



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2590/2
PJK:kmg:jf

2001 SENATE BILL 126

April 4, 2001 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform.

1 **AN ACT to repeal** 767.115 (1) (b) and 767.115 (4); **to renumber** 767.265 (6) (a);
2 **to renumber and amend** 767.045 (6), 767.115 (1) (a) and 767.115 (2); **to**
3 **amend** 20.921 (2) (a), 102.27 (2) (a), 767.07 (1), 767.11 (8) (c), 767.115 (title),
4 767.115 (1m), 767.115 (3), 767.24 (1m), 767.265 (4), 767.265 (6) (c), 814.615 (1)
5 (b) and 814.615 (3); and **to create** 767.045 (6) (b), 767.085 (2) (c), 767.085 (2m)
6 (a) 3., 767.115 (1) (a) 1., 767.115 (1) (a) 2., 767.115 (1) (a) 3., 767.115 (1) (a) 4.,
7 767.115 (1) (a) 5., 767.115 (1) (a) 6., 767.115 (1) (a) 7., 767.115 (1) (a) 8., 767.115
8 (1) (bm), 767.115 (2) (b), 767.115 (2) (c), 767.265 (3j) and 767.265 (6) (a) 2. of the
9 statutes; **relating to:** guardians ad litem, parent education, and parenting
10 plans in actions affecting the family.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the joint legislative council in the bill.

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

SENATE BILL 126

PREFATORY NOTE: This bill is recommended by the joint legislative council's special committee on guardians ad litem in actions affecting the family. The special committee was directed to study the appointment, role, supervision, training, and compensation of guardians ad litem (GALs), and to make legislative recommendations and petition the Wisconsin supreme court regarding proposed changes that are more appropriate for supreme court rules.

This bill does the following:

1. Clarifies the current statutory provision governing GAL compensation to provide that when parties are ordered to pay GAL compensation, they may be ordered to pay the GAL directly, pay into an escrow account from which the GAL will be paid, or reimburse the county if it has paid the GAL's compensation. Also, the bill allows the court to order the county to pay a GAL's compensation if either party is indigent.

2. Permits a court to order income withholding to collect GAL fees or fees for mediation and custody and physical placement studies.

3. Requires the clerk of court to provide parties with instructions for completing and filing a parenting plan when they file a petition or receive a summons for an action affecting the family. The bill also provides that a mediator must review the nonfinancial provisions of the parenting plan at the initial session of mediation.

The bill draft requires parties to file a parenting plan with the court within 60 days after the court waives the requirement that the parties attend mediation or within 60 days after the mediator notifies the court that the parties have not reached an agreement, unless the court orders otherwise.

4. Requires parties to an action affecting the family in which a minor child is involved to attend a parent education program that includes at least four hours of instruction or training on the effects of divorce on a child; working together in the best interest of the child; parenting or coparenting skills; the consequences of stipulating to a custody and placement arrangement and of resolution of disputes by the court; available mediation; current law relating to custody and physical placement; current law relating to GALs and the duties and responsibilities of a GAL; and the potential costs associated with an action affecting the family.

The bill provides that the court or family court commissioner (FCC) may elect not to order attendance at a parent education program or may order the parties to attend separate sessions of the program if the court or FCC determines that attending the program or attending the program with the other party would cause undue hardship or endanger the health or safety of one of the parties.

If attendance at the program is ordered, the court or FCC may require attendance as a condition to the granting of a final judgment or order in the action. In addition, the court or FCC may refuse to hear a custody or physical placement motion of a party who refuses to attend the program.

1 **SECTION 1.** 20.921 (2) (a) of the statutes is amended to read:

2 20.921 (2) (a) Whenever it becomes necessary in pursuance of any federal or
3 state law or court-ordered assignment of income under s. 46.10 (14) (e), 301.12 (14)
4 (e), 767.045 (6) (b), 767.23 (1) (L), 767.25 (4m) (c) ~~or~~, 767.265, or 814.615 (3) to make
5 deductions from the salaries of state officers or employees or employees of the
6 University of Wisconsin Hospitals and Clinics Authority, the state agency or
7 authority by which the officers or employees are employed is responsible for making

SENATE BILL 126

1 such deductions and paying over the total thereof for the purposes provided by the
2 laws or orders under which they were made.

