State of Wisconsin

2021 Senate Bill 105

Date of enactment: **May 21, 2021**
Date of publication*: **May 22, 2021**

2021 WISCONSIN ACT 35

AN ACT *to repeal* 767.225 (1) (e); and *to amend* 565.30 (5m) (a), 767.34 (1), 767.35 (1) (c), 767.511 (6m), 767.531 (intro.), 767.54, 767.553 (1) (a), 767.59 (1), 767.61 (3) (i), 767.71 (1) (a), 767.73 (1) (a), 767.75 (1) (b), 767.77 (1) and 767.78 (1) of the statutes; **relating to:** calculating the child support obligation and elimination of family support.

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

SECTION 1. 565.30 (5m) (a) of the statutes is amended to read:

565.30 **(5m)** (a) The administrator shall report to the department of children and families the name, address, and social security number of each winner of a lottery prize that is payable in installments and the name, address, and social security number or federal income tax number of the person who has been assigned a lottery prize that is payable in installments. Upon receipt of the report, the department of children and families shall certify to the administrator whether any payee or assignee named in the report is obligated to provide child support, spousal support, maintenance, or family support under s. 767.531, 2019 stats., or s. 767.001 (1) (f) or (g), 767.225, 767.34, 767.511, 767.531, 767.56, 767.804 (3), 767.805 (4), 767.85, 767.863 (3), 767.89 (3), 767.893 (2m), or 948.22 (7) or ch. 769 and the amount required to be withheld from the lottery prize under s. 767.75. Subject to par. (b), the administrator shall withhold the certified amount from each payment made to the winner or assignee and remit the certified amount to the department of children and families.

SECTION 2. 767.225 (1) (e) of the statutes is repealed.

SECTION 3. 767.34 (1) of the statutes is amended to read:

767.34 **(1)** AUTHORITY. The parties in an action for an annulment, divorce, or legal separation may, subject to the approval of the court, stipulate for a division of property, for maintenance payments, for the support of children, for periodic family support payments under s. 767.531, or for legal custody and physical placement, in case a divorce or legal separation is granted or a marriage annulled.

SECTION 4. 767.35 (1) (c) of the statutes is amended to read:

767.35 **(1)** (c) To the extent that it has jurisdiction to do so, the court has considered and approved or made provision for legal custody and physical placement, the support of any child of the marriage entitled to support, the maintenance of either spouse, the support of the family under s. 767.531, and the disposition of property.

SECTION 5. 767.511 (6m) of the statutes is amended to read:

767.511 **(6m)** PILOT PROGRAM ON INTEREST RATE. The department may conduct a pilot program under which the interest that accrues on the amounts in arrears specified in sub. (6) and in s. 767.531, 2019 stats., and in sub. (6) shall be at the rate of 0.5 percent per month instead of 1 percent per month. If the department conducts a pilot

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* Section 991.11, WISCONSIN STATUTES: 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."

program under this subsection, the program may begin at any time after December 31, 2013, and the new rate shall apply to interest that accrues during that time.

SECTION 6. 767.531 (intro.) of the statutes is amended to read:

767.531 Family support. (intro.) ~~The court may make a financial order designated "family support" as a substitute for child support orders under s. 767.511 and maintenance payment orders under s. 767.56.~~ Subject to s. 767.511 (6m), a party ordered to pay family support under this section, 2019 stats., shall pay simple interest at the rate of 1 percent per month on any amount in arrears that is equal to or greater than the amount of child support due in one month. Subject to s. 767.511 (6m), if the party no longer has a current obligation to pay child support, interest at the rate of 1 percent per month shall accrue on the total amount of child support in arrears, if any. Interest under this section is in lieu of interest computed under s. 807.01 (4), 814.04 (4), or 815.05 (8) and is paid to the department or its designee under s. 767.57. Except as provided in s. 767.57 (1m), the department or its designee shall apply all payments received for family support ordered under this section, 2019 stats., as follows:

SECTION 7. 767.54 of the statutes is amended to read:

767.54 Required exchange of financial information. In an action in which the court has ordered a party to pay ~~child or~~ family support under s. 767.225, 2019 stats., or s. 767.531, 2019 stats., or child support under this chapter, including an action to revise a judgment or order under s. 767.59, the court shall require the parties annually to exchange financial information. Information disclosed under this section is subject to s. 767.127 (3). A party who fails to furnish information required by the court under this section may be proceeded against for contempt of court under ch. 785. If the court finds that a party has failed to furnish information required under this section, the court may award to the party bringing the action costs and, notwithstanding s. 814.04 (1), reasonable attorney fees.

