



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - PLEASE DO NOT REMOVE FROM DRAFTING FILE

Date Transfer Requested: 09/05/2013 (Per: PJK)

Appendix A ... segment II

Appendix A  The drafting file for LRB 13-0016 (used to create 13-3081)
(Representative Kleefisch)

Appendix B  The drafting file for LRB 11-3501 (used to create 13-0016)
(Representative Kleefisch)

has been transferred to the drafting file for

2013 LRB-3081

(Representative Kleefisch)



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0016/2
PJK:sac:jf

P2

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note
(in 10-19)

regenerate

1 **AN ACT** *to renumber and amend* 767.511 (1j), 767.511 (1n) and 767.511 (2); *to*
2 *amend* 767.215 (1) (b), 767.215 (2m) (a) 2., 767.225 (1n) (b) 1., 767.511 (1) (a),
3 767.511 (1j) (title), 767.511 (1m) (intro.), 767.511 (2) (title), 767.513 (2), 767.55
4 (2) (c), 767.553 (1) (a), 767.553 (1) (b), 767.59 (1c) (a) (intro.), 767.59 (1c) (a) 1.,
5 767.59 (1f) (b) (intro.), 767.59 (1f) (b) 4., 767.59 (1f) (c) (intro.), 767.59 (1f) (d),
6 767.59 (2) (a), 767.59 (2) (b), 767.80 (7), 767.813 (6) and 767.85 (2); *to repeal*
7 *and recreate* 767.59 (1f) (a); and *to create* 767.511 (1j) (a), 767.511 (1j) (b) 1.,
8 767.511 (1j) (b) 2., 767.511 (1j) (b) 2m., 767.511 (1j) (b) 2r., 767.511 (1j) (b) 3.,
9 767.511 (1j) (b) 4., 767.511 (1j) (b) 5., 767.511 (1m) (bc), 767.511 (1p), 767.511
10 (1s), 767.511 (2) (b), 767.59 (1f) (b) 5. and 767.59 (1f) (bm) of the statutes;
11 **relating to:** calculating child support and granting rule-making authority.

Analysis by the Legislative Reference Bureau

(Note: This analysis has not been updated for the changes made to 2011 LRB-3501/2. An updated version will be included after all changes are finalized and approved.)

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: serial-family parents; shared-placement payers; split-placement payers; low-income payers; and high-income payers. A serial-family parent is a parent who is already obligated to pay child support and who is later ordered to pay support for another child, from a later marriage or a paternity adjudication, for example. The amount of support that the person must pay under the later order may be calculated by first reducing the payer's monthly income available for support by the amount under the first child support order and then applying the percentage standard to that reduced income amount.

Shared-placement parents are parents who both have physical placement with a child for at least 25 percent of the time or 92 days a year and who are both ordered by the court to assume the child's basic support costs in proportion to the time that the parent has placement of the child. For shared-placement parents, child support may be determined by multiplying each parent's income by the percentage standard, multiplying each of those resulting amounts by 150 percent, and then multiplying the resulting amount determined for each parent by the other parent's proportion of physical placement. The parent with the higher resulting amount pays to the other parent the difference between the amounts or the amount that would be determined by applying the percentage standard to his or her income, whichever is lower.

Split-placement parents are parents who have two or more children and each has placement with at least one but not all of the children. Under the code, child support may be determined by multiplying each parent's income by the pro rata percentage standard that applies for the number of children placed with the other parent. (For example, if there are two children and each parent has physical placement with one child, the pro rata percentage standard is 12.5 percent, or one-half of the 25 percent that applies for two children under the percentage standard.) The parent who would be required to pay the higher amount pays the difference to the other parent.

For low-income payers and high-income payers, the court may determine child support by using a schedule of percentages that are different from the percentages in the percentage standard. Currently, a low-income payer is one with annual income available for support of \$16,200 or less. This amount, which is 150 percent

of poverty, is adjusted based on federal poverty guidelines. The schedule of percentages is reduced for each income level in gradients of \$25 per monthly income amount. Currently, the percentages, depending on income level, range from 11.11 percent to 17 percent for one child and from 22.22 percent to 34 percent for five or more children. 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.

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 sets out a child support percentage standard in the statutes for actions affecting the family and specifies how a court must determine child support, including for revisions of existing child support orders. Under the bill, the court must determine the support obligation of each parent who has physical placement with a child for less than 75 percent of the time and order one or both parents to pay an amount for the support of the child. To calculate a parent's child support obligation, the parent's net monthly income is multiplied by a specified percentage. Under the bill, net monthly income is a parent's gross monthly income, determined in the manner provided in the code, less federal and state income tax that would be withheld, or that would be paid by a self-employed individual, based on the actual number of dependents that the individual or self-employed individual is legally

entitled to claim on his or her income tax return. If a parent's net monthly income is \$7,000 or less (which equals \$84,000 or less of net annual income), his or her total net monthly income is multiplied by the same percentages as the percentage standard under the code: 17 percent for one child, 25 percent for two children, 29 percent for three children, 31 percent for four children, and 34 percent for more than four children. However, if a parent's net monthly income exceeds \$7,000, his or her total net monthly income is multiplied by 14 percent for one child, 20 percent for two children, 23 percent for three children, 25 percent for four children, and 27 percent for more than four children, except that the court may not calculate a parent's child support obligation on any of the parent's net income that exceeds \$150,000 per year, annually adjusted in accordance with the consumer price index.

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 monthly child support obligation, the court must deduct from that amount any amount the parent currently pays, or is ordered to pay, for the child's health care coverage, health care expenses not covered by insurance, and child care expenses. Then, if both parents have physical placement with a child for more than 25 percent of the time, each parent's child support obligation, thus determined, is multiplied by the percentage of time that the other parent has physical placement with the child to determine each parent's comparative child support obligation. Whichever parent has the larger comparative child support obligation pays the difference between the two to the other parent as child support.

Under the bill, a court is still authorized, upon a party's request, to modify the amount of child support that would be ordered by using the new percentage standard if the court finds that its use is unfair to the child or either of the parties after considering the factors under current law. However, if the court does modify the amount of child support that would be ordered by using the new percentage standard, the court is still prohibited from calculating any child support on a parent's net income over \$150,000 per year, unless the parties agree in writing or in open court that the court is not prohibited from doing so. In addition, the bill adds, as another factor for the court to consider, the amount of income actually available to a parent for the payment of child support. The bill directs DCF to promulgate rules on how to compute the amount of income actually available to a parent, and provides that, if a parent is self-employed, a cash flow statement from a certified public accountant on behalf of the parent establishes the parent's income that is actually available for support.

Current law provides that the court may require a portion of the amount that either party must pay in child support to be set aside in a separate fund or trust for the support, education, and welfare of the child. The bill does not change the ability of the court to set funds aside for the child. The bill adds, however, that if the court determines that the amount of child support calculated in the new manner exceeds the amount reasonably necessary to support the child's current needs, the court must order the excess to be deposited in an account that requires the signatures of both

parents for withdrawal, to be used for any extraordinary needs of the child. When the child support obligation ends, any funds remaining must be used for postsecondary education expenses of the child. Any funds remaining after ten years after the child support obligation ends must be returned to the parent or parents in proportion to their comparative child support obligations or distributed in another manner specified by the court.

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 provides that the creation of the new percentage standard in the statutes and the other new requirements related to determining child support constitute a substantial change in circumstances on which a revision may be based. The bill also provides that any agreement related to child support that was entered into before the effective date of the bill that has not yet been approved by a court is void unless the parties reaffirm the agreement in writing or in open court on or after the effective date of the bill. Finally, the bill provides that the court may determine a parent's child support obligation in conformity with any provisions of the code that are not in conflict with the new percentage standard or other new requirements in the statutes.

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

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

1 **SECTION 1.** 767.215 (1) (b) of the statutes is amended to read:

2 767.215 (1) (b) The clerk of court shall provide without charge, to each person
3 filing a petition requesting child support, a document setting forth the percentage
4 standard ~~established by the department~~ under s. ~~49.22 (9)~~ 767.511 (1j) (b) and listing
5 the factors that a court may consider under s. 767.511 (1m).

6 **SECTION 2.** 767.215 (2m) (a) 2. of the statutes is amended to read:

7 767.215 (2m) (a) 2. Shall be accompanied by a document, provided without
8 charge by the clerk of court, setting forth the percentage standard under s. 767.511
9 (1j) (b) or, if the action affecting the family is one under s. 767.001 (1) (m), the
10 percentage standard established by the department under s. 49.22 (9) and listing the
11 factors that a court may consider under s. 767.511 (1m).

SECTION 3. 767.225 (1n) (b) 1. of the statutes is amended to read:

767.225 (1n) (b) 1. If the court makes a temporary child support order that deviates from the amount of support that would be required by using the percentage standard under s. 767.511 (1j) (b) or, if the action affecting the family is one under s. 767.001 (1) (m), the percentage standard established by the department under s. 49.22 (9), the court shall comply with the requirements of relating to the court's statements in writing or on the record described under s. 767.511 (1n) (1r).

Insert
6-7

SECTION 4. 767.511 (1) (a) of the statutes is amended to read:

767.511 (1) (a) ~~Order~~ Determine the support obligation of each parent who has physical placement with his or her child for less than 75 percent of the time and order either or both parents to pay an amount reasonable or necessary to fulfill a duty to support ~~a~~ the child. The support amount must be expressed as a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the payer's income and the requirements under s. 767.34 (2) (am) 1. to 3. are satisfied.

