

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - PLEASE DO NOT REMOVE FROM DRAFTING FILE

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

Appendix B ... segment I

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
LEGISLATIVE REFERENCE BUREAU

☞ Appendix A ... segment I

LRB BILL HISTORY RESEARCH APPENDIX

☞ The drafting file for 2011 LRB-3501/1 (For: Rep. Kleefisch)

has been transferred to the drafting file for

2013 LRB-0016 (For: Rep. Kleefisch)



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 09/04/2012 (Per: PJK)

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

2011 DRAFTING REQUEST

Bill

Received: 11/16/2011

Received By: **pkahler**

Wanted: **As time permits**

Companion to LRB:

For: **Joel Kleefisch (608) 266-8551**

By/Representing: **Stephanie Kundert**

May Contact:

Drafter: **pkahler**

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

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Kleefisch@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Calculation of child support

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 11/21/2011			_____			
/P1		scalvin 12/15/2011	jfrantze 12/15/2011	_____	sbasford 12/15/2011		
/P2	pkahler 01/09/2012	scalvin 01/10/2012	rschlue 01/11/2012	_____	ggodwin 01/11/2012		S&L
/P3	pkahler 01/31/2012	scalvin 02/06/2012	jmurphy 02/06/2012	_____	mbarman 02/06/2012		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/2			rschluet 02/28/2012	_____ _____	lparisi 02/28/2012	lparisi 02/29/2012	

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/P3	pkahler 01/31/2012	scalvin 02/06/2012	jmurphy 02/06/2012	_____	mbarman 02/06/2012		S&L

Handwritten signatures and initials:
A large signature over "jmurphy" and "02/06/2012".
Initials "JMK" and "2/8/12" written below the signature.

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

WD
2/28/12
12

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Jr JF+JM
2/22

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

chanaman
02/06/2012

FE Sent For:

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FE Sent For:

02/02/12
SAC
1/P3
WD 2/3/12
Ella
jm 2/3
JH+JM 2/6

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1P2
FE Sent For: SAC 01/10/2012

MD
1/10/12
1P2

1/10/12
<END>

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1?	pkahler	PI SAC 12/14/11		12/15			
FE Sent For:		PI NJ 12/15/11					

<END>

Kahler, Pam

From: Kundert, Stephanie
Sent: Wednesday, November 16, 2011 3:31 PM
To: Kahler, Pam
Subject: Child Support Legislation

Attachments: Child Support Draft.pdf

Hi Pam,

I hope this finds you well now that session has ended.

My boss wanted to introduce a bill that would alter our child support laws. A proposed draft is attached for your review.

If you have any questions or concerns, please do not hesitate to contact me.

Thanks so much!

Stephanie



Child Support
Draft.pdf (355 K...

Stephanie L. Kundert
Office of Representative Joel Kleefisch
Member, Joint Committee on Finance
38th Assembly District
321 East, State Capitol
Madison, WI 53708
608.266.8552
stephanie.kundert@legis.wisconsin.gov

D Pratt from Me to Legislature

(1j) PERCENTAGE STANDARD GENERALLY REQUIRED. The court shall determine child support payments as set forth in this subsection.

- (a) A paying parent is defined for the purpose of this subsection as a parent who has less than 75% placement of one or more children who are entitled to support.
- (b) Net income is defined for the purposes of this subsection as total income defined in Admin. Code DCF s. 150.02, reduced for all state and federal taxes due on such income.
- (c) A paying parent with net monthly income of \$7,000.00 or less shall pay child support based on a percentage of that parent's net income as follows:
 1. For one child, 17%.
 2. For two children, 25%.
 3. For three children, 29%.
 4. For four children, 31%.
 5. For more than four children, 34%.
- (d) A paying parent with net monthly income in excess of \$7,000.00 shall pay child support based on a percentage of that parent's net income as follows:
 1. For one child, 14%.
 2. For two children, 20%.
 3. For three children, 23%.
 4. For four children, 25%.
 5. For more than four children, 27%.

7,000 - 12,500 / mo
(nothing above the amount)

- ✓ (e) Notwithstanding par. (d) above, a court may not order a child support obligation based on net income in excess of 150,000.00 per year, adjusted annually pursuant to the Bureau of Labor Standards Consumer Price Index for urban consumers.
- ✓ (f) In the event that the child has two parents who have placement for 25% of the time or more, (each parent shall have an obligation to contribute to the support of the child while the child is placed with the other parent.) The child support owed by each parent shall be computed as provide herein and then multiplied by the percentage of time the other parent has placement of the child. The child support obligation for the greater earner shall be offset by the child support obligation of the lesser earner. *not use higher or lower earn - this is a to be to*
- ✓ (g) In the event that the child support ordered as computed herein exceeds the amount reasonably needed to support the child's current needs, all excess child support shall be deposited into an account requiring the signatures of both parents for withdrawal and such funds shall be used to meet extraordinary needs of the child as the parents may agree. Funds remaining in such account when the child reaches the age of majority shall be used to finance the child's post-high school education or, if the child does not chose to continue his or her education, returned to the payer. *when return - how long does child have before it goes to yr return - what happens then?*
- ✓ (h) Payment of health insurance costs, uninsured medical expenses, and child care costs shall be included in calculating the child support owed by a parent

XXXX NOTE

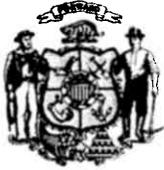
D. note

what do you mean "included in calculation" - when it comes to amounts actually included? (7.7.512)

under this section, unless the parents otherwise agree in writing or in open court at the time the support is awarded.

- ✓(i) Net income shall be computed pursuant to rules of the department and shall reflect money actually available to the family to pay living expenses. It is presumed that a cash flow statement provided by a self-employed paying parent's certified public account establishes that parent's net income for purposes of determining child support.
- D-note* (j) The statutory calculation of child support as set forth herein supersedes any prior agreement of the parties prior to the effective date of this law as to child support arrangements unless such agreement is reconfirmed by both parties in writing or in open court after the effective date of this laws passage.
- D-note* (k) No court may award child support except in conformity with this subsection.

