

2001 ASSEMBLY BILL 248

March 26, 2001 – Introduced by Representatives KESTELL, ALBERS, DUFF, J. LEHMAN, MUSSER, OTT, RILEY and OWENS, cosponsored by Senators GEORGE, COWLES and ROESSLER, by request of Department of Workforce Development. Referred to Committee on Children and Families.

1 **AN ACT** *to renumber and amend* 767.33 (2); *to amend* 767.08 (2) (b), 767.23 (1)
2 (c), 767.25 (1) (a), 767.265 (3m), 767.27 (2), 767.27 (2m), 767.32 (1) (a), 767.33
3 (1), 767.33 (1m) (a), 767.33 (1m) (b) and 808.075 (4) (d) 3.; and *to create* 767.32
4 (1) (d), 767.33 (2) (c) 1., 767.33 (2) (c) 2. and 767.33 (2) (c) 3. of the statutes;
5 **relating to:** expressing child support as a fixed sum, requiring child support
6 payers annually to furnish copies of tax returns, and providing for annual
7 adjustments in child support.

Analysis by the Legislative Reference Bureau

Under current law, child or family support may be expressed in a judgment or order as a fixed sum, as a percentage of a parent's income, or as a combination of the two in the alternative by requiring payment of the greater or lesser of either a percentage of a parent's income or a fixed sum. In order to revise a judgment or order with respect to an amount of child or family support, the court must find that there has been a substantial change in the circumstances of at least one of the parties. This bill requires that child or family support be expressed as a fixed sum in a judgment or order, including a temporary order. The bill also provides that the court is not required to make a finding of a substantial change in circumstances to change the manner of expressing the amount of child or family support to a fixed sum in a judgment or order in which the amount of child or family support is expressed as a percentage, or as a percentage or a fixed sum in the alternative.

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Under current law, the parties to an action affecting the family are required to disclose all of their assets, including income, on a financial disclosure form. If the court orders child or family support in the action, the court must order the party who must pay support to furnish a financial disclosure form annually, and may order that party to furnish copies of his or her most recently filed state and federal income tax returns annually, to the payee of the support and, if the state is a real party in interest, such as when a dependent child involved in the action is receiving medical assistance, to the county child support agency. The bill eliminates the requirement that the court order the support payer to furnish a financial disclosure form to the payee of the support and to the county child support agency but requires, instead of authorizes, the court to order the support payer to furnish copies of his or her most recently filed state and federal income tax returns annually to the payee of the support.

Finally, current law provides that a child support order that is expressed as a fixed sum may provide for an annual adjustment in the support amount, based on a change in the payer's income. The adjustment is not automatic, however; the payee of the support must apply to the family court commissioner for the actual adjustment. The bill requires every child or family support order that is expressed as a fixed sum to provide for an annual adjustment in the support amount, based on a change in the payer's income, and still requires application to the family court commissioner for the adjustment to take effect. Since an adjustment would be a decrease in the support amount if the payer's income decreased, the bill provides that either party, not just the payee, may apply for the adjustment. If the family court commissioner receives an application for an adjustment, the family court commissioner must send notice to the other party, who may request a hearing on whether the adjustment should go into effect. If a hearing is held, the family court commissioner may direct that all or part of the adjustment not go into effect until such time as directed by the family court commissioner if: 1) as under current law, the payer establishes that extraordinary circumstances beyond his or her control prevent fulfillment of the adjustment; 2) the payee establishes that the payer has voluntarily and unreasonably reduced his or her income below his or her earning capacity; or 3) the party who requested the hearing establishes that the adjustment would be unfair to the child.

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.** 767.08 (2) (b) of the statutes is amended to read:
- 2 767.08 (2) (b) The court in the action shall, as provided under s. 767.25 or
- 3 767.26, determine and adjudge the amount, if any, the person should reasonably

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1 contribute to the support and maintenance of the spouse or child and how the sum
2 should be paid. This amount may must be expressed as a percentage of the person's
3 ~~income or as a fixed sum, or as a combination of both in the alternative by requiring~~
4 ~~payment of the greater or lesser of either a percentage of the person's income or a~~
5 ~~fixed sum. The amount so ordered to be paid may be changed or modified by the court~~
6 ~~upon notice of motion or order to show cause by either party upon sufficient evidence.~~

7 **SECTION 2.** 767.23 (1) (c) of the statutes is amended to read:

8 767.23 **(1)** (c) Subject to s. 767.477, requiring either party or both parties to
9 make payments for the support of minor children, which payment amounts may
10 must be expressed as a percentage of parental income or as a fixed sum, or as a
11 ~~combination of both in the alternative by requiring payment of the greater or lesser~~
12 ~~of either a percentage of parental income or a fixed sum.~~

13 **SECTION 3.** 767.25 (1) (a) of the statutes is amended to read:

