

2013 DRAFTING REQUEST

Bill

Received: 9/5/2013 Received By: pkahler
 Wanted: As time permits Same as LRB:
 For: Joel Kleefisch (608) 266-8551 By/Representing: Ashlee Moore
 May Contact: Drafter: pkahler
 Subject: Dom. Rel. - child support/maint. Addl. Drafters:
 Dom. Rel. - cust./plac./vis. Extra Copies:

Submit via email: YES
 Requester's email: Rep.Kleefisch@legis.wisconsin.gov
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Child support modifications and equalizing physical placement

Instructions:

Combine LRB-0016 and AB 211

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>
/?	pkahler 10/14/2013	scalvin 10/14/2013	rschluet 10/14/2013	_____			
/1				_____	srose 10/14/2013	mbarman 10/14/2013	State S&L

FE Sent For:

act
intro

<END>

2013 DRAFTING REQUEST

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/1				_____	rose 10/14/2013		State S&L

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/? pkahler

1 sac
10/14/2013

[Handwritten signature]
B/12/13

[Handwritten signature]

FE Sent For:

<END>

Kahler, Pam

From: Moore, Ashlee
Sent: Thursday, September 05, 2013 10:20 AM
To: Kahler, Pam
Subject: Re: drafting file

No that's fine! Just want to keep the separate bills also in case we can't sell them together

Ashlee Moore
Research Assistant
State Representative Joel Kleefisch - 38th Assembly District

On Sep 5, 2013, at 10:10 AM, "Kahler, Pam" <Pam.Kahler@legis.wisconsin.gov> wrote:

Hi, Ashlee:

Is it okay if I add the guts of the drafting file for LRB-0016 to the file for the new draft (LRB number is 3081), or is there some reason why you do not want that material in the drafting file for the new draft?

Pam

Pamela J. Kahler
Legislative Attorney
Legislative Reference Bureau
608-266-2682

Kahler, Pam

From: Moore, Ashlee
Sent: Friday, September 06, 2013 9:18 AM
To: Kahler, Pam
Subject: FW: Attached is a copy of a letter and its enclosure from Mr. Smiley to you.
Attachments: eisenga 9-5-13 lt2.pdf

Pam,

Can you make this change to the combined draft of AB 211 and the Child Support Legislation?

Also, can you make this change to just the Child Support Legislation so I can re-jacket it (again)?

I apologize for all the changes. This should be the last of them. Thank you for all your help

Ashlee Moore
Representative Joel Kleefisch – 38th Assembly District
307 North, State Capitol – (608) 266-8551

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

From: Michael Eisenga [<mailto:MEisenga@alshomeloans.com>]
Sent: Thursday, September 05, 2013 7:25 PM
To: Jeff Fitzgerald; Moore, Ashlee; Kleefisch, Joel
Subject: FW: Attached is a copy of a letter and its enclosure from Mr. Smiley to you.

Please have the drafter make these SPECIFIC changes to the bill when she combines them.

Michael S. Eisenga
President

American Lending Solutions, LLC
N4365 State Hwy 73
Columbus, WI 53925
USA

(920) 350-6001 phone ext 222
(920) 623-9235 fax

CONFIDENTIALITY NOTICE: Unless otherwise indicated or obvious from the nature of this electronic transmission, the information contained in this electronic transmission is privileged and confidential intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, or are not certain whether it is privileged, please immediately return this message to the sender, and delete this message from your email records.

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

From: Secretary at Smiley Law Office [<mailto:secretary235@tds.net>]

Sent: Thursday, September 05, 2013 3:56 PM

To: Michael Eisenga

Subject: Attached is a copy of a letter and its enclosure from Mr. Smiley to you.

Michael S. Eisenga
President

American Lending Solutions, LLC
N4365 State Hwy 73
Columbus, WI 53925
USA

(920) 350-6001 phone ext 222
(920) 623-9235 fax

CONFIDENTIALITY NOTICE: Unless otherwise indicated or obvious from the nature of this electronic transmission, the information contained in this electronic transmission is privileged and confidential intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, or are not certain whether it is privileged, please immediately return this message to the sender, and delete this message from your email records.

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

From: Secretary at Smiley Law Office [mailto:secretary235@tds.net]
Sent: Thursday, September 05, 2013 3:56 PM
To: Michael Eisenga
Subject: Attached is a copy of a letter and its enclosure from Mr. Smiley to you.

SMILEY LAW OFFICE

235 West Cook Street

P. O. Box 361

Portage, Wisconsin 53901

Fax (608)742-6349

Telephone (608)742-5336

email: wsmiley@chorus.net

Legal Assistants

Nancy A. Kral

Lorena McElroy

Maggie Parlich

Attorneys
William A. Smiley
Ann M. Wegher

September 5, 2013

Mr. Michael S. Eisenga
146 W. Mill Street
Columbus, Wisconsin 53925

Via Email

Dear Mr. Eisenga:

Thank you for sending us a draft of the proposed bill.

We focused only on the portion that would require the court to modify your child support order based solely on the passage of the bill.

Accordingly, we suggest that 20 words be removed from the analysis on page 3 and that about 24 words be removed from page 11 of the proposed bill.

A copy of our proposed changes is enclosed.

Thank you.

