in
 17 stipulating to an adjustment of the amount of child or family support and
 18 modification of any applicable income-withholding order. The form shall include an
 19 order, to be signed by a judge or family court commissioner, for approval of the
 20 stipulation of the parties.

21 (3) (a) If the payer's income changes from the amount found by the court or
 22 family court commissioner or stipulated to by the parties for the current child or
 23 family support order, the parties may implement an adjustment under this section
 24 by stipulating, on the form under sub. (2), to the changed income amount and the
 25 adjusted child or family support amount, subject to sub. (1) (b).

1 (b) If the parties are implementing an annual adjustment under this section
 2 after January 1 in the year after the year in which the payer's income changed, the
 3 parties shall determine the difference between the adjusted amount of child or family
 4 support that should have been paid since January 1 and the amount that the payer
 5 actually paid since that date. If the amount that should have been paid is greater
 6 than the amount actually paid, the difference shall be included in the stipulation as
 7 an arrearage owed by the payer. If the amount that should have been paid is less
 8 than the amount actually paid, the difference shall be included in the stipulation as
 9 a credit owed to the payer. ~~The parties shall, in the stipulation, provide for how a~~
 10 ~~credit or arrearage shall be paid and whether an arrearage shall accrue interest.~~

11 *b* The stipulation form must be signed by all parties and filed with the court.
 12 If the stipulation is approved, the order shall be signed by a judge or family court
 13 commissioner and implemented in the same manner as an order for a revision under
 14 s. 767.32. *no 9* An adjustment under this subsection shall be

15 (4) (a) Subject to par. (b), *any* ~~either~~ party may file a motion, petition, or order to
 16 show cause for implementation of an annual adjustment under this section if any of
 17 the following applies:

- 18 1. A party refuses to provide the information required by the court under sub.
- 19 (1) (c).
- 20 2. The payer's income changes, but a party refuses to sign the stipulation for
- 21 an adjustment in the amount of child or family support.

22 (b) For implementation of an annual adjustment under this subsection, a party
 23 may not file a motion, petition, or order to show cause after September 1 of the year
 24 after the year in which the payer's income changed.

including the state if the state is a real party in interest under s. 767.075(1)

Effective as of the date on which the order is signed by the judge or family court commissioner.

1 (c) If the court or family court commissioner determines after a hearing that
 2 an adjustment should be made, the court or family court commissioner shall enter
 3 an order adjusting the child or family support payments by the amount determined
 4 by the court or family court commissioner, subject to sub. (1) (b). The court or family
 5 court commissioner may, however, direct that all or part of the adjustment not take
 6 effect until such time as the court or family court commissioner directs, if any of the
 7 following applies:

8 1. The payee was seeking an adjustment and the payer establishes that
 9 extraordinary circumstances beyond his or her control prevent fulfillment of the
 10 adjusted child or family support obligation.

11 2. The payer was seeking an adjustment and the payee establishes that the
 12 payer voluntarily and unreasonably reduced his or her income below his or her
 13 earning capacity.

14 3. The payer was seeking an adjustment and the payee establishes that the
 15 adjustment would be unfair to the child.

16 (d) If the court or family court commissioner implements an adjustment under
 17 par. (c) after January 1 of the year after the year in which the payer's income changed
 18 and determines that the payer has an arrearage or a credit due on the basis of the
 19 difference between what the payer actually paid in child or family support since
 20 January 1 and what the payer should have paid since January 1, the court or family
 21 court commissioner shall provide for how such credit or arrearage shall be paid and
 22 whether such arrearage shall accrue interest.

23 (e) If in an action under this subsection the court or family court commissioner
 24 determines that a party has unreasonably failed to provide the information required
 25 under sub. (1) (c) or to provide the information on a timely basis, or unreasonably

Insert 9-22

1 failed or refused to sign a stipulation for an annual adjustment, the court or family
2 court commissioner shall award to the aggrieved party actual costs, including service
3 costs, any costs attributable to time missed from employment, the cost of travel to
4 and from court, and reasonable attorney fees.