14 767.25 **(1)** (a) Order either or both parents to pay an amount reasonable or
15 necessary to fulfill a duty to support a child. The support amount may must be
16 expressed as a percentage of parental income or as a fixed sum, or as a combination
17 ~~of both in the alternative by requiring payment of the greater or lesser of either a~~
18 ~~percentage of parental income or a fixed sum.~~

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

20 767.265 **(3m)** Benefits under ch. 108 may be assigned and withheld only in the
21 manner provided in s. 108.13 (4). Any order to withhold benefits under ch. 108 may
22 shall be for a percentage of benefits payable or for a fixed sum, or for a combination
23 ~~of both in the alternative by requiring the withholding of the greater or lesser of~~
24 ~~either a percentage of benefits payable or a fixed sum. When money is to be withheld~~

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1 from these benefits, no fee may be deducted from the amount withheld and no fine
2 may be levied for failure to withhold the money.

3 **SECTION 5.** 767.27 (2) of the statutes is amended to read:

4 767.27 (2) ~~Except as provided in sub. (2m), disclosure~~ Disclosure forms
5 required under this section shall be filed within 90 days after the service of summons
6 or the filing of a joint petition or at such other time as ordered by the court or family
7 court commissioner. Information contained on such forms shall be updated on the
8 record to the date of hearing.

9 **SECTION 6.** 767.27 (2m) of the statutes is amended to read:

10 767.27 (2m) In every action in which the court has ordered a party to pay child
11 support under s. 767.25, 767.51 or 767.62 (4) or family support under s. 767.261 and
12 the circumstances specified in s. 767.075 (1) apply this chapter, including an action
13 to revise a judgment or order under s. 767.32, the court shall require the party who
14 is ordered to pay the support to annually furnish the disclosure form required under
15 this section and may require that party to annually furnish a copy of his or her most
16 recently filed state and federal income tax returns to the county child support agency
17 under s. 59.53 (5) for the county in which the order was entered. In any action in
18 which the court has ordered a party to pay child support under s. 767.25, 767.51 or
19 767.62 (4) or family support under s. 767.261, the court may require the party who
20 is ordered to pay the support to annually furnish the disclosure form required under
21 this section and a copy of his or her most recently filed state and federal income tax
22 returns to the party for whom the support has been awarded. A party who fails to
23 furnish the information as required by the court under this subsection may be
24 proceeded against for contempt of court under ch. 785. If the court finds that a party
25 has failed to furnish the information required under this subsection, the court shall

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1 award to the party bringing the action costs and, notwithstanding s. 814.04 (1),
2 reasonable attorney fees.

3 **SECTION 7.** 767.32 (1) (a) of the statutes is amended to read:

4 767.32 (1) (a) After a judgment or order providing for child support under this
5 chapter or s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b)
6 4., 938.357 (5m) (a), 938.363 (2), or 948.22 (7), maintenance payments under s.
7 767.26, or family support payments under this chapter, or for the appointment of
8 trustees under s. 767.31, the court may, from time to time, on the petition, motion,
9 or order to show cause of either of the parties, or upon the petition, motion, or order
10 to show cause of the department, a county department under s. 46.215, 46.22, or
11 46.23, or a county child support agency under s. 59.53 (5) if an assignment has been
12 made under s. 46.261, 48.57 (3m) (b) 2. or (3n) (b) 2., 49.19 (4) (h), or 49.45 (19) or if
13 either party or their minor children receive aid under s. 48.57 (3m) or (3n) or ch. 49,
14 and upon notice to the family court commissioner, revise and alter such judgment or
15 order respecting the amount of such maintenance or child support and the payment
16 thereof, and also respecting the appropriation and payment of the principal and
17 income of the property so held in trust, and may make any judgment or order
18 respecting any of the matters that such court might have made in the original action,
19 except that a judgment or order that waives maintenance payments for either party
20 shall not thereafter be revised or altered in that respect nor shall the provisions of
21 a judgment or order with respect to final division of property be subject to revision
22 or modification. ~~A- Except as provided in par. (d), a revision, under this section, of~~
23 a judgment or order with respect to an amount of child or family support may be made
24 only upon a finding of a substantial change in circumstances. In any action under
25 this section to revise a judgment or order with respect to maintenance payments, a

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1 substantial change in the cost of living by either party or as measured by the federal
2 bureau of labor statistics may be sufficient to justify a revision of judgment or order
3 with respect to the amount of maintenance, except that a change in an obligor's cost
4 of living is not in itself sufficient if payments are expressed as a percentage of income.

5 **SECTION 8.** 767.32 (1) (d) of the statutes is created to read:

6 767.32 (1) (d) In an action under this section to revise a judgment or order with
7 respect to child or family support, the court is not required to make a finding of a
8 substantial change in circumstances to change to a fixed sum the manner in which
9 the amount of child or family support is expressed in the judgment or order.

