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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2003-04
(session year)

Assembly
(Assembly, Senate or Joint)

Committee on ... Children and Families (AC-CF)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
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- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (May 2012)

Assembly

Record of Committee Proceedings

Committee on Children and Families

Assembly Bill 624

Relating to: a statute of limitations for bringing an action to collect child support.

By Representatives Krusick, Berceau, Colon, Huber, Jeskewitz, Owens, Seratti, Staskunas and Ziegelbauer; cosponsored by Senators Roessler and Carpenter.

October 27, 2003 Referred to Committee on Children and Families.

January 15, 2004 **PUBLIC HEARING HELD**

Present: (8) Representatives Kestell, Ladwig, Albers, Jeskewitz, Vukmir, Sinicki, Miller and Krug.
Absent: (0) None.

Appearances For
- Janet Nelson, Milwaukee County, Milwaukee
- Rep. Krusick, 7th Assembly District
- Connie Chesnick, DWD, Madison
- Bob Anderson, Legal Action of WI, Madison
- Tom Glowacki, State Bar of WI, Madison

Appearances Against
- None.

Appearances for Information Only
- None.

Registrations For
- Senator Roessler, 18th Senate District

Carol Medaris, WI Council on Children and Families, Madison
Dan Rossmilller, State Bar of WI, Madison

Registrations Against
None.

February 19, 2004 **EXECUTIVE SESSION HELD**

Present: (7) Representatives Kestell, Ladwig, Albers, Vukmir, Sinicki, Miller and Toles.
Absent: (1) Representative Jeskewitz.

Moved by Representative Albers, seconded by Representative Ladwig that **Assembly Bill 624** be recommended for passage.

Ayes:	(7)	Representatives Kestell, Ladwig, Albers, Vukmir, Sinicki, Miller and Toles.
Noes:	(0)	None.
Absent:	(1)	Representative Jeskewitz.

PASSAGE RECOMMENDED, Ayes 7, Noes 0

David Matzen
Committee Clerk

Vote Record
Committee on Children and Families

Date: 2-19-04

Moved by: Albers Seconded by: Ladwig

AB 624 SB _____ Clearinghouse Rule _____

AJR _____ SJR _____ Appointment _____

AR _____ SR _____ Other _____

A/S Amdt _____

A/S Amdt _____ to A/S Amdt _____

A/S Sub Amdt _____

A/S Amdt _____ to A/S Sub Amdt _____

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:

☒ Passage ☐ Adoption ☐ Confirmation ☐ Concurrence ☐ Indefinite Postponement

☐ Introduction ☐ Rejection ☐ Tabling ☐ Nonconcurrence

Committee Member	Aye	No	Absent	Not Voting
Representative Steve Kestell, Chair	☒	☐	☐	☐
Representative Bonnie Ladwig	☒	☐	☐	☐
Representative Sheryl Albers	☒	☐	☐	☐
Representative Suzanne Jeskewitz	☐	☐	☒	☐
Representative Leah Vukmir	☒	☐	☐	☐
Representative Christine Sinicki	☒	☐	☐	☐
Representative Mark Miller	☒	☐	☐	☐
Representative Barbara Toles	☒	☐	☐	☐
Totals:	7	0	1	

☒ Motion Carried ☐ Motion Failed


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WISCONSIN CHILD SUPPORT ENFORCEMENT ASSOCIATION

Memorandum

TO : Assembly Committee on Children and Families

FROM : Janet Nelson, Chair, Legislative Committee, Wisconsin Child Support Enforcement Association and Chief Legal Counsel, Milwaukee County Department of Child Support Enforcement

DATE : January 15, 2004

SUBJECT : Testimony on 2003 Assembly Bill 624, relating to the statute of limitations for bringing an action to collect child support.

The Wisconsin Child Support Enforcement Association (WCSEA) represents Wisconsin's county and tribal child support agencies, who are responsible for establishing and enforcing Wisconsin's child support orders. Milwaukee County and the WCSEA view Assembly Bill 624 as an essential addition to Wisconsin law.

A statute of limitation is a law that sets the period of time within which a person must start a lawsuit or lose the right to do so. It is a bright line rule that allows litigants to clearly understand what their obligations are in pursuing legal relief. Additionally, it is an important safeguard that protects potential lawsuit respondents from facing litigation on long-stale claims.

The current statute of limitation for the collection of child support is subject to considerable debate. This uncertainty requires the parties and the child support agencies to litigate the issue over and over in a case-by-case basis, unnecessarily using valuable court time on an issue that the legislature can and should clear up.

Until a Court of Appeals decision in 2002, family law courts, lawyers, and parties throughout the State of Wisconsin understood that a custodial parent had twenty years from the date the youngest child emancipated to pursue collection of child support arrears.

