



1997 ASSEMBLY BILL 584

October 29, 1997 - Introduced by Representatives HARSDORF, WARD, MUSSER, SPRINGER, F. LASEE, OLSEN, SERATTI and POWERS, cosponsored by Senator CLAUSING. Referred to Committee on Children and Families.

1 **AN ACT** *to renumber and amend* 767.33 (1) and 767.33 (2); *to amend* 767.33
2 (title), 767.33 (1m) (a), 767.33 (1m) (b), 767.51 (6) and 808.075 (4) (d) 3.; and *to*
3 **create** 49.22 (9m), 767.33 (1) (b), 767.33 (2) (d), 767.33 (3) and 808.075 (4) (d)
4 3m. of the statutes; **relating to:** adjustments in child support and family
5 support orders based on a change in the cost of living or a change in the obligor's
6 income and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, certain support orders may provide for an adjustment in the amount to be paid based on a change in the obligor's income. Those orders include temporary orders for child support in any action affecting the family and final orders for child support when the court enters a judgement of annulment, divorce or legal separation, enters an order or judgment in an action for child support or family support or in an action to compel support or approves a stipulation for child support by the parties in an action for annulment, divorce or legal separation. Current law, however, permits an adjustment in the amount of child support or family support to be paid based on a change in the obligor's income only when the payment is expressed as a fixed sum rather than as a percentage of parental income or in the alternative as the greater or lesser of either a percentage of parental income or a fixed sum, in which case only the fixed sum alternative may be adjusted based on a change in the obligor's income.

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Under current law, to adjust the amount of child support or family support to be paid based on a change in the obligor's income, the person receiving the payments must apply to the family court commissioner for the adjustment. The adjustment then becomes effective unless the obligor requests a hearing and, at the hearing, establishes that extraordinary circumstances beyond his or her control prevent fulfillment of the adjusted support obligation. Currently, an adjustment in the amount of child support or family support to be paid based on a change in the obligor's income may be made only once a year.

This bill requires any child support or family support order in which payment is expressed as a fixed sum or in the alternative as the greater or lesser of either a percentage of parental income or a fixed sum to provide for an adjustment in the amount to be paid based on a change in the cost of living, unless the order contains a provision that has the same effect as a cost-of-living adjustment provision or the parties agree in writing to waive cost-of-living adjustments. Under the bill, those orders include, in addition to the orders that under current law may provide for an adjustment in the amount to be paid based on a change in the obligor's income, child support ordered in a paternity determination, child support ordered in a criminal failure to support proceeding and child support ordered when a child is placed outside of his or her home in a proceeding under the children's code or the juvenile justice code.

Under the bill, to adjust the amount of child support or family support to be paid based on a change in the cost of living, the person receiving the payments or, if an assignment of that support has been made to the state because the child or person receiving payments is receiving aid under the foster care, kinship care, Wisconsin works (W-2), aid to families with dependent children (AFDC) or medical assistance (MA) programs, the department of workforce development (DWD), a county department of human services or social services (county department) or a county child support agency must apply to the family court commissioner for the adjustment. The adjustment then becomes effective unless the obligor requests a hearing and, at the hearing, establishes that an insufficient increase in his or her income or extraordinary circumstances beyond his or her control prevent fulfillment of the adjusted support obligation. Under the bill, an adjustment in the amount of child support or family support to be paid based on a change in the cost of living may be made not more than once every 2 years. The bill also requires the court, in any action to enforce or revise a child support or family support order to which this bill applies that was entered before this bill takes effect and that does not provide for a cost-of-living adjustment, to include in its enforcement or revision order a cost-of-living adjustment provision, unless the order already has such a provision or a provision that has the same effect as a cost-of-living adjustment provision.

Finally, the bill expands the types of child support orders that may provide for an adjustment in the amount to be paid based on a change in the obligor's income to include child support ordered in a paternity determination, child support ordered in a criminal failure to support proceeding and child support ordered when a child is placed outside of his or her home in a proceeding under the children's code or the juvenile justice code. The bill also permits DWD, a county department or a county

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child support agency to apply for an adjustment in the amount of child support to be paid based on a change in the obligor's income when that support has been assigned to the state because the child or person receiving those payments is receiving aid under the foster care, kinship care, W-2, AFDC or MA programs.