Sincerely,

William A. Smiley
Attorney at Law

BILL

Under the statutes, a court is authorized, upon a party's request, to modify the amount of child support that would be ordered by using the percentage standard if the court finds that use of the percentage standard is unfair to the child or either of the parties. In making this finding, the court must consider a number of factors, such as the earning capacity of each parent, the desirability that the custodian remain in the home as a full-time parent, and extraordinary travel expenses incurred in exercising physical placement rights.

This bill makes a few modifications to the way in which child support is determined. The bill provides that child support may be based only on a parent's actual income or imputed income based on earning capacity, as determined by the court. The bill provides that child support may not be based on any of a parent's assets and that it may not be based on any portion of a parent's annual gross income that exceeds \$150,000, annually adjusted in accordance with the consumer price index. The bill conforms the statutory provision that authorizes DCF to promulgate rules establishing the percentage standard with these changes.

Under current law, in addition to ordering child support for a child, the court is required to assign responsibility for payment of the child's health care expenses and may require a parent to initiate or continue health insurance coverage for the child. Under the bill, after determining a parent's child support payments, the court must deduct from that amount any amount the parent currently pays, or is ordered to pay, for health insurance premiums for the child for whom support is determined.

Under the bill, a court still may, upon a party's request, modify the amount of child support determined if the court finds that the amount is unfair to the child or either of the parties after considering the factors under current law. However, the court may modify the amount of child support it has determined in the manner provided in the statutes only by reducing that amount. The requirement that a court may only reduce the amount of support that it has determined in the manner provided in the statutes also applies to temporary support orders and to revisions of support orders.

Under current law, the court may revise the amount of child support under an existing order only if the court finds that there has been a substantial change in circumstances. The bill does not change this requirement; however, the bill also provides that, if the court does find that there has been a substantial change in circumstances, the court must revise the amount of child support under an existing order. In addition, the bill provides that, in an action to revise the amount of child or family support under an existing order, if the amount under the existing order is different from the amount that would be ordered using the new requirements ~~and the court did not use the new requirements and did not specify the reasons why they were not used~~, the court must find a substantial change in circumstances that requires the court to revise the existing child support order.

The bill makes a few other changes relating to support. Under current law, family support is an order that combines child support and maintenance (formerly called alimony) into a single support amount. The bill provides that a family support order may not include a child support amount that exceeds the amount of child support that would be determined otherwise in the manner provided in the statutes.

1 to pay under s. 767.511 (1j) ~~and the court did not determine child support payments~~
2 ~~in the manner provided under s. 767.511 (1j) and did not provide the information~~
3 ~~required under s. 767.511 (1a).~~

4 SECTION 25. 767.59 (1f) (c) (intro.) of the statutes is amended to read:

5 767.59 (1f) (c) (intro.) In an action under this section to revise a judgment or
6 order with respect to an amount of child support, any of the following may constitute
7 a substantial change of in circumstances sufficient to ~~justify~~ require revision of the
8 judgment or order:

9 SECTION 26. 767.59 (2) (a) of the statutes is amended to read:

10 767.59 (2) (a) Except as provided in par. (b) or (c), if the court revises a judgment
11 or order with respect to child support payments, it shall do so ~~by using the percentage~~
12 ~~standard established by the department in the manner provided under s. 49.22 (9)~~
13 767.511 (1j).

14 SECTION 27. 767.59 (2) (b) of the statutes is amended to read:

15 767.59 (2) (b) Upon request by a party, the court may modify, by reducing but
16 not by increasing, the amount of revised child support payments determined under
17 par. (a) if, after considering the factors listed in s. 767.511 (1m), the court finds, by
18 the greater weight of the credible evidence, that ~~the use of the percentage standard~~
19 amount of child support determined in the manner provided under s. 767.511 (1j) is
20 unfair to the child or to any of the parties.

21 SECTION 28. 767.59 (2m) of the statutes is created to read:

22 767.59 (2m) MINIMUMS ARE VOID. In an action under this section to revise a
23 judgment or order with respect to the amount of child support, any provision in the
24 judgment or order that sets a minimum amount of child support that may be ordered
25 in the future in the event that the child support order is revised under this section

Can you please make the changes described below to LRB 0016 as well as to the new combined draft of LRB 0016 and LRB 1271?

Please let me know if you have any questions. Thanks!

Ashlee Moore

Representative Joel Kleefisch – 38th Assembly District
307 North, State Capitol – (608) 266-8551

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

From: Kahler, Pam

Sent: Monday, September 09, 2013 12:43 PM

To: Moore, Ashlee

Subject: RE: Attached is a copy of a letter and its enclosure from Mr. Smiley to you.

Ashlee:

Instead of calling, I thought I would put my concerns in writing so that you could send them on, if necessary. I think I understand the concern with the current language. It does not make a distinction between s. 767.511 (1j) in current law and that same subsection as modified in the bill. As currently written in the bill draft, the intention is that the court is required to revise a child support order if: 1) the amount is different from the amount that would have been obtained by using the new method of determining child support; 2) the court did not use the new method; and 3) the court did not include in the order its reasons for deviating from the new method. This parallels current s. 767.59 (1f) (b) 4. If I were to change the language in the manner suggested, it would require the court to revise any child support order that deviates from the new method, regardless of when the order is made. In other words, it would make s. 767.511 (1m) and (1n) a nullity. Any person whose child support order deviated from the new method, even if the court deviated from that method under s. 767.511 (1m), could come right back into court the following day.