SECTION 5. 767.511 (1j) (title) of the statutes is amended to read:

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

SECTION 6. 767.511 (1j) of the statutes is renumbered 767.511 (1j) (b) (intro.) and amended to read:

767.511 (1j) (b) (intro.) Except as provided in sub. (1m), the court shall determine the child support payments by using the percentage standard established by the department under s. 49.22 (9). obligation of a parent in the following manner:

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

767.511 (1j) (a) In this subsection:

1 1. "Gross income" has the meaning given in s. DCF 150.02 (13) (a), Wis. Adm.
2 Code.

3 2. a. Except as provided in subd. 2. b., "net income" means gross income less
4 federal and state income tax that would be withheld based on the actual number of
5 dependents that the individual is legally entitled to claim on his or her income tax
6 return or that would be paid by a self-employed individual based on the actual
7 number of dependents that the self-employed individual is legally entitled to claim
8 on his or her income tax return.

9 b. For a parent who voluntarily terminates or reduces his or her income for any
10 reason, "net income" means that parent's earning capacity, as determined by the
11 court.

****NOTE: Do you want to impose any time limits on when the voluntary termination or reduction of income occurred, such as after the divorce was commenced or granted or within a certain amount of time before the divorce was commenced? What if early in the marriage the parties together agree that one of them will stop working and be a stay-at-home child care provider? Should the court use earning capacity for that parent, too?

12 **SECTION 8.** 767.511 (1j) (b) 1. of the statutes is created to read:

13 767.511 (1j) (b) 1. Subject to subd. 3., if the parent's total monthly net income
14 is \$7,000 or less, his or her monthly child support obligation equals the amount that
15 is the following percentage of his or her total monthly net income:

- 16 a. For one child, 17 percent.
- 17 b. For 2 children, 25 percent.
- 18 c. For 3 children, 29 percent.
- 19 d. For 4 children, 31 percent.
- 20 e. For more than 4 children, 34 percent.

21 **SECTION 9.** 767.511 (1j) (b) 2. of the statutes is created to read:

1 767.511 (1j) (b) 2. Subject to subds. 2m. and 3., if the parent's total monthly net
2 income exceeds \$7,000, his or her monthly child support obligation equals the
3 amount that is the following percentage of his or her total monthly net income:

- 4 a. For one child, 14 percent.
- 5 b. For 2 children, 20 percent.
- 6 c. For 3 children, 23 percent.
- 7 d. For 4 children, 25 percent.
- 8 e. For more than 4 children, 27 percent.

order any

9 SECTION 10. 767.511 (1j) (b) 2m. of the statutes is created to read:

10 767.511 (1j) (b) 2m. The court may not ~~calculate the~~ amount of child support
 11 that a parent is obligated to pay on ~~any of the~~ parent's net income that exceeds
 12 \$150,000 per year. This income amount shall be adjusted annually, beginning in
 13 2015, to reflect changes in the consumer price index for all urban consumers, U.S.
 14 city average, as determined by the U.S. department of labor.

15 SECTION 11. 767.511 (1j) (b) 2r. of the statutes is created to read:

16 767.511 (1j) (b) 2r. The court may not ~~base~~ any amount of child support ~~that~~
 17 a parent is obligated to pay on the value of any ~~or all~~ of ~~the~~ parent's assets.

18 SECTION 12. 767.511 (1j) (b) 3. of the statutes is created to read:

19 767.511 (1j) (b) 3. When the court calculates a parent's child support obligation,
 20 unless the parties agree otherwise in writing or orally in open court, the court shall
 21 reduce the amount determined under subd. 1. or 2. for the parent by the amount per
 22 month that the parent currently pays or is ordered to pay for any of the following
 23 costs:

- 24 a. Health care coverage for the child.
- 25 b. The child's health care expenses that are not covered by insurance.

1 c. Child care expenses.

2 SECTION 13. 767.511 (1j) (b) 4. of the statutes is created to read:

3 767.511 (1j) (b) 4. If each parent has physical placement with a child for more
4 than 25 percent of the time, the child support obligation of each parent shall be
5 calculated as provided in subds. 1. to 3. and multiplied by the percentage of time that
6 the other parent has physical placement with the child. The product of a parent's
7 child support obligation multiplied by the percentage of time that the other parent
8 has physical placement with the child is that parent's comparative child support
9 obligation amount. Subject to sub. (2) (b), the parent with the larger comparative
10 child support obligation amount shall pay to the other parent that amount reduced
11 by the payee parent's comparative child support obligation amount.

12 SECTION 14. 767.511 (1j) (b) 5. of the statutes is created to read:

13 767.511 (1j) (b) 5. In addition to the calculations under subds. 1. to 4., the court
14 may determine a parent's child support obligation under this section in conformity
15 with any state administrative rules relating to child support that are not in conflict
16 with subds. 1. to 4.

***NOTE: I have removed the citation to the administrative rules and substituted a description, instead. This is the preferred method, in case the rules are renumbered or repealed in the future.

17 SECTION 15. 767.511 (1m) (intro.) of the statutes is amended to read:

18 767.511 (1m) DEVIATION FROM STANDARD; FACTORS. (intro.) Upon request by a
19 party, the court may ~~modify~~ reduce the amount of child support payments
20 determined under sub. (1j), subject to sub. (1p), if, after considering the following
21 factors, the court finds by the greater weight of the credible evidence that use of ~~the~~
22 that percentage standard is unfair to the child or to any of the parties:

23 SECTION 16. 767.511 (1m) (bc) of the statutes is created to read:

Insert 9-22

change component

1 767.511 (1m) (bc) The amount of income actually available to a parent for the
2 payment of child support.

3 SECTION 17. 767.511 (1n) of the statutes is renumbered 767.511 (1r) and
4 amended to read:

5 767.511 (~~1r~~)¹ⁿ DEVIATION FROM STANDARD; RECORD. If the court finds under sub.
6 (1m) that use of the percentage standard under sub. (1j) (b) is unfair to the child or
7 the requesting party, the court shall state in writing or on the record the amount of
8 support that would be required by using the percentage standard, the amount by
9 which the court's order deviates ^{is reduced} from that amount, its reasons for finding that use
10 of the percentage standard is unfair to the child or the party, its reasons for the
11 amount of the modification reduction, and the basis for the modification reduction.

12 SECTION 18. 767.511 (1p) of the statutes is created to read:
13 767.511 (1p) LIMIT ON DEVIATION FROM STANDARD. Unless the parties agree
14 otherwise in writing or in open court, the court shall comply with sub. (1j) (b) 2m. in
15 any reduction of child support payments under sub. (1m).

****NOTE: Is this provision still necessary? Since under the bill the court may only reduce the amount that would be obtained by using the percentage standard, and since when using the percentage standard the court may not calculate support on any net income that exceeds \$150,000 per year, it does not seem necessary to say that when reducing the child support amount, the court may not calculate support on any net income that exceeds \$150,000 per year.

16 SECTION 19. 767.511 (~~1s~~)^{1p} of the statutes is created to read:

17 767.511 (~~1s~~)^{1p} RULES FOR INCOME AVAILABLE FOR SUPPORT. The department shall
18 promulgate rules related to how the amount of income actually available to a parent
19 for the payment of child support shall be computed for purposes of sub. (1m) (bc). If
20 a parent is self-employed, a cash flow statement prepared by a certified public
21 accountant on behalf of the parent shall establish the parent's income actually
22 available for the payment of child support for purposes of sub. (1m) (bc).

Insert 10-22 →

1 SECTION 20. 767.511 (2) (title) of the statutes is amended to read:

2 767.511 (2) (title) SEPARATE ACCOUNT FUND, OR TRUST.

3 SECTION 21. 767.511 (2) of the statutes is renumbered 767.511 (2) (a) and
4 amended to read:

5 767.511 (2) (a) The Except as provided in par. (b), the court may protect and
6 promote the best interests of the minor children by setting aside a portion of the child
7 support ~~which~~ that either party is ordered to pay in a separate fund or trust for the
8 support, education, and welfare of such children.

9 SECTION 22. 767.511 (2) (b) of the statutes is created to read:

10 767.511 (2) (b) If the court determines that the amount of child support
11 calculated in the manner provided in this section exceeds the amount reasonably
12 necessary to support the child's current needs, the court shall order that the excess
13 amount be deposited in an account requiring the signatures of both parents for
14 withdrawal, to be used for any extraordinary needs of the child on which the parents
15 agree. Any funds remaining in the account when the child support obligation ends
16 shall be used for postsecondary education expenses for the child. Any funds
17 remaining in the account after 10 years from the date on which the child support
18 obligation ends shall be returned to the parents in proportion to the comparative
19 child support obligation of each under sub. (1j) (b) 4. or, if only one parent had a child
20 support obligation, to that parent, or shall be distributed in another manner
21 specified by the court.

22 SECTION 23. 767.513 (2) of the statutes is amended to read:

23 767.513 (2) RESPONSIBILITY AND PAYMENT. In addition to ordering child support
24 for a child under s. 767.511 (1), and subject to s. 767.511 (1j) (b) 3., the court shall
25 specifically assign responsibility for and direct the manner of payment of the child's

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

16 **SECTION 24.** 767.55 (2) (c) of the statutes is amended to read:

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

Consent 12-15

1 parent shall make child support payments calculated under s. 767.511 (1j) or (1m)
2 after the obligation to make payments ordered under this paragraph ceases.