NOTE: SECTION 1 amends current law relating to income-withholding orders applicable to state employees to include cross-references to the provisions amended in SECTIONS 4 and 34.

3 **SECTION 2.** 102.27 (2) (a) of the statutes is amended to read:

4 102.27 (2) (a) A benefit under this chapter is assignable under s. 46.10 (14) (e),
5 301.12 (14) (e), 767.045 (6) (b), 767.23 (1) (L), 767.25 (4m) (c) ~~or~~, 767.265 (1) or (2m),
6 or 814.615 (3).

NOTE: SECTION 2 amends current law relating to worker's compensation to provide that such claims may be assigned under the provisions contained in SECTIONS 4 and 34.

7 **SECTION 3.** 767.045 (6) of the statutes is renumbered 767.045 (6) (a) and
8 amended to read:

9 767.045 (6) (a) The guardian ad litem shall be compensated at a rate that the
10 court determines is reasonable. The court shall order either or both parties to pay
11 all or any part of the compensation of the guardian ad litem. In addition, upon motion
12 by the guardian ad litem, the court shall order either or both parties to pay the fee
13 for an expert witness used by the guardian ad litem, if the guardian ad litem shows
14 that the use of the expert is necessary to assist the guardian ad litem in performing
15 his or her functions or duties under this chapter. ~~If both parties are~~ The order may
16 direct either or both parties to pay the guardian ad litem directly, to place payments
17 in an escrow account in an amount estimated to be sufficient to pay the guardian ad
18 litem's compensation and expert witness fees, or to reimburse the county of venue for
19 any payments made by the county to the guardian ad litem. If either party is
20 indigent, the court may direct that the county of venue pay the compensation and
21 fees for that party. If the court orders a county to pay the compensation of the

SENATE BILL 126**SECTION 3**

1 guardian ad litem, the amount ordered may not exceed the compensation paid to
2 private attorneys under s. 977.08 (4m) (b).

3 (c) The court may order a separate judgment for the amount of the
4 reimbursement in favor of the county and against the party or parties responsible
5 for the reimbursement, or for the amount of the compensation and fees in favor of the
6 guardian ad litem and against the party or parties responsible for payment of the
7 compensation and fees.

8 (d) The court may enforce its orders under this subsection by means of its
9 contempt power.

NOTE: SECTION 3 provides that when parties are ordered to pay GAL compensation, they may be ordered to pay the GAL directly, pay into an escrow account from which the GAL will be paid, or reimburse the county if it has paid the GAL's compensation.

SECTION 3 also provides that if either party is indigent, the court may direct the county to pay the GAL compensation and fees for that party. Under current law, the court may order the county to pay only if both parties are indigent.

10 **SECTION 4.** 767.045 (6) (b) of the statutes is created to read:

11 767.045 (6) (b) In directing the manner of payment of compensation and fees
12 to the guardian ad litem or of reimbursement to the county, the court may order that
13 the payment amount be withheld from income and sent to the guardian ad litem or
14 that the reimbursement amount be withheld from income and sent to the county
15 treasurer, as provided in s. 767.265 (3j) (a). If the court orders income withholding
16 and assignment for payment of compensation and fees or for reimbursement, the
17 court shall send notice of assignment in the manner provided under s. 767.265 (2r).

NOTE: Under SECTION 4, the court may order that the amount of GAL compensation and fees may be withheld from a party's income and sent to the GAL directly or to the county treasurer to reimburse the county.

18 **SECTION 5.** 767.07 (1) of the statutes is amended to read:

SENATE BILL 126

1 767.07 (1) The requirements of this chapter as to residence and marriage
2 ~~assessment counseling~~ attendance at the educational program under s. 767.115 (1)
3 (a) have been complied with;

NOTE: SECTION 5 provides that a court must grant a judgment of divorce or legal separation if, along with other conditions, the requirements of ch. 767, stats., as to residence and attendance at the parent education program under s. 767.115 (1) (a), stats., have been complied with.