EFFECTIVE DATE: This law shall take effect on the day after its publication and shall apply to any child support payment due after its effective date.



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3501/76
PJK:.....

71
signed

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

(11-21)
D-note

you cut

*and granting
rule-making authority*

① AN ACT relating to: calculating child support

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

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

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

History: 1971 c. 220; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.085; 1985 a. 29; 1987 a. 332 s. 64; 1987 a. 355, 403; 1989 a. 31, 56, 132; 1993 a. 78, 481; 1995 a. 27 s. 9126 (19); 1995 a. 201, 404; 1997 a. 191; 2001 a. 61; 2005 a. 443 ss. 31, 46 to 49, 71, 83, 84; Stats. 2005 s. 767.215; 2007 a. 187; 2011 a. 32.

7 SECTION 2. 767.215 (2m) (a) 2.^x of the statutes is amended to read:

8 767.215 (2m) (a) 2. Shall be accompanied by a document, provided without
9 charge by the clerk of court, setting forth the percentage standard established by the

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

History: 1971 c. 220; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.085; 1985 a. 29; 1987 a. 332 s. 64; 1987 a. 355, 403; 1989 a. 31, 56, 132; 1993 a. 78, 481; 1995 a. 27 s. 9126 (19); 1995 a. 201, 404; 1997 a. 191; 2001 a. 61; 2005 a. 443 ss. 31, 46 to 49, 71, 83, 84; Stats. 2005 s. 767.215; 2007 a. 187; 2011 a. 32.

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

4 767.225 (1n) (b) 1. If the court makes a temporary child support order that
5 deviates from the amount of support that would be required by using the percentage
6 standard established by the department under s. ~~49.22 (9)~~ 767.511 (1j) (b), the court
7 shall comply with the requirements of s. 767.511 (1n).

History: 1971 c. 149; 1971 c. 211 s. 126; 1971 c. 220, 307; 1975 c. 283; Sup. Ct. Order, 73 Wis. 2d xxxi (1976); 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 111, 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.23; 1983 a. 27; 1983 a. 204 s. 22; 1983 a. 447; 1985 a. 29 s. 3202 (9); 1987 a. 355, 364, 413; 1989 a. 212; 1991 a. 39; 1993 a. 78, 481, 490; 1995 a. 27 ss. 7100h, 9126 (19); 1995 a. 70, 404; 1999 a. 9; 2001 a. 16, 61; 2003 a. 130, 326; 2005 a. 174, 342; 2005 a. 443 ss. 86 to 91; Stats. 2005 s. 767.225; 2007 a. 96.

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

9 767.511 (1) (a) Order ~~either or both parents~~ a parent who has physical
10 placement with his or her child for less than 75 percent of the time to pay an amount
11 reasonable or necessary to fulfill a duty to support ^{strike both sides} ~~a~~ the child. The support amount
12 must be expressed as a fixed sum unless the parties have stipulated to expressing
13 the amount as a percentage of the payer's income and the requirements under s.
14 767.34 (2) (am) 1. to 3. are satisfied.

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.

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

16 767.511 (1j) (title) PERCENTAGE CALCULATION; PERCENTAGE STANDARD GENERALLY
17 REQUIRED.

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.

18 SECTION 6. 767.511 (1j) of the statutes is renumbered 767.511 (1j) (b) (intro.)

19 and amended to read: (intro)

20 767.511 (1j) (b) Except as provided in sub. (1m), the court shall determine the
21 child support payments by using the percentage standard established by the

1 ~~department under s. 49.22 (9).~~ obligation of a parent ordered to pay child support
2 under sub. (1) (a) in the following manner:

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.

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

4 767.511 (1j) (a) In this subsection:

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

7 2. "Net income" means gross income less federal and state tax required by law
8 to be withheld or to be paid by a self-employed individual.

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

10 767.511 (1j) (b) 1. If the parent's monthly net income is \$7,000 or less, his or
11 her monthly child support obligation equals the following percentage of his or her
12 monthly net income:

13 a. For one child, 17 percent.

14 b. For 2 children, 25 percent.

15 c. For 3 children, 29 percent.

16 d. For 4 children, 31 percent.

17 e. For more than 4 children, 34 percent.

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

19 767.511 (1j) (b) 2. Subject to subd. 3., if the parent's monthly net income exceeds
20 \$7,000, his or her monthly child support obligation equals the following percentage
21 of his or her monthly net income:

22 a. For one child, 14 percent.

23 b. For 2 children, 20 percent.

24 c. For 3 children, 23 percent.

1 d. For 4 children, 25 percent.

2 e. For more than 4 children, 27 percent.

3 **SECTION 10.** 767.511 (1j) (b) 3. of the statutes is created to read:

4 767.511 (1j) (b) 3. The court may not calculate the amount of child support that
5 a parent is obligated to pay on any of the parent's net income that exceeds \$150,000
6 per year, adjusted annually, beginning in 2013, to reflect changes in the consumer
7 price index for all urban consumers, U.S. city average, as determined by the U.S.
8 department of labor.

****NOTE: Should this be expressed as a monthly amount instead since the support obligation is determined on monthly income?

****NOTE: I am advised by DCF that this particular provision may present a problem under federal law, in which case the state could stand to lose federal funding for child support enforcement activities.

9 **SECTION 11.** 767.511 (1j) (b) 4. of the statutes is created to read:

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

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

20 767.511 (1j) (c) The department shall promulgate rules related to how net
21 income shall be computed. The computation of net income under the rules shall
22 reflect moneys actually available to the family to pay living expenses. If a parent is

1 self-employed, there shall be a rebuttable presumption that a cash flow statement
2 provided by a certified accountant on behalf of the parent establishes the parent's net
3 income for purposes of this subsection.