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

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

10 **SECTION 26.** 767.553 (1) (b) of the statutes is amended to read:

11 767.553 (1) (b) An adjustment under this section may not be made more than
12 once in a year and shall be determined on the basis of the percentage standard
13 ~~established by the department~~ under s. ~~49.22 (9)~~ 767.511 (1j) (b).

14 **SECTION 27.** 767.59 (1c) (a) (intro.) of the statutes is amended to read:

15 767.59 (1c) (a) (intro.) On the petition, motion, or order to show cause of either
16 of the parties, the department, a county department under s. 46.215, 46.22, or 46.23,
17 or a county child support agency under s. 59.53 (5) if an assignment has been made
18 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
19 party or their minor children receive aid under s. 48.57 (3m) or (3n) or 48.645 or ch.
20 49, a court may, except as provided in par. (b) and subject to sub. (1f) (a), do any of
21 the following:

22 **SECTION 28.** 767.59 (1c) (a) 1. of the statutes is amended to read:

23 767.59 (1c) (a) 1. Revise and alter a support or maintenance order as to the
24 amount and payment of maintenance or child support and the appropriation and
25 payment of the principal and income of property held in trust. The court may revise

Insert 13-13

1 and alter a child support order regardless of whether the amount of support was
2 determined by the court, by court approval of a stipulation of the parties, or through
3 arbitration.

4 **SECTION 29.** 767.59 (1f) (a) of the statutes is repealed and recreated to read:

5 767.59 (1f) (a) Except as provided in par. (d), in an action under this section to
6 revise a judgment or order as to the amount of child or family support, both of the
7 following apply:

8 1. The court may not revise the judgment or order as to the amount of child or
9 family support unless the court finds a substantial change in circumstances.

10 2. The court must revise the judgment or order as to the amount of child or
11 family support if the court finds a substantial change in circumstances.

12 **SECTION 30.** 767.59 (1f) (b) (intro.) of the statutes is amended to read:

13 767.59 (1f) (b) (intro.) ~~In~~ Except as provided in par. (bm), in an action under
14 this section to revise a judgment or order with respect to the amount of child support,
15 any of the following constitutes a rebuttable presumption of a substantial change in
16 circumstances sufficient to ~~justify~~ require a revision of the judgment or order:

17 **SECTION 31.** 767.59 (1f) (b) 4. of the statutes is amended to read:

18 767.59 (1f) (b) 4. ~~A. If the action is one to revise a judgment or order with respect~~
19 to child support ordered under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183
20 (4), 938.355 (2) (b) 4., 938.357 (5m) (a), or 938.363 (2), a difference between the
21 amount of child support ordered by the court to be paid by the payer and the amount
22 that the payer would have been required to pay based on the percentage standard
23 established by the department under s. 49.22 (9) if the court did not use the ~~that~~
24 percentage standard in determining the child support payments and did not provide

1 the information required under s. 46.10 (14) (d), 49.345 (14) (d), 301.12 (14) (d), or
 2 767.511 (~~1n~~) (~~1r~~), whichever is appropriate.

3 *plain* SECTION 32. 767.59 (1f) (b) 5. of the statutes is created to read:

4 767.59 (1f) (b) 5. If the action is one to revise a judgment or order with respect
 5 to child support or family support ordered under this chapter or s. 948.22 (7), a
 6 difference between the amount of child support ordered by the court to be paid by the
 7 payer and the amount that the payer would have been required to pay based on the
 8 percentage standard under s. 767.511 (1j) (b) if the court did not use that percentage
 9 standard in determining the child support payments and did not provide the
 10 information required under s. 767.511 (~~1r~~). *1n*

11 SECTION 33. 767.59 (1f) (bm) of the statutes is created to read:

12 767.59 (1f) (bm) In an action under this section to revise a judgment or order
 13 with respect to child support or family support ordered under this chapter or s.
 14 948.22 (7), the court shall find a substantial change of circumstances sufficient to
 15 require revision of the judgment or order if *any* of the following apply:

16 *2a*. The amount of child support ordered by the court to be paid by the payer
 17 exceeds the amount that the payer would have been required to pay based on the
 18 percentage standard under s. 767.511 (1j) (b) by 20 percent or more of the amount
 19 that the payer would have been required to pay based on that percentage standard *and*

20 *no 1* ② The court did not use the percentage standard under s. 767.511 (1j) (b) in
 21 determining the child support payments and did not provide the information
 22 required under s. 767.511 (~~1r~~). *1n*

****NOTE: If the bill passes, this provision will have very limited application because, under the bill, the court may no longer modify the child support amount from the percentage standard except to reduce it, so a modified amount should never exceed the percentage standard.

23 SECTION 34. 767.59 (1f) (c) (intro.) of the statutes is amended to read:

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

Insert 16-4

5 SECTION 35. 767.59 (1f) (d) of the statutes is amended to read:

6 767.59 (1f) (d) ~~In Paragraph (a) does not apply to an action under this section~~
7 to revise a judgment or order with respect to child or family support, ~~the court is not~~
8 ~~required to make a finding of a substantial change in circumstances~~ to change to a
9 fixed sum the manner in which the amount of child or family support is expressed
10 in the judgment or order.

11 SECTION 36. 767.59 (2) (a) of the statutes is amended to read:

12 767.59 (2) (a) Except as provided in par. (b) ~~or (c)~~, if the court revises a judgment
13 or order with respect to child support payments ordered under this chapter or s.
14 948.22 (7), it shall do so by using the percentage standard ~~established by the~~
15 ~~department under s. 49.22 (9)~~ 767.511 (1j) (b).

16 SECTION 37. 767.59 (2) (b) of the statutes is amended to read:

17 767.59 (2) (b) Upon request by a party, the court may ~~modify~~ reduce the amount
18 of revised child support payments determined under par. (a) if, after considering the
19 factors listed in s. 767.511 (1m), the court finds, by the greater weight of the credible
20 evidence, that the use of the percentage standard under s. 767.511 (1j) (b) is unfair
21 to the child or to any of the parties.

Insert 16-21

22 SECTION 38. 767.80 (7) of the statutes is amended to read:

23 767.80 (7) CLERK TO PROVIDE DOCUMENT. The clerk of court shall provide without
24 charge to each person bringing an action under this section, except to the state under
25 sub. (1) (g) or (6m), a document setting forth the percentage standard ~~established by~~

by reducing
but not by
increasing
plain ↓

1 the department under s. ~~49.22 (9)~~ 767.511 (1j) (b) and listing the factors that a court
2 may consider under s. 767.511 (1m).

3 SECTION 39. 767.813 (6) of the statutes is amended to read:

4 767.813 (6) DOCUMENT. The summons served on the respondent shall be
5 accompanied by a document, provided without charge by the clerk of court, setting
6 forth the percentage standard established by the department under s. ~~49.22 (9)~~
7 767.511 (1j) (b) and listing the factors that a court may consider under s. 767.511
8 (1m).

9 SECTION 40. 767.85 (2) of the statutes is amended to read:

10 767.85 (2) CONSIDERATIONS. Before making any temporary order under sub. (1),
11 the court shall consider those factors that the court is required to consider when
12 granting a final judgment on the same subject matter. If the court makes a
13 temporary child support order that deviates from the amount of support that would
14 be required by using the percentage standard established by the department under
15 s. ~~49.22 (9)~~ 767.511 (1j) (b), the court shall comply with the requirements of s. 767.511

16 (1n) (1r) *Insert 6-7*

17 *plain* SECTION 41. Nonstatutory provisions.

18 (1) SUBSTANTIAL CHANGE IN CIRCUMSTANCES. Notwithstanding section 767.59 (1f)
19 (b) 5. of the statutes, as created by this act, the renumbering and amendment of
20 section 767.511 (1j) of the statutes by this act and the creation of section 767.511 (1j)
21 (b) 1. to 4. and (1m) (bc) of the statutes by this act constitute a substantial change
22 in circumstances on which may be based a revision under section 767.59 of the
23 statutes of a judgment or order with respect to child or family support.

24 (2) AGREEMENTS VOID. Any agreement entered into before the effective date of
25 this subsection by parties to an action affecting the family, as defined in section

1 767.001 (1) of the statutes, that relates to child support and that has not been
2 approved by a court before the effective date of this subsection is void unless the
3 parties reaffirm the agreement in writing or in open court on or after the effective
4 date of this subsection.

5 (3) DOCUMENT PROVIDED BY CLERK SETTING FORTH PERCENTAGE STANDARD.

6 (a) Notwithstanding sections 767.215 (1) (b) and (2m) (a) 2., 767.511 (1m) (bc),
7 767.80 (7), and 767.813 (6) of the statutes, as affected by this act, and SECTION 42 (2)
8 (a) of this act, a clerk of court is not required to provide a document under section
9 767.215 (1) (b) or (2m) (a) 2., 767.80 (7), or 767.813 (6) of the statutes, as affected by
10 this act, that sets forth the percentage standard under section 767.511 (1j) (b) of the
11 statutes, as affected by this act, and lists the factors that a court may consider under
12 section 767.511 (1m) of the statutes, including section 767.511 (1m) (bc) of the
13 statutes, as created by this act, before the first day of the 3rd month beginning after
14 the effective date of this paragraph.

15 (b) Before the date specified in paragraph (a), a clerk of court may, in all actions
16 affecting the family, provide a document under section 767.215 (1) (b) or (2m) (a) 2.,
17 767.80 (7), or 767.813 (6) of the statutes, as affected by this act, that sets forth the
18 percentage standard established by the department of children and families under
19 section 49.22 (9) of the statutes and lists the factors that a court may consider under
20 section 767.511 (1m) (a), (b), and (bj) to (i) of the statutes.