4 **SECTION 6.** 767.085 (2) (c) of the statutes is created to read:

5 767.085 (2) (c) The clerk of court shall provide, without charge, to each person
6 filing a petition instructions for completing and filing a parenting plan under s.
7 767.24 (1m).

8 **SECTION 7.** 767.085 (2m) (a) 3. of the statutes is created to read:

9 767.085 (2m) (a) 3. Shall be accompanied by instructions, provided without
10 charge by the clerk of court, for completing and filing a parenting plan under s.
11 767.24 (1m).

NOTE: SECTIONS 6 and 7 require the clerk of court to provide instructions for completing and filing a parenting plan to each person who files a petition or receives a summons initiating an action affecting the family.

12 **SECTION 8.** 767.11 (8) (c) of the statutes is amended to read:

13 767.11 (8) (c) The initial session under par. (a) shall be a screening and
14 evaluation mediation session to determine whether mediation is appropriate and
15 whether both parties wish to continue in mediation. At the initial session, the
16 mediator shall review with the parties the nonfinancial provisions that must be
17 included in the parenting plan under s. 767.24 (1m).

NOTE: SECTION 8 requires the mediator to review with the parties at the initial session of mediation the nonfinancial provisions that must be included in the parenting plan.

18 **SECTION 9.** 767.115 (title) of the statutes is amended to read:

SENATE BILL 126**SECTION 9**

1 **767.115 (title) Educational programs and classes program in actions**
2 **affecting the family.**

3 **SECTION 10.** 767.115 (1) (a) of the statutes is renumbered 767.115 (1) (a) (intro.)
4 and amended to read:

5 767.115 (1) (a) (intro.) ~~At any time during~~ During the pendency of an action
6 affecting the family in which a minor child is involved ~~and in which the court or~~
7 ~~family court commissioner determines that it is appropriate and in the best interest~~
8 ~~of the child, the court or family court commissioner, on its own motion, may shall~~
9 order the parties to attend a program, specified by the court or family court
10 commissioner ~~concerning the effects on a child of a dissolution of the marriage., that~~
11 provides instruction on or training in any of the following that the court or family
12 court commissioner determines is appropriate in the particular case:

13 **SECTION 11.** 767.115 (1) (a) 1. of the statutes is created to read:

14 767.115 (1) (a) 1. The effects of divorce on a child.

15 **SECTION 12.** 767.115 (1) (a) 2. of the statutes is created to read:

16 767.115 (1) (a) 2. Working together in the best interest of the child.

17 **SECTION 13.** 767.115 (1) (a) 3. of the statutes is created to read:

18 767.115 (1) (a) 3. Parenting or coparenting skills or both.

19 **SECTION 14.** 767.115 (1) (a) 4. of the statutes is created to read:

20 767.115 (1) (a) 4. The consequences of stipulating to a custody and placement
21 arrangement and of resolution of disputes by the court.

22 **SECTION 15.** 767.115 (1) (a) 5. of the statutes is created to read:

23 767.115 (1) (a) 5. Available mediation under s. 767.11.

24 **SECTION 16.** 767.115 (1) (a) 6. of the statutes is created to read:

25 767.115 (1) (a) 6. The provisions of s. 767.24.

SENATE BILL 126

1 **SECTION 17.** 767.115 (1) (a) 7. of the statutes is created to read:

2 767.115 (1) (a) 7. The provisions of s. 767.045 and the duties and
3 responsibilities of a guardian ad litem in representing the best interest of a child.

4 **SECTION 18.** 767.115 (1) (a) 8. of the statutes is created to read:

5 767.115 (1) (a) 8. The potential costs of an action affecting the family, including
6 all of the following:

- 7 a. The cost of representation by an attorney.
- 8 b. Mediation fees.
- 9 c. Legal custody and physical placement study fees under s. 814.615.
- 10 d. Guardian ad litem fees and expenses and fees and expenses ordered under
11 s. 767.045 (6) of any expert witness used to assist the guardian ad litem.
- 12 e. The costs of mental or physical examinations of a party under s. 804.10, if
13 applicable, including the costs for preparing a written report or court testimony.
- 14 f. Any other costs, fees, or expenses that may be incurred during litigation.