***NOTE: Are rules necessary since "net income" is defined as "gross income" minus federal and state taxes? Do you want to change the definition? What do you mean by "family" in this provision? Do you mean the two families after the divorce (payer's and payee's)? Should "family" be "parent" instead? What do you mean by "moneys actually available"?

4 **SECTION 13.** 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 the amount of child support payments determined under
7 sub. (1j) if, after considering the following factors, the court finds by the greater
8 weight of the credible evidence that use of the that percentage standard is unfair to
9 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.

***NOTE: The instructions included the provision: "No court may award child support except in the conformity with this subsection." Does that mean that, instead of amending the above provision, you want to repeal it so that the court has no discretion to deviate from the new standard under sub. (1j)?

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

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.

18 **SECTION 15.** 767.511 (2) (title) of the statutes is amended to read:

1 767.511 (2) (title) SEPARATE ACCOUNT, FUND, OR TRUST.

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.

2 SECTION 16. 767.511 (2) of the statutes is renumbered 767.511 (2) (a) and
3 amended to read:

4 767.511 (2) (a) The Except as provided in par. (b), the court may protect and
5 promote the best interests of the minor children by setting aside a portion of the child
6 support ~~which that~~ either party is ordered to pay in a separate fund or trust for the
7 support, education, and welfare of such children.

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.

8 SECTION 17. 767.511 (2) (b) of the statutes is created to read:

9 767.511 (2) (b) If the court determines that the amount of child support
10 calculated in the manner provided in this section exceeds the amount reasonably
11 necessary to support the child's current needs, the court shall order that the excess
12 amount be deposited in an account requiring the signatures of both parents for
13 withdrawal, to be used for any extraordinary needs of the child on which the parents
14 agree. Any amounts remaining in the account when the child support obligation
15 ends shall be used for postsecondary education expenses for the child. If the child
16 chooses not to pursue postsecondary education, the remaining funds shall be
17 returned to the parent who paid the child support into the account.

****NOTE: If both parents have physical placement for more than 25 percent of the time, the funds in the account would represent payments by both. Therefore, any remaining funds should really be returned to both parents in proportion to their child support obligation or their comparative child support obligation, as described in proposed sub. (1j) (b) 4.

****NOTE: Does the child have to decide to go on to school immediately? How long does the child have to decide? What if the child goes on one year and then wants to take some time off? What if the child wants to go to postsecondary school but the child and parents do not agree on the school? Who is in charge of the funds for that use? You may want to set some limits to avoid disputes.

18 SECTION 18. 767.55 (2) (c) of the statutes is amended to read:

1 767.55 (2) (c) If the court enters an order under par. (am), it shall order the
2 parent to pay child support equal to the amount determined by applying the
3 percentage standard established under s. ~~49.22 (9)~~ [✓] 767.511 (1j) (b) or equal to the
4 amount of child support that the parent was ordered to pay in the most recent
5 determination of support under this chapter. The child support obligation ordered
6 under this paragraph continues until the parent makes timely payment in full for
7 3 consecutive months or until the person participates in the program under s. 49.36
8 for 16 weeks, whichever occurs first. The court shall provide in its order that the
9 parent shall make child support payments calculated under s. 767.511 (1j) or (1m)
10 after the obligation to make payments ordered under this paragraph ceases.

History: 2005 a. 443 ss. 40, 41, 107, 108, 135, 136, 223; 2007 a. 20. [✓]

11 **SECTION 19.** 767.553 (1) (a) of the statutes is amended to read:

12 767.553 (1) (a) An order for child or family support under this chapter may
13 provide for an annual adjustment in the amount to be paid based on a change in the
14 payer's income if the amount of child or family support is expressed in the order as
15 a fixed sum and based on the percentage standard established by the department
16 under s. ~~49.22 (9)~~ [✓] 767.511 (1j) (b). No adjustment may be made under this section
17 unless the order provides for the adjustment.

History: 1981 c. 20; 1983 a. 27; 1993 a. 481; 1995 a. 27 s. 9126 (19); ~~1995 a. 404~~; 1997 a. 27; 2001 a. 16, 61, 105; 2005 a. 443 ss. 167, 224; Stats. 2005 s. 767.553.

18 **SECTION 20.** 767.553 (1) (b) of the statutes is amended to read:

19 767.553 (1) (b) An adjustment under this section may not be made more than
20 once in a year and shall be determined on the basis of the percentage standard
21 established by the department under s. ~~49.22 (9)~~ [✓] 767.511 (1j) (b).

History: 1981 c. 20; 1983 a. 27; 1993 a. 481; 1995 a. 27 s. 9126 (19); ~~1995 a. 404~~; 1997 a. 27; 2001 a. 16, 61, 105; 2005 a. 443 ss. 167, 224; Stats. 2005 s. 767.553.

22 **SECTION 21.** 767.59 (1f) (b) 4. of the statutes is amended to read:

23 767.59 (1f) (b) 4. ~~A~~ If the action is one to revise a judgment or order with respect
24 to child support ordered under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183

SECTION 21

1 (4), 938.355 (2) (b) 4., 938.357 (5m) (a), or 938.363 (2), a difference between the
 2 amount of child support ordered by the court to be paid by the payer and the amount
 3 that the payer would have been required to pay based on the percentage standard
 4 established by the department under s. 49.22 (9) if the court did not use ~~the~~ that
 5 percentage standard in determining the child support payments and did not provide
 6 the information required under s. 46.10 (14) (d), 49.345 (14) (d), 301.12 (14) (d), or
 7 767.511 (1n), whichever is appropriate.

History: 1971 c. 220; 1977 c. 105 ss. 38, 48, 49; 1977 c. 418; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.32; 1981 c. 20 s. 2202 (20) (m); 1981 c. 314 s. 146; 1983 a. 27; 1985 a. 176; 1987 a. 27, 355, 413; 1989 a. 212; 1991 a. 39; 1993 a. 16, 481, 497; 1995 a. 27 s. 9126 (19); 1995 a. 77, 201, 225, 279, 289, 404, 417; 1997 a. 27, 35, 105, 191, 237, 273; 1999 a. 9, 103; 2001 a. 16, 61, 105; 2005 a. 443 ss. 147 to 159, 227, 228; Stats. 2005 s. 767.59; 2007 a. 20.