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

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

1 **SECTION 1.** 49.22 (9m) of the statutes is created to read:

2 49.22 **(9m)** The department shall promulgate rules that provide cost-of-living
3 indices for courts to use in ordering adjustments in child support under s. 767.33 (1)
4 (b). Those indices may include the consumer price index for all urban consumers,
5 U.S. city average, as determined by the U.S. bureau of labor statistics or any other
6 consumer price index published by the U.S. bureau of labor statistics that the
7 department finds appropriate.

8 **SECTION 2.** 767.33 (title) of the statutes is amended to read:

9 **767.33** (title) ~~Annual adjustments~~ **Adjustments in child support order**
10 **and family support orders.**

11 **SECTION 3.** 767.33 (1) of the statutes is renumbered 767.33 (1) (a) and amended
12 to read:

13 767.33 **(1)** (a) An order for child support under ~~s. 767.23 or 767.25~~ this chapter
14 or under s. 48.355 (2) (b) 4., 48.357 (5m), 48.363 (2), 938.183 (2), 938.355 (2) (b) 4.,
15 938.357 (5m), 938.363 (2) or 948.22 (7) or for family support under s. 767.261 to which
16 this section applies under sub. (1m) may provide for an adjustment in the amount
17 to be paid based on a change in the obligor's income, as reported on the disclosure
18 form under s. 767.27 (2m) or as disclosed under s. 49.22 (2m) to the department or
19 county child and spousal support agency under s. ~~49.22 (2m)~~. ~~The order may~~ 59.53

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1 (5). An order for child support or family support that provides for an adjustment
2 under this paragraph shall specify the date on which the annual adjustment becomes
3 effective. No adjustment may be made under this paragraph unless the order so
4 provides and the party receiving payments or the department, a county department
5 under s. 46.215, 46.22 or 46.23 or a county child support agency under s. 59.53 (5)
6 applies for an the adjustment as provided in sub. (2) (a). An adjustment under this
7 ~~section~~ paragraph may be made ~~only~~ not more than once in any year. an adjustment
8 made under this paragraph shall be compounded.

9 **SECTION 4.** 767.33 (1) (b) of the statutes is created to read:

10 767.33 **(1)** (b) An order for child support under this chapter or under s. 48.355
11 (2) (b) 4., 48.357 (5m), 48.363 (2), 938.183 (2), 938.355 (2) (b) 4., 938.357 (5m), 938.363
12 (2) or 948.22 (7) or for family support under s. 767.261 to which this section applies
13 under sub. (1m) shall provide for an adjustment in the amount to be paid based on
14 a change in the cost of living, unless the order contains a provision that has the same
15 effect as a cost-of-living adjustment provision or the parties agree in writing to
16 waive cost-of-living adjustments. An order for child support or family support that
17 provides for a cost-of-living adjustment under this paragraph shall specify the
18 cost-of-living index provided by the department under s. 49.22 (9m) to be applied
19 and the date on which the adjustment becomes effective. No adjustment may be
20 made under this paragraph unless the order so provides and the party receiving
21 payments or the department, a county department under s. 46.215, 46.22 or 46.23
22 or a county child support agency under s. 59.53 (5) applies for the adjustment as
23 provided in sub. (2) (a). An adjustment under this paragraph may be made not more
24 than once very 2 years. An adjustment under this paragraph shall be compounded.

25 **SECTION 5.** 767.33 (1m) (a) of the statutes is amended to read:

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1 767.33 (1m) (a) Except as provided in par. (b), this section applies only to an
2 order ~~under s. 767.23 or 767.25~~ for child support or family support in which payment
3 is expressed as a fixed sum. ~~It~~ This section does not apply to ~~such an order~~ for child
4 support or family support in which payment is expressed as a percentage of parental
5 income.

6 **SECTION 6.** 767.33 (1m) (b) of the statutes is amended to read:

7 767.33 (1m) (b) If payment is expressed in an order ~~under s. 767.23 or 767.25~~
8 for child support or family support in the alternative as the greater or lesser of either
9 a percentage of parental income or a fixed sum, this section applies only to the fixed
10 sum alternative under the order.