5 (5) Notwithstanding subs. ~~808.075~~ (3) (a) and (b), and (4) (c) and (d), if an
6 increase or decrease in the payer's income results from a single occurrence that is not
7 expected to be ongoing, such as a bonus, an adjustment under sub. (3) or (4) may
8 consist of an arrearage or a credit without any prospective adjustment in the child
9 or family support amount.

10 (6) Nothing in this section affects a party's right to file at any time a motion,
11 petition, or order to show cause under s. 767.32 for revision of a judgment or order
12 with respect to an amount of child or family support.

13 SECTION 13. 808.075 (4) (d) 3. of the statutes is amended to read:

14 808.075 (4) (d) 3. Annual adjustment of child or family support under s. 767.33.

15 SECTION 14. 814.04 (intro.) of the statutes, as affected by 2001 Wisconsin Act
16 6, is amended to read:

17 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.30 (5m),
18 106.50 (6) (i) and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 767.33 (4) (e), 769.313, 814.025,
19 814.245, 895.035 (4), 895.10 (3), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212
20 (2) (b), 943.245 (2) (d) and 943.51 (2) (b), when allowed costs shall be as follows:

21 SECTION 15. Initial applicability.

22 (1) The treatment of sections 767.08 (2) (b), 767.23 (1) (c), 767.25 (1) (a) ~~767.25 (1) (a)~~
23 767.263 (1), 767.265 (3m), 767.32 (1m), 767.33, and 814.04 (intro.) of the statutes first
24 applies to judgments and orders, including revision orders under section 767.32 of

STET

(3) (a) and (b)

767.10(2)(am)

~~767.25 (1) (a)~~

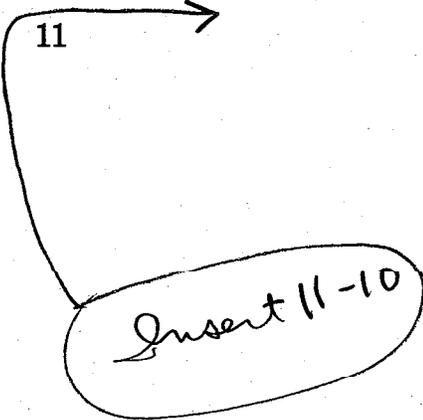
1 the statutes, as affected by this act, and temporary orders, granted on the effective
2 date of this subsection.

3 (2) The treatment of section 767.32 (1) (a) and (d) of the statutes first applies
4 to actions under section 767.32 of the statutes to revise a judgment or order with
5 respect to child or family support that are commenced on the effective date of this
6 subsection.

7 (3) The treatment of section 767.27 (2) and (2m) of the statutes first applies to
8 actions in which a child or family support order under chapter 767 of the statutes,
9 as affected by this act, including a revision order under section 767.32 of the statutes,
10 as affected by this act, is granted on the effective date of this subsection.

11

(END)



Insert 11-10

D-note

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0112/P1ins
PJK. ~~4/3~~

INSERT 1-8

1 SECTION 1. 767.075 (1) (c) of the statutes is amended to read:

2 767.075 (1) (c) Whenever aid under s. 46.261, 48.57 (3m) or (3n), 49.19, or 49.45
3 is provided on behalf of a dependent child or benefits are provided to the child's
4 custodial parent under s. 49.124 or under ss. 49.141 to 49.161. ✓

History: 1977 c. 418; 1979 c. 32 s. 50; 1979 c. 352 s. 39; Stats. 1979 s. 767.075; 1983 a. 27 s. 2202 (57); 1987 a. 413; 1989 a. 31; 1993 a. 326, 481; 1995 a. 27 s. 9126 (19); 1995 a. 201, 275, 289, 404; 1997 a. 35, 105.