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

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

16 **SECTION 23.** 767.59 (2) (a) of the statutes is amended to read:

17 767.59 (2) (a) Except as provided in par. (b) or (c), if the court revises a judgment
 18 or order with respect to child support payments, it shall do so by using the percentage
 19 standard ~~established by the department~~ under s. ~~49.22 (9)~~ 767.511 (1j) (b).

History: 1971 c. 220; 1977 c. 105 ss. 38, 48, 49; 1977 c. 418; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.32; 1981 c. 20 s. 2202 (20) (m); 1981 c. 314 s. 146; 1983 a. 27; 1985 a. 176; 1987 a. 27, 355, 413; 1989 a. 212; 1991 a. 39; 1993 a. 16, 481, 491; 1995 a. 27 s. 9126 (19); 1995 a. 77, 201, 225, 279, 289, 404, 417; 1997 a. 27, 35, 105, 191, 237, 273; 1999 a. 9, 103; 2001 a. 16, 61, 105; 2005 a. 443 ss. 147 to 159, 227, 228; Stats. 2005 s. 767.59; 2007 a. 20.

20 **SECTION 24.** 767.80 (7) of the statutes is amended to read:

21 767.80 (7) CLERK TO PROVIDE DOCUMENT. The clerk of court shall provide without
 22 charge to each person bringing an action under this section, except to the state under
 23 sub. (1) (g) or (6m), a document setting forth the percentage standard ~~established by~~

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).

History: 1979 c. 352; 1981 c. 20 s. 2202 (20) (m); 1983 a. 447; 1985 a. 29; 1987 a. 27, 355, 399, 413; 1989 a. 31, 212; 1993 a. 326, 481; 1995 a. 27 s. 9126 (19); 1995 a. 68, 100, 201, 275, 404; 1997 a. 191; 1999 a. 9; 2001 a. 61; 2005 a. 443 ss. 12, 184, 241; Stats. 2005 s. 767.80; 2007 a. 97; 2009 a. 321.

3 SECTION 25. 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).

History: 1979 c. 352; 1981 c. 314; 1983 a. 447; 1985 a. 29; 1987 a. 27, 413; Sup. Ct. Order, 171 Wis. 2d xix (1992); 1993 a. 16, 481; 1995 a. 27 ss. 7112, 7113b, 9126 (19); 1995 a. 100, 404, 417; 1997 a. 35, 191, 250; 1999 a. 9; 2001 a. 61; 2005 a. 443 ss. 185, 186, 190, 243, 244; Stats. 2005 s. 767.813.

9 SECTION 26. 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).

History: 1997 a. 191; 1999 a. 9; 2005 a. 443 ss. 209, 252; Stats. 2005 s. 767.85.

17 SECTION 27. 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. of the statutes by this act constitute a substantial change in circumstances
22 on which may be based a revision under section 767.59 of a judgment or order with
23 respect to child or family support.

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

LRB-3501/7dn
PJK:.....

Sac & med

-date-

There were parts of the drafting request that I could not draft without answers to some questions.

The current percentage standard is used not only in the usual actions affecting the family (divorce, separation, paternity, acknowledgments of paternity) but also in a number of other situations, including when a child is placed outside of his or her home in a residential, nonmedical facility, such as a foster home, group home, residential care center for children and youth, or juvenile correctional institution (see chs. 46, 48, 49, 301, 938, and 948). Do you want this new method for calculating child support to be used only in the actions affecting the family listed in s. 767.511 (1) (intro.), or do you want it to replace the current percentage standard entirely and be used in situations outside of ch. 767 when a child is placed outside of the home? In this version of the draft, I have not affected any of the provisions outside of ch. 767. ✓

One of the drafting instructions was that "[p]ayment of health insurance costs, uninsured medical expenses, and child care costs" are to be "included in calculating the child support owed by a parent." Does this mean that: 1) the actual amount calculated for child support based on a percentage of the parent's income would be reduced dollar for dollar by the amount that the parent pays for these expenses, or 2) that these expenses would be considered when determining child support and the possible deviation under s. 767.511 (1m)? (See s. 767.511 (1m) (e) and (f) under current law.) If you want these expenses actually deducted from the amount calculated, significant modifications to the draft will be required. Also, I do not know how a court could know the cost of uninsured medical expenses in advance, or would it be up to the parent to reduce payments by the amount of any uninsured medical expenses that the parent pays? If so, how could this be accomplished if the parent has the child support amount automatically deducted from his or her paycheck as an income assignment, which is the usual method?

One of the drafting instructions was that the new way to calculate child support supersedes any agreement before the effective date unless the agreement is reconfirmed after the effective date. I'm not sure what agreements are being referred to. Are these agreements that people involved in a court action have entered into before the court has approved them? It may be an unconstitutional impairment of a private

contract to provide that they are superseded. In practice, before a court approves a stipulation, a party may decide that, in light of the new law, he or she no longer agrees with what was stipulated. If, however, you mean an agreement on which a court order was based, that can only be changed by another court order in an action to revise the order. (See the nonstatutory provision I have included in the bill.)

Note that in the draft I required the court to determine a child support obligation for any parent who has physical placement for less than 75 percent of the time (as was requested) and required an offset between the parents if they both have placement for more than 25 percent of the time (rather than 25 percent or more, as was requested). OK?

This bill takes effect on the day after publication, as you requested. However, under current law the clerk of court must provide a person filing a divorce petition with a document that sets forth the percentage standard. I'm sure clerks will need some time to have new documents prepared. In addition, if you really want DCF to promulgate rules related to computing net income, that could take many months to more than a year to get through the rule-making process.