SECTION 8. 767.553 (1) (a) of the statutes is amended to read:

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

SECTION 9. 767.59 (1) of the statutes is amended to read:

767.59 **(1)** DEFINITION. In this section, "support or maintenance order" means a judgment or order providing for child support under this chapter or s. 48.355 (2) (b) 4. or (4g) (a), 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4. or (4g) (a), 938.357 (5m) (a), 938.363

(2), or 948.22 (7), for maintenance payments under s. 767.56, for family support payments under ~~this chapter~~ s. 767.531, 2019 stats., or for the appointment of trustees or receivers under s. 767.57 (5).

SECTION 10. 767.61 (3) (i) of the statutes is amended to read:

767.61 **(3)** (i) The amount and duration of an order under s. 767.56 granting maintenance payments to either party, any order for periodic family support payments under s. 767.531, 2019 stats., and whether the property division is in lieu of such payments.

SECTION 11. 767.71 (1) (a) of the statutes is amended to read:

767.71 **(1)** (a) In this section, "support order" means an order for child support under this chapter or s. 948.22 (7), an order for family support under this chapter, 2019 stats., or a stipulation approved by the court for child support under this chapter.

SECTION 12. 767.73 (1) (a) of the statutes is amended to read:

767.73 **(1)** (a) In this subsection, "support payment" means a payment ordered for support under s. 767.521, support under s. 767.501, child support or family support under s. 767.225, family support under s. 767.531, 2019 stats., revised child or family support under s. 767.59, or child support under s. 767.511, 767.804 (3), 767.805 (4), 767.85, 767.863 (3), 767.89, or 948.22 (7) or ch. 769.

SECTION 13. 767.75 (1) (b) of the statutes is amended to read:

767.75 **(1)** (b) "Payment order" means an order for child support under this chapter, for maintenance payments under s. 767.225 or 767.56, for family support under this chapter, 2019 stats., for costs ordered under s. 767.804 (3), 767.805 (4), or 767.89 (3), for support by a spouse under s. 767.001 (1) (f), or for maintenance payments under s. 767.001 (1) (g); an order for or obligation to pay the annual receiving and disbursing fee under s. 767.57 (1e) (a); an order for a revision in a judgment or order with respect to child support, maintenance, or family support payments under s. 767.59; a stipulation approved by the court for child support under this chapter; and an order for child or spousal support entered under s. 948.22 (7).

SECTION 14. 767.77 (1) of the statutes is amended to read:

767.77 **(1)** DEFINITION. In this section, "payment obligation" means an obligation to pay support under s. 48.355 (2) (b) 4. or (4g) (a), 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4. or (4g) (a), 938.357 (5m) (a), or 938.363 (2), support or maintenance under s. 767.501, child support, ~~family support,~~ or maintenance under s. 767.225, child support under s. 767.511, maintenance under s. 767.56, family support under s. 767.225, 2019 stats., or s. 767.531, 2019 stats., attorney fees under s. 767.241, child support or a child's health care expenses under s. 767.85, paternity obligations under s. 767.804

(3), 767.805 (4), 767.863 (3), or 767.89, support arrearages under s. 767.71, or child or spousal support under s. 948.22 (7).

Section 15. 767.78 (1) of the statutes is amended to read:

767.78 **(1)** Definition. In this section, "financial obligation" means an obligation for payment incurred under s. 767.531, 2019 stats., or s. 48.355 (2) (b) 4. or (4g) (a), 48.357 (5m) (a), 48.363 (2), 767.225, 767.241, 767.511, 767.531, 767.56, 767.61, 767.71, 767.804 (3), 767.805 (4), 767.85, 767.863 (3), 767.89, 938.183 (4), 938.355 (2) (b) 4. or (4g) (a), 938.357 (5m) (a), or 938.363 (2).

Section 16. Chapter DCF 150 (title) of the administrative code is amended to read:

CHAPTER DCF 150
CHILD SUPPORT PERCENTAGE OF
INCOME STANDARD

Section 17. DCF 150.02 (9m) of the administrative code is created to read:

DCF 150.02 **(9m)** "Designated percentage" means the applicable percentage of a parent's monthly income available for child support or adjusted monthly income available for child support under s. DCF 150.035 (2) or 150.04 (4) or (5).