(END OF INSERT 1-8)

INSERT 2-6

5 SECTION 2. 767.10 (2) (am) of the statutes is created to read:

6 767.10 (2) (am) A court may not approve a stipulation for expressing child
7 support or family support as a percentage of ~~income~~ *the payer's* unless all of the following apply:

8 1. The state is not a real party in interest in the action under any of the
9 circumstances specified in s. 767.075 (1). ✓

10 2. The payer is not subject to any other order, in any other action, for the
11 payment of child or family support or maintenance.

12 3. All payment obligations included in the order are expressed as a percentage
13 of the payer's income. ✓

(END OF INSERT 2-6)

INSERT 2-19

14 *not* unless the parties have stipulated to expressing the amount as a percentage of the
15 payer's income and the requirements under s. 767.10 (2) (am) 1. to 3. are satisfied

(END OF INSERT 2-19) ✓

INSERT 4-1



Insert 4-1

v-24

1 unless the court-ordered obligation on which the withholding order is based is
2 expressed in the court order as a percentage of the payer's income, in which case

(END OF INSERT 4-1) ✓

INSERT 9-22

3 (c) If the court or family court commissioner determines after a hearing that
4 an adjustment should be made, the court or family court commissioner shall enter
5 an order adjusting the child or family support payments by the amount determined
6 by the court or family court commissioner, subject to sub. (1) (b). An adjustment
7 under this subsection may not take effect before the date on which the party
8 responding to the motion, petition, or order to show cause received notice of the action
9 under this subsection.

10 (d) Notwithstanding par. (c), the court or family court commissioner may direct
11 that all or part of the adjustment not take effect until such time as the court or family
12 court commissioner directs, if any of the following applies:

13 1. The payee was seeking an adjustment and the payer establishes that
14 extraordinary circumstances beyond his or her control prevent fulfillment of the
15 adjusted child or family support obligation.

16 2. The payer was seeking an adjustment and the payee establishes that the
17 payer voluntarily and unreasonably reduced his or her income below his or her
18 earning capacity.



Qus. 9-22 cont'd

1 3. The payer was seeking an adjustment and the payee establishes that the
2 adjustment would be unfair to the child.

(END OF INSERT 9-22)

INSERT 11-10

3 (3) The treatment of section 767.075 (1) (c) of the statutes first applies to actions
4 affecting the family that are pending on the effective date of this subsection.

(END OF INSERT 11-10)

*4 ← use
autonomous*

3
4

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0112/P2dn

PJK: ~~gr:if~~

cjs

Connie:

1. I left s. 767.33 (5) in the draft unchanged. Do you think that an arrearage or a credit in that situation would amount to an impermissible retroactive change? If so, that subsection should come out.
2. I required the parties to stipulate to *expressing* the support amount as a percentage, rather than requiring the parties to stipulate to a support amount that is expressed as a percentage. If it were the latter and the parties stipulated to an amount of child support based on the percentage standard, it would be unclear whether they were stipulating to the amount or the way in which the amount is expressed, with all of the attendant effects. If the parties have stipulated to a support amount that is expressed as a percentage, the court can convert it to a fixed sum (which the court must do anyway in every case in which the amount is based on the percentage standard and expressed as a fixed sum) unless the parties have actually agreed that the amount will be *expressed* as a percentage.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0112/P2dn

PJK:cjs:ch

May 18, 2001

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Connie Chernick S-24 changes to S0112/P2

✓ 767.33(5) → out

✓ add:
to 767.075(1)(c)

Badger Care A. 49.665
Transitional child care

transition from
welfare to
A. 49.155

✓ p2, l 24 add:
2 other than R+D fee 767.25

✓ p.3, l 22
add page ~~4~~ (CCSA)

✓ p5, l 13 change "shall" to "may"

~~scribble~~

~~scribble~~

✓ p8, l 8 "including the date"

✓ p8, remove ll 21-23 (b)