15 **SECTION 19.** 767.115 (1) (b) of the statutes is repealed.

NOTE: Under current law, at any time when an action affecting the family in which a minor child is involved is pending, and in which the court or FCC determines that it is appropriate and in the best interests of the child, the court or FCC may order the parties to attend a program concerning the effects on a child of a dissolution of the marriage.

SECTIONS 9 to 19 require the court or FCC to order the parties to an action affecting the family in which a minor child is involved to attend a program that provides instruction on or training in any of the following that the court or FCC determines is appropriate in the particular case:

- a. The effects of divorce on a child.
- b. Working together in the best interest of the child.
- c. Parenting or coparenting skills, or both.
- d. The consequences of stipulating to a custody and placement arrangement and of resolution of disputes by the court.
- e. Available mediation under s. 767.11, stats.
- f. Current law relating to child custody and physical placement.
- g. Current law relating to GALs and the duties and responsibilities of a GAL in representing the best interest of a child.
- h. The potential costs of an action affecting the family, including: representation by an attorney; mediation fees; custody and physical placement study fees; fees and expenses of a GAL and any expert witness ordered to assist the GAL; the costs of mental

SENATE BILL 126**SECTION 19**

or physical examinations of a party; and any other costs, fees, or expenses that may be incurred during litigation.

1 **SECTION 20.** 767.115 (1) (bm) of the statutes is created to read:

2 767.115 (1) (bm) In the discretion of the court or family court commissioner, the
3 parties may not be required to attend a program under par. (a) or may be required
4 to attend separate sessions of the program if the court or family court commissioner
5 finds that attending such a program or attending such a program with the other
6 party would cause undue hardship or endanger the health or safety of one of the
7 parties. In making a determination of whether attending a program under par. (a)
8 or attending the program with the other party would endanger the health or safety
9 of one of the parties, the court or family court commissioner shall consider the
10 following:

11 1. Evidence that a party engaged in abuse, as defined in s. 813.122 (1) (a), of
12 the child, as defined in s. 48.02 (2).

13 2. Evidence of interspousal battery, as described under s. 940.19 or 940.20 (1m),
14 or domestic abuse, as defined in s. 813.12 (1) (a).

15 3. Evidence that either party has a significant problem with alcohol or other
16 drug abuse.

17 4. Any other evidence indicating that a party's health or safety will be
18 endangered by attending a program or by attending the program with the other
19 party.

NOTE: Under SECTION 20, the parties to an action affecting the family may not be required to attend the parent education program or may be required to attend separate sessions of the program if the court or FCC finds that attending such a program or attending such a program with the other party would cause undue hardship or endanger the health or safety of one of the parties. In making this determination, the court or FCC must consider evidence that a party engaged in child abuse; evidence of spousal battery or domestic abuse; evidence that either party has a significant problem with alcohol or other drug abuse; or any other evidence that a party's health or safety will be endangered by attending a program or by attending the program with the other party.

SENATE BILL 126

1 **SECTION 21.** 767.115 (1m) of the statutes is amended to read:

2 767.115 **(1m)** A program under sub. (1) (a) shall be educational rather than
3 therapeutic in nature and ~~may not exceed a total of~~ shall include at least 4 hours in
4 length of instruction or training. The parties shall be responsible for the cost, if any,
5 of attendance at the program. The court or family court commissioner may
6 specifically assign responsibility for payment of any cost. No facts or information
7 obtained in the course of the program, and no report resulting from the program, is
8 admissible in any action or proceeding.

NOTE: Under current law, the parent education program may not exceed four hours
in length. SECTION 21 amends current law to provide that the program must include at
least four hours of instruction or training.

9 **SECTION 22.** 767.115 (2) of the statutes is renumbered 767.115 (2) (a) and
10 amended to read:

11 767.115 **(2)** (a) ~~Notwithstanding s. 767.07~~ Except as provided in par. (b), the
12 court or family court commissioner may require the parties to an action affecting the
13 family in which a minor child is involved to attend a program under sub. (1) (a) as
14 a condition to the granting of a final judgment or order in the action affecting the
15 family ~~that is pending before the court or family court commissioner~~.