X In the draft, a parent with net monthly income of \$7,000 or less pays a specified percentage (17 percent for one child, for example) for support and a parent with net monthly income above \$7,000 pays a different specified percentage (14 percent for one child) on all of that income. Did you instead intend for 17 percent to apply to any parent's net monthly income up to \$7,000 and then 14 percent to ~~apply~~ ^{apply} to net monthly income that exceeds \$7,000, similar to a marginal tax rate? In the former situation, a parent with less total income could pay more child support than a parent with a higher income because all of the income is subject to a higher percentage. For example, a parent with \$6,200 in net monthly income would have a child support obligation (for one child) of \$1054, while a parent with \$7,200 in net monthly income would have a child support obligation (for one child) of \$1008.

Note that the percentage standard in current law is set out in the Administrative Code, rather than in the statutes. The rules address high income payers, as well as a multitude of situations, such as shared placement arrangements, that are not addressed in this draft.

For initial applicability, the change in this bill draft can be made to apply to original actions that are commenced on or after the effective date or to actions that have already been commenced but in which no child support order has as yet been granted. In addition, it can be made to apply to actions to *revise* child support that are commenced on or after the effective date or to actions to revise child support that have already been commenced but in which no revision has as yet been ordered. In either case, applying to actions commenced on or after the effective date is cleaner because parties will not have to start negotiations all over again. Let me know how you want to treat the initial applicability in this bill.

The draft contains ****NOTES with other questions.

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-3501/P1dn
PJK:sac&med:jf

December 15, 2011

There were parts of the drafting request that I could not draft without answers to some questions.

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The draft contains ****NOTES with other questions.

Pamela J. Kahler
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3501

Kahler, Pam

From: Kundert, Stephanie
Sent: Tuesday, January 03, 2012 3:34 PM
To: Kahler, Pam
Cc: Rep. Kleefisch
Subject: Child Support update

Hi Pam,

Happy New Year! I hope this finds you well and that you had a nice Christmas and New Year's celebration.

Please find pasted below the comments we received back from the constituent Joel has been working with on the child support legislation in regards to the initial draft of the legislation. If you have any questions or concerns, please do not hesitate to contact me. Otherwise, Mr. Eisenga's contact information is listed below if you'd like to speak with him directly about the language of the bill.

Thank you!

Stephanie

Stephanie L. Kundert
Office of Representative Joel Kleefisch
Member, Joint Committee on Finance
38th Assembly District
321 East, State Capitol
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stephanie.kundert@legis.wisconsin.gov

Hi Stephanie, Bill and Micki,

Below you will find responses to the drafters questions from my Attorney. Please provide this feedback to Pam the drafter. We are not aware of what the Federal \$\$\$ issues are, but ask Pam, so we can draft around it. Obviously we do not want to cost our state federal money. I am willing to call or meet with Pam as well if needed to keep the process moving. I am still awaiting any comments form my other attorney Bill Smiley (Also copied on this email).

Anything I can do I will.

I hope you all had a very Merry Christmas!!!

Michael S. Eisenga
President

First American Funding Company, LLC
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USA

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(920)623-5543 fax

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From: Balisle & Roberson, S.C. [mailto:office@b-rlaw.com]
Sent: Tuesday, December 27, 2011 9:39 AM
To: Michael Eisenga
Subject: RE: Eisenga: Child Support Draft

Hey Mike –

It's hard to respond to this since it's in PDF (Not your fault – I know that is how it was sent to you) and I haven't been able to copy it into another document (there is probably a way to do this but I am technologically impaired) – but here goes:

- ✓ 1. I don't think you care whether the new standards apply to out-of-family placement. There's an argument to be made that the standards should be higher when the child is not in the home because an out-of-home placement by definition means that the other parent isn't providing services and financial support to the child directly. So – I think leaving it as it is makes some sense and doesn't affect your goals.
- ✓ 2. Including insurance and child care costs – not as difficult as she makes it. "At the time of the initial calculation of child support, the then current costs incurred on a monthly basis by the paying parent for the child's health insurance coverage and child care costs shall be deducted from the total monthly amount the parent is obligated to pay. A significant change in the cost of health insurance coverage or child care constitutes sufficient cause to revise the child support order." I think this takes care of it.
only current - not what might be added
- ✓ 3. Applies to prior orders – no constitutional issue here that I can see. If parents have stipulated to the old standard, they have done so "in the shadow of the law" because there is no sense in fighting what the law requires. If it's their intention to do MORE than required, they can reaffirm the contract so there is no impairment of the right to contract. Depriving a parent who is already paying of the right to have child support determined under the new rules MIGHT be an unconstitutional denial of equal protection of the laws. This argument makes no sense to me. HOWEVER she is right that everybody needs time to get up to speed. Maybe you should add something about giving the department and county clerks 90 days to come up with new rules/procedures to comply with the law, but any motion to modify support based on the new law is retroactive to the effective date. I think that takes care of her problem there. She wants to make the new standards apply only to new cases and that doesn't meet your intent.
under 3.5B?
- ✓ 4. Application of percentage number – I think it's your intention that the lower percentage be applied to ALL income of a high income payer. Correct? You just need to confirm that with her and make sure it's drafted to clarify that.
- ✓ 5. You aren't intending to change the shared placement formula. Anything you don't change remains in effect. That should be obvious but maybe you need to clarify it with her.
- ✓ 6. Re the federal funding issue she notes in Section 10 – I don't know what the potential issue is, but if it's real that in itself will likely kill your bill so you should ask her what the deal is and see if you can draft around it.
get rid of cap
- ✓ 7. Re notes to Section 12 – change "net income" to "income actually available to a parent for payment of child support." Then you can delete the 2nd sentence.
- ✓ 8. Re note to Section 14 – I think you want to require strict compliance. I think you'll find more support if you give courts some leeway, as suggested above. *can't tell - seems inconsistent*
- ✓ 9. Re note to Section 17 – she's right; it makes sense to set a limit of "within x years after graduation from high school" to complete higher education. Maybe 10 years? Re return of unused money – she points out that it

may constitute contributions from both parents, so if she wants to make it "parent(s)" instead of "parent" I think that's in keeping with your intent.