Instead of changing the language as suggested, I would propose to modify it by adding the new paragraphs to the citation so that it is clear that the new method is being referred to. So, the language would be the same on page 10, but page 11 would read: "to pay under s. 767.511 (1j) (a) to (d) and the court did not determine child support payments in the manner provided under s. 767.511 (1j) (a) to (d) and did not provide the information required under s. 767.511 (1n)." In other words, the court did not use the new method under s. 767.511 (1j) (a) to (d), or deviated from the new method by using s. 767.511 (1m), and did not state the reasons for deviating under s. 767.511 (1n).

Let me know if you have any questions.

Pam

Kahler, Pam

From: Kahler, Pam
Sent: Thursday, September 19, 2013 1:21 PM
To: Moore, Ashlee
Subject: RE: Draft Changes

Sure – let me email you what my thought was. I started thinking that my proposal below might not accomplish what they want and that it would need to be different depending on when the child support order was granted. The provision requires a court to revise a child support order if: 1) the amount is different from the amount that would be required using the new method of determining child support, 2) the court did not use the new method, and 3) the court did not provide the information that it is supposed to provide when it deviates from that amount. It could be that orders before the effective date satisfy 1) and 2) but not 3). (In other words, in orders before the effective date, the support amount may have been a deviation so the court may have provided the information that it is supposed to provide for a deviation, so 3) is not satisfied.) I was thinking that we would have to have two parts, one for orders granted before the effective date and one for orders granted in the future. The orders in the future would have to be revised if 1) to 3) were satisfied. Orders granted before the effective date would have to be revised if they are different from the amount that would be required using the new method. That is the only criterion.

This may not make sense in the abstract, but we can talk tomorrow. Thanks!

Pam

From: Moore, Ashlee
Sent: Thursday, September 19, 2013 1:05 PM
To: Kahler, Pam
Subject: Re: Draft Changes

I'm out of the office today but can call you tomorrow if you are available in the morning?

Ashlee Moore
Research Assistant
State Representative Joel Kleefisch - 38th Assembly District

On Sep 19, 2013, at 12:29 PM, "Kahler, Pam" <Pam.Kahler@legis.wisconsin.gov> wrote:

Ashlee,
Please give me a call when you get the chance. I need to explain an idea that I had to you.

Pam

From: Moore, Ashlee
Sent: Thursday, September 19, 2013 11:04 AM
To: Kahler, Pam
Subject: Draft Changes

Pam,

Can you please make the changes described below to LRB 0016 as well as to the new combined draft of LRB 0016 and LRB 1271?

Please let me know if you have any questions. Thanks!

Kahler, Pam

From: Kahler, Pam
Sent: Thursday, September 19, 2013 1:27 PM
To: Moore, Ashlee
Subject: RE: Draft Changes

Some more ... what that would amount to is what Atty. Smiley was requesting, but limited to orders granted before the effective date, and my proposal for orders granted after the effective date. That way we avoid the situation where in the future there can be no deviations because either party can turn right around and go back in for a revision.

From: Moore, Ashlee
Sent: Thursday, September 19, 2013 1:05 PM
To: Kahler, Pam
Subject: Re: Draft Changes

I'm out of the office today but can call you tomorrow if you are available in the morning?

Ashlee Moore
Research Assistant
State Representative Joel Kleefisch - 38th Assembly District

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Subject: Draft Changes

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Please let me know if you have any questions. Thanks!

Ashlee Moore
Representative Joel Kleefisch - 38th Assembly District
307 North, State Capitol - (608) 266-8551

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Sent: Monday, September 09, 2013 12:43 PM
To: Moore, Ashlee
Subject: RE: Attached is a copy of a letter and its enclosure from Mr. Smiley to you.

Kahler, Pam

From: Kahler, Pam
Sent: Thursday, September 19, 2013 1:35 PM
To: Moore, Ashlee
Subject: RE: Draft Changes

I know. It's hard to fashion a general principle that will apply to only one situation.

From: Moore, Ashlee
Sent: Thursday, September 19, 2013 1:33 PM
To: Kahler, Pam
Subject: Re: Draft Changes

This is what we are trying to avoid-I just don't see how we can while making it a change in circumstance to have not used the new way. Lets talk tomorrow thanks Pam

Ashlee Moore
Research Assistant
State Representative Joel Kleefisch - 38th Assembly District

On Sep 19, 2013, at 1:31 PM, "Kahler, Pam" <Pam.Kahler@legis.wisconsin.gov> wrote:

Still more ... do keep in mind, though, that this will potentially open the flood gates because the courts will be required to revise any child support order that was granted before the effective date, since the amount will not have been determined using the new method.

From: Moore, Ashlee
Sent: Thursday, September 19, 2013 1:05 PM
To: Kahler, Pam
Subject: Re: Draft Changes

I'm out of the office today but can cal you tomorrow if you are available in the morning?

Ashlee Moore
Research Assistant
State Representative Joel Kleefisch - 38th Assembly District

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Please give me a call when you get the chance. I need to explain an idea that I had to you.

