State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX -

PLEASE DO NOT REMOVE FROM DRAFTING FILE

Date Transfer Requested: 09/26/2005 (Per: PJK)

☞ The 2005 drafting file for LRB 05–1831**/all**

has been copied/added to the 2005 drafting file for

LRB 05–3460

☞ The attached 2005 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

☞ This cover sheet was added to rear of the original 2005 drafting file. The drafting file was then returned, intact, to its folder and filed.

2005 DRAFTING REQUEST

Bill

Received: **01/21/2005**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Workforce Development 7-7295**

By/Representing: **Connie Chesnik**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Dom. Rel. - child support**

Extra Copies:

Submit via email: **YES**

Requester's email: **connie.chesnik@dwd.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Obtaining an order for birth expenses

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	pkahler 02/03/2005	kfollett 02/08/2005		_____ _____			
/1			rschluet 02/09/2005	_____ _____	sbasford 02/09/2005	sbasford 03/02/2005	
/2	pkahler 08/17/2005	kfollett 08/17/2005	rschluet 08/18/2005	_____ _____	lnorthro 08/18/2005	lnorthro 08/18/2005	
/3	pkahler	kfollett	pgreensl	_____	lemery	lemery	

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
	08/29/2005	09/09/2005	09/09/2005	_____	09/09/2005	09/09/2005	

FE Sent For:

<END>

2005 DRAFTING REQUEST

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Submit via email: **YES**

Requester's email: **connie.chesnik@dwd.state.wi.us**

Carbon copy (CC:) to:

Jacket is (or was) in DWD drawer - please change jacket to Assembly, instead of Senate

Pre Topic:

No specific pre topic given

Topic:

Obtaining an order for birth expenses

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	pkahler 02/03/2005	kfollett 02/08/2005		_____ _____			
/1			rschluet 02/09/2005	_____ _____	sbasford 02/09/2005	sbasford 03/02/2005	
/2	pkahler 08/17/2005	kfollett 08/17/2005	rschluet 08/18/2005	9/9 _____	lnorthro 08/18/2005	lnorthro 08/18/2005	

13 lgf 9/9 9/9 p8 p81 ch

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	pkahler 02/03/2005	kfollett 02/08/2005					
/1		12 Kjf 8/17	rschluet 02/09/2005		sbasford 02/09/2005	sbasford 03/02/2005	

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

Received: **01/21/2005**

Received By: **pkahler**

Wanted: **As time permits**

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By/Representing: **Connie Chesnik**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Dom. Rel. - child support**

Extra Copies:

Submit via email: **YES**

Requester's email: **connie.chesnik@dwd.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Obtaining an order for birth expenses

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	pkahler 02/03/2005	kfollett 02/08/2005		_____ _____			
/1			rschluet 02/09/2005	_____ _____	sbasford 02/09/2005		

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

Received: **01/21/2005**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Workforce Development 7-7295**

By/Representing: **Connie Chesnik**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Dom. Rel. - child support**

Extra Copies:

Submit via email: **YES**

Requester's email: **connie.chesnik@dwd.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Obtaining an order for birth expenses

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	~~Proofed~~	Submitted	Jacketed	Required
/?	pkahler	11kf 2/8					

FE Sent For:

<END>

Kahler, Pam

From: Chesnik, Constance
Sent: Thursday, January 20, 2005 4:24 PM
To: Kahler, Pam
Subject: FW: Court of Appeals decision

Hi Pam. Attached is the email I sent to JoAnna. Hopefully it explains everything. My proposal is at the end. Let me know what you think. Connie

Connie M. Chesnik
Attorney
Department of Workforce Development
ph: 608-267-7295
fax: 608-267-2824
email: connie.chesnik@dwd.state.wi.us