✓10. Re note to Section 27 – yes, you do want to change existing child support orders.

Linda



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3501/11
PJK:sac&med:ff

P2

Stungs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Thurs., please
(in 1-9)
D-note

Gen Cat

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

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

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

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

5 **SECTION 2.** ^x767.215 (2m) (a) 2. of the statutes is amended to read:

6 767.215 (2m) (a) 2. Shall be accompanied by a document, provided without
7 charge by the clerk of court, setting forth the percentage standard established by the
8 department under s. ~~49.22 (9)~~ 767.511 (1j) (b) and listing the factors that a court may
9 consider under s. 767.511 (1m).

10 **SECTION 3.** ^x767.225 (1n) (b) 1. of the statutes is amended to read:

11 767.225 (1n) (b) 1. If the court makes a temporary child support order that
12 deviates from the amount of support that would be required by using the percentage
13 standard established by the department under s. ~~49.22 (9)~~ 767.511 (1j) (b), the court
14 shall comply with the requirements of s. 767.511 (1n).

15 **SECTION 4.** ^x767.511 (1) (a) of the statutes is amended to read:

16 767.511 (1) (a) Order ~~either or both parents~~ a parent who has physical
17 placement with his or her child for less than 75 percent of the time to pay an amount
18 reasonable or necessary to fulfill a duty to support ~~a~~ the child. The support amount
19 must be expressed as a fixed sum unless the parties have stipulated to expressing
20 the amount as a percentage of the payer's income and the requirements under s.
21 767.34 (2) (am) 1. to 3. are satisfied.

22 **SECTION 5.** ^x767.511 (1j) (title) of the statutes is amended to read:

23 767.511 (1j) (title) PERCENTAGE CALCULATION: PERCENTAGE STANDARD GENERALLY
24 REQUIRED.

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

3 767.511 (1j) (b) (intro.) Except as provided in sub. (1m), the court shall
4 determine the child support payments by using the percentage standard established
5 by the department under s. 49.22 (9). obligation of a parent ordered to pay child
6 support under sub. (1) (a) in the following manner:

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

8 767.511 (1j) (a) In this subsection:

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

11 2. "Net income" means gross income less federal and state tax required by law
12 to be withheld or to be paid by a self-employed individual.

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

14 767.511 (1j) (b) 1. ^{total} If the parent's monthly net income is \$7,000 or less, his or
15 her monthly child support obligation equals the ^{amount that is the} following percentage of his or her
16 ^{total} monthly net income:

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

Subject to subd. 3.)

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

23 767.511 (1j) (b) 2. Subject to subd. 3., if the parent's ^{total} monthly net income exceeds
24 \$7,000, his or her monthly child support obligation equals the following percentage
25 of his or her ^{total} monthly net income:

^{total} amount that is the

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

6 **SECTION 10.** 767.511 (1j) (b) 3. of the statutes is created to read:

7 **767.511 (1j) (b) 3.** ~~The court may not calculate the amount of child support that~~
8 a parent is obligated to pay on any of the parent's net income that exceeds \$150,000
9 per year, adjusted annually beginning in 2013, to reflect changes in the consumer
10 price index for all urban consumers, U.S. city average, as determined by the U.S.
11 department of labor.

****NOTE: Should this be expressed as a monthly amount instead since the support obligation is determined on monthly income?

****NOTE: I am advised by DCF that this particular provision may present a problem under federal law, in which case the state could stand to lose federal funding for child support enforcement activities.

12 **SECTION 11.** 767.511 (1j) (b) 4. of the statutes is created to read:

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

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

Insert 4-7

Insert 5-6

Insert 5-2

1 767.511 (1j) (c) The department shall promulgate rules related to how ~~net~~
 2 ~~income~~ shall be computed. The computation of net income under the rules shall
 3 reflect moneys actually available to the family to pay living expenses. If a parent is
 4 self-employed, there shall be a rebuttable presumption that a cash flow statement
 5 provided by a certified accountant on behalf of the parent establishes the parent's ~~net~~
 6 ~~income~~ for purposes of this subsection.

Insert 5-7

****NOTE: Are rules necessary since "net income" is defined as "gross income" minus federal and state taxes? Do you want to change the definition? What do you mean by "family" in this provision? Do you mean the two families after the divorce (payer's and payee's)? Should "family" be "parent" instead? What do you mean by "moneys actually available"?

7 SECTION 13. 767.511 (1m) (intro.) of the statutes is amended to read:

8 767.511 (1m) DEVIATION FROM STANDARD; FACTORS. (intro.) Upon request by a
 9 party, the court may modify the amount of child support payments determined under
 10 sub. (1j) if, after considering the following factors, the court finds by the greater
 11 weight of the credible evidence that use of the that percentage standard is unfair to
 12 the child or to any of the parties:

****NOTE: The instructions included the provision: "No court may award child support except in the conformity with this subsection." Does that mean that, instead of amending the above provision, you want to repeal it so that the court has no discretion to deviate from the new standard under sub. (1j)?

13 SECTION 14. 767.511 (1n) of the statutes is amended to read:

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

1 SECTION 15. 767.511 (2) (title) of the statutes is amended to read:

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

3 SECTION 16. 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 17. 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 ~~amounts~~ ^{funds} remaining in the account when the child support obligation
16 ends shall be used for postsecondary education expenses for the child. If the child
17 chooses not to pursue postsecondary education, the remaining funds shall be
18 returned to the parent who paid the child support into the account.

Insert 6-16

****NOTE: If both parents have physical placement for more than 25 percent of the time, the funds in the account would represent payments by both. Therefore, any remaining funds should really be returned to both parents in proportion to their child support obligation or their comparative child support obligation, as described in proposed sub. (1j) (b) 4.