Pam

From: Moore, Ashlee
Sent: Thursday, September 19, 2013 11:04 AM
To: Kahler, Pam
Subject: Draft Changes

Pam,

9-24

Ashlee Moore by phone
modify LRB-0016 so that ^{it is a} substantial
change in circumstances if current order
exceeds amount that would be
determined under new method by
20%

(later changed to 10%)

"RESEARCH APPENDIX"

... Drafting History Reproduction Request Form ...

 DRAFTING ATTORNEYS: PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN

(Request Made By: PJK) (Date: 9/5/13)

Note:

BOTH DRAFTS SHOULD HAVE THE SAME "REQUESTOR"

(exception: companion bills)



Please transfer the drafting file for

2011 LRB _____

(For: Rep. / Sen. _____)

to the drafting file for

2013 LRB _____

(For: Rep. / Sen. _____)

-----OR-----



Please copy the drafting file for

2013 LRB 0016/12

(include the version)

(For: Rep. / Sen. Kleefisch)

and place it in the drafting file for

2013 LRB 3081

(For: Rep. / Sen. Kleefisch)



Are These "Companion Bills" ?? ... Yes No

If yes, who in the initial requestor's office authorized the copy/transfer of the drafting history

("guts") from the original file: Ashlee Moore



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-001074
PJK:sac:ma

3081

v m not run

2013 BILL

today on
Tues, please
(in 10-14)

request ↓

1 AN ACT to renumber 767.531 (1), 767.531 (2) and 767.531 (3); to renumber and
2 amend 767.511 (1j) and 767.531 (intro.) (except 767.531 (title)); to amend
3 49.22 (9), 767.225 (1n) (b) 1., 767.511 (1j) (title), 767.511 (1m) (intro.), 767.511
4 (1n), 767.513 (2), 767.55 (2) (c), 767.553 (1) (a), 767.553 (1) (b), 767.59 (1c) (a)
5 (intro.), 767.59 (1c) (a) 1., 767.59 (1f) (b) (intro.), 767.59 (1f) (b) 4., 767.59 (1f)
6 (c) (intro.), 767.59 (2) (a), 767.59 (2) (b) and 767.85 (2); and to create 767.511
7 (1j) (b), 767.511 (1j) (c), 767.511 (1j) (d), 767.511 (1r), 767.59 (1c) (c), 767.59 (1f)
8 (bm) and 767.59 (2m) of the statutes; relating to: child support changes,
9 including prohibiting basing support on income over \$150,000 per year,
10 deducting the amount of health insurance premiums from the support amount,
11 prohibiting increasing support above the standard amount, prohibiting orders

insert 1-8

BILL

1 that set minimum future support amounts, and requiring a support revision if
 2 there has been a substantial change in circumstances.

Insert A-1

Analysis by the Legislative Reference Bureau

Under current law, in divorces, paternity actions, and other actions affecting the family in which there are minor children the court is required to order either or both parents to pay an amount that is reasonable or necessary to fulfill a duty to support a child. The court must generally determine child support payments by using the percentage standard set out in the Wisconsin Administrative Code (code) and established by the Department of Children and Families (DCF). The percentage standard is a percentage of the child support payer's monthly income available for support. The percentage that the child support payer must pay varies with the number of children to be supported. Under the percentage standard, a payer must pay 17 percent of his or her monthly income available for support for one child, 25 percent for two children, 29 percent for three children, 31 percent for four children, and 34 percent for five or more children. Generally, the parent who has physical placement with a child for less time is ordered to pay child support to the other parent on the basis of the percentage standard.

In addition to the percentage standard, the code provides special methods that the court may, but is not required to, use for calculating child support in special situations, including for high-income payers. For high-income payers, child support may be determined by multiplying annual income available for support that is less than \$84,000 by the usual percentages of the percentage standard, income between \$84,000 and \$150,000 by a different schedule of percentages that are about 80 percent of the usual percentages, and income above \$150,000 by another schedule of percentages that are about 60 percent of the usual percentages. For example, for a payer with annual income available for support above \$150,000, child support for one child may be determined by multiplying the payer's monthly income under \$7,000 by 17 percent, multiplying the additional monthly income between \$7,000 and \$12,500 by 14 percent, multiplying the additional monthly income over \$12,500 by 10 percent, and adding together the amounts obtained.

The code provides that the court must determine a parent's monthly income that is available for child support by dividing by 12 the sum of the parent's gross annual income, or gross annual income modified for business expenses, the parent's annual imputed income based on earning capacity, and the parent's annual income imputed from assets. Under the code, the court may impute income to a payer if the court determines that the payer's income is less than his or her earning capacity or if the payer has unproductive assets or has diverted income into assets to avoid paying child support. For imputing income based on earning capacity, the court assesses the parent's education, training, previous work experience and income level, and the availability of work in or near the parent's community. Income imputation for unproductive assets involves multiplying the net value of the parent's assets by the current six-month treasury bill rate or another reasonable rate.

anal: title: sub-sub
Child support

BILL

Under the statutes, a court is authorized, upon a party's request, to modify the amount of child support that would be ordered by using the percentage standard if the court finds that use of the percentage standard is unfair to the child or either of the parties. In making this finding, the court must consider a number of factors, such as the earning capacity of each parent, the desirability that the custodian remain in the home as a full-time parent, and extraordinary travel expenses incurred in exercising physical placement rights.

