



## 1995 SENATE BILL 225

June 1, 1995 - Introduced by Senators LEEAN, ELLIS and RUDE, by request of Governor Tommy G. Thompson. Referred to Committee on Judiciary.

1     **AN ACT to amend** 767.081 (2) (intro.), 767.265 (1), 767.51 (6) and 808.075 (4) (d)  
2             4.; and **to create** 767.075 (1) (cm), 767.323 and 814.61 (7) (d) of the statutes;  
3             **relating to:** revision of child support by affidavit.

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### *Analysis by the Legislative Reference Bureau*

Under current law, the payee or payer under a judgment or order providing for child or family support may file a petition, motion or order to show cause with the court to have the amount of support revised. The court or family court commissioner may not revise the amount of support unless the person requesting the change can show a substantial change in circumstances. A number of conditions constitute a rebuttable presumption of a substantial change in circumstances. Among them are: the commencement of receipt of aid to families with dependent children (AFDC) since the entry of the last order; the expiration of 33 months since the entry of the last order; a difference between the amount of support required under the order and the amount that would be required under the percentage standard established by the department of health and social services (DHSS) if the court did not specify in the order the reason for the deviation. (Under the percentage standard, a parent who is ordered to pay child support must pay a given percentage of his or her gross income as support. The percentage depends on the number of children to be supported. The support may be expressed as the percentage of income or it may be expressed as a fixed amount that is based on the percentage or it may be expressed as a combination of both in the alternative.) Other conditions specified in current law, such as a change in the needs of the child or a change in the payer's earning capacity, may constitute a substantial change in circumstances, although they do not constitute a rebuttable presumption of one.

If the court or family court commissioner revises child or family support, it must do so by using the percentage standard. The court or family court commissioner may, however, deviate from the amount that would result from use of the percentage standard if, on the basis of various factors, the court or family court commissioner

determines that use of the percentage standard would be unfair to the child or to either of the parties. The court or family court commissioner may decide whether to revise the child support amount at a hearing, or the parties may agree to a revised amount for approval by the court or family court commissioner. Any revised amount of support is an assignment of income, just as is any original order for support.

This bill provides that a payee under a judgment or order for child or family support may file an affidavit with the court for a revision of the support, unless the current judgment or order is based on the percentage standard and is expressed as a percentage of income or unless less than 33 months have elapsed since the entry of the current judgment or order. The affidavit must include: facts supporting a reasonable basis for a substantial change in circumstances; the proposed amount of support, which must be determined by using the percentage standard; the number of children to be supported under the revised judgment or order; the payer's current income or earning capacity, if the proposed amount of support is expressed as a fixed sum or as a combination of a percentage and a fixed sum in the alternative. The payee must serve the affidavit on the payer, or send it by registered or certified mail to the payer's last-known address. Upon proof of service on the payer, the court must send notice to the payer that informs the payer that the court or family court commissioner may revise the support amount as requested in the affidavit unless the payer requests a hearing within 30 days.

If the payer does not timely request a hearing, the court or family court commissioner may revise the support amount as requested in the affidavit if the affidavit complies with all of the requirements under the statute and demonstrates to the satisfaction of the court or family court commissioner that the revision in support is determined in a manner consistent with the statute under current law that provides for revision of support. If the support is revised, the court must send the revised order to the payer along with notice that an assignment is in effect for the new amount of support and that the payer may within 10 days request a hearing on whether the assignment should be withdrawn. If the payer does timely request a hearing, the court or family court commissioner must hold a hearing and determine, in accordance with the statute in current law that provides for revision of support, whether the support should be revised.

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

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

- 1           **SECTION 1.** 767.075 (1) (cm) of the statutes is created to read:  
2           767.075 (1) (cm) Whenever aid under s. 49.19 or 49.45 has, in the past, been  
3 provided to a dependent child and the child's family is eligible for continuing child  
4 support services under 45 CFR 302.33.

1           **SECTION 2.** 767.081 (2) (intro.) of the statutes is amended to read:

2           767.081 (2) (intro.) Upon request of a party to an action affecting the family,  
3 including a revision of judgment or order under s. 767.32, 767.323 or 767.325:

4           **SECTION 3.** 767.265 (1) of the statutes is amended to read:

5           767.265 (1) Each order for child support under this chapter, for maintenance  
6 payments under s. 767.23 or 767.26, for family support under this chapter, for costs  
7 ordered under s. 767.51 (3), for support by a spouse under s. 767.02 (1) (f) or for  
8 maintenance payments under s. 767.02 (1) (g), each order for a revision in a judgment  
9 or order with respect to child support, maintenance or family support payments  
10 under s. 767.32, each order for a revision in a judgment or order with respect to child  
11 support or family support payments under s. 767.323, each stipulation approved by  
12 the court or the family court commissioner for child support under this chapter and  
13 each order for child or spousal support entered under s. 948.22 (7) constitutes an  
14 assignment of all commissions, earnings, salaries, wages, pension benefits, benefits  
15 under ch. 102 or 108, lottery prizes that are payable in instalments and other money  
16 due or to be due in the future to the clerk of the court where the action is filed. The  
17 assignment shall be for an amount sufficient to ensure payment under the order or  
18 stipulation and to pay any arrearages due at a periodic rate not to exceed 50% of the  
19 amount of support due under the order or stipulation so long as the addition of the  
20 amount toward arrearages does not leave the party at an income below the poverty  
21 line established under 42 USC 9902 (2).