16 **SECTION 23.** 767.115 (2) (b) of the statutes is created to read:

17 767.115 **(2)** (b) If the parties were not ordered to attend a program under sub.
18 (1) (a) because the court or family court commissioner found under sub. (1) (bm) that
19 attending would cause undue hardship or endanger the health or safety of one of the
20 parties, the court or family court commissioner may not condition the granting of the
21 final judgment or order in the action affecting the family on attending a program.

NOTE: Under SECTIONS 22 and 23, a court or FCC may require the parties to an
action affecting the family in which a minor child is involved to attend a parent education
program as a condition to the granting of a final judgment unless the parties were not
ordered to attend a parent education program.

SENATE BILL 126**SECTION 24**

1 **SECTION 24.** 767.115 (2) (c) of the statutes is created to read:

2 767.115 (2) (c) The court or family court commissioner may refuse to hear a
3 custody or physical placement motion of a party who refuses to attend a program
4 ordered under sub. (1) (a).

NOTE: SECTION 24 provides that a court or FCC may refuse to hear a custody or physical placement motion of a party who is ordered and refuses to attend a parent education program.

5 **SECTION 25.** 767.115 (3) of the statutes is amended to read:

6 767.115 (3) A party who fails to attend a program ordered under sub. (1) (a) or
7 to pay costs specifically ordered under sub. (1m) may be proceeded against under ch.
8 785 for contempt of court.

NOTE: SECTION 25 conforms a cross-reference with a change made in the bill.

9 **SECTION 26.** 767.115 (4) of the statutes is repealed.

NOTE: SECTION 26 repeals a provision of current law that permits a court or FCC to order parties to a pending divorce or paternity action to attend a class that addresses such issues as child development, family dynamics, how parental separation affects a child's development, and what parents can do to make raising a child in a separated situation less stressful for the child, because parties to these actions will be required to attend such a class under SECTIONS 9 to 19.

10 **SECTION 27.** 767.24 (1m) of the statutes is amended to read:

11 767.24 (1m) PARENTING PLAN. In an action for annulment, divorce, or legal
12 separation, an action to determine paternity, or an action under s. 767.02 (1) (e) or
13 767.62 (3) in which legal custody or physical placement is contested, a party seeking
14 sole or joint legal custody or periods of physical placement shall file a parenting plan
15 with the court ~~before any pretrial conference~~ within 60 days after the court waives
16 the requirement to attend mediation or within 60 days after the mediator notifies the
17 court under s. 767.11 (12) (b) that the parties have not reached an agreement, unless
18 the court orders otherwise. Except for cause shown, a party required to file a
19 parenting plan under this subsection who does not timely file a parenting plan

SENATE BILL 126

1 waives the right to object to the other party's parenting plan. A parenting plan shall
2 provide information about the following questions:

NOTE: SECTION 27 requires parties to file a parenting plan within 60 days after the court waives the requirement to attend mediation or within 60 days after the mediator notifies the court that the parties have not reached an agreement, unless the court orders otherwise. Under current law, the parenting plan must be filed before any pretrial conference.

3 **SECTION 28.** 767.265 (3j) of the statutes is created to read:

4 767.265 (3j) (a) A person who receives notice of assignment under s. 767.045
5 (6) (b) shall withhold the amount specified in the notice from any money that that
6 person pays to the payer later than one week after receipt of notice of assignment.
7 Within 5 days after the day on which the person pays money to the payer, the person
8 shall send the amount withheld to the guardian ad litem or county treasurer
9 specified in the notice.

10 (b) A person who receives notice of assignment under s. 814.615 (3) shall
11 withhold the amount specified in the notice from any money that that person pays
12 to the payer later than one week after receipt of notice of assignment. Within 5 days
13 after the day on which the person pays money to the payer, the person shall send the
14 amount withheld to the county treasurer specified in the notice.

15 (c) Section 241.09 does not apply to assignments under this subsection.