This bill makes a few modifications to the way in which child support is determined. The bill provides that child support may be based only on a parent's actual income or imputed income based on earning capacity, as determined by the court. The bill provides that child support may not be based on any of a parent's assets and that it may not be based on any portion of a parent's annual gross income that exceeds \$150,000, annually adjusted in accordance with the consumer price index. The bill conforms the statutory provision that authorizes DCF to promulgate rules establishing the percentage standard with these changes.

Under current law, in addition to ordering child support for a child, the court is required to assign responsibility for payment of the child's health care expenses and may require a parent to initiate or continue health insurance coverage for the child. Under the bill, after determining a parent's child support payments, the court must deduct from that amount any amount the parent currently pays, or is ordered to pay, for health insurance premiums for the child for whom support is determined.

Under the bill, a court still may, upon a party's request, modify the amount of child support determined if the court finds that the amount is unfair to the child or either of the parties after considering the factors under current law. However, the court may modify the amount of child support it has determined in the manner provided in the statutes only by reducing that amount. The requirement that a court may only reduce the amount of support that it has determined in the manner provided in the statutes also applies to temporary support orders and to revisions of support orders.

Under current law, the court may revise the amount of child support under an existing order only if the court finds that there has been a substantial change in circumstances. The bill does not change this requirement; however, the bill also provides that, if the court does find that there has been a substantial change in circumstances, the court must revise the amount of child support under an existing order. In addition, the bill provides that, in an action to revise the amount of child or family support under an existing order, if the amount under the existing order exceeds by 10 percent or more the amount that would have been ordered using the new requirements, the court must find a substantial change in circumstances that requires the court to revise the existing child support order.

The bill makes a few other changes relating to support. Under current law, family support is an order that combines child support and maintenance (formerly called alimony) into a single support amount. The bill provides that a family support order may not include a child support amount that exceeds the amount of child support that would be determined otherwise in the manner provided in the statutes. The bill prohibits a court from including a provision in a support order that sets a

BILL

minimum amount of child support that may be ordered at a future time if the support order is revised. The bill also provides that, in an action to revise an order with respect to the amount of child support, regardless of when the order was granted, if it includes a provision that sets a minimum amount of support that may be ordered at a future time, that provision is void and may not be given effect.

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.** 49.22 (9) of the statutes is amended to read:

2 49.22 (9) The department shall promulgate rules that provide a standard for
3 courts to use in determining a child support obligation based upon a percentage of
4 the gross income ~~and assets~~ of either or both parents. The rules shall provide for
5 consideration of the income of each parent and the amount of physical placement
6 with each parent in determining a child support obligation in cases in which a child
7 has substantial periods of physical placement with each parent. The rules may not
8 base any amount of child support on any portion of a parent's gross income that
9 exceeds \$150,000 per year, which gross income amount shall be adjusted annually,
10 beginning in 2015, to reflect changes in the consumer price index for all urban
11 consumers, U.S. city average, as determined by the U.S. department of labor.

12 **SECTION 2.** 767.225 (1n) (b) 1. of the statutes is amended to read:

13 767.225 (1n) (b) 1. If the court makes a temporary child support order that
14 deviates from the amount of support that would be required ~~by using the percentage~~
15 ~~standard established by the department~~ under s. 49.22 (9) 767.511 (1j), the court
16 shall comply with the requirements of s. 767.511 (1n). The court may make a
17 temporary child support order that deviates from the amount that would be required
18 under s. 767.511 (1j) by reducing, but not by increasing, that amount.

Insert 4-18 →

BILL

1 **SECTION 3.** 767.511 (1j) (title) of the statutes is amended to read:

2 767.511 (1j) (title) ~~PERCENTAGE CALCULATION; PERCENTAGE STANDARD GENERALLY~~
3 REQUIRED.

4 **SECTION 4.** 767.511 (1j) of the statutes is renumbered 767.511 (1j) (intro.) and
5 amended to read:

6 767.511 (1j) (intro.) Except as provided in sub. (1m), the court shall determine
7 child support payments ~~by using~~ in the following manner:

8 (a) Except as otherwise provided in this subsection, the court shall use the
9 percentage standard established by the department under s. 49.22 (9).

10 **SECTION 5.** 767.511 (1j) (b) of the statutes is created to read:

11 767.511 (1j) (b) The court may not order any amount of child support based on
12 any portion of a parent's gross income that exceeds \$150,000 per year. This income
13 amount shall be adjusted annually, beginning in 2015, to reflect changes in the
14 consumer price index for all urban consumers, U.S. city average, as determined by
15 the U.S. department of labor.

16 **SECTION 6.** 767.511 (1j) (c) of the statutes is created to read:

17 767.511 (1j) (c) The court shall base child support payments only on a parent's
18 actual income or on imputed income based on earning capacity, as determined by the
19 court, and may not order any amount of child support based on the value of any of
20 a parent's assets.

21 **SECTION 7.** 767.511 (1j) (d) of the statutes is created to read:

22 767.511 (1j) (d) When the court calculates the amount of a parent's child
23 support payments, unless the parties agree otherwise in writing or orally in open
24 court, the court shall reduce the amount determined under pars. (a) to (c) by the
25 amount per month that the parent currently pays or is ordered to pay for health

BILL

1 insurance premiums attributable to the child for whom the support is being
2 determined.