Section 18. DCF 150.02 (19) of the administrative code is amended to read:

DCF 150.02 **(19)** "Low−income payer" means a payer for whom the court uses the monthly support amount provided in the schedule in Appendix C based on the court's determination that the payer's total economic circumstances limit his or her ability to pay support at the level provided under s. DCF 150.03 (1) 150.035 and the payer's income available for child support is at a level set forth in the schedule in Appendix C.

Section 19. DCF 150.02 (26) of the administrative code is amended to read:

DCF 150.02 **(26)** "Shared−placement payer" means the shared−placement parent who is determined to owe a greater support amount than the other parent under the calculation in s. DCF 150.04 (2) (b) 150.035 (1).

Section 20. DCF 150.02 (28) of the administrative code is repealed.

Section 21. DCF 150.02 (28) Note of the administrative code is renumbered DCF 150.02 (9m) Note.

Section 22. DCF 150.03 (1) (intro.) of the administrative code is renumbered DCF 150.03 (1) and amended to read:

DCF 150.03 **(1)** Determining income available for child support using the percentage standard. The court shall determine a parent's monthly income available for child support by adding together the parent's annual gross income or, if applicable, the parent's annual income modified for business expenses; the parent's annual income imputed based on earning capacity; and the parent's annual income imputed from assets, and

dividing that total by 12. This may be done by completing the worksheet in Appendix B, although use of the worksheet for this purpose is not required. Except as provided in s. DCF 150.04 (4) and (5), the percentage of the parent's monthly income available for child support or adjusted monthly income available for child support that constitutes the child support obligation shall be:

Section 23. DCF 150.03 (1) (a) to (e) of the administrative code are renumbered DCF 150.035 (2) (a) to (e).

Section 24. DCF 150.03 (1) (e) Note of the administrative code is renumbered DCF 150.035 (2) (e) Note.

Section 25. DCF 150.03 (5) (a) of the administrative code is amended to read:

DCF 150.03 **(5)** (a) The court may consider a child's benefit under 42 USC 402 (d) based on a parent's entitlement to federal disability or old−age insurance benefits under 42 USC 401 to 433 and adjust a payer's child support obligation by subtracting the amount of the child's benefit received by the payee. In no case may this adjustment require the payee to reimburse the payer for any portion of the child's benefit. If the payer is receiving the child's benefit, the support amount is either the designated percentage standard applied to the payer's income or the amount of the child's benefit, whichever is greater.

Section 26. DCF 150.03 (5) (b) (intro.), 2. and 7. of the administrative code are amended to read:

DCF 150.03 **(5)** (b) (intro.) If the shared−placement guidelines under s. DCF 150.04 (2) 150.035 (1) apply, the child's benefit is split between the parents in proportion to the amount of time the child spends with each parent. Add the proportion of the child's benefit that represents the proportion of time the child spends with the parent not receiving the benefit to the support obligation of the parent who is receiving the child's benefit. Support shall be determined as follows:

2. Multiply each parent's monthly income available for child support by the appropriate designated percentage standard under s. DCF 150.03 (1).

7. Offset the resulting amounts against each other. The parent with the greater child support obligation is the shared−placement payer. The shared−placement payer shall pay either the lesser of the amount determined in this subsection or the amount determined using the appropriate designated percentage standard under s. DCF 150.03 (1).

Section 27. DCF 150.03 (5m) (intro.), (a), (b) and (g) of the administrative code are amended to read:

DCF 150.03 **(5m)** (intro.) Adjustment for adoption assistance. The court may consider adoption assistance received by either parent under s. 48.975 (3) (a), Stats. If the shared placement guidelines under s. DCF 150.04 (2) 150.035 (1) apply, the adoption assistance should be split between the parents in proportion to the amount of time the child spends with each parent. Add the proportion of the adoption assistance that represents the proportion of time the child spends with the par-

ent not receiving the adoption assistance to the support obligation of the parent who is receiving the adoption assistance. Support shall be determined as follows:

(a) Determine each parent's monthly income available for child support under s. DCF 150.03 (1) (intro.). If a parent has one or more previous child support obligations, determine the parent's monthly income available for child support adjusted for the previous obligations as provided in s. DCF 150.04 (1). Do not include the adoption assistance under s. 48.975 (3) (a), Stats., in either parent's income.

(b) Multiply each parent's monthly income available for child support by the appropriate designated percentage standard under s. DCF 150.03 (1).

(g) Offset the resulting amounts against each other. The parent with the greater child support obligation is the shared−placement payer. The shared−placement payer shall pay the lesser of the amount determined in this subsection or the amount determined using the appropriate designated percentage standard under s. DCF 150.03 (1).