****NOTE: Does the child have to decide to go on to school immediately? How long does the child have to decide? What if the child goes on one year and then wants to take some time off? What if the child wants to go to postsecondary school but the child and parents do not agree on the school? Who is in charge of the funds for that use? You may want to set some limits to avoid disputes.

19 SECTION 18. 767.55 (2) (c) of the statutes is amended to read:

1 767.55 (2) (c) If the court enters an order under par. (am), it shall order the
2 parent to pay child support equal to the amount determined by applying the
3 percentage standard established under s. ~~49.22 (9)~~ 767.511 (1j) (b) or equal to the
4 amount of child support that the parent was ordered to pay in the most recent
5 determination of support under this chapter. The child support obligation ordered
6 under this paragraph continues until the parent makes timely payment in full for
7 3 consecutive months or until the person participates in the program under s. 49.36
8 for 16 weeks, whichever occurs first. The court shall provide in its order that the
9 parent shall make child support payments calculated under s. 767.511 (1j) or (1m)
10 after the obligation to make payments ordered under this paragraph ceases.

11 **SECTION 19.** 767.553 (1) (a) [✓] of the statutes is amended to read:

12 767.553 (1) (a) An order for child or family support under this chapter may
13 provide for an annual adjustment in the amount to be paid based on a change in the
14 payer's income if the amount of child or family support is expressed in the order as
15 a fixed sum and based on the percentage standard ~~established by the department~~
16 under s. ~~49.22 (9)~~ 767.511 (1j) (b). No adjustment may be made under this section
17 unless the order provides for the adjustment.

18 **SECTION 20.** 767.553 (1) (b) [✓] of the statutes is amended to read:

19 767.553 (1) (b) An adjustment under this section may not be made more than
20 once in a year and shall be determined on the basis of the percentage standard
21 ~~established by the department~~ under s. ~~49.22 (9)~~ 767.511 (1j) (b).

22 **SECTION 21.** 767.59 (1f) (b) 4. [✓] of the statutes is amended to read:

23 767.59 (1f) (b) 4. ~~A~~ If the action is one to revise a judgment or order with respect
24 to child support ordered under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183
25 (4), 938.355 (2) (b) 4., 938.357 (5m) (a), or 938.363 (2), a difference between the

1 amount of child support ordered by the court to be paid by the payer and the amount
2 that the payer would have been required to pay based on the percentage standard
3 established by the department under s. 49.22 (9) if the court did not use ~~the that~~
4 percentage standard in determining the child support payments and did not provide
5 the information required under s. 46.10 (14) (d), 49.345 (14) (d), 301.12 (14) (d), or
6 767.511 (1n), whichever is appropriate.

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

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

15 **SECTION 23.** 767.59 (2) (a) of the statutes is amended to read:

16 767.59 (2) (a) Except as provided in par. (b) or (c), if the court revises a judgment
17 or order with respect to child support payments, it shall do so by using the percentage
18 standard established by the department under s. ~~49.22 (9)~~ 767.511 (1j) (b).

19 **SECTION 24.** 767.80 (7) of the statutes is amended to read:

20 767.80 (7) CLERK TO PROVIDE DOCUMENT. The clerk of court shall provide without
21 charge to each person bringing an action under this section, except to the state under
22 sub. (1) (g) or (6m), a document setting forth the percentage standard established by
23 ~~the department~~ under s. ~~49.22 (9)~~ 767.511 (1j) (b) and listing the factors that a court
24 may consider under s. 767.511 (1m).

25 **SECTION 25.** 767.813 (6) of the statutes is amended to read:

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

6 **SECTION 26.** 767.85 (2) of the statutes is amended to read:

7 767.85 (2) CONSIDERATIONS. Before making any temporary order under sub. (1),
8 the court shall consider those factors that the court is required to consider when
9 granting a final judgment on the same subject matter. If the court makes a
10 temporary child support order that deviates from the amount of support that would
11 be required by using the percentage standard ~~established by the department~~ under
12 s. ~~49.22 (9)~~ 767.511 (1j) (b), the court shall comply with the requirements of s. 767.511
13 (1n).

14 **SECTION 27. Nonstatutory provisions.**

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

Event 9-20

****NOTE: Is this what you want? This means that the change in the way child support is calculated under this bill may serve as a basis for changing existing orders that were calculated under previous law.

21 **SECTION 28. Initial applicability.**

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

4 (2) The treatment of sections 767.215 (1) (b) and (2m) (a) 2., 767.59 (1f) (b) 4.
5 and 5. and (2) (a), 767.80 (7), and 767.813 (6) of the statutes first applies to actions
6 or proceedings, including actions or proceedings to modify a judgment or order
7 previously granted, that are commenced on the effective date of this subsection.

8 ****NOTE: These are preliminary initial applicability provisions. See D-note.

(END)

*judgments or
and orders revising orders previously
granted*

D-note

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3501/P2ins
PJK:.....

INSERT 4-7

1 *with* When the court calculates a parent's child support obligation, unless the parties
2 agree otherwise in writing or orally in open court the court shall reduce the amount
3 determined under subd. 1. or 2. for the parent by the amount per month that the
4 parent currently pays for any of the following costs:

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

****NOTE: The comment to my question about this provision indicated that only what a parent is currently paying should be considered. Therefore, I did not include what a parent might be ordered to pay in health insurance premiums under s. 767.513 in this calculation. It is possible that a court might require an arrangement that is different from the current arrangement or even a different parent to cover the child on his or her insurance under s. 767.513, in which case the child support obligation, if it takes into account only what is currently paid, will not be calculated correctly. Do you want to address s. 767.513 for purposes of the reduction under this subdivision?