3 **SECTION 8.** 767.511 (1m) (intro.) of the statutes is amended to read:

4 767.511 (1m) DEVIATION FROM STANDARD; FACTORS. (intro.) Upon request by a
5 party, the court may modify, by reducing but not by increasing, the amount of child
6 support payments determined under sub. (1j) if, after considering the following
7 factors, the court finds by the greater weight of the credible evidence that ~~use of the~~
8 percentage standard the amount of child support determined under sub. (1j) is unfair
9 to the child or to any of the parties:

10 **SECTION 9.** 767.511 (1n) of the statutes is amended to read:

11 767.511 (1n) DEVIATION FROM STANDARD; RECORD. If the court finds under sub.
12 (1m) that ~~use of the percentage standard~~ the amount of child support determined
13 under sub. (1j) is unfair to the child or the requesting party, the court shall state in
14 writing or on the record the amount of support that would be required ~~by using the~~
15 percentage standard under sub. (1j), the amount by which the court's order deviates
16 is reduced from that amount, its reasons for finding that ~~use of the percentage~~
17 standard the amount of child support determined under sub. (1j) is unfair to the child
18 or the party, its reasons for the amount of the ~~modification~~ reduction, and the basis
19 for the ~~modification~~ reduction.

20 **SECTION 10.** 767.511 (1r) of the statutes is created to read:

21 767.511 (1r) MINIMUM REVISION AMOUNTS PROHIBITED. The court may not grant
22 a child support order that sets a minimum amount of support that may be ordered
23 in the future in the event that the child support order is revised under s. 767.59 or
24 a substantially similar law of another state.

25 **SECTION 11.** 767.513 (2) of the statutes is amended to read:

BILL

1 **767.513 (2) RESPONSIBILITY AND PAYMENT.** In addition to ordering child support
2 for a child under s. 767.511 (1), and subject to s. 767.511 (1j) (d), the court shall
3 specifically assign responsibility for and direct the manner of payment of the child's
4 health care expenses. In assigning responsibility for a child's health care expenses,
5 the court shall consider whether a child is covered under a parent's health insurance
6 policy or plan at the time the court approves a stipulation for child support under s.
7 767.34, enters a judgment of annulment, divorce, or legal separation, or enters an
8 order or a judgment in a paternity action or in an action under s. 767.001 (1) (f) or
9 (j), 767.501, or 767.805 (3), the availability of health insurance to each parent
10 through an employer or other organization, the extent of coverage available to a
11 child, and the costs to the parent for the coverage of the child. A parent may be
12 required to initiate or continue health care insurance coverage for a child under this
13 section. If a parent is required to do so, he or she shall provide copies of necessary
14 program or policy identification to the custodial parent and is liable for any health
15 care costs for which he or she receives direct payment from an insurer. This section
16 shall not be construed to limit the authority of the court to enter or modify support
17 orders containing provisions for payment of medical expenses, medical costs, or
18 insurance premiums that are in addition to and not inconsistent with this section.

19 **SECTION 12.** 767.531 (intro.) (except 767.531 (title)) of the statutes, as affected
20 by 2013 Wisconsin Act 20, is renumbered 767.531 (1m) and amended to read:

21 **767.531 (1m)** The court may make a financial order designated "family
22 support" as a substitute for child support orders under s. 767.511 and maintenance
23 payment orders under s. 767.56. As part of a family support order, the court may not
24 order a party to pay an amount of child support that exceeds the child support
25 payments that the party would be required to pay under s. 767.511 (1j).

BILL

1 **(2m)** Subject to s. 767.511 (6m), a party ordered to pay family support under
2 this section shall pay simple interest at the rate of 1% per month on any amount in
3 arrears that is equal to or greater than the amount of child support due in one month.
4 Subject to s. 767.511 (6m), if the party no longer has a current obligation to pay child
5 support, interest at the rate of 1% per month shall accrue on the total amount of child
6 support in arrears, if any. Interest under this section is in lieu of interest computed
7 under s. 807.01 (4), 814.04 (4), or 815.05 (8) and is paid to the department or its
8 designee under s. 767.57.

9 **(3m)** Except as provided in s. 767.57 (1m), the department or its designee shall
10 apply all payments received for family support as follows:

11 **SECTION 13.** 767.531 (1) of the statutes is renumbered 767.531 (3m) (a).

12 **SECTION 14.** 767.531 (2) of the statutes is renumbered 767.531 (3m) (b).

13 **SECTION 15.** 767.531 (3) of the statutes is renumbered 767.531 (3m) (c).

14 **SECTION 16.** 767.55 (2) (c) of the statutes is amended to read:

15 767.55 (2) (c) If the court enters an order under par. (am), it shall order the
16 parent to pay child support equal to the amount determined by ~~applying the~~
17 ~~percentage standard established~~ under s. ~~49.22 (9)~~ 767.511 (1j) or equal to the
18 amount of child support that the parent was ordered to pay in the most recent
19 determination of support under this chapter. The child support obligation ordered
20 under this paragraph continues until the parent makes timely payment in full for
21 3 consecutive months or until the person participates in the program under s. 49.36
22 for 16 weeks, whichever occurs first. The court shall provide in its order that the
23 parent shall make child support payments calculated under s. 767.511 (1j) or (1m)
24 after the obligation to make payments ordered under this paragraph ceases.