NOTE: SECTION 28 provides that an employer or other person who receives notice of an income-withholding order as provided under SECTIONS 4 and 34 must withhold the amount specified from any money paid to the person subject to the order later than one week after receiving the notice. The money must then be sent to the GAL or county treasurer within five days.

16 **SECTION 29.** 767.265 (4) of the statutes is amended to read:

17 767.265 (4) A withholding assignment or order under this section or s. 767.045
18 (6) (b), 767.23 (1) (L) ~~or~~, 767.25 (4m) (c), or 814.615 (3) has priority over any other
19 assignment, garnishment, or similar legal process under state law.

SENATE BILL 126**SECTION 29**

NOTE: SECTION 29 provides that, along with income withholding to pay child support, an income-withholding order under Section 4 or 34 has priority over any other assignment, garnishment, or similar legal process.

1 **SECTION 30.** 767.265 (6) (a) of the statutes is renumbered 767.265 (6) (a) 1.

2 **SECTION 31.** 767.265 (6) (a) 2. of the statutes is created to read:

3 767.265 (6) (a) 2. Except as provided in sub. (3m), if after receipt of notice of
4 assignment the person from whom the payer receives money fails to withhold the
5 money or send the money to the guardian ad litem or county treasurer as provided
6 in sub. (3j), the person may be proceeded against under the principal action under
7 ch. 785 for contempt of court or may be proceeded against under ch. 778 and be
8 required to forfeit not less than \$50 nor more than an amount, if the amount exceeds
9 \$50, that is equal to 1% of the amount not withheld or sent.

NOTE: Section 31 creates penalties for failure to withhold income as ordered under SECTION 4 or 34.

10 **SECTION 32.** 767.265 (6) (c) of the statutes is amended to read:

11 767.265 (6) (c) No employer may use an assignment under this section or s.
12 767.045 (6) (b), 767.23 (1) (L) or, 767.25 (4m) (c), or 814.615 (3) as a basis for the denial
13 of employment to a person, the discharge of an employee, or any disciplinary action
14 against an employee. An employer who denies employment or discharges or
15 disciplines an employee in violation of this paragraph may be fined not more than
16 \$500 and may be required to make full restitution to the aggrieved person, including
17 reinstatement and back pay. Except as provided in this paragraph, restitution shall
18 be in accordance with s. 973.20. An aggrieved person may apply to the district
19 attorney or to the department for enforcement of this paragraph.

NOTE: SECTION 32 provides that an employer may not use an income-withholding order under SECTION 4 or 34 as a basis for denying a person employment, discharging an employee, or any disciplinary action against an employee.

20 **SECTION 33.** 814.615 (1) (b) of the statutes is amended to read:

SENATE BILL 126

1 814.615 (1) (b) The Except as provided in sub. (3), the county shall determine
2 when and how to collect the fees under par. (a). Subject to sub. (3), the county shall
3 reduce the fees in accordance with the parties' ability to pay or provide the services
4 without payment of the fees if both parties are unable to pay.

5 **SECTION 34.** 814.615 (3) of the statutes is amended to read:

6 814.615 (3) The court or family court commissioner shall direct either or both
7 parties to pay any applicable fee under this section. In directing the manner of
8 payment of the fees, the court may order that payment be withheld from income and
9 sent to the county treasurer, as provided in s. 767.265 (3j) (b). If the court orders
10 income withholding and assignment for the fees, the court shall send notice of
11 assignment in the manner provided under s. 767.265 (2r). If either or both parties
12 are unable to pay, the court shall grant a separate judgment for the amount of the
13 fees in favor of the county and against the party or parties responsible for the fees.

NOTE: This SECTION permits the court or family court commissioner to order income
withholding for one or both of the parties in order to collect fees for mediation or a custody
and placement study.

14 **SECTION 35. Initial applicability.**

15 (1) This act first applies to actions commenced on the effective date of this
16 subsection, including actions to enforce or modify a judgment or order that was
17 granted before the effective date of this subsection.

NOTE: SECTION 35 provides that the provisions of the act first apply to actions
affecting the family commenced on the effective date of the act.

18

(END)