

2003 SENATE BILL 257

September 23, 2003 – Introduced by Senators ROESSLER, A. LASEE, COWLES and LASSA, cosponsored by Representatives BIES, MUSSER, OWENS, M. LEHMAN, HAHN, J. LEHMAN, OTT, VAN ROY and TAYLOR. Referred to Committee on Judiciary, Corrections and Privacy.

1 **AN ACT** *to renumber* 767.32 (2m); *to amend* 46.10 (14) (b), 46.247, 48.30 (6) (b),
2 48.31 (7) (b), 48.357 (5m) (a), 48.363 (1) (c), 49.22 (9), 301.12 (14) (b), 301.12 (14)
3 (g), 767.085 (2) (b), 767.085 (2m) (a) 2., 767.23 (1n), 767.25 (1j), 767.25 (1m) (b),
4 767.295 (2) (c), 767.32 (1) (b) 4., 767.32 (2), 767.33 (1) (a), 767.33 (1) (b), 767.45
5 (7), 767.455 (6), 767.477 (2), 938.30 (6) (b), 938.31 (7) (b), 938.357 (5m) (a) and
6 938.363 (1) (c); and *to create* 767.085 (1) (dm), 767.25 (1r) and 767.32 (2m) (b)
7 of the statutes; **relating to:** use of the percentage standard in special cases,
8 consideration of income disparity in determining child support, and
9 information to be included in family action petitions.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Workforce Development (DWD) must promulgate rules that provide a standard for courts to use in determining child support based on a percentage of a parent's gross income. This standard is called the percentage standard, and it requires a payer to pay 17% of his or her gross income for one child, 25% for two children, 29% for three children, 31% for four children, and 34% for five or more children.

The statute that requires DWD to establish the percentage standard by administrative rule also requires those rules to provide for consideration of each

SENATE BILL 257

parent's income and physical placement with the child in determining child support in cases in which both parents have substantial physical placement with the child. Thus, in addition to the percentage standard, the rules set out a special method that may be used to calculate child support payments, based on adjustments to the percentage standard to fit the specific circumstance, if the payer provides care for the child at least 31% of the time (shared-time payer), already has a legal obligation to pay support for one or more children from a previous marriage or other relationship (serial-family payer), or has at least two children and cares for at least one, but not all, of the children for more time than the other parent (split-custody payer).

In *In re Marriage of Randall v. Randall*, 2000 WI App 98, 235 Wis. 2d 1, 612 N.W. 2d 737, the Wisconsin Court of Appeals decided that, even though the administrative rule setting out the special method for calculating child support for shared-time, serial-family, and split-custody payers is permissive in the rule, a court is required to use the special method if the payer is a shared-time, serial-family, or split-custody payer because the special method is part of the percentage standard, which the court is required to use under the statute. This bill reverses that decision.

Under the bill, DWD is required to establish the percentage standard by rule and required to provide by rule for adjustments to the percentage standard that a court may, in its discretion, use for determining support in cases in which both parents have substantial physical placement with the child or in which a parent has a preexisting obligation to support a child. The bill authorizes, but does not require, a court to modify the amount of child support that it would order if it used the percentage standard by using the special method of calculating child support set out in the rule if both parents have substantial physical placement with the child or a parent has a preexisting obligation to support a child.

Under current law, a court may, upon the request of a party, modify the amount of child support that would be ordered by using the percentage standard if the court, after considering a number of factors, finds that use of the percentage standard is unfair to the child or to either of the parties. Among the factors under current law that the court must consider are the financial resources and earning capacity of each parent. This bill adds that the court must also consider the resulting disparity in the parties' incomes and resources and, if the payer's income and resources are lower than the payee's, whether application of the percentage standard would create substantially disparate standards of living between the parties. This addition is intended to address the decision in *Luciani v. Montemurro-Luciani*, 199 Wis. 2d 280, 544 N.W. 2d 561 (1996), which some perceive as unfair to the child support payer. In that case, the parent with less physical placement with the couple's two children and whose income was much lower than the income of the parent with more physical placement was ordered to pay child support in the amount determined by using the percentage standard without any modification based on the payee's significantly higher income.