> -----Original Message-----
> From: Chesnik, Constance
> Sent: Thursday, January 13, 2005 10:45 AM
> To: Richard, JoAnna - DWD
> Subject: Court of Appeals decision
>
> Jo, I've been giving some furher thought to the Court of Appeals decision regarding reimbursement of state paid birth expenses. There is one possible legislative remedy that I think might be less offensive to low income advocates but would allow us to continue our current policy and ensure that counties MSL incentives are not reduced. Under sec 767.51 (3) (e), Wis. Stats, as it currenty reads, a judgment or order of paternity must contain:
>
> "> An order requiring the father to pay or contribute to the reasonable expenses of the mother> '> s pregnancy and the child> '> s birth, based on the father> '> s ability to pay or contribute to those expenses.> ">
>
> The department> '> s current policy is that the CSA may obtain an order for birth cost within the guidelines of the regional averages for recovering birth cost. However, if the family's income is below 185% of the federal poverty level, the child support agency must NOT ask the court to order regular payments. In such cases, tax intercept may be used to recover birth cost.
>
> The court construed the 'ability to pay' language to mean that we can't obtain any order establishing an obligation for birth costs, even if the order specifies that no current payments are due. We could seek to amend 767.51(3)(e) to provide that the judgment must contain:
>
> "An order eatablishing the father's obligation to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth. Such order shall specify whether periodic payments are due under the order based on the father's ability to make payments at the time of the hearing."
>
>
> Connie M. Chesnik
> Attorney
> Department of Workforce Development
> ph: 608-267-7295
> fax: 608-267-2824
> email: connie.chesnik@dwd.state.wi.us
>

WISBAR WISCONSIN LAWYERS STATE BAR of WISCONSIN EXPERT ADVISERS SERVING YOU
Wisconsin Court of Appeals

COURT OF APPEALS

DECISION

DATED AND FILED

January 11, 2005

Cornelia G. Clark

Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* Wis. Stat. § 808.10 and Rule 809.62.

Appeal No. 04-2267-FT
STATE OF WISCONSIN

Cir. Ct. No. 04-FA-10
IN COURT OF APPEALS
DISTRICT III

Rusk County Department of Health and Human

Services,

Petitioner-Respondent,

Danielle K. Schultz,

Petitioner,

v.

Leonard M. Thorson,

Respondent-Appellant.

APPEAL from an order of the circuit court for Rusk County: FREDERICK A. HENDERSON, Judge. *Reversed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1. PETERSON,J.Leonard Thorson appeals an order[1] obligating him to pay lying-in expenses for his children, as authorized under Wis. Stat. §767.51(3)(e). Thorson argues the circuit court had no authority to order he was obligated to pay those expenses when, at the time of the order, he had no ability to pay.[3] We agree and reverse the order.

BACKGROUND

¶2. Thorson is the father of twins born September 28, 2003. He resides with the children and their mother. The Wisconsin Medical Assistance Program paid the expenses associated with the birth of the twins.

¶3. On February 5, 2004, the Rusk County Department of Health and Human Services filed a paternity petition seeking, among other things, reimbursement for lying-in expenses. The parties agreed and the circuit court found that Thorson did not have the present ability to pay any of the expenses. Nevertheless, the court ordered that Thorson was obligated for the total of $4,332.50, although it held payment in abeyance. It also ordered Thorson to provide copies of his tax returns and to report to the County any change of address, employer or income.

STANDARD OF REVIEW

¶4. The authority of the circuit court in paternity actions is limited to that provided in the paternity statutes. *State v. Charles R.P.*, 223 Wis.2d 768, 771, 590 N.W.2d 21 (Ct. App. 1998). The interpretation of a statute and its application to a set of facts are questions of law that we review independently. *Id.* Our role is to give effect to the plain meaning of the words in the statute. *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶45, 271 Wis.2d 633, 681 N.W.2d 110. Accordingly, when interpreting a statute, we begin with the plain language of the statute. *Id.*, ¶44. If the language is plain and unambiguous, we apply it as written without further inquiry. *Id.*

DISCUSSION

¶5. Wisconsin Stat. §767.51(3)(e) authorizes the circuit court to order a "father to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth, based on the father's ability to pay or contribute to those expenses." By the plain language of the statute, the court's ability to order payment is contingent on "the father's ability to pay." Wis. Stat. §767.51(3)(e). Accordingly, because it is undisputed that Thorson had no ability to pay at the time of the hearing, the court had no authority to set his obligation to pay lying-in expenses.[4]

¶6. The County argues that setting an obligation for payment is not the same as an order to pay. However, the circuit court's authority is limited to that provided by the statutes. *Charles R.P.*, 223

Wis.2d at 771. The County provides no statutory authority, and we can find none, for a court to obligate a father to pay lying-in expenses when he has no current ability to pay.