(END OF INSERT 4-7)

INSERT 5-2

8 *with* income actually available to a parent for the payment of child support

(END OF INSERT 5-2)

INSERT 5-6

9 *with* income actually available for the payment of child support

(END OF INSERT 5-6)

INSERT 5-7

****NOTE: I have modified this provision in the way suggested, by deleting the second sentence and substituting the suggested language for "net income." The problem with this provision, however, is that it does not explicitly relate to anything in the way that child support is established. There is nothing that tells a court what to do with this information. Do you want the amount of income actually available for the payment of

↓

Ins 5-7 cont'd

child support to be a factor for modifying support under s. 767.511 (1m)? Do you want the court to consider it every time a child support obligation is determined so that it would be part of the calculation under proposed s. 767.511 (1j) (b)? Do you want to change the definition of "net income" to be "the amount of gross income actually available to the parent for the payment of child support, less federal and state taxes"? All of these are options for how this information can be used.

(END OF INSERT 5-7)

INSERT 6-16

1 *WGT* Any funds remaining in the account after 10 years from the date on which the
2 child support obligation ends shall be returned to the parents in proportion to the
3 comparative child support obligation of each under sub. (1j) (b) 4. or, if only one
4 parent had a child support obligation, to that parent, or shall be distributed in
5 another manner specified by the court.

****NOTE: Rather than 10 years from when the child graduates from high school, I required the money to be returned 10 years after the child support obligation ends, in case the child does not graduate from high school.

****NOTE: I added that the court could specify another manner of distribution to account for the possibility that the court might modify child support under sub. (1m).

(END OF INSERT 6-16)

INSERT 9-20

6 *Q* (O) AGREEMENTS VOID. Any agreement entered into before the effective date of
7 this subsection by parties to an action affecting the family, as defined in section
8 767.001 (1) of the statutes, that relates to child support and that has not been
9 approved by a court before the effective date of this subsection is void unless the
10 parties reaffirm the agreement in writing or in open court on or after the effective
11 date of this subsection.

(END OF INSERT 9-20)

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

LRB-3501/P2dn
PJK:Y:....

- date -

sac J. med

I wasn't quite sure how to interpret the comment regarding my question about whether to retain s. 767.51 (1m), which allows the court to deviate from the standard if using it would be unfair to the child or any party, so I did not make any change in the draft. The comment was, "I think you want to require strict compliance. I think you'll find more support if you give courts some leeway..." These two statements seem contradictory. ✓

I don't know what you want to do about the two timing problems in this draft. If you really want DCF to promulgate rules on "income actually available for paying child support" and you want courts to use those rules in calculating child support, the rules will not be ready for many months to a year or more. You could authorize DCF to promulgate emergency rules before the permanent ones are effective, but that will still take some time. ✓

Clerks of court are required under ss. 767.215 (1) (b) and 767.80 (7) to provide every party filing a petition for child support a document that sets forth the percentage standard. They are required under ss. 767.215 (2m) (a) 2. and 767.813 (6) to provide every party initiating an action affecting the family a document that sets forth the percentage standard. This document is served with the summons. Even if you give clerks of court some time to have the new documents prepared, parties commencing actions or receiving summonses in the meantime would be given inaccurate information. Normally, the change in the law would be delayed for a bit so that the documents provided by the clerks would be accurate. ✓

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

LRB-3501/P2dn
PJK:sac&med:rs

January 10, 2012

I wasn't quite sure how to interpret the comment regarding my question about whether to retain s. 767.51 (1m), which allows the court to deviate from the standard if using it would be unfair to the child or any party, so I did not make any change in the draft. The comment was, "I think you want to require strict compliance. I think you'll find more support if you give courts some leeway...." These two statements seem contradictory.

I don't know what you want to do about the two timing problems in this draft. If you really want DCF to promulgate rules on "income actually available for paying child support" and you want courts to use those rules in calculating child support, the rules will not be ready for many months to a year or more. You could authorize DCF to promulgate emergency rules before the permanent ones are effective, but that will still take some time.

Clerks of court are required under ss. 767.215 (1) (b) and 767.80 (7) to provide every party filing a petition for child support a document that sets forth the percentage standard. They are required under ss. 767.215 (2m) (a) 2. and 767.813 (6) to provide every party initiating an action affecting the family a document that sets forth the percentage standard. This document is served with the summons. Even if you give clerks of court some time to have the new documents prepared, parties commencing actions or receiving summonses in the meantime would be given inaccurate information. Normally, the change in the law would be delayed for a bit so that the documents provided by the clerks would be accurate.

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Kahler, Pam

From: Kundert, Stephanie
Sent: Thursday, January 26, 2012 5:09 PM
To: Kahler, Pam
Subject: LRB 3501 update

Hi Pam ~

I hope this finds you well and having a good week thus far. I wanted to provide you with an update on the most recent requested changes to the language of LRB 3501, please.

On the Drafter's Note:

✓ First, in regards to your concerns about the contradictory comment, "I think you want to require strict compliance. I think you'll find more support if you give courts some leeway...", please disregard that comment.

Next, in regards to the two timing problems cited, how about "permitting the department to make additional rules as it deems necessary, and saying that old rules that conflict with the new statute are invalid as of the effective date?" It was suggested to me that part of the intent of this legislation is to over-ride the department's rule-making process and instead require that the statute (with its specific language) be used. As for authorizing DCF to promulgate emergency rules before the permanent ones are effective, it was suggested that the effective date be left as is, but "allow the courts 60 days to generate the document with the new rules, require anyone who files during that period to provide a copy of the new rules to the respondent as soon as they become available, and have any orders retroactive to the date the new law became effective."

point is rules reg no. income available

Under the Preliminary Draft:

✓ Within your NOTES, under Section 10, line 13c, you referenced s. 767.513. Consideration should include "what the parent currently pays and/or is ordered to pay for any of the following costs: ..."

✓ Under Section 12, line 4c, please add "for the purposes of determining a child support obligation pursuant to this chapter" after "computed."

~ In the NOTES portion under Section 12, we do want the amount of income actually available for the payment of child support to be a factor for modifying support under s. 767.511 (1m). We also do not want to change the definition of "net income" as it would not take business expenses into consideration.

Those are all the changes I have at this time. Please feel free to contact me if you have any questions or concerns. Thanks so much again for your assistance and patience on this bill.

Stephanie

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