10 **SECTION 9.** 767.33 (1) of the statutes is amended to read:

11 767.33 (1) An order for child or family support under ~~s. 767.23 or 767.25~~ may
12 this chapter, including an order revising child or family support under s. 767.32, shall
13 provide for an adjustment in the amount to be paid based on a change in the obligor's
14 income, as reported on ~~the disclosure form~~ his or her most recently filed state and
15 federal tax returns furnished under s. 767.27 (2m) or as disclosed under s. 49.22 (2m)
16 to the department or county child support agency under s. 59.53 (5). The order may
17 specify the date on which the annual adjustment becomes effective. No adjustment
18 may be made unless the order so provides and either the obligor or the party receiving
19 payments applies for an adjustment as provided in sub. (2) (a). An adjustment under
20 this section may be made only once in any year.

21 **SECTION 10.** 767.33 (1m) (a) of the statutes is amended to read:

22 767.33 (1m) (a) Except as provided in par. (b), this section applies only to ~~an~~
23 a child or family support order under s. 767.23 or 767.25 this chapter in which
24 payment is expressed as a fixed sum. It does not apply to such an order in which
25 payment is expressed as a percentage of parental income.

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1 **SECTION 11.** 767.33 (1m) (b) of the statutes is amended to read:

2 767.33 **(1m)** (b) If payment is expressed in an a child or family support order
3 under ~~s. 767.23 or 767.25~~ this chapter in the alternative as the greater or lesser of
4 either a percentage of ~~parental~~ income or a fixed sum, this section applies only to the
5 fixed sum alternative under the order.

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

8 767.33 **(2)** (a) An adjustment under sub. (1) may be made only if ~~the~~ a party
9 ~~receiving payments~~ applies to the family court commissioner for the adjustment. If
10 the order specifies the date on which the annual adjustment becomes effective, the
11 application to the family court commissioner must be made at least 20 days before
12 the effective date of the adjustment.

13 **(b)** The family court commissioner, upon application by ~~the~~ a party receiving
14 ~~payments~~, shall send a notice by certified mail to the last-known address of the
15 ~~obligor~~ nonapplicant party. The notice shall be postmarked no later than 10 days
16 after the date on which the application was filed and shall inform the ~~obligor~~
17 nonapplicant party that an adjustment in payments will become effective on the date
18 specified in the order or, if no date is specified in the order, 10 days after the date on
19 which the notice is sent. The ~~obligor~~ nonapplicant party may, after receipt of notice
20 and before the effective date of the adjustment, request a hearing on the issue of
21 whether the adjustment should take effect, in which case the adjustment shall be
22 held in abeyance pending the outcome of the hearing.

23 **(c)** The family court commissioner shall hold a hearing requested under ~~this~~
24 ~~subsection~~ par. (b) within 10 working days after the request. ~~If at~~ After the hearing
25 ~~the obligor establishes that extraordinary circumstances beyond his or her control~~

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1 ~~prevent fulfillment of the adjusted child support obligation, the family court~~
2 ~~commissioner may direct that all or part of the adjustment not take effect until the~~
3 ~~obligor is able to fulfill the adjusted obligation. If at the hearing the obligor does not~~
4 ~~establish that extraordinary circumstances beyond his or her control prevent~~
5 ~~fulfillment of the adjusted obligation, the such time as the family court commissioner~~
6 ~~directs, if any of the following applies:~~

7 (d) If none of the conditions specified in par. (c) 1. to 3. is satisfied, the
8 adjustment shall take effect as of the date it would have become effective had no
9 hearing been requested. Either party may, within 15 working days of the date of the
10 decision by the family court commissioner ~~under this subsection,~~ seek review of the
11 decision by the court with jurisdiction over the action.

12 **SECTION 13.** 767.33 (2) (c) 1. of the statutes is created to read:

13 767.33 **(2)** (c) 1. The obligor requested the hearing and establishes that
14 extraordinary circumstances beyond his or her control prevent fulfillment of the
15 adjusted child support obligation.

16 **SECTION 14.** 767.33 (2) (c) 2. of the statutes is created to read:

17 767.33 **(2)** (c) 2. The party receiving payments requested the hearing and
18 establishes that the obligor voluntarily and unreasonably reduced his or her income
19 below his or her earning capacity.

20 **SECTION 15.** 767.33 (2) (c) 3. of the statutes is created to read:

21 767.33 **(2)** (c) 3. The party who requested the hearing establishes that the
22 adjustment would be unfair to the child.

23 **SECTION 16.** 808.075 (4) (d) 3. of the statutes is amended to read:

24 808.075 **(4)** (d) 3. Annual adjustment of child or family support under s. 767.33.

25 **SECTION 17. Initial applicability.**