¶7. The County also argues that if courts lack the authority to impose an obligation for payment, even if the father has no ability to pay, it would "virtually eliminate collection of lying-in expense from a father." However, a county cannot collect the expense until a father has the ability to pay. Therefore, an order setting the obligation amount with payment held in abeyance does nothing to aid the County in collecting the expenses. When and if a father has the ability to pay, the court may order him to pay or contribute to the lying-in expenses. If the father's ability to pay changes, the order may be modified. Wis. Stat. §§767.51(6) and 767.32.

By the Court.-Order reversed.

Recommended for publication in the official reports.

1 The document is titled "Order and Judgment."

2 This is an expedited appeal under Wis. Stat. Rule809.17. All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

3 Thorson also argues the circuit court erroneously exercised its discretion by applying the wrong legal standard. Because the interpretation of Wis. Stat. §767.51(3)(e) is conclusive, we do not address this argument. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed).

4 The County contends that the court's order was supported by the facts, since Thorson has a gross monthly income of $2,027.88 and has no physical, mental or emotional limitation on his earning ability. However, the County conceded in the circuit court that Thorson had no current ability to pay. The County cannot now be heard to argue that Thorson is able to pay, based on his income and lack of inhibitors to his earning ability. *See* ***State v. Michels***, 141 Wis.2d 81, 98, 414 N.W.2d 311 (Ct. App. 1987) (judicial estoppel bars litigant from argument directly contradictory to circuit court argument).

Court of Appeals main

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State of Wisconsin
2005 – 2006 LEGISLATURE

LRB-1831/1
PJK:

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT ; **relating to:** requiring a court to establish a father's obligation for birth expenses.

Analysis by the Legislative Reference Bureau

Under current law, in a paternity judgment or order the court must include an order that requires the man who is determined to be the father to pay or contribute to the expenses of the mother's pregnancy and the child's birth based on the man's ability to pay. A recent Court of Appeals decision based on this statute held that, if the father has no present ability to pay, a circuit court has no authority to set an obligation to pay lying–in expenses, even if payments are held in abeyance. This bill modifies the requirement under current law so that in a paternity judgment or order the court must establish the amount of the father's obligation to pay or contribute to those expenses and must specify whether periodic payments are due on the obligation based on the father's ability to pay.

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

SECTION 1. 767.51 (3) (e) of the statutes is amended to read:

(e) An order ~~requiring the father~~ establishing the amount of the father's obligation to pay or contribute to the reasonable expenses of the mother's pregnancy

and the child's birth. The order shall specify whether periodic payments are due on the obligation, based on the father's ability to pay or contribute to those expenses.

History: 1979 c. 352; 1983 a. 27, 192, 447; 1985 a. 29; 1985 a. 315 s. 22; 1987 a. 27, 37, 355, 413; 1989 a. 212; 1991 a. 39; 1993 a. 481; 1995 a. 27 ss. 7115, 7116, 9126 (19); 1995 a. 100, 201, 279, 375, 404; 1997 a. 27, 35, 191; 1999 a. 9; 2001 a. 16.

SECTION 2. Initial applicability.

(1) This act first applies to paternity judgments or orders that are granted on the effective date of this subsection.

(END)

D-note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1831/2dn
PJK:...:...

Date

Connie:

I added "amount of" to obligation because I thought it would be necessary to know how much could be recovered through tax intercept.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1831/1dn
PJK:kjf:rs

February 9, 2005

Connie:

I added "amount of" to obligation because I thought it would be necessary to know how much could be recovered through tax intercept.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

Basford, Sarah

From: Chesnik, Connie → Jacket for Senate
Sent: Tuesday, March 01, 2005 3:16 PM
To: Basford, Sarah
Subject: RE: Draft review: LRB 05-1831/1 Topic: Obtaining an order for birth expenses

Hi Sarah. The department would like to have this bill jacketed; however, there is no button on the email I received to click on. Would you let me know what I need to do? Thanks. Connie

Connie M. Chesnik
Attorney
Department of Workforce Development
ph: 608-267-7295
fax: 608-267-2824
email: connie.chesnik@dwd.state.wi.us

From: Basford, Sarah
Sent: Wednesday, February 09, 2005 8:37 AM
To: Chesnik, Connie
Subject: Draft review: LRB 05-1831/1 Topic: Obtaining an order for birth expenses

State of Wisconsin
Legislative Reference Bureau

One East Main Street
Suite 200
P.O. Box 2037
Madison, WI 53701-2037

The attached draft was prepared at your request. Please review it carefully to ensure that it satisfies your intent. If you have any questions concerning the draft or would like to have it redrafted, please contact Pamela J. Kahler, Senior Legislative Attorney, at (608) 266-2682, at pam.kahler@legis.state.wi.us, or at One East Main Street, Suite 200.