22           **SECTION 4.** 767.323 of the statutes is created to read:

23           **767.323 Affidavit for revision of child support. (1)** In this section, “payee”  
24 includes the state or its designee under s. 59.07 (97) if the state is a real party in  
25 interest under s. 767.075 (1).

1           **(2)** (a) The payee under a judgment or order for child support under this  
2 chapter, s. 948.22 (7) or ch. 769 or a judgment or order for family support under this  
3 chapter may file in the action in which the judgment or order was entered an affidavit  
4 to revise the amount of support. An affidavit under this subsection shall include all  
5 of the following:

6           1. The amount of child or family support that the payer is required to pay under  
7 the current judgment or order and the date on which the current judgment or order  
8 was entered.

9           2. The facts supporting a reasonable basis for a substantial change in  
10 circumstances that justifies a revision of the judgment or order for support. Any of  
11 the conditions listed in s. 767.32 (1) (b) create a rebuttable presumption of a  
12 substantial change in circumstances and any of the conditions listed in s. 767.32 (1)  
13 (c) may constitute a substantial change in circumstances.

14           3. The proposed amount of child or family support, expressed as a percentage  
15 of parental income or as a fixed sum, or as a combination of both in the alternative  
16 by requiring payment of the greater or lesser of either a percentage of parental  
17 income or a fixed sum. Any proposed amount must be determined by using the  
18 percentage standard established by the department of health and social services  
19 under s. 46.25 (9) (a).

20           4. The number of children entitled to support under the revised judgment or  
21 order and any special circumstances that the court must consider in order to  
22 determine whether the percentage standard was accurately applied in obtaining the  
23 proposed amount under subd. 3.

24           5. If the proposed amount under subd. 3. is expressed as a fixed sum or as a  
25 combination of a percentage of parental income and a fixed sum in the alternative,

1 the payer's current income or earning capacity and the facts supporting a reasonable  
2 basis for determining that income or earning capacity.

3 (b) Paragraph (a) does not apply if any of the following applies:

4 1. The current judgment or order for child or family support is expressed as a  
5 percentage of parental income and was determined by using the percentage standard  
6 established by the department of health and social services under s. 46.25 (9) (a).

7 2. Less than 33 months have elapsed since the date of the entry of the current  
8 judgment or order for child or family support, which may be a revision of a judgment  
9 or order under this section or s. 767.32.

10 **(3)** Not later than 60 days after filing an affidavit under sub. (2), the payee shall  
11 serve the affidavit on the payer in the manner provided in s. 801.11 (1) (a) or (b) or  
12 by sending the affidavit by registered or certified mail to the last-known address of  
13 the payer. After the payee files with the court a proof of service on the payer, the court  
14 shall send a notice to the payer by regular, registered or certified mail to the payer's  
15 last-known address. The notice shall provide that, unless the payer requests a  
16 hearing to dispute the revision or the amount of the revision not later than 30 days  
17 after the date of the notice, the court or family court commissioner may revise the  
18 amount of child or family support as requested in the affidavit and may provide  
19 notice of assignment under s. 767.265. The notice shall include the address to which  
20 the request for hearing must be mailed or delivered in order to schedule a hearing.

21 **(4)** If the court sends the notice under sub. (3) and the payer fails to make a  
22 timely request for a hearing, the court or family court commissioner, if the affidavit  
23 complies with the requirements under sub. (2) and demonstrates to the satisfaction  
24 of the court or family court commissioner that the revision of child or family support  
25 is determined in a manner consistent with s. 767.32, may revise the amount of child

1 or family support under the judgment or order as proposed in the affidavit. If the  
2 court or family court commissioner revises the amount of child or family support, the  
3 court shall enter the revised judgment or order and send notice of assignment under  
4 s. 767.265 that replaces any assignment in effect for child or family support under  
5 the last judgment or order. The court shall send the revised judgment or order to the  
6 payer's last-known address and shall inform the payer that an assignment is in  
7 effect and that the payer may, within a 10-day period, by motion request a hearing  
8 on the issue of whether the assignment should be withdrawn.

9 (5) If the payer makes a timely request for a hearing, the court or family court  
10 commissioner shall hold a hearing to determine, in accordance with s. 767.32,  
11 whether to revise the amount of child or family support under the judgment or order  
12 and, if so, in what amount. If the court or family court commissioner revises the  
13 amount of child or family support, the court shall enter the revised judgment or order  
14 and send notice of assignment under s. 767.265 that replaces any assignment in  
15 effect for child or family support under the last judgment or order.

16 (6) Section 814.025 applies to the filing of an affidavit under this section.

17 **SECTION 5.** 767.51 (6) of the statutes is amended to read:

18 767.51 (6) Sections 767.24, 767.245, 767.263, 767.265, 767.267, 767.29,  
19 767.293, 767.30, 767.305, 767.31, 767.32, 767.323 and 767.325, where applicable,  
20 shall apply to a judgment or order under this section.

21 **SECTION 6.** 808.075 (4) (d) 4. of the statutes is amended to read:

22 808.075 (4) (d) 4. Revision of judgment or order for child support, maintenance  
23 payments or family support payments under s. 767.32 or 767.51 or revision of  
24 judgment or order for child support or family support payments under s. 767.323.

25 **SECTION 7.** 814.61 (7) (d) of the statutes is created to read:

1           814.61 **(7)** (d) Paragraph (a) does not apply to the filing of an affidavit under  
2   s. 767.323.

3   **(END)**