21 (c) As soon as practicable after the date specified in paragraph (a), a clerk of
22 court shall provide a document that sets forth the percentage standard under section
23 767.511 (1j) (b) of the statutes, as affected by this act, and lists the factors that a court
24 may consider under section 767.511 (1m) of the statutes, including section 767.511
25 (1m) (bc) of the statutes, as created by this act, to each person to whom the clerk

1 provided, after the effective date of this paragraph, a document described in
2 paragraph (b), except for a person who is a party in an action affecting the family, as
3 defined in section 767.001 (1) (m) of the statutes.

4 (d) Each person who receives a document under paragraph (c) from a clerk of
5 court and who served a summons under section 767.215 (2m) of the statutes, as
6 affected by this act, or under section 767.813 (6) of the statutes, as affected by this
7 act, after the effective date of this paragraph accompanied by a document described
8 in paragraph (b) shall as soon as practicable provide the document received from the
9 clerk under paragraph (c) to the party on whom the summons accompanied by the
10 document described in paragraph (b) was served.

11 **SECTION 42. Initial applicability.**

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

15 (2) DOCUMENTS PROVIDED BY CLERK.

16 (a) The treatment of sections 767.215 (1) (b) and (2m) (a) 2., 767.80 (7), and
17 767.813 (6) of the statutes first applies to actions or proceedings, including actions
18 or proceedings to modify a judgment or order previously granted, that are
19 commenced on the effective date of this paragraph.

20 (b) SECTION 41 (3) of this act first applies to actions or proceedings, including
21 actions or proceedings to modify a judgment or order previously granted, that are
22 commenced on the effective date of this paragraph.

23 (END)

 - note

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INSERT 6-7

1 The court may make a temporary child support order that deviates from the
2 amount that would be required by using the percentage standard under s. 767.511
3 (1j) (b) by reducing, but not by increasing, that amount.

(END OF INSERT 6-7)

INSERT 9-22

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

History: 1971 c. 157; 1977 c. 29, 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.25; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 27, 37, 355, 413; 1989 a. 31, 212; 1991 a. 39; 1993 a. 481; 1995 a. 27 ss. 7101, 7102, 9126 (19); 1995 a. 201, 279, 404; 1997 a. 27, 35, 191; 1999 a. 9, 32; 2001 a. 16, 61; 2005 a. 253, 342; 2005 a. 443 ss. 103, 105, 219; Stats. 2005 s. 767.511; 2009 a. 185; 2011 a. 32.

(END OF INSERT 9-22)

INSERT 10-22

10 SECTION 2. 767.511 (1r) of the statutes is created to read:
11 767.511 (1r) MINIMUM AND MAXIMUM REVISION AMOUNTS PROHIBITED. Unless
12 based on a written stipulation of the parties, the court may not grant a child support
13 order that sets a minimum or maximum amount of support that may be ordered in
14 the future in the event that the child support order is revised under s. 767.59 or a
15 substantially similar law of another state.

(END OF INSERT 10-22)

INSERT 12-15



Ins 12-15

1 **SECTION 3.** 767.531 (intro.) (except 767.531 (title)) of the statutes is
2 renumbered 767.531 (1m) and amended to read:

3 767.531 (1m) The court may make a financial order designated "family
4 support" as a substitute for child support orders under s. 767.511 and maintenance
5 payment orders under s. 767.56. The court may not order a party to pay family
6 support payments that exceed the child support payments that the party would be
7 required to pay, as determined under s. 767.511 (1j).

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

15 **(3m)** Except as provided in s. 767.57 (1m), the department or its designee shall
16 apply all payments received for family support as follows:

History: 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.261; 1983 a. 27; 1985 a. 29; 1993 a. 481; 1995 a. 279; 1997 a. 27, 191; 1999 a. 9, 32; 2005 a. 443 s. 111; Stats. 2005 s. 767.531.

17 **SECTION 4.** 767.531 (1) of the statutes is renumbered 767.531 (3m) (a).

18 **SECTION 5.** 767.531 (2) of the statutes is renumbered 767.531 (3m) (b).

19 **SECTION 6.** 767.531 (3) of the statutes is renumbered 767.531 (3m) (c).

(END OF INSERT 12-15)

INSERT 13-13

20 **SECTION 7.** 767.57 (1m) (intro.) of the statutes is amended to read:

21 767.57 (1m) OVERPAYMENT. (intro.) ~~Notwithstanding ss. 767.511 (6) and~~
22 ~~767.531,~~ If the department or its designee receives support or maintenance money



Ins 13-13 contd

1 that exceeds the amount due in the month in which it is received and the department
2 or its designee determines that the excess amount is for support or maintenance due
3 in a succeeding month, the department or its designee may hold the amount of
4 overpayment that does not exceed the amount due in the next month for
5 disbursement in the next month if any of the following applies:

History: 1971 c. 41 s. 12; Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1975 c. 82, 200; 1975 c. 401 s. 4; 1977 c. 105 s. 59; 1977 c. 271, 418, 447; 1979 c. 32 ss. 50, 92 (4); 1979 c. 257 s. 17; Stats. 1979 s. 767.29; 1981 c. 20 s. 2202 (20) (m); 1983 a. 27, 302; 1985 a. 29, 176; 1991 a. 39; 1993 a. 48 l; 1995 a. 27 ss. 7104tm, 9126 (19), 9130 (4); 1995 a. 77, 279, 289, 404; 1997 a. 27, 35, 105, 191, 252; 1999 a. 9; 2001 a. 16, 59, 61, 105; 2005 a. 25, 387; 2005 a. 443 ss. 127 to 132, 144, 225; Stats. 2005 s. 767.57; 2007 a. 20, 96; 2009 a. 28, 180.

(END OF INSERT 13-13)

INSERT 16-4

6 **SECTION 8.** 767.59 (1f) (c) 1. of the statutes is renumbered 767.59 (1f) (bm) 1.

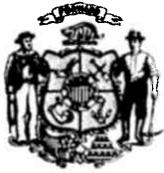
(END OF INSERT 16-4)

INSERT 16-21

7 **SECTION 9.** 767.59 (2m) of the statutes is created to read:

8 **767.59 (2m) MINIMUMS AND MAXIMUMS ARE VOID.** In an action under this section
9 to revise a judgment or order with respect to the amount of child support, if the
10 judgment or order was granted on or after the effective date of this subsection[✓]
11 [LRB inserts date], any provision in the judgment or order that sets a minimum or
12 maximum amount of child support that may be ordered in the future in the event that
13 the child support order is revised under this section or a substantially similar law
14 of another state is void and may not be given effect by the court unless the provision
15 was based on a written stipulation of the parties.

(END OF INSERT 16-21)



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0016/P2
PJK:sac...

Joey

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

changes on pp. 2, 13, 16, 19, & 21

*+ D-note
(back in 10-31)*

regenerate ↓

1 **AN ACT to renumber** 767.531 (1), 767.531 (2), 767.531 (3) and 767.59 (1f) (c) 1.;
2 **to renumber and amend** 767.511 (1j), 767.511 (2) and 767.531 (intro.) (except
3 767.531 (title)); **to amend** 767.215 (1) (b), 767.215 (2m) (a) 2., 767.225 (1n) (b)
4 1., 767.511 (1) (a), 767.511 (1j) (title), 767.511 (1m) (intro.), 767.511 (1n), 767.511
5 (2) (title), 767.513 (2), 767.55 (2) (c), 767.553 (1) (a), 767.553 (1) (b), 767.57 (1m)
6 (intro.), 767.59 (1c) (a) (intro.), 767.59 (1c) (a) 1., 767.59 (1f) (b) (intro.), 767.59
7 (1f) (b) 4., 767.59 (1f) (c) (intro.), 767.59 (1f) (d), 767.59 (2) (a), 767.59 (2) (b),
8 767.80 (7), 767.813 (6) and 767.85 (2); **to repeal and recreate** 767.59 (1f) (a);
9 **and to create** 767.511 (1j) (a), 767.511 (1j) (b) 1., 767.511 (1j) (b) 2., 767.511 (1j)
10 (b) 2m., 767.511 (1j) (b) 2r., 767.511 (1j) (b) 3., 767.511 (1j) (b) 4., 767.511 (1j) (b)
11 5., 767.511 (1m) (bc), 767.511 (1p), 767.511 (1r), 767.511 (2) (b), 767.59 (1f) (b)

1

2

and revising

5., 767.59 (1f) (bm) and 767.59 (2m) of the statutes; relating to: calculating child support and granting rule-making authority.

, allowing discovery to obtain information about the use of child support, prohibiting setting minimum or maximum support amounts,

Analysis by the Legislative Reference Bureau

(Note: This analysis has not been updated for the changes made to 2011 LRB-3501/2. An updated version will be included after all changes are finalized and approved.)

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: serial-family parents; shared-placement payers; split-placement payers; low-income payers; and high-income payers. A serial-family parent is a parent who is already obligated to pay child support and who is later ordered to pay support for another child, from a later marriage or a paternity adjudication, for example. The amount of support that the person must pay under the later order may be calculated by first reducing the payer's monthly income available for support by the amount under the first child support order and then applying the percentage standard to that reduced income amount.