If you would like to jacket the draft for introduction, please click on the appropriate button (to the left). If you have any questions about jacketing, please call our program assistants at (608) 266-3561. Please allow one day for jacketing.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the draft before it is introduced by contacting our program assistants at LRB.Legal@legis.state.wi.us or at (608) 266-3561. If you have previously requested a fiscal estimate on an earlier version of this draft and would like to obtain a fiscal estimate on this version before it is introduced, you will need to request a revised fiscal estimate from our program assistants.

Please call our program assistants at (608) 266-3561 if you have any questions regarding this

rmis run

State of Wisconsin
2005 – 2006 LEGISLATURE

LRB–1831/~~1~~ 2
PJK:kjf:~~tel~~

2005 BILL

D-vote

regenerate

AN ACT ***to amend*** 767.51 (3) (e) of the statutes; **relating to:** requiring a court to establish a father's obligation for birth expenses.

Analysis by the Legislative Reference Bureau

Under current law, in a paternity judgment or order the court must include an order that requires the man who is determined to be the father to pay or contribute to the expenses of the mother's pregnancy and the child's birth based on the man's ability to pay. A recent Wisconsin court of appeals decision based on this statute held that, if the father has no present ability to pay, a circuit court has no authority to set an obligation to pay lying–in expenses, even if payments are held in abeyance. This bill modifies the requirement under current law so that in a paternity judgment or order the court must establish the amount of the father's obligation to pay or contribute to those expenses and must specify whether periodic payments are due on the obligation based on the father's ability to pay.

Insert A

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

change component

renumbered 767.51 (3) (e) 1. and

SECTION 1. 767.51 (3) (e) of the statutes is amended to read:

767.51 **(3)** (e) 1. An order ~~requiring the father~~ establishing the amount of the father's obligation to pay or contribute to the reasonable expenses of the mother's

~~which the bill requires to be one-half of the total actual and reasonable pregnancy and birth expenses~~

pregnancy and the child's birth. The order shall specify whether periodic payments are due on the obligation, based on the father's ability to pay or contribute to those expenses.

SECTION 2. Initial applicability.

(1) ~~This act~~ first applies to paternity judgments or orders that are granted on the effective date of this subsection.

(END)

Insert 2-1

also

Insert 2-3

The renumbering and amendment of section 767.51 (3)(e) of the statutes

A-note

2005–2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1831/2ins
PJK:kjf:rs

INSERT A

WOH requires the court to set the father's obligation at one–half of the total actual and reasonable pregnancy and birth expenses. The bill requires the court to specify in the judgment or order whether periodic payments are due on the obligation, based on the father's ability to pay, and provides that, if the court does not require periodic payments because the father does not have the present ability to pay, the court may modify the paternity judgment or order at a later date to require periodic payments if the father has the ability to pay at that time.

(END OF INSERT A)

INSERT 2–1

WOH amount established shall be limited to one–half of the total actual and reasonable pregnancy and birth expenses. The

(END OF INSERT 2–1)

INSERT 2–3

SECTION 1. 767.51 (3) (e) 2. of the statutes is created to read:

767.51 **(3)** (e) 2. If the order does not ~~specify~~ require periodic payments because the father has no present ability to pay or contribute to the expenses, the court may modify the judgment or order at a later date to require periodic payments if the father has the ability to pay at that time.

