

# State of Wisconsin



2005 Senate Bill 369

Date of enactment: **April 10, 2006**  
Date of publication\*: **April 20, 2006**

## 2005 WISCONSIN ACT 304

AN ACT *to renumber and amend* 767.51 (3) (e) and 767.62 (4) (d); *to amend* 49.855 (3) and 49.855 (4m) (b); and *to create* 767.51 (3) (e) 2. and 767.62 (4) (d) 2. of the statutes; **relating to:** requiring a court to establish a father's obligation for birth expenses.

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

**SECTION 1c.** 49.855 (3) of the statutes is amended to read:

49.855 (3) Receipt of a certification by the department of revenue shall constitute a lien, equal to the amount certified, on any state tax refunds or credits owed to the obligor. The lien shall be foreclosed by the department of revenue as a setoff under s. 71.93 (3), (6), and (7). When the department of revenue determines that the obligor is otherwise entitled to a state tax refund or credit, it shall notify the obligor that the state intends to reduce any state tax refund or credit due the obligor by the amount the obligor is delinquent under the support, maintenance, or receiving and disbursing fee order or obligation, by the outstanding amount for past support, medical expenses, or birth expenses under the court order, or by the amount due under s. 46.10 (4) or 301.12 (4). The notice shall provide that within 20 days the obligor may request a hearing before the circuit court rendering the order under which the obligation arose. Within 10 days after receiving a request for hearing under this subsection, the court shall set the matter for hearing. Pending further order by the court or a circuit court commissioner, the department of workforce development or its designee, whichever is appropriate, is prohibited from disbursing the obligor's

state tax refund or credit. A circuit court commissioner may conduct the hearing. The sole issues at that hearing shall be whether the obligor owes the amount certified and, if not and it is a support or maintenance order, whether the money withheld from a tax refund or credit shall be paid to the obligor or held for future support or maintenance, except that the obligor's ability to pay shall also be an issue at the hearing if the obligation relates to an order under s. 767.51 (3) (e) 1. or 767.62 (4) (d) 1. and the order specifies that the court found that the obligor's income was at or below the poverty line established under 42 USC 9902 (2).

**SECTION 1h.** 49.855 (4m) (b) of the statutes is amended to read:

49.855 (4m) (b) The department of revenue may provide a certification that it receives under sub. (1), (2m), or (2p) to the department of administration. Upon receipt of the certification, the department of administration shall determine whether the obligor is a vendor or is receiving any other payments from this state, except for wages, retirement benefits, or assistance under s. 45.352, 1971 stats., s. 45.40 (1), this chapter, or ch. 46, 108, or 301. If the department of administration determines that the obligor is a vendor or is receiving payments from this state, except for wages, retirement benefits, or assistance under s. 45.352, 1971 stats., s. 45.40 (1), this chapter, or ch. 46, 108, or 301, it shall begin to withhold the amount

\* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

certified from those payments and shall notify the obligor that the state intends to reduce any payments due the obligor by the amount the obligor is delinquent under the support, maintenance, or receiving and disbursing fee order or obligation, by the outstanding amount for past support, medical expenses, or birth expenses under the court order, or by the amount due under s. 46.10 (4) or 301.12 (4). The notice shall provide that within 20 days after receipt of the notice the obligor may request a hearing before the circuit court rendering the order under which the obligation arose. An obligor may, within 20 days after receiving notice, request a hearing under this paragraph. Within 10 days after receiving a request for hearing under this paragraph, the court shall set the matter for hearing. A circuit court commissioner may conduct the hearing. Pending further order by the court or circuit court commissioner, the department of workforce development or its designee, whichever is appropriate, may not disburse the payments withheld from the obligor. The sole issues at the hearing are whether the obligor owes the amount certified and, if not and it is a support or maintenance order, whether the money withheld shall be paid to the obligor or held for future support or maintenance, except that the obligor's ability to pay is also an issue at the hearing if the obligation relates to an order under s. 767.51 (3) (e) 1. or 767.62 (4) (d) 1. and the order specifies that the court found that the obligor's income was at or below the poverty line established under 42 USC 9902 (2).

**SECTION 1s.** 767.51 (3) (e) of the statutes is renumbered 767.51 (3) (e) 1. and amended to read:

767.51 (3) (e) 1. An order ~~requiring the father~~ establishing the amount of the father's obligation to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth. The amount established may not exceed one-half of the total actual and reasonable pregnancy and birth expenses. The order also shall

specify the court's findings as to whether the father's income is at or below the poverty line established under 42 USC 9902 (2), and shall specify whether periodic payments are due on the obligation, based on the father's ability to pay or contribute to those expenses.

**SECTION 2.** 767.51 (3) (e) 2. of the statutes is created to read:

767.51 (3) (e) 2. If the order does not require periodic payments because the father has no present ability to pay or contribute to the expenses, the court may modify the judgment or order at a later date to require periodic payments if the father has the ability to pay at that time.

**SECTION 3.** 767.62 (4) (d) of the statutes is renumbered 767.62 (4) (d) 1. and amended to read:

767.62 (4) (d) 1. An order ~~requiring the father~~ establishing the amount of the father's obligation to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth. The amount established may not exceed one-half of the total actual and reasonable pregnancy and birth expenses. The order also shall specify the court's findings as to whether the father's income is at or below the poverty line established under 42 USC 9902 (2), and shall specify whether periodic payments are due on the obligation, based on the father's ability to pay or contribute to those expenses.

**SECTION 4.** 767.62 (4) (d) 2. of the statutes is created to read:

767.62 (4) (d) 2. If the order does not require periodic payments because the father has no present ability to pay or contribute to the expenses, the court may modify the judgment or order at a later date to require periodic payments if the father has the ability to pay at that time.

**SECTION 5. Initial applicability.**

(1) The renumbering and amendment of sections 767.51 (3) (e) and 767.62 (4) (d) of the statutes first applies to judgments or orders that are granted on the effective date of this subsection.