SECTION 28. DCF 150.03 (7) of the administrative code is amended to read:

DCF 150.03 **(7)** CALCULATION OF FAMILY SUPPORT. When the standard under sub. (1) designated percentage is used to calculate support under s. 767.531, 2019Stats., the amount determined shall be increased by the amount necessary to provide a net family support payment, after state and federal income taxes are paid, of at least the amount of a child support payment under the standard.

SECTION 29. DCF 150.03 (11) of the administrative code is renumbered DCF 150.035 (3) and amended to read:

DCF 150.035 **(3)** DEVIATION FROM THE PERCENTAGE STANDARD. (a) Upon request by a party, the court may modify the amount of child support payments determined under sub. (1) (2) if, after considering the factors in s. 767.511 (1m), Stats., as applicable, the court finds by the greater weight of the credible evidence that use of the designated percentage standard is unfair to the child or to any of the parties.

(b) If the court under par. (a) modifies the amount of child support payment determined under sub. (1) (2), the court shall state in writing or on the record the amount of support that would be required by using the designated percentage standard under sub. (1), the amount by which the court's order deviates from that amount, its reasons for finding that use of the designated percentage standard is unfair to the child or the party, its reasons for the amount of the modification and the basis for the modification as provided under s. 767.511 (1n), Stats.

SECTION 30. DCF 150.035 (title) and (2) of the administrative code are created to read:

DCF 150.035 (title) **Determining the child support obligation.**

(2) DETERMINING THE CHILD SUPPORT OBLIGATION OF NONSHARED PLACEMENT PARENTS. If the conditions under sub. (1) (a) are not met, the child support obligation is one of the following percentages of the parent's monthly income available for child support or adjusted monthly income available for child support, except as provided under s. DCF 150.04 (4) or (5):

SECTION 31. DCF 150.04 (1) (b) 1. and 3. a. and b. of the administrative code are amended to read:

DCF 150.04 **(1)** (b) 1. Determine the parent's monthly income available for child support under s. DCF 150.03 (1) (intro.).

3. a. If the parent is subject to an existing support order for that legal obligation, except a shared−placement order under s. DCF 150.04 (2) 150.035 (1), the support for that obligation is the monthly amount of that order.

b. If the parent is in an intact family or is subject to a shared−placement order under s. DCF 150.04 (2) 150.035 (1), the support is determined by multiplying the appropriate designated percentage under s. DCF 150.03 (1) for that number of children by the parent's monthly income available for child support or, if applicable, determine support under sub. (2), (3), (4), or (5) or s. DCF 150.035 (1).

SECTION 32. DCF 150.04 (1) (b) 5. a. and b. of the administrative code are amended to read:

DCF 150.04 **(1)** (b) 5. a. If the parent is subject to an existing support order for that legal obligation, except a shared−placement order under s. DCF 150.04 (2) 150.035 (1), the support for that obligation is the monthly amount of that order.

b. If the parent is in an intact family or is subject to a shared−placement order under s. DCF 150.04 (2) 150.035 (1), the support is determined by multiplying the appropriate designated percentage under s. DCF 150.03 (1) for that number of children by the parent's monthly income available for child support or, if applicable, determine support under sub. (2), (3), (4), or (5) or s. DCF 150.035 (1).

SECTION 33. DCF 150.04 (1) (b) 8. of the administrative code is amended to read:

DCF 150.04 **(1)** (b) 8. Multiply the appropriate designated percentage under s. DCF 150.03 (1) for the number of children subject to the new order by the final adjusted monthly income available for child support determined in either subd. 6. or 7. to determine the new child support obligation or if applicable, determine the new child support obligation under sub. (2), (3), (4), or (5) or s. DCF 150.035 (1). If multiple child support obligations reduce a serial−family parent's income to a level set forth in the schedule in ch. DCF 150 Appendix C, the court may combine the provisions of this subsection with the provisions for determining the support obligation of a low−income payer under s. DCF 150.04 (4).

SECTION 34. DCF 150.04 (2) of the administrative code is renumbered DCF 150.035 (1), and DCF 150.035 (1) (b) 1., 2. and 5., as renumbered, are amended to read:

DCF 150.035 **(1)** (b) 1. Determine each parent's monthly income available for child support under s. DCF 150.03 (1). In determining whether to impute income based on earning capacity for an unemployed parent or a parent employed less than full time under s. DCF 150.03 (3), the court shall consider benefits to the child of having a parent remain in the home during periods of placement and the additional variable day care costs that would be incurred if the parent worked more. If a parent has one or more previous child support obligations, determine the parent's monthly income available for child support adjusted for the previous obligations as provided in ~~sub.~~ s. DCF 150.04 (1).