(END OF INSERT 2–3)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1831/5dn
PJK:kjf:

Date

Connie:

I restructured this [renumbered and amended s. 767.51 (3) (e) and created s. 767.51 (3) (e) 2.] so that I could make the initial applicability apply only to the requirement originally in the bill. I thought that it would be misleading to have the initial applicability apply to modification of paternity judgments and orders to require periodic payments because I assume there is no reason why those judgments and orders cannot currently be modified to require periodic payments. I would not want a judge to think that paternity judgments and orders granted before the effective date of the act could not be modified in this way.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1831/2dn
PJK:kjf:rs

August 18, 2005

Connie:

I restructured this [renumbered and amended s. 767.51 (3) (e) and created s. 767.51 (3) (e) 2.] so that I could make the initial applicability apply only to the requirement originally in the bill. I thought that it would be misleading to have the initial applicability apply to modification of paternity judgments and orders to require periodic payments because I assume there is no reason why those judgments and orders cannot currently be modified to require periodic payments. I would not want a judge to think that paternity judgments and orders granted before the effective date of the act could not be modified in this way.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266–2682
E–mail: pam.kahler@legis.state.wi.us

8-29-05

Connie Chesnick
LRB-1831

(1) make same changes to s. 767.62

(2) we discussed removing "and reasonable" from underscored language but decision was to retain it because of "reasonable" in first sentence (in current law)

jacket for Assembly (since I can be introduced in Senate by Sen Roessler)
LRB-3460

State of Wisconsin
2005 – 2006 LEGISLATURE

LRB–1831/~~2~~ 3
PJK:~~kjf:rs~~ kjf
rmis

Mon. Sept. 12

LPS: change request sheet pls.

Assembly

2005 ~~SENATE~~ BILL

D-vote

reagenerate

AN ACT ***to renumber and amend*** 767.51 (3) (e); and ***to create*** 767.51 (3) (e) 2. of the statutes; **relating to:** requiring a court to establish a father's obligation for birth expenses.

Analysis by the Legislative Reference Bureau

reasonable

Under current law, in a paternity judgment or order the court must include an order that requires the man who is determined to be the father to pay or contribute to the expenses of the mother's pregnancy and the child's birth based on the man's ability to pay. A recent Wisconsin Court of Appeals decision based on this statute held that, if the father has no present ability to pay, a circuit court has no authority to set an obligation to pay lying–in expenses, even if payments are held in abeyance.

This bill modifies the requirement under current law so that in a paternity judgment or order the court must establish the amount of the father's obligation to pay or contribute to those expenses and requires the court to set the father's obligation at one–half of the total actual and reasonable pregnancy and birth expenses. The bill requires the court to specify in the judgment or order whether periodic payments are due on the obligation, based on the father's ability to pay, and provides that, if the court does not require periodic payments because the father does not have the present ability to pay, the court may modify the paternity judgment or

determining paternity, including one based on a voluntary acknowledgment of paternity,

order at a later date to require periodic payments if the father has the ability to pay at that time.

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

SECTION 1. 767.51 (3) (e) of the statutes is renumbered 767.51 (3) (e) 1. and amended to read:

767.51 **(3)** (e) 1. An order ~~requiring the father~~ establishing the amount of the father's obligation to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth. The amount established shall be limited to one–half of the total actual and reasonable pregnancy and birth expenses. The order also shall specify whether periodic payments are due on the obligation, based on the father's ability to pay or contribute to those expenses.

SECTION 2. 767.51 (3) (e) 2. of the statutes is created to read:

767.51 **(3)** (e) 2. If the order does not require periodic payments because the father has no present ability to pay or contribute to the expenses, the court may modify the judgment or order at a later date to require periodic payments if the father has the ability to pay at that time.

SECTION 3. Initial applicability.

(1) The renumbering and amendment of ~~section~~ sections 767.51 (3) (e) and 767.62 (4) (d) of the statutes first applies to paternity judgments or orders that are granted on the effective date of this subsection.

(END)

2005–2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1831/~~2~~3ins
PJK:~~kjf:rs~~

INSERT 2–13

SECTION 1. 767.62 (4) (d) of the statutes is renumbered 767.62 (4) (d) 1. and amended to read:

767.62 **(4)** (d) 1. An order ~~requiring the father~~ establishing the amount of the father's obligation to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth. The amount established shall be limited to one–half of the total actual and reasonable pregnancy and birth expenses. The order also shall specify whether periodic payments are due on the obligation, based on the father's ability to pay or contribute to those expenses.

History: 1993 a. 481; 1995 a. 100; 1997 a. 191; 1999 a. 9; 2001 a. 16, 61.