11 **SECTION 7.** 767.33 (2) of the statutes is renumbered 767.33 (2) (a) and amended
12 to read:

13 767.33 (2) (a) An adjustment under sub. (1) (a) or (b) may be made only if the
14 party receiving payments or, if an assignment has been made under s. 46.261, 48.57
15 (3m) (b) 2., 49.153 (3), 49.19 (4) (h) or 49.45 (19) or if the party receiving payments
16 or his or her minor child is receiving aid under s. 48.57 or ch. 49, the department, a
17 county department under s. 46.215, 46.22 or 46.23 or a county child support agency
18 under s. 59.53 (5) applies to the family court commissioner for the adjustment. If the
19 ~~order specifies the date on which the annual adjustment becomes effective, the~~ The
20 application to the family court commissioner must be made at least 20 days before
21 the effective date of the adjustment. The family court commissioner, upon
22 application ~~by the party receiving payments~~ under this paragraph, shall send a
23 notice by certified mail to the last-known address of the obligor. The notice shall be
24 postmarked no later than 10 days after the date on which the application was filed
25 and shall inform the obligor ~~that an~~ of the amounts of the adjustment in payments

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1 ~~and that the adjustment~~ will become effective on the date specified in the order or,
2 if no date is specified in the order, 10 days after the date on which the notice is sent.

3 (b) The obligor may, after receipt of notice and before the effective date of the
4 adjustment, request a hearing on the issue of whether the adjustment should take
5 effect, in which case the adjustment shall be held in abeyance pending the outcome
6 of the hearing. The family court commissioner shall hold a hearing requested under
7 this subsection ~~paragraph~~ within 10 working days after the request.

8 (c) If at the hearing on an adjustment under sub. (1) (a) the obligor establishes
9 that extraordinary circumstances beyond his or her control prevent fulfillment of the
10 adjusted ~~child support~~ obligation, the family court commissioner may direct that all
11 or part of the adjustment not take effect until the obligor is able to fulfill the adjusted
12 obligation. If at the hearing on an adjustment under sub. (1) (a) the obligor does not
13 establish that extraordinary circumstances beyond his or her control prevent
14 fulfillment of the adjusted obligation, the adjustment shall take effect as of the date
15 it that the adjustment would have become effective had no hearing been requested.

16 (e) Either party may, within 15 working days of after the date of the decision
17 by the family court commissioner under ~~this subsection~~ par. (c) or (d), seek review of
18 the decision by the court with jurisdiction over the action.

19 **SECTION 8.** 767.33 (2) (d) of the statutes is created to read:

20 767.33 (2) (d) If at the hearing on an adjustment under sub. (1) (b) the obligor
21 establishes that an insufficient increase in his or her income or extraordinary
22 circumstances beyond his or her control prevent fulfillment of the adjusted
23 obligation, the family court commissioner may direct that all or part of the
24 adjustment not take effect until the obligor is able to fulfill the adjusted obligation.
25 If at the hearing on an adjustment under sub. (1) (b) the obligor does not establish

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1 that an insufficient increase in his or her income or extraordinary circumstances
2 beyond his or her control prevent fulfillment of the adjusted obligation, the
3 adjustment shall take effect as of the date that the adjustment would have become
4 effective had no hearing been requested.

5 **SECTION 9.** 767.33 (3) of the statutes is created to read:

6 767.33 (3) In any action to enforce or revise an order for child support or family
7 support to which this section applies under sub. (1m) that was entered before the
8 effective date of this subsection [revisor inserts date], and that does not provide
9 for an adjustment in the amount to be paid based on a change in the cost of living,
10 the court shall include in its enforcement or revision order a cost-of-living
11 adjustment provision, unless the order for child support or for family support already
12 has a cost-of-living adjustment provision or a provision that has the same effect as
13 a cost-of-living adjustment provision.

14 **SECTION 10.** 767.51 (6) of the statutes is amended to read:

15 767.51 (6) Sections 767.24, 767.245, 767.263, 767.265, 767.267, 767.29,
16 767.293, 767.30, 767.305, 767.31, 767.32 and, 767.325 and 767.33, where applicable,
17 shall apply to a judgment or order under this section.

18 **SECTION 11.** 808.075 (4) (d) 3. of the statutes is amended to read:

19 808.075 (4) (d) 3. Annual adjustment of child support under s. 767.33 (1) (a).

20 **SECTION 12.** 808.075 (4) (d) 3m. of the statutes is created to read:

21 808.075 (4) (d) 3m. Biennial adjustment of child support under s. 767.33 (1) (b).

22 **SECTION 13. Initial applicability.**

23 (1) This act first applies to orders entered on the effective date of this
24 subsection.

25 (END)