Shared-placement parents are parents who both have physical placement with a child for at least 25 percent of the time or 92 days a year and who are both ordered by the court to assume the child's basic support costs in proportion to the time that the parent has placement of the child. For shared-placement parents, child support may be determined by multiplying each parent's income by the percentage standard, multiplying each of those resulting amounts by 150 percent, and then multiplying the resulting amount determined for each parent by the other parent's proportion of physical placement. The parent with the higher resulting amount pays to the other parent the difference between the amounts or the amount that would be determined by applying the percentage standard to his or her income, whichever is lower.

Split-placement parents are parents who have two or more children and each has placement with at least one but not all of the children. Under the code, child

depositing extra support for use for extraordinary needs and postsecondary education, requiring family support not to exceed child support,

support may be determined by multiplying each parent's income by the pro rata percentage standard that applies for the number of children placed with the other parent. (For example, if there are two children and each parent has physical placement with one child, the pro rata percentage standard is 12.5 percent, or one-half of the 25 percent that applies for two children under the percentage standard.) The parent who would be required to pay the higher amount pays the difference to the other parent.

For low-income payers and high-income payers, the court may determine child support by using a schedule of percentages that are different from the percentages in the percentage standard. Currently, a low-income payer is one with annual income available for support of \$16,200 or less. This amount, which is 150 percent of poverty, is adjusted based on federal poverty guidelines. The schedule of percentages is reduced for each income level in gradients of \$25 per monthly income amount. Currently, the percentages, depending on income level, range from 11.11 percent to 17 percent for one child and from 22.22 percent to 34 percent for five or more children. 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.

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 sets out a child support percentage standard in the statutes for actions affecting the family and specifies how a court must determine child support, including for revisions of existing child support orders. Under the bill, the court must determine the support obligation of each parent who has physical placement with a child for less than 75 percent of the time and order one or both parents to pay an amount for the support of the child. To calculate a parent's child support obligation, the parent's net monthly income is multiplied by a specified percentage. Under the bill, net monthly income is a parent's gross monthly income, determined in the manner provided in the code, less federal and state income tax that would be withheld, or that would be paid by a self-employed individual, based on the actual number of dependents that the individual or self-employed individual is legally entitled to claim on his or her income tax return. If a parent's net monthly income is \$7,000 or less (which equals \$84,000 or less of net annual income), his or her total net monthly income is multiplied by the same percentages as the percentage standard under the code: 17 percent for one child, 25 percent for two children, 29 percent for three children, 31 percent for four children, and 34 percent for more than four children. However, if a parent's net monthly income exceeds \$7,000, his or her total net monthly income is multiplied by 14 percent for one child, 20 percent for two children, 23 percent for three children, 25 percent for four children, and 27 percent for more than four children, except that the court may not calculate a parent's child support obligation on any of the parent's net income that exceeds \$150,000 per year, annually adjusted in accordance with the consumer price index.

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 monthly child support obligation, the court must deduct from that amount any amount the parent currently pays, or is ordered to pay, for the child's health care coverage, health care expenses not covered by insurance, and child care expenses. Then, if both parents have physical placement with a child for more than 25 percent of the time, each parent's child support obligation, thus determined, is multiplied by the percentage of time that the other parent has physical placement with the child to determine each parent's comparative child support obligation. Whichever parent has the larger comparative child support obligation pays the difference between the two to the other parent as child support.

Under the bill, a court is still authorized, upon a party's request, to modify the amount of child support that would be ordered by using the new percentage standard if the court finds that its use is unfair to the child or either of the parties after considering the factors under current law. However, if the court does modify the amount of child support that would be ordered by using the new percentage standard, the court is still prohibited from calculating any child support on a parent's net income over \$150,000 per year, unless the parties agree in writing or in open court that the court is not prohibited from doing so. In addition, the bill adds, as another factor for the court to consider, the amount of income actually available to a parent for the payment of child support. The bill directs DCF to promulgate rules on how

to compute the amount of income actually available to a parent, and provides that, if a parent is self-employed, a cash flow statement from a certified public accountant on behalf of the parent establishes the parent's income that is actually available for support.

Current law provides that the court may require a portion of the amount that either party must pay in child support to be set aside in a separate fund or trust for the support, education, and welfare of the child. The bill does not change the ability of the court to set funds aside for the child. The bill adds, however, that if the court determines that the amount of child support calculated in the new manner exceeds the amount reasonably necessary to support the child's current needs, the court must order the excess to be deposited in an account that requires the signatures of both parents for withdrawal, to be used for any extraordinary needs of the child. When the child support obligation ends, any funds remaining must be used for postsecondary education expenses of the child. Any funds remaining after ten years after the child support obligation ends must be returned to the parent or parents in proportion to their comparative child support obligations or distributed in another manner specified by the court.

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 provides that the creation of the new percentage standard in the statutes and the other new requirements related to determining child support constitute a substantial change in circumstances on which a revision may be based. The bill also provides that any agreement related to child support that was entered into before the effective date of the bill that has not yet been approved by a court is void unless the parties reaffirm the agreement in writing or in open court on or after the effective date of the bill. Finally, the bill provides that the court may determine a parent's child support obligation in conformity with any provisions of the code that are not in conflict with the new percentage standard or other new requirements in the statutes.

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

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

- 1 **SECTION 1.** 767.215 (1) (b) of the statutes is amended to read:
- 2 767.215 (1) (b) The clerk of court shall provide without charge, to each person
- 3 filing a petition requesting child support, a document setting forth the percentage
- 4 standard ~~established by the department under s. 49.22 (9)~~ 767.511 (1j) (b) and listing
- 5 the factors that a court may consider under s. 767.511 (1m).

1 **SECTION 2.** 767.215 (2m) (a) 2. of the statutes is amended to read:

2 767.215 (2m) (a) 2. Shall be accompanied by a document, provided without
3 charge by the clerk of court, setting forth the percentage standard under s. 767.511
4 (1j) (b) or, if the action affecting the family is one under s. 767.001 (1) (m), the
5 percentage standard established by the department under s. 49.22 (9) and listing the
6 factors that a court may consider under s. 767.511 (1m).

7 **SECTION 3.** 767.225 (1n) (b) 1. of the statutes is amended to read:

8 767.225 (1n) (b) 1. If the court makes a temporary child support order that
9 deviates from the amount of support that would be required by using the percentage
10 standard under s. 767.511 (1j) (b) or, if the action affecting the family is one under
11 s. 767.001 (1) (m), the percentage standard established by the department under s.
12 49.22 (9), the court shall comply with the requirements of relating to the court's
13 statements in writing or on the record described under s. 767.511 (1n). The court may
14 make a temporary child support order that deviates from the amount that would be
15 required by using the percentage standard under s. 767.511 (1j) (b) by reducing, but
16 not by increasing, that amount.

17 **SECTION 4.** 767.511 (1) (a) of the statutes is amended to read:

18 767.511 (1) (a) Order Determine the support obligation of each parent who has
19 physical placement with his or her child for less than 75 percent of the time and order
20 either or both parents to pay an amount reasonable or necessary to fulfill a duty to
21 support ~~a~~ the child. The support amount must be expressed as a fixed sum unless
22 the parties have stipulated to expressing the amount as a percentage of the payer's
23 income and the requirements under s. 767.34 (2) (am) 1. to 3. are satisfied.

24 **SECTION 5.** 767.511 (1j) (title) of the statutes is amended to read:

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

3 **SECTION 6.** 767.511 (1j) of the statutes is renumbered 767.511 (1j) (b) (intro.)
4 and amended to read:

5 767.511 (1j) (b) (intro.) Except as provided in sub. (1m), the court shall
6 determine ~~the child support payments by using the percentage standard established~~
7 ~~by the department under s. 49.22 (9).~~ obligation of a parent in the following manner:

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

9 767.511 (1j) (a) In this subsection:

10 1. "Gross income" has the meaning given in s. DCF 150.02 (13) (a), Wis. Adm.
11 Code.

12 2. a. Except as provided in subd. 2. b., "net income" means gross income less
13 federal and state income tax that would be withheld based on the actual number of
14 dependents that the individual is legally entitled to claim on his or her income tax
15 return or that would be paid by a self-employed individual based on the actual
16 number of dependents that the self-employed individual is legally entitled to claim
17 on his or her income tax return.

18 b. For a parent who voluntarily terminates or reduces his or her income for any
19 reason, "net income" means that parent's earning capacity, as determined by the
20 court.

21 **SECTION 8.** 767.511 (1j) (b) 1. of the statutes is created to read:

22 767.511 (1j) (b) 1. Subject to subd. 3., if the parent's total monthly net income
23 is \$7,000 or less, his or her monthly child support obligation equals the amount that
24 is the following percentage of his or her total monthly net income:

25 a. For one child, 17 percent.

- 1 b. For 2 children, 25 percent.
2 c. For 3 children, 29 percent.
3 d. For 4 children, 31 percent.
4 e. For more than 4 children, 34 percent.

5 **SECTION 9.** 767.511 (1j) (b) 2. of the statutes is created to read:

6 767.511 (1j) (b) 2. Subject to subds. 2m. and 3., if the parent's total monthly net
7 income exceeds \$7,000, his or her monthly child support obligation equals the
8 amount that is the following percentage of his or her total monthly net income:

- 9 a. For one child, 14 percent.
10 b. For 2 children, 20 percent.
11 c. For 3 children, 23 percent.
12 d. For 4 children, 25 percent.
13 e. For more than 4 children, 27 percent.

14 **SECTION 10.** 767.511 (1j) (b) 2m. of the statutes is created to read:

15 767.511 (1j) (b) 2m. The court may not order any amount of child support based
16 on a parent's net income that exceeds \$150,000 per year. This income amount shall
17 be adjusted annually, beginning in 2015, to reflect changes in the consumer price
18 index for all urban consumers, U.S. city average, as determined by the U.S.
19 department of labor.