SECTION 2. 767.62 (4) (d) 2. of the statutes is created to read:

767.62 **(4)** (d) 2. If the order does not require periodic payments because the father has no present ability to pay or contribute to the expenses, the court may modify the judgment or order at a later date to require periodic payments if the father has the ability to pay at that time.

(END OF INSERT 2–13)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1831/~~2~~3dn
PJK:~~kjf:rs~~
lgf

Date

Note that "*actual and reasonable* pregnancy and birth expenses" was not changed to "*actual* pregnancy and birth expenses" because the requirement to contribute in current law applies to "reasonable expenses of the mother's pregnancy and the child's birth." The two references to the expenses that the father must pay should be consistent with each other, and removing "reasonable" in current law will create a question about whether the statute now requires the father to contribute to unreasonable expenses.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1831/3dn
PJK:kjf:pg

September 9, 2005

Note that "*actual and reasonable* pregnancy and birth expenses" was not changed to "*actual* pregnancy and birth expenses" because the requirement to contribute in current law applies to "reasonable expenses of the mother's pregnancy and the child's birth." The two references to the expenses that the father must pay should be consistent with each other, and removing "reasonable" in current law will create a question about whether the statute now requires the father to contribute to unreasonable expenses.

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LRB–1831/3
PJK:kjf:pg

2005 ASSEMBLY BILL

AN ACT ***to renumber and amend*** 767.51 (3) (e) and 767.62 (4) (d); and ***to create*** 767.51 (3) (e) 2. and 767.62 (4) (d) 2. of the statutes; **relating to:** requiring a court to establish a father's obligation for birth expenses.

Analysis by the Legislative Reference Bureau

Under current law, in a paternity judgment or order the court must include an order that requires the man who is determined to be the father to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth based on the man's ability to pay. A recent Wisconsin Court of Appeals decision based on this statute held that, if the father has no present ability to pay, a circuit court has no authority to set an obligation to pay lying–in expenses, even if payments are held in abeyance.

This bill modifies the requirement under current law so that in a judgment or order determining paternity, including one based on a voluntary acknowledgment of paternity, the court must establish the amount of the father's obligation to pay or contribute to those expenses and requires the court to set the father's obligation at one–half of the total actual and reasonable pregnancy and birth expenses. The bill requires the court to specify in the judgment or order whether periodic payments are due on the obligation, based on the father's ability to pay, and provides that, if the court does not require periodic payments because the father does not have the

present ability to pay, the court may modify the paternity judgment or order at a later date to require periodic payments if the father has the ability to pay at that time.

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

SECTION 1. 767.51 (3) (e) of the statutes is renumbered 767.51 (3) (e) 1. and amended to read:

767.51 **(3)** (e) 1. An order ~~requiring the father~~ establishing the amount of the father's obligation to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth. The amount established shall be limited to one–half of the total actual and reasonable pregnancy and birth expenses. The order also shall specify whether periodic payments are due on the obligation, based on the father's ability to pay or contribute to those expenses.

SECTION 2. 767.51 (3) (e) 2. of the statutes is created to read:

767.51 **(3)** (e) 2. If the order does not require periodic payments because the father has no present ability to pay or contribute to the expenses, the court may modify the judgment or order at a later date to require periodic payments if the father has the ability to pay at that time.

SECTION 3. 767.62 (4) (d) of the statutes is renumbered 767.62 (4) (d) 1. and amended to read:

767.62 **(4)** (d) 1. An order ~~requiring the father~~ establishing the amount of the father's obligation to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth. The amount established shall be limited to one–half of the total actual and reasonable pregnancy and birth expenses. The order also shall specify whether periodic payments are due on the obligation, based on the father's ability to pay or contribute to those expenses.

SECTION 4. 767.62 (4) (d) 2. of the statutes is created to read:

767.62 **(4)** (d) 2. If the order does not require periodic payments because the father has no present ability to pay or contribute to the expenses, the court may modify the judgment or order at a later date to require periodic payments if the father has the ability to pay at that time.

SECTION 5. Initial applicability.

(1) The renumbering and amendment of sections 767.51 (3) (e) and 767.62 (4) (d) of the statutes first applies to judgments or orders that are granted on the effective date of this subsection.

(END)