This time period was consistent with other Wisconsin law on enforcing judgments, and it was supported by a number of well-reasoned Supreme Court and Court of Appeals decisions. It worked well for a number of reasons. First, it allowed parents to avoid conflict over enforcement while the children were younger and more vulnerable to adversarial relations between the parents. It also provided for enforcement when the payer no longer had a current support obligation to pay for his or her child, increasing the resources available for collection. Finally, it gave a date certain that payees and child support agencies had to take action within or lose the right to further enforcement. This certainty was beneficial for all concerned.

Why the uncertainty now? Back in 1980, Chapter 893 of the statutes, which contain the bulk of the State's statutes of limitation, was rewritten and reorganized. The thought now is that there was no real intention to change the statute of limitation for support collection, but that is what resulted. No one noticed the impact of the rewording until the 2002 Court of Appeals case *State of Wisconsin v. Hamilton*, 2002 WI App 89 (Ct. App. 2002).

Originally, the statute was written so that the limitation period began to run when "the cause of action accrued", or when the harm occurred. In family cases, the cause of action for support accrued when current support was no longer being charged for any minor children, and you knew exactly how much the arrears were.

The 1980 language revision for enforcement of judgements said that the limitation period begins to run when the judgment is entered. This makes sense for most judgments. When you get most civil judgments, you know how much is owed and twenty years is a reasonable amount of time to collect that sum certain.

In a divorce, however, the entry of the judgment of divorce is only the beginning of a child support order. The limitation period for enforcement begins to run before either party knows whether enforcement efforts are even going to be needed. It creates inappropriate differences in enforcement periods depending upon how old a couple's children are at the time of divorce.

Example: Family A, the youngest child is 15 at the time if divorce - the payee will have 17 years after the child emancipates to collect arrears.

Family B, the youngest child is one at the time of the divorce – the payee will have three years after the child emancipates to collect arrears. This is particularly unfair if the arrears only began to accrue when the child was a teenager.

One result of the current uncertainty over support collection limitations is that I have obtained court decisions saying that I can enforce child support orders in individual cases virtually forever. Now while that has some appeal, I recognize, and both the WCSEA and Milwaukee County realize, that this is not good policy for the State of Wisconsin. The public policy behind reasonable statutes of limitation is sound. For these reasons, the WCSEA and Milwaukee County strongly encourage this committee to support Assembly Bill 624.

Thank you for your time and your consideration.

Janet Nelson
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WISCONSIN LAWYERS
STATE BAR of WISCONSIN | EXPERT ADVISERS. SERVING YOU.

MEMORANDUM

To: Members, Assembly Committee on Children and Families

From: **Family Law Section**, State Bar of Wisconsin

Date: January 15, 2004

Re: 2003 Assembly Bill 624, relating to: a statute of limitations for bringing an action to collect child support.

The **Family Law Section** of the State Bar of Wisconsin **supports** Assembly Bill 624.

This bill codifies the previous interpretation of the statute of limitations in child support actions and will provide clear and fair guidance for all participants in Wisconsin's child support system. Representing over 1300 Wisconsin attorneys who devote all or a substantial portion of their practice to family law issues, the Family Law Section. The Family Law Section supports AB 624 and believes it is good public policy because the current unsettled state of the law regarding the statute of limitations creates confusion for courts, family law practitioners, payers, payees and child support agencies.

Background

Two types of actions are brought to collect past-due child support payments: (1) independent actions and (2) contempt proceedings (typically a motion or an order to show cause within the context of the original or underlying action). The bulk of child support actions are contempt actions. Independent actions are usually filed by an outside party (such as the State, for example, which retains an interest in recouping AFDC payments made to a parent during a period of time when the other parent was failing to make child support payments).

Last May, in *State v. Hamilton*, 2003 WI 50, 661 N.W.2d 832 (2003), the Wisconsin Supreme Court addressed the statute of limitations for **independent actions** brought to secure the payment of child support arrearages. It held that s. 893.40, Stats, governs the time within which a party may bring an independent action to collect child support arrearages that have amassed after July 1, 1980. It further held that this statute requires that actions brought in Wisconsin courts on entered judgments, including child support judgments, must be commenced within 20 years of when the judgments are entered (or when judgments are amended and entered). (A judgment is "entered" when it is filed in the office of the clerk of court.)

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The supreme court, in the *Hamilton* decision, explicitly took no position on how the statute of limitations applies to the contempt powers of the circuit courts in the underlying divorce action. This has created a great deal of uncertainty as some interpret the decision as leaving no statute of limitations governing enforcement of child support orders undertaken within the underlying family court action (i.e., contempt actions).

In any event , the current statute and the interpretation given it by the court creates widely differing time limits for bringing an action after a final missed payment depending on when a couple is divorced in relation to the ages of the children or whether and amended judgment was entered.

Consider the following example: Couple A divorces when their youngest child is one year old, but the obligated parent makes support payments for the child until the child is 16. Couple B divorces when their child is 16, but the obligated parent never pays any of the ordered child support. The effect of the *Hamilton* decision is that the limitations period for collecting against the delinquent parent in Couple A is effectively 5 years, while the collection period in the Couple B example is 20 years.

