

2001 DRAFTING REQUEST

Senate Amendment (SA-SSA(LRBs0112/3)-SB106)

Received: **06/25/2001**

Received By: **kahlepj**

Wanted: **Soon**

Identical to LRB:

For: **Gary George (608) 266-2500**

By/Representing: **Dan Rossmiller**

This file may be shown to any legislator: **NO**

Drafter: **kahlepj**

May Contact:

Addl. Drafters:

Subject: **Dom. Rel. - child support**

Extra Copies:

Submit via email: **NO**

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Child support payer's ability to earn

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kahlepj 06/25/2001	csicilia 06/25/2001		_____			
/1			jfrantzc 06/25/2001	_____	lrb_docadmin 06/25/2001	lrb_docadmin 06/25/2001	
/2	kahlepj 06/27/2001	csicilia 06/27/2001	jfrantze 06/27/2001	_____	lrb_docadmin 06/27/2001	lrb_docadmin 06/27/2001	

FE Sent For:

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/1			jfrantze 06/25/2001		lrb_docadmin 06/25/2001	lrb_docadmin 06/25/2001	

FE Sent For:

1 cjs 6/27
01 06/11/01 *Sell*
7
<END>

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1?	kahlepj	1 gjs 6/25 01	6/22	Self 6/22			

FE Sent For:

<END>

Kahler, Pam

From: Rossmiller, Dan
Sent: Sunday, June 24, 2001 8:39 PM
To: Kahler, Pam
Subject: Amendment Request for SB 106

Pam:

Over the weekend I sent you a fax with a drafting request. If you are able to do this, the simple amendment should be drafted to LRBs0112/3.

Thanks. Call me if you have any questions.

I hope you got some rest over the weekend.

Dan Rossmiller
Chief of Staff
Office of Senator Gary R. George
608-266-2500
877-474-2000 (toll free)



Senator Gary R. George
State of Wisconsin
Sixth Senate District

118 South, State Capitol Building
P. O. Box 7882
Madison, WI 53707-7882
(608) 266-2500

4011 W. Capitol Drive
Milwaukee, WI 53216
(414) 445-9436
(800) 362-9472

Facsimile Cover Sheet

Please deliver to the individual named below.

To: Pam Kahler, Legislative Reference Bureau

Phone: (608) 266-2682

Fax: (608) 264-8522

From: Dan Rossmiller, Chief of Staff

Number of pages: 3, including cover sheet

Message: I know you must just be swamped. Is there a chance Sen. George could have the two changes proposed in the attached letter drafted in the form of a simple amendment to the substitute you drafted to SB 106 re: eliminating the use of percentage expressed child support orders? We are holding a committee exec. on Tuesday morning at 10:30 AM. Please let me know what can be done in light of all the budget requests you have. Also, please call me if you have any questions. (6-2500)
Thank you so much.

LEGAL ACTION OF WISCONSIN, INC.


31 South Mills Street • P.O. Box 259686 • Madison, Wisconsin 53725-9686

608/256-3304 • 800/362-3904 • FAX 608/256-0510

Kenosha Office
508 56th Street
Kenosha, WI 53140
1-800-242-5840

Milwaukee Office
230 West Wells Street
Milwaukee, WI 53203
414-278-7722

TO: Senator Gary George

FROM: Bob Andersen 

RE: **Revision of the Amendments I Proposed to SB 106, relating to Percentage Expressed Orders**

DATE: June 19, 2001

The amendments which I proposed to the Senate Judiciary and Consumer Affairs Committee in my memorandum, dated June 5, 2001, were discussed at a meeting held on June 18, 2001 by the ad hoc committee established by DWD to review child support laws. I attended the meeting of the DWD committee to advocate in favor of two of the three suggestions that I made in my memo to your committee. **(I have decided not to pursue the third amendment addressed in the earlier memo, relating to abating a child support order during the period that a payer is incarcerated or is hospitalized.)** The committee decided not to support the two amendments I suggested at this time, but deferred any further action until their next meeting scheduled for August 27, 2001.

My concern is, as I testified before your committee, that the enactment of the repeal of percentage expressed orders will be very harmful to low income payers because courts and court commissioners will be even more inclined to automatically set support orders at 40 times the federal minimum wage for people who do not have jobs. While percentage expressed orders existed, courts and court commissioners could set percentages to be applied to the real income that comes from real jobs that payers have. Now, without the percentage expressed orders, judges and court commissioners will automatically set orders at fictional levels of 40 times the federal minimum wage, notwithstanding physical, mental, educational, or job market barriers that may prevent payers from actually obtaining those jobs. **The problem is that the payers are never able to comply with those child support orders and they go to jail.**

I am concerned that whatever amendments need to be made should be made at the time the authority for the percentage expressed orders expires, and not at some distant date when some other legislation may be approved. In view of this reality, I am afraid that it is too long to wait for the next meeting of this ad hoc committee.

The discussion that the ad hoc committee had on these proposals was very helpful and provided a basis for improving my proposals. I cannot say that the ad hoc committee will ever approve the

following revised proposals, but I can tell you what their concerns were and how the following revisions address those.

As a result, I would like to modify my proposals for amendment to SB 106 to include the following two amendments:

1. **Provide in the statutes that the court may impute income by setting "an amount determined by the court to represent the payer's actual ability to earn, based on the payer's education, training and work experience, and the availability of work in or near the payer's community."**

[Note: the largest question raised by the ad hoc committee was whether this would really do anything to change current law, because judges or court commissioners could still look at this and set orders at 40 times the federal minimum wage. While this is true, it would at least be an explicit reference in the law to this as the standard to follow, instead of an explicit reference to imputing income at 40 times the federal minimum wage, which is given express authority by DWD 40.03 (3). Also, this includes the word "actual" in defining the ability to earn, which does not exist under the current administrative rule].