2. Multiply each parent's monthly income available for child support by the ~~appropriate~~ designated percentage ~~standard under s. DCF 150.03 (1)~~.

5. Offset resulting amounts under subd. 4. against each other. The parent with a greater child support obligation is the shared−placement payer. The shared−placement payer shall pay the lesser of the amount determined under this ~~subd.~~ subdivision or the amount determined using the ~~appropriate~~ designated percentage ~~standard under s. DCF 150.03 (1)~~. If the shared−placement payer is also a low−income or high−income payer, the court may combine the provisions of either ~~sub.~~ s. DCF 150.04 (4) or (5) with the provisions of this section.

SECTION 35. DCF 150.04 (3) (b) of the administrative code is amended to read:

DCF 150.04 **(3)** (b) Multiply the amount determined in par. (a) by the pro rata percentage standard for the number of children in split placement who are placed with the other parent. The pro rata percentage standard for the number of children in split placement who are placed with the other parent is calculated by determining the ~~appropriate~~ designated percentage ~~standard under s. DCF 150.03 (1)~~ for the total number of children, dividing by the total number of children, and adding together the percentages for the children in split−placement who are placed with the other parent.

SECTION 36. DCF 150.04 (4) (a) of the administrative code is amended to read:

DCF 150.04 **(4)** (a) The court may use the monthly support amount provided in the schedule in Appendix C as the support amount for a payer with a monthly income available for child support at a level set forth in the schedule if the payer's total economic circumstances limit his or her ability to pay support at the level determined under s. DCF ~~150.03 (1)~~ 150.035. If a payer's monthly income available for child support is below the lowest income level in Appendix C, the court may set an order at an amount appropriate for the payer's total economic circumstances. This amount may be lower than the lowest support amount in Appendix C.

SECTION 37. DCF 150.04 (5) (b) of the administrative code is amended to read:

DCF 150.04 **(5)** (b) The court shall apply the percentages in s. DCF ~~150.03 (1)~~ 150.035 (2) to a payer's monthly income available for child support that is less than $7,000.

SECTION 38. DCF 150.04 (6) (b) 1. and 4. of the administrative code are amended to read:

DCF 150.04 **(6)** (b) 1. Determine the pro rata percentage standard for the total number of children for whom support is being established. The pro rata percentage standard for the total number of children for whom support is being established is calculated by determining the ~~appropriate~~ designated percentage ~~standard under s. DCF 150.03 (1)~~ for the total number of children and dividing by the total number of children.

4. Add or offset the child support obligation for children placed with the other parent full−time under subd. 2. with the child support obligation for children in shared−placement under subd. 3. e. The parent with a greater child support obligation is the payer. The payer shall pay the lesser of the amount determined under this subdivision or the amount determined using the ~~appropriate~~ designated percentage ~~standard under s. DCF 150.03 (1)~~. If the payer under this subdivision is also a low−income payer, the child support obligation may be the lesser of the amount determined under this subdivision or under sub. (4).

SECTION 39. DCF 150.04 (6) (c) 1. b. and 3. of the administrative code are amended to read:

DCF 150.04 **(6)** (c) 1. b. If no court−ordered support obligation exists, multiplying the ~~appropriate~~ designated percentage ~~under DCF 150.03 (1)~~ by the parent's monthly income available for child support.

3. Multiply the ~~appropriate~~ designated percentage ~~under s. DCF 150.03 (1)~~ for the number of children subject to the new order by the final adjusted monthly income available for child support determined under subd. 2. to determine the new child support obligation.

SECTION 40. Initial applicability.

(1) The treatment of ss. 565.30 (5m) (a), 767.225 (1) (e), 767.34 (1), 767.35 (1) (c), 767.511 (6m), 767.531 (intro.), 767.54, 767.553 (1) (a), 767.59 (1), 767.61 (3) (i), 767.71 (1) (a), 767.73 (1) (a), 767.75 (1) (b), 767.77 (1), and 767.78 (1) and, notwithstanding SECTION 41 (1) of this act, s. DCF 150.03 (7), Wis. Admin. Code (as it applies to the reference to s. 767.531) first apply to orders entered on the effective date of this subsection.

SECTION 41. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of administrative rules takes effect on the first day of the 7th month beginning after publication.