The Family Law Section believes this inconsistency is unfair, and creates unnecessary uncertainty and confusion for all parties in the child support system. Assembly Bill 624 will not only restore consistent treatment of parents, it will resolve the uncertainty concerning the applicable statute of limitations for contempt proceedings by establishing one consistent statute of limitations for all actions to collect delinquent child support.

In closing we note that Justice David Prosser, who wrote the opinion in the *Hamilton* case and someone who is no stranger to the legislative process, noted the need for clarifying legislation in Paragraph 49, where he stated:

> "¶49. To the extent that this court's application of § 893.40 in the context of actions upon judgments involving child support payments represents an unintended and undesired result, the legislature may rectify the situation in new legislation."

For all of the reasons we have indicated, The Family Law Section urges the committee to adopt Assembly Bill 624 to address Justice Prosser's concern that the current statute of limitations produces unintended and undesirable results. We believe Assembly Bill 624 is the fairest way to rectify the current situation.

If you have any questions about this memo, please contact Dan Rossmiller, Public Affairs Director of the State Bar of Wisconsin at (608) 250-6140 or drossmiller@wisbar.org.


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State of Wisconsin
Department of Workforce Development
Jim Doyle, Governor
Roberta Gassman, Secretary

January 15, 2004

Good afternoon, Representative Kestell and members of the committee. My name is Connie Chesnik, and I am legal counsel for the state Child Support program in the Department of Workforce Development. I am here today to testify in support of AB 624 related to the statute of limitations for the enforcement of child support orders.

Let me start by giving you a very brief history of the statutes as they relate to this issue. A statute of limitations prescribes the time period within which parties must take judicial action to enforce their rights or be forever barred from enforcing them. There has never been a separate limitation period in the statutes addressed specifically to the enforcement of child support orders. However, courts have long relied on the limitation period applicable to the enforcement of civil judgments when dealing with child support. Prior to 1980, the applicable statute of limitations provided that any action upon a judgment must be commenced within 20 years of when the cause of action accrued. A cause of action accrues at the moment that a party obtains the right to bring the action. In the case of child support, it has long been held that the cause of action accrues when the youngest child reaches the age of majority. Unlike other judgments, the amount of child support owing is constantly subject to change until the child reaches the age of majority. Civil judgments are typically final on the date that they are entered and are for an amount certain. Child support is modifiable until the child reaches age 18 and is, therefore, not final until that time.

In 1980, the statute of limitations applicable to civil judgments was repealed, recreated and renumbered to the current s. 893.40. The new statutory provision removed the cause of action language and now provides that an action upon a judgment must be brought within 20 years of the date the judgment is entered. There is nothing in the legislative history of this change that indicates that there was any intent to change the limitation period as it applied to child support. In fact, for the next 20 years appellate courts in Wisconsin continued to interpret the provision as affording a 20-year limitation period from the date the youngest child reached the age of majority. However, in 2003, the change in the statute was raised and the Supreme Court, in the case of State. v. Hamilton, held that the limitation period begins to run from the date of judgment in a child support case. The Supreme Court decision, authored by Justice David Prosser, notes that it may not have been the legislature's intent to have the statute applied in this manner to the enforcement of child support orders. Justice Prosser wrote that "To the extent that this court's application of s.893.40 in the context of actions upon judgments involving child support payments represents an unintended and undesired result, the legislature may rectify the situation in new legislation." 261 Wis. 23 458, 661 N.w.2d 803 (2003)

The Hamilton decision has also created some additional confusion relating to the limitation period. A footnote in the decision indicates that the decision applies only to independent actions to enforce child support orders, in other words, new actions filed with a new summons and new petition. It would appear, then, that the courts ruling may not apply to motions for enforcement brought within the underlying divorce or paternity action. That, effectively, would mean that there is no limitation period for enforcement actions taken within the underlying action. The Department is not interested in, nor is it reasonable to subject individuals to enforcement rights

that go on forever. Our only interest is in having a limitation period in the statutes that is consistent with the interpretation that was given to s.893.40 for over 20 years until the courts decision in Hamilton. Certainly, we make every effort to enforce child support arrearages as they become due. However, it would be extremely unfair to allow a parent to avoid their financial obligation to their children simply because they managed to avoid enforcement until the child was no longer a minor. In many paternity cases, support orders are entered when the child is only a few months old. Under the Hamilton decision, the clock is ticking from that date forward on enforcement of arrearage amounts that will not even become due for nearly 18 years. By the time the child reaches the age of majority, they will have only 18 months left to enforce their right to child support.

The child support program places a very high priority on the passage of this legislation. I encourage you to support AB 624. Thank you for your time and consideration of this issue.

Sincerely,

Connie M. Chesnik
Legal Counsel
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