2. **Provide that "Any arrears in child support that is attributable to months during which the payer has an income that is below the federal poverty guidelines amount for a single person, as reported by the federal department of health and human services, shall not accrue to more than \$500 in total, unless the payer had the actual ability to earn more than the federal poverty guidelines amount, based on the payer's education, training and work experience, and the availability of work in or near the payer's community."**

[Note: The single largest objection made to the proposal was that a payer could have a limit placed on arrears, even though the payer had the ability to earn more, simply because the payer's income was below the federal poverty level. Members of the ad hoc committee suggested qualifying this so that it would not apply where the earning capacity of the individual was higher. Consequently, this proposed amendment has been revised to provide that the arrears attributable to months that a payer's income is below poverty will not be limited to \$500 if the payer had the actual ability to earn more than the poverty level.]



gjs

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~
SENATE AMENDMENT ,
TO SENATE SUBSTITUTE AMENDMENT (LRBs0112/3),
TO 2001 SENATE BILL 106

needed
by 9am Tues

1 At the locations indicated, amend the substitute amendment as follows:
2 1. Page 4, line 2: after that line insert:
3 "SECTION 6c. 767.25 (1g) of the statutes is amended to read:
4 767.25 (1g) In determining child support payments, the court may consider all
5 relevant financial information or other information relevant to the parent's earning
6 capacity, including information reported under s. 49.22 (2m) to the department or the
7 county child support agency under s. 59.53 (5). The court may impute income by
8 setting an amount determined by the court to represent the parent's actual ability
9 to earn, based on the parent's education, training, and work experience, and the
10 availability of work in or near the parent's community.

11 History: 1971 c. 157; 1977 c. 29, 105, 418; 1979 c. 32, ss. 50, 52(4); 1979 c. 196; Stats. 1979 s. 767.25; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 27, 37, 355, 413; 1989 a. 31, 212; 1991 a. 39; 1993 a. 481; 1995 a. 27 ss. 710, 710, 712(19); 1995 a. 201, 279, 404; 1997 a. 27, 35, 191; 1999 a. 9, 32.
SECTION 6m. 767.251 of the statutes is created to read:

1 **767.251 Limitation on support arrearage.** Arrearages in child or family
2 support that accrue while a payer's income is below the federal poverty line, as
3 defined under 42 USC 9902 (2), for a single individual, shall be limited to no more
4 than \$500 in total, unless the court determines that the party had the actual ability
5 to earn more than the federal poverty line amount for a single individual, based on
6 the party's education, training, and work experience, and the availability of work in
7 or near the party's community."

8

(END)

Ron Sklonsky 6-26 (phone)

do another version of 90617/1

that turns part 2 into a study
on the same issue

plus the impact
that a "windfall" (like
winning lottery or an
inheritance) should
have ~~on~~ limitations
in areas

report by Oct 1

Kahler, Pam

From: Rossmiller, Dan
Sent: Tuesday, June 26, 2001 6:41 PM
To: Kahler, Pam
Subject: Request re: amendment to SB 106

Pam:

Senator George asks that with respect to the requirement that DWD study limitations on arrearages, etc. that the report language indicate that DWD is required to report to the chairs of the Senate and Assembly Judiciary Committees by October 1, 2001. Thanks for your help.

Dan Rossmiller
Chief of Staff
Office of Senator Gary R. George
608-266-2500
877-474-2000 (toll free)



LRBa0617/A
PJK:cjs:jf
r m i s t e r
stays

**SENATE AMENDMENT ,
TO SENATE SUBSTITUTE AMENDMENT (LRBs0112/3),
TO 2001 SENATE BILL 106**

needed by
Thurs 9am

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6 capacity, including information reported under s. 49.22 (2m) to the department or the
7 county child support agency under s. 59.53 (5). The court may impute income by
8 setting an amount determined by the court to represent the parent's actual ability
9 to earn, based on the parent's education, training, and work experience, and the
10 availability of work in or near the parent's community.)) ←

10

11

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4 than \$500 in total, unless the court determines that the party had the actual ability
5 to earn more than the federal poverty line amount for a single individual, based on
6 the party's education, training, and work experience, and the availability of work in
7 or near the party's community."

8

(END)

Insert 2-7

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0617/2ins
PJK.ejs:jf

INSERT 2-7

1 **1.** Page 10, line 15: after that line insert:

2 **"SECTION 15m. Nonstatutory provisions.**

3 (1) STUDY ON LIMITING ARREARAGES. The department of workforce development
4 shall conduct a study on whether arrearages in child or family support that accrue
5 while the support payer's income is below the federal poverty line, as defined under
6 42 USC 9902 (2), for a single individual, should be limited to no more than a specified
7 amount, such as \$500; whether any such limitation should not apply if the court
8 determines that the payer has the actual ability to earn more than the federal
9 poverty line amount for a single individual, based on the payer's education, training,
10 and work experience and the availability of work in or near the payer's community;
11 and what effect, if any, on such a limitation there should be if the payer, during the
12 time that his or her income is below the federal poverty line amount, receives a
13 sizable amount of money or other valuable assets that are not considered income for
14 purposes of support, such as an inheritance. No later than October 1, 2001, the
15 department of workforce development shall report the results of the study, together
16 with its findings and recommendations, to the chairpersons of the senate and
17 assembly committees on judiciary in the manner provided under section 13.172 (3)
18 of the statutes."

19 **2.** Page 10, line 18: after "767.25 (1) (a)" insert "and (1g)".

(END OF INSERT 2-7)