25 **SECTION 17.** 767.553 (1) (a) of the statutes is amended to read:

BILL

1 767.553 (1) (a) An order for child or family support under this chapter may
2 provide for an annual adjustment in the amount to be paid based on a change in the
3 payer's income if the amount of child or family support is expressed in the order as
4 a fixed sum and ~~based on the percentage standard established by the department~~
5 determined in the manner provided under s. ~~49.22 (9)~~ 767.511 (1j). No adjustment
6 may be made under this section unless the order provides for the adjustment.

7 **SECTION 18.** 767.553 (1) (b) of the statutes is amended to read:

8 767.553 (1) (b) An adjustment under this section may not be made more than
9 once in a year and shall be determined ~~on the basis of the percentage standard~~
10 established by the department in the manner provided under s. ~~49.22 (9)~~ 767.511 (1j).

11 **SECTION 19.** 767.59 (1c) (a) (intro.) of the statutes is amended to read:

12 767.59 (1c) (a) (intro.) On the petition, motion, or order to show cause of either
13 of the parties, the department, a county department under s. 46.215, 46.22, or 46.23,
14 or a county child support agency under s. 59.53 (5) if an assignment has been made
15 under s. 48.57 (3m) (b) 2. or (3n) (b) 2., 48.645 (3), 49.19 (4) (h), or 49.45 (19) or if either
16 party or their minor children receive aid under s. 48.57 (3m) or (3n) or 48.645 or ch.
17 49, a court may, except as provided in ~~par. pars.~~ (b) and (c), do any of the following:

18 **SECTION 20.** 767.59 (1c) (a) 1. of the statutes is amended to read:

19 767.59 (1c) (a) 1. Revise and alter a support or maintenance order as to the
20 amount and payment of maintenance or child support and the appropriation and
21 payment of the principal and income of property held in trust. The court may revise
22 and alter a child support order regardless of whether the amount of support was
23 determined by the court, by court approval of a stipulation of the parties, or through
24 arbitration.

25 **SECTION 21.** 767.59 (1c) (c) of the statutes is created to read:

BILL

1 767.59 (1c) (c) In an action under this section to revise a judgment or order as
2 to the amount of child or family support, the court must revise the judgment or order
3 as to the amount of child or family support if the court finds a substantial change in
4 circumstances.

5 **SECTION 22.** 767.59 (1f) (b) (intro.) of the statutes is amended to read:

6 767.59 (1f) (b) (intro.) In an action under this section to revise a judgment or
7 order with respect to the amount of child support, any of the following constitutes a
8 rebuttable presumption of a substantial change in circumstances sufficient to justify
9 require a revision of the judgment or order:

10 **SECTION 23.** 767.59 (1f) (b) 4. of the statutes is amended to read:

11 767.59 (1f) (b) 4. A If the action is one to revise a judgment or order with respect
12 to child support ordered under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183
13 (4), 938.355 (2) (b) 4., 938.357 (5m) (a), 938.363 (2), or 948.22 (7), a difference between
14 the amount of child support ordered by the court to be paid by the payer and the
15 amount that the payer would have been required to pay based on the percentage
16 standard established by the department under s. 49.22 (9) if the court did not use the
17 percentage standard in determining the child support payments and did not provide
18 the information required under s. 46.10 (14) (d), 49.345 (14) (d), or 301.12 (14) (d),
19 or 767.511(1n), whichever is appropriate.

20 **SECTION 24.** 767.59 (1f) (bm) of the statutes is created to read:

21 767.59 (1f) (bm) In an action under this section to revise a judgment or order
22 with respect to an amount of child or family support ordered under this chapter, the
23 court shall find a substantial change in circumstances sufficient to require revision
24 of the judgment or order if the amount of child support ordered by the court to be paid
25 by the payer exceeds the amount that the payer would have been required to pay

BILL

1 under s. 767.511 (1j) (a) to (d), had the court determined child support payments in
2 the manner provided under s. 767.511 (1j) (a) to (d), by 10 percent or more of the latter
3 amount.

4 **SECTION 25.** 767.59 (1f) (c) (intro.) of the statutes is amended to read:

5 767.59 (1f) (c) (intro.) In an action under this section to revise a judgment or
6 order with respect to an amount of child support, any of the following may constitute
7 a substantial change of in circumstances sufficient to ~~justify~~ require revision of the
8 judgment or order:

9 **SECTION 26.** 767.59 (2) (a) of the statutes is amended to read:

10 767.59 (2) (a) Except as provided in par. (b) or (c), if the court revises a judgment
11 or order with respect to child support payments, it shall do so ~~by using the percentage~~
12 ~~standard established by the department~~ in the manner provided under s. 49.22 (9)
13 767.511 (1j).

14 **SECTION 27.** 767.59 (2) (b) of the statutes is amended to read:

15 767.59 (2) (b) Upon request by a party, the court may modify, by reducing but
16 not by increasing, the amount of revised child support payments determined under
17 par. (a) if, after considering the factors listed in s. 767.511 (1m), the court finds, by
18 the greater weight of the credible evidence, that the ~~use of the percentage standard~~
19 amount of child support determined in the manner provided under s. 767.511 (1j) is
20 unfair to the child or to any of the parties.