20 **SECTION 11.** 767.511 (1j) (b) 2r. of the statutes is created to read:

21 767.511 (1j) (b) 2r. The court may not order any amount of child support based
22 on the value of any of a parent's assets.

23 **SECTION 12.** 767.511 (1j) (b) 3. of the statutes is created to read:

24 767.511 (1j) (b) 3. When the court calculates a parent's child support obligation,
25 unless the parties agree otherwise in writing or orally in open court, the court shall

1 reduce the amount determined under subd. 1. or 2. for the parent by the amount per
2 month that the parent currently pays or is ordered to pay for any of the following
3 costs:

- 4 a. Health care coverage for the child.
- 5 b. The child's health care expenses that are not covered by insurance.
- 6 c. Child care expenses.

7 **SECTION 13.** 767.511 (1j) (b) 4. of the statutes is created to read:

8 767.511 (1j) (b) 4. If each parent has physical placement with a child for more
9 than 25 percent of the time, the child support obligation of each parent shall be
10 calculated as provided in subds. 1. to 3. and multiplied by the percentage of time that
11 the other parent has physical placement with the child. The product of a parent's
12 child support obligation multiplied by the percentage of time that the other parent
13 has physical placement with the child is that parent's comparative child support
14 obligation amount. Subject to sub. (2) (b), the parent with the larger comparative
15 child support obligation amount shall pay to the other parent that amount reduced
16 by the payee parent's comparative child support obligation amount.

17 **SECTION 14.** 767.511 (1j) (b) 5. of the statutes is created to read:

18 767.511 (1j) (b) 5. In addition to the calculations under subds. 1. to 4., the court
19 may determine a parent's child support obligation under this section in conformity
20 with any state administrative rules relating to child support that are not in conflict
21 with subds. 1. to 4.

22 **SECTION 15.** 767.511 (1m) (intro.) of the statutes is amended to read:

23 767.511 (1m) DEVIATION FROM STANDARD; FACTORS. (intro.) Upon request by a
24 party, the court may modify, by reducing but not by increasing, the amount of child
25 support payments determined under sub. (1j) if, after considering the following

1 factors, the court finds by the greater weight of the credible evidence that use of the
2 percentage standard is unfair to the child or to any of the parties:

3 **SECTION 16.** 767.511 (1m) (bc) of the statutes is created to read:

4 **767.511 (1m) (bc)** The amount of income actually available to a parent for the
5 payment of child support.

6 **SECTION 17.** 767.511 (1n) of the statutes is amended to read:

7 **767.511 (1n) DEVIATION FROM STANDARD; RECORD.** If the court finds under sub.
8 (1m) that use of the percentage standard under sub. (1j) (b) is unfair to the child or
9 the requesting party, the court shall state in writing or on the record the amount of
10 support that would be required by using the percentage standard, the amount by
11 which the court's order ~~deviates~~ is reduced from that amount, its reasons for finding
12 that use of the percentage standard is unfair to the child or the party, its reasons for
13 the amount of the ~~modification~~ reduction, and the basis for the ~~modification~~
14 reduction.

15 **SECTION 18.** 767.511 (1p) of the statutes is created to read:

16 **767.511 (1p) RULES FOR INCOME AVAILABLE FOR SUPPORT.** The department shall
17 promulgate rules related to how the amount of income actually available to a parent
18 for the payment of child support shall be computed for purposes of sub. (1m) (bc). If
19 a parent is self-employed, a cash flow statement prepared by a certified public
20 accountant on behalf of the parent shall establish the parent's income actually
21 available for the payment of child support for purposes of sub. (1m) (bc).

22 **SECTION 19.** 767.511 (1r) of the statutes is created to read:

23 **767.511 (1r) MINIMUM AND MAXIMUM REVISION AMOUNTS PROHIBITED.** Unless
24 based on a written stipulation of the parties, the court may not grant a child support
25 order that sets a minimum or maximum amount of support that may be ordered in

1 the future in the event that the child support order is revised under s. 767.59 or a
2 substantially similar law of another state.

3 **SECTION 20.** 767.511 (2) (title) of the statutes is amended to read:

4 767.511 (2) (title) SEPARATE ACCOUNT, FUND, OR TRUST.

5 **SECTION 21.** 767.511 (2) of the statutes is renumbered 767.511 (2) (a) and
6 amended to read:

7 767.511 (2) (a) The Except as provided in par. (b), the court may protect and
8 promote the best interests of the minor children by setting aside a portion of the child
9 support ~~which~~ that either party is ordered to pay in a separate fund or trust for the
10 support, education, and welfare of such children.

11 **SECTION 22.** 767.511 (2) (b) of the statutes is created to read:

12 767.511 (2) (b) If the court determines that the amount of child support
13 calculated in the manner provided in this section exceeds the amount reasonably
14 necessary to support the child's current needs, the court shall order that the excess
15 amount be deposited in an account requiring the signatures of both parents for
16 withdrawal, to be used for any extraordinary needs of the child on which the parents
17 agree. Any funds remaining in the account when the child support obligation ends
18 shall be used for postsecondary education expenses for the child. Any funds
19 remaining in the account after 10 years from the date on which the child support
20 obligation ends shall be returned to the parents in proportion to the comparative
21 child support obligation of each under sub. (1j) (b) 4. or, if only one parent had a child
22 support obligation, to that parent.

23 **SECTION 23.** 767.513 (2) of the statutes is amended to read:

24 767.513 (2) **RESPONSIBILITY AND PAYMENT.** In addition to ordering child support
25 for a child under s. 767.511 (1), and subject to s. 767.511 (1j) (b) 3., the court shall

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

17 **SECTION 24.** 767.531 (intro.) (except 767.531 (title)) of the statutes is
18 renumbered 767.531 (1m) and amended to read:

19 767.531 (1m) The court may make a financial order designated "family
20 support" as a substitute for child support orders under s. 767.511 and maintenance
21 payment orders under s. 767.56. The court may not order a party to pay family
22 support payments that exceed the child support payments that the party would be
23 required to pay, as determined under s. 767.511 (1j).

24 (2m) A party ordered to pay family support under this section shall pay simple
25 interest at the rate of 1% per month on any amount in arrears that is equal to or

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

6 **(3m)** Except as provided in s. 767.57 (1m), the department or its designee shall
7 apply all payments received for family support as follows:

8 **SECTION 25.** 767.531 (1) of the statutes is renumbered 767.531 (3m) (a).

9 **SECTION 26.** 767.531 (2) of the statutes is renumbered 767.531 (3m) (b).

10 **SECTION 27.** 767.531 (3) of the statutes is renumbered 767.531 (3m) (c).

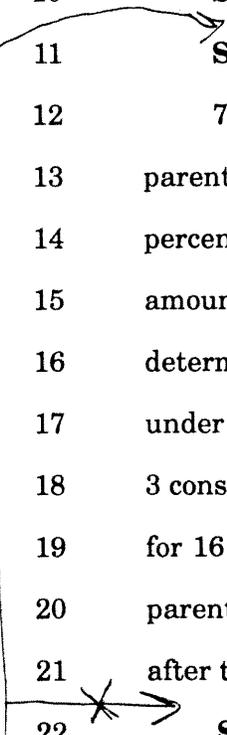
11 **SECTION 28.** 767.55 (2) (c) of the statutes is amended to read:

12 767.55 (2) (c) If the court enters an order under par. (am), it shall order the
13 parent to pay child support equal to the amount determined by applying the
14 percentage standard established under s. ~~49.22 (9)~~ 767.511 (1j) (b) or equal to the
15 amount of child support that the parent was ordered to pay in the most recent
16 determination of support under this chapter. The child support obligation ordered
17 under this paragraph continues until the parent makes timely payment in full for
18 3 consecutive months or until the person participates in the program under s. 49.36
19 for 16 weeks, whichever occurs first. The court shall provide in its order that the
20 parent shall make child support payments calculated under s. 767.511 (1j) or (1m)
21 after the obligation to make payments ordered under this paragraph ceases.

22 **SECTION 29.** 767.553 (1) (a) of the statutes is amended to read:

23 767.553 (1) (a) An order for child or family support under this chapter may
24 provide for an annual adjustment in the amount to be paid based on a change in the
25 payer's income if the amount of child or family support is expressed in the order as

Insert 13-21



1 a fixed sum and based on the percentage standard established by the department
2 under s. ~~49.22 (9)~~ 767.511 (1j) (b). No adjustment may be made under this section
3 unless the order provides for the adjustment.

4 **SECTION 30.** 767.553 (1) (b) of the statutes is amended to read:

5 767.553 (1) (b) An adjustment under this section may not be made more than
6 once in a year and shall be determined on the basis of the percentage standard
7 established by the department under s. ~~49.22 (9)~~ 767.511 (1j) (b).