21 **SECTION 28.** 767.59 (2m) of the statutes is created to read:

22 767.59 (2m) MINIMUMS ARE VOID. In an action under this section to revise a
23 judgment or order with respect to the amount of child support, any provision in the
24 judgment or order that sets a minimum amount of child support that may be ordered
25 in the future in the event that the child support order is revised under this section

BILL

1 or a substantially similar law of another state is void and may not be given effect by
2 the court, regardless of when the judgment or order was granted.

3 **SECTION 29.** 767.85 (2) of the statutes is amended to read:

4 767.85 (2) CONSIDERATIONS. Before making any temporary order under sub. (1),
5 the court shall consider those factors that the court is required to consider when
6 granting a final judgment on the same subject matter. If the court makes a
7 temporary child support order that deviates from the amount of support that would
8 be required by using the percentage standard established by the department under
9 s. ~~49.22 (9)~~ 767.511 (1j), the court shall comply with the requirements of s. 767.511
10 (1n). The court may make a temporary child support order that deviates from the
11 amount that would be required under s. 767.511 (1j) by reducing, but not by
12 increasing, that amount.

13 **SECTION 30. Initial applicability.**

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S A → *and (3)*

14 (1) GENERAL. Except as provided in subsection (2), this act first applies to child
15 or family support orders, including temporary orders and orders revising judgments
16 or orders previously granted, that are granted on the effective date of this subsection.

17 (2) ANNUAL ADJUSTMENTS. The treatment of section 767.553 (1) (b) of the
18 statutes first applies to adjustments made on the effective date of this subsection.

19 (END)

(CS)
IN CHILD SUPPORT

Insert 12-18



2013 ASSEMBLY BILL 211

May 17, 2013 – Introduced by Representatives KLEEFISCH, BERNIER, KRUG, KESTELL, PRIDEMORE, T. LARSON, HONADEL, SCHRAA, KNODL, LEMAHIEU, NASS, SPIROS, TITTL, PETERSEN, A. OTT, BORN and BROOKS. Referred to Committee on Family Law.

Insert 1-8

Insert A-1

1 ~~AN ACT to amend 767.41 (4) (a) 2; and to create 767.41 (5) (am) 5m.~~ of the
 2 ~~statutes; relating to:~~ a presumption that equalizing physical placement to the
 3 highest degree is in the child's best interest *and*

Analysis by the Legislative Reference Bureau

Under current law, in an action affecting the family, such as a divorce or a paternity action, a court must determine the legal custody of a minor child based on the best interest of the child. In current law, there is a presumption that joint legal custody is in the child's best interest. The court also must allocate periods of physical placement between the parties. The court is required to set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes the amount of time the child may spend with each parent, taking into consideration geographic separation and accommodations for different households. The court may deny periods of physical placement with a parent only if the court finds that the physical placement would endanger the child's physical, mental, or emotional health. When determining custody and periods of physical placement, the court is required, under current law, to consider a number of factors (custody and placement factors), such as the wishes of the child and of the parties, the interaction and interrelationship of the child with his or her parents, the amount and quality of time that each party has spent with the child in the past, the child's adjustment to the home, school, and community, and the cooperation and communication between the parties.

This bill provides that, when the court allocates periods of physical placement, instead of maximizing the amount of time a child may spend with each parent, taking

Equal placement presumption

anal: title: sub-sub ↓



ASSEMBLY BILL 211

Insert A-1 cont'd

into consideration geographic separation and accommodations for different households, the court must presume that a placement schedule that equalizes to the highest degree the amount of time the child may spend with each parent is in the child's best interest. This presumption may be rebutted if the court finds by clear and convincing evidence, after considering the custody and placement factors, that equalizing physical placement would not be in the child's best interest. The bill also makes the geographic separation of the parties an additional custody and placement factor for the court to consider in every case when determining custody and periods of physical placement.

(end of insert A-1)

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

SECTION 1. 767.41 (4) (a) 2. of the statutes is amended to read:

767.41 (4) (a) 2. In determining the allocation of periods of physical placement, the court shall ~~consider each case on the basis of the factors in sub. (5) (am), subject to sub. (5) (bm). The court shall set~~ presume that a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes equalizes to the highest degree the amount of time the child may spend with each parent, ~~taking into account geographic separation and accommodations for different households is in the best interest of the child. The~~ presumption under this subdivision is rebutted if the court finds by clear and convincing evidence, after considering all of the factors in sub. (5) (am), subject to sub. (5) (bm), that equalizing physical placement to the highest degree would not be in the child's best interest.

SECTION 2. 767.41 (5) (am) 5m. of the statutes is created to read:

767.41 (5) (am) 5m. The geographic separation of the parties.

~~**SECTION 3. Initial applicability.**~~

Insert 4-18

ASSEMBLY BILL 211

insert 12-18

auto ref A

1 (1) This act first applies to actions or proceedings, including actions or
 2 proceedings to modify a judgment or order previously granted, that are commenced
 3 on the effective date of this subsection.

(END of insert 12-18)

(5) EQUAL PLACEMENT PRESUMPTION. The treatment of section 767.41(4)(a)2. and
 (5)(am)5m. of the statutes

Barman, Mike

From: Moore, Ashlee
Sent: Monday, October 14, 2013 2:15 PM
To: LRB.Legal
Subject: Draft Review: LRB -3081/1 Topic: Child support modifications and equalizing physical placement

Please Jacket LRB -3081/1 for the ASSEMBLY.