8 **SECTION 31.** 767.57 (1m) (intro.) of the statutes is amended to read:

9 767.57 (1m) OVERPAYMENT. (intro.) ~~Notwithstanding ss. 767.511 (6) and~~
10 ~~767.531, if~~ If the department or its designee receives support or maintenance money
11 that exceeds the amount due in the month in which it is received and the department
12 or its designee determines that the excess amount is for support or maintenance due
13 in a succeeding month, the department or its designee may hold the amount of
14 overpayment that does not exceed the amount due in the next month for
15 disbursement in the next month if any of the following applies:

16 **SECTION 32.** 767.59 (1c) (a) (intro.) of the statutes is amended to read:

17 767.59 (1c) (a) (intro.) On the petition, motion, or order to show cause of either
18 of the parties, the department, a county department under s. 46.215, 46.22, or 46.23,
19 or a county child support agency under s. 59.53 (5) if an assignment has been made
20 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
21 party or their minor children receive aid under s. 48.57 (3m) or (3n) or 48.645 or ch.
22 49, a court may, except as provided in par. (b) and subject to sub. (1f) (a), do any of
23 the following:

24 **SECTION 33.** 767.59 (1c) (a) 1. of the statutes is amended to read:

1 767.59 (1c) (a) 1. Revise and alter a support or maintenance order as to the
2 amount and payment of maintenance or child support and the appropriation and
3 payment of the principal and income of property held in trust. The court may revise
4 and alter a child support order regardless of whether the amount of support was
5 determined by the court, by court approval of a stipulation of the parties, or through
6 arbitration.

7 **SECTION 34.** 767.59 (1f) (a) of the statutes is repealed and recreated to read:

8 767.59 (1f) (a) Except as provided in par. (d), in an action under this section to
9 revise a judgment or order as to the amount of child or family support, both of the
10 following apply:

11 1. The court may not revise the judgment or order as to the amount of child or
12 family support unless the court finds a substantial change in circumstances.

13 2. The court must revise the judgment or order as to the amount of child or
14 family support if the court finds a substantial change in circumstances.

15 **SECTION 35.** 767.59 (1f) (b) (intro.) of the statutes is amended to read:

16 767.59 (1f) (b) (intro.) ~~In~~ Except as provided in par. (bm), in an action under
17 this section to revise a judgment or order with respect to the amount of child support,
18 any of the following constitutes a rebuttable presumption of a substantial change in
19 circumstances sufficient to ~~justify~~ require a revision of the judgment or order:

20 **SECTION 36.** 767.59 (1f) (b) 4. of the statutes is amended to read:

21 767.59 (1f) (b) 4. ~~A~~ If the action is one to revise a judgment or order with respect
22 to child support ordered under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183
23 (4), 938.355 (2) (b) 4., 938.357 (5m) (a), or 938.363 (2), a difference between the
24 amount of child support ordered by the court to be paid by the payer and the amount
25 that the payer would have been required to pay based on the percentage standard

1 established by the department under s. 49.22 (9) if the court did not use ~~the~~ that
2 percentage standard in determining the child support payments and did not provide
3 the information required under s. 46.10 (14) (d), 49.345 (14) (d), 301.12 (14) (d), or
4 767.511 (1n), whichever is appropriate.

5 **SECTION 37.** 767.59 (1f) (b) 5. of the statutes is created to read:

6 767.59 (1f) (b) 5. If the action is one to revise a judgment or order with respect
7 to child support or family support ordered under this chapter or s. 948.22 (7), a
8 difference between the amount of child support ordered by the court to be paid by the
9 payer and the amount that the payer would have been required to pay based on the
10 percentage standard under s. 767.511 (1j) (b) if the court did not use that percentage
11 standard in determining the child support payments and did not provide the
12 information required under s. 767.511 (1n).

13 **SECTION 38.** 767.59 (1f) (bm) of the statutes is created to read:

14 767.59 (1f) (bm) In an action under this section to revise a judgment or order
15 with respect to child support or family support ordered under this chapter or s.
16 948.22 (7), the court shall find a substantial change of circumstances sufficient to
17 require revision of the judgment or order if any of the following ~~apply~~ *applies*

18 2. The amount of child support ordered by the court to be paid by the payer
19 exceeds the amount that the payer would have been required to pay based on the
20 percentage standard under s. 767.511 (1j) (b) by 20 percent or more of the amount
21 that the payer would have been required to pay based on that percentage standard
22 and the court did not use the percentage standard under s. 767.511 (1j) (b) in
23 determining the child support payments and did not provide the information
24 required under s. 767.511 (1n).

25 **SECTION 39.** 767.59 (1f) (c) (intro.) of the statutes is amended to read:

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

5 **SECTION 40.** 767.59 (1f) (c) 1. of the statutes is renumbered 767.59 (1f) (bm) 1.

6 **SECTION 41.** 767.59 (1f) (d) of the statutes is amended to read:

7 767.59 (1f) (d) ~~In Paragraph (a) does not apply to~~ an action under this section
8 to revise a judgment or order with respect to child or family support, ~~the court is not~~
9 ~~required to make a finding of a substantial change in circumstances~~ to change to a
10 fixed sum the manner in which the amount of child or family support is expressed
11 in the judgment or order.

12 **SECTION 42.** 767.59 (2) (a) of the statutes is amended to read:

13 767.59 (2) (a) Except as provided in par. (b) ~~or (e)~~, if the court revises a judgment
14 or order with respect to child support payments ordered under this chapter or s.
15 948.22 (7), it shall do so by using the percentage standard ~~established by the~~
16 ~~department~~ under s. ~~49.22 (9)~~ 767.511 (1j) (b).

17 **SECTION 43.** 767.59 (2) (b) of the statutes is amended to read:

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

23 **SECTION 44.** 767.59 (2m) of the statutes is created to read:

24 767.59 (2m) MINIMUMS AND MAXIMUMS ARE VOID. In an action under this section
25 to revise a judgment or order with respect to the amount of child support, if the

1 judgment or order was granted on or after the effective date of this subsection ...
2 [LRB inserts date], any provision in the judgment or order that sets a minimum or
3 maximum amount of child support that may be ordered in the future in the event that
4 the child support order is revised under this section or a substantially similar law
5 of another state is void and may not be given effect by the court unless the provision
6 was based on a written stipulation of the parties.

7 **SECTION 45.** 767.80 (7) of the statutes is amended to read:

8 767.80 (7) CLERK TO PROVIDE DOCUMENT. The clerk of court shall provide without
9 charge to each person bringing an action under this section, except to the state under
10 sub. (1) (g) or (6m), a document setting forth the percentage standard established by
11 the department under s. ~~49.22 (9)~~ 767.511 (1j) (b) and listing the factors that a court
12 may consider under s. 767.511 (1m).

13 **SECTION 46.** 767.813 (6) of the statutes is amended to read:

14 767.813 (6) DOCUMENT. The summons served on the respondent shall be
15 accompanied by a document, provided without charge by the clerk of court, setting
16 forth the percentage standard established by the department under s. ~~49.22 (9)~~
17 767.511 (1j) (b) and listing the factors that a court may consider under s. 767.511
18 (1m).

19 **SECTION 47.** 767.85 (2) of the statutes is amended to read:

20 767.85 (2) CONSIDERATIONS. Before making any temporary order under sub. (1),
21 the court shall consider those factors that the court is required to consider when
22 granting a final judgment on the same subject matter. If the court makes a
23 temporary child support order that deviates from the amount of support that would
24 be required by using the percentage standard established by the department under
25 s. ~~49.22 (9)~~ 767.511 (1j) (b), the court shall comply with the requirements of s. 767.511

1 (1n). The court may make a temporary child support order that deviates from the
2 amount that would be required by using the percentage standard under s. 767.511
3 (1j)(b) by reducing, but not by increasing, that amount.

4 **SECTION 48. Nonstatutory provisions.**

5 (1) SUBSTANTIAL CHANGE IN CIRCUMSTANCES. Notwithstanding section 767.59 (1f)
6 (b) 5. of the statutes, as created by this act, the renumbering and amendment of
7 section 767.511 (1j) of the statutes by this act and the creation of section 767.511 (1j)
8 (b) 1. to 4. and (1m) (bc) of the statutes by this act constitute a substantial change
9 in circumstances ^{requiring} on which may be based a revision under section 767.59 of the
10 statutes _{of a judgment or order with respect to child or family support.}

11 (2) AGREEMENTS VOID. Any agreement entered into before the effective date of
12 this subsection by parties to an action affecting the family, as defined in section
13 767.001 (1) of the statutes, that relates to child support and that has not been
14 approved by a court before the effective date of this subsection is void unless the
15 parties reaffirm the agreement in writing or in open court on or after the effective
16 date of this subsection.

17 (3) DOCUMENT PROVIDED BY CLERK SETTING FORTH PERCENTAGE STANDARD.

18 (a) Notwithstanding sections 767.215 (1) (b) and (2m) (a) 2., 767.511 (1m) (bc),
19 767.80 (7), and 767.813 (6) of the statutes, as affected by this act, and SECTION 49 (2)
20 (a) of this act, a clerk of court is not required to provide a document under section
21 767.215 (1) (b) or (2m) (a) 2., 767.80 (7), or 767.813 (6) of the statutes, as affected by
22 this act, that sets forth the percentage standard under section 767.511 (1j) (b) of the
23 statutes, as affected by this act, and lists the factors that a court may consider under
24 section 767.511 (1m) of the statutes, including section 767.511 (1m) (bc) of the

1 statutes, as created by this act, before the first day of the 3rd month beginning after
2 the effective date of this paragraph.

3 (b) Before the date specified in paragraph (a), a clerk of court may, in all actions
4 affecting the family, provide a document under section 767.215 (1) (b) or (2m) (a) 2.,
5 767.80 (7), or 767.813 (6) of the statutes, as affected by this act, that sets forth the
6 percentage standard established by the department of children and families under
7 section 49.22 (9) of the statutes and lists the factors that a court may consider under
8 section 767.511 (1m) (a), (b), and (bj) to (i) of the statutes.

9 (c) As soon as practicable after the date specified in paragraph (a), a clerk of
10 court shall provide a document that sets forth the percentage standard under section
11 767.511 (1j) (b) of the statutes, as affected by this act, and lists the factors that a court
12 may consider under section 767.511 (1m) of the statutes, including section 767.511
13 (1m) (bc) of the statutes, as created by this act, to each person to whom the clerk
14 provided, after the effective date of this paragraph, a document described in
15 paragraph (b), except for a person who is a party in an action affecting the family, as
16 defined in section 767.001 (1) (m) of the statutes.

17 (d) Each person who receives a document under paragraph (c) from a clerk of
18 court and who served a summons under section 767.215 (2m) of the statutes, as
19 affected by this act, or under section 767.813 (6) of the statutes, as affected by this
20 act, after the effective date of this paragraph accompanied by a document described
21 in paragraph (b) shall as soon as practicable provide the document received from the
22 clerk under paragraph (c) to the party on whom the summons accompanied by the
23 document described in paragraph (b) was served.

24 **SECTION 49. Initial applicability.**

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

4 (2) DOCUMENTS PROVIDED BY CLERK.

5 (a) The treatment of sections 767.215 (1) (b) and (2m) (a) 2., 767.80 (7), and
6 767.813 (6) of the statutes first applies to actions or proceedings, including actions
7 or proceedings to modify a judgment or order previously granted, that are
8 commenced on the effective date of this paragraph.

9 (b) SECTION 48 (3) of this act first applies to actions or proceedings, including
10 actions or proceedings to modify a judgment or order previously granted, that are
11 commenced on the effective date of this paragraph.

12 (END)

*and in sections 767.542 and
767.59 (2m) of the statutes, as created
by this act*

D-note

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0016/P2ins
PJK:sac:...

INSERT 13-21

1 **SECTION 1.** 767.542 of the statutes is created to read:

2 **767.542 Discovery about use of support.** At any time after a final judgment
3 requiring a party to pay child or family support is entered under this subchapter, the
4 payer may use any of the methods of discovery specified in ch. 804 to obtain
5 information about the purposes for which the payee has used or is using the child or
6 family support. This section applies with respect to final judgments entered before,
7 on, or after the effective date of this section [LRB inserts date].

(END OF INSERT 13-21)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0016/P2dn

PJK:f.....
JAC

r m i s n e

- date -

I have made the changed^s requested at our meeting on October 16, except that I not changed "the court may not" to "the court shall not" for a number of reasons; ^{have}

1. Section 2.01 (8) of our drafting manual provides, "Use ^{no person may} or ^{a person may not} to forbid behavior. ^{No person shall} could be interpreted to mean ^{no person is required to}. See *Milwaukee Alliance v. Elections Board*, 106 wis. 2d 593, 609 (1982)." In that court case, the state supreme court was addressing language changes that had been made to the state constitution. The court found that changing "no person shall" to "no person may" did not change the meaning or substance but reflected the current view of the proper use of language in legal drafting. Using the affirmative "shall" with a negative subject (no person) or with the word "not" literally negates the *obligation* to act but not the *permission* to act. "No person may" or "a person may not," on the other hand, negates the permission and, according to the court, is the stronger prohibition. *

2. From a search of the statutes, I found 203 instances of "court may not" and only 20 instances of "court shall not." Chapter 767, itself, has only one instance of "court shall not" and 29 instances of "court may not."

3. Using "court shall not" in the draft could have the effect of casting doubt and confusion on the meaning of "court may not" in the rest of ch. 767. When courts interpret statutes, they are to assume that the legislature was aware of the other statutes and that, if the legislature uses a phrase or word that is different from a phrase or word in another statute, the legislature intended a different meaning.

I also did not change "court may not" to "court is prohibited." The statutes do not contain a single instance of "court is prohibited." I am reluctant to use a phrase that is not used even once in the statutes when a settled phrase for the same concept (court may not) is used over 200 times in the statutes.

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

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0016/P2dn
PJK:sac:...

October 30, 2012

I have made the changes requested at our meeting on October 16, except that I have not changed "the court may not" to "the court shall not" for a number of reasons:

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D-note insert

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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0016/P2dn
PJK:sc:...

D. note insert

I have added proposed s. 767.542, which gives the payer party the authority to use discovery procedures to obtain information about the use of support. This is highly unusual, however. Normally when a party uses discovery, it is for some purpose, such as for a hearing on a motion, petition, or order to show cause. What is the information that the party obtains going to be used for? Is the party using discovery going to request, by motion, petition, or order to show cause, some court action on the basis of the information obtained, such as an order to modify the amount of support? If so, discovery may be used after such a motion, petition, or order to show cause has been filed with the court (see s. 801.01 (2), stats). Otherwise, the ongoing authority to use discovery when there is no action pending seems to be only for the purpose of harassment or vigilantism.

I have other concerns about the draft as it is currently written. One relates to an issue we discussed at our meeting on Oct. 16. At our meeting we discussed how it would be problematic and perhaps even unconstitutional, for due process reasons, to apply the new provisions to matters that are already on appeal. I mentioned that I usually make new provisions apply to actions that are commenced on or after the effective date, not to actions already before the court. That is the cleanest initial applicability because that way everyone knows at the outset what the rules are, including judges, who have to make decisions based on those rules.

I have this same concern about applying the new provisions to actions that have already been commenced, especially to those actions to revise original orders. In some cases, actions may have been commenced to revise orders in ways that now, all of a sudden, are not permitted under the new rules. What will happen to those actions? I assume that many of them will have to be dismissed, and the person who commenced the action will have to forfeit the filing fee, as well as all attorney fees that have accrued up to that point.

Considering the magnitude and the quantity of the changes in this bill, the best course would be to have the new provisions in the bill apply to actions that are commenced on or after the effective date and, in addition, to have the effective date delayed to give people time to digest the new law and be able to proceed in an informed way in original actions and actions to revise orders in accordance with the new law. It seems like you

are setting up a chaotic situation if actions that have already been commenced have to proceed, in midstream, according to new rules. Undoubtedly, many people who have incurred attorney fees preparing cases based on the "old rules" will now have to shift gears or even start all over again.

The other concern I've expressed before, but want to mention again. The nonstatutory provision that voids any agreement relating to child support entered into before the effective date but not yet approved by a court may impermissibly impair contracts in violation of both the state and federal constitutions. Even though such an agreement is not yet in force because it has not yet been approved by a court, the nonstatutory provision still constitutes a state law that is interfering with a private agreement made between two parties.

(end of D-note insert)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0016/P2dn
PJK:sac:rs

November 1, 2012

I have made the changes requested at our meeting on October 16, except that I have not changed "the court may not" to "the court shall not" for a number of reasons:

1. Section 2.01 (8) of our drafting manual provides, "Use 'no person may' or 'a person may not' to forbid behavior. 'No person shall' could be interpreted to mean 'no person is required to.' See *Milwaukee Alliance v. Elections Board*, 106 Wis. 2d 593, 609 (1982)." In that court case, the state supreme court was addressing language changes that had been made to the state constitution. The court found that changing "no person shall" to "no person may" did not change the meaning or substance but reflected the current view of the proper use of language in legal drafting. Using the affirmative "shall" with a negative subject (no person) or with the word "not" literally negates the *obligation* to act but not the *permission* to act. "No person may" or "a person may not," on the other hand, negates the permission and, according to the court, is the stronger prohibition.
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Pamela J. Kahler
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Kahler, Pam

From: Braun, Rick
Sent: Monday, November 26, 2012 9:48 AM
To: Kahler, Pam
Subject: Child support bill



childsupport.pdf

Pam:

After consulting with his attorney and others, Michael Eisenga has been convinced that they are over-reaching and not likely to win passage. They have sent some recommended modifications.

I know you've put a lot of time into this, but I think their recommendations do slim down the reach of the bill.

Thanks,

Rick Braun
Office of Rep. Joel Kleefisch

SMILEY LAW OFFICE

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November 20, 2012

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

Via Email

Dear Mr. Eisenga:

You asked us to review LRB 0016. I think you are trying to do too much. Accordingly we suggest:

✓ §49.22 (9) be amended to provide that the Department shall not require the inclusion of income over \$150,000 per year in determining child support awards.

Amend §767.511, §767.59, §767.89 and possibly the statutes mentioned in §767.001 (1) (m) to provide:

✓ a. Child support shall be based solely on income or imputed income.

✓ b. No income in excess of \$150,000 per year may be utilized in calculating a child support obligation.

c. This change in the law shall, by itself, ^{be} a change of circumstances justifying a change in the existing child support order if it was established prior to the enactment of this statute.

nonstat (1)
✓ d. The party that is paying for health insurance for the child is entitled to a credit against child support for the amount actually paid for health insurance premiums attributable to the child for whom child support is being paid.

✓ e. No court may deviate from the child support standards in order to increase a payor's child support obligation.

✓ f. No court shall approve any agreement for child support that purports to establish a minimum child support order in the event the child support obligation is re-set. No existing orders establishing a minimum child support obligation may be enforced after the effective date of this statute.

Mr. Michael S. Eisenga
November 20, 2012
Page: 2

✓g. Keep \$767.531 (1m) but consider whether it should apply only to the child support portion of a family support order.

h. Keep \$767.59 (1c) (a) 1 but add your proposed \$767.59 (1f) a 2 to the end of \$767.59 (1c) (a) 1.

Thank you.

Sincerely,



William A. Smiley
Attorney at Law