Current law specifies certain information that must be included in a petition in an action affecting the family, such as a divorce, paternity action, or action to enforce or revise an order issued in a divorce. This bill requires a petition in an action

SENATE BILL 257

affecting the family to indicate whether either of the parties is obligated to pay child or family support under a judgment or order issued by a court and, if so, the name of the court and the amount of support owed under the judgment or order.

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

1 **SECTION 1.** 46.10 (14) (b) of the statutes is amended to read:

2 46.10 (14) (b) Except as provided in par. (c) and subject to par. (cm), liability
3 of a parent specified in sub. (2) or s. 46.03 (18) for the care and maintenance of the
4 parent's minor child who has been placed by a court order under s. 48.355 or 48.357
5 in a residential, nonmedical facility such as a group home, foster home, treatment
6 foster home, or residential care center for children and youth shall be determined by
7 the court by using the percentage standard established by the department of
8 workforce development under s. 49.22 (9) (a) and by applying the percentage
9 standard in the manner established by the department under s. 46.247.

10 **SECTION 2.** 46.247 of the statutes is amended to read:

11 **46.247 Application of child support standard for certain children.** For
12 purposes of determining child support under s. 46.10 (14) (b), the department shall
13 promulgate rules related to the application of the standard established by the
14 department of workforce development under s. 49.22 (9) (a) to a child support
15 obligation for the care and maintenance of a child who is placed by a court order
16 under s. 48.355 or 48.357 in a residential, nonmedical facility. The rules shall take
17 into account the needs of any person, including dependent children other than the
18 child, whom either parent is legally obligated to support.

19 **SECTION 3.** 48.30 (6) (b) of the statutes is amended to read:

SENATE BILL 257

1 48.30 (6) (b) If it appears to the court that disposition of the case may include
2 placement of the child outside the child's home, the court shall order the child's
3 parent to provide a statement of income, assets, debts, and living expenses to the
4 court or the designated agency under s. 48.33 (1) at least 5 days before the scheduled
5 date of the dispositional hearing or as otherwise ordered by the court. The clerk of
6 court shall provide, without charge, to any parent ordered to provide a statement of
7 income, assets, debts, and living expenses a document setting forth the percentage
8 standard established by the department of workforce development under s. 49.22 (9)
9 (a) and the manner of its application established by the department of health and
10 family services under s. 46.247 and listing the factors that a court may consider
11 under s. 46.10 (14) (c).

12 **SECTION 4.** 48.31 (7) (b) of the statutes is amended to read:

13 48.31 (7) (b) If it appears to the court that disposition of the case may include
14 placement of the child outside the child's home, the court shall order the child's
15 parent to provide a statement of income, assets, debts, and living expenses to the
16 court or the designated agency under s. 48.33 (1) at least 5 days before the scheduled
17 date of the dispositional hearing or as otherwise ordered by the court. The clerk of
18 court shall provide, without charge, to any parent ordered to provide a statement of
19 income, assets, debts, and living expenses a document setting forth the percentage
20 standard established by the department of workforce development under s. 49.22 (9)
21 (a) and the manner of its application established by the department of health and
22 family services under s. 46.247 and listing the factors that a court may consider
23 under s. 46.10 (14) (c).

24 **SECTION 5.** 48.357 (5m) (a) of the statutes is amended to read:

SENATE BILL 257

1 48.357 **(5m)** (a) If a proposed change in placement changes a child's placement
2 from a placement in the child's home to a placement outside the child's home, the
3 court shall order the child's parent to provide a statement of income, assets, debts,
4 and living expenses to the court or the person or agency primarily responsible for
5 implementing the dispositional order by a date specified by the court. The clerk of
6 court shall provide, without charge, to any parent ordered to provide a statement of
7 income, assets, debts, and living expenses a document setting forth the percentage
8 standard established by the department of workforce development under s. 49.22 (9)
9 (a) and the manner of its application established by the department of health and
10 family services under s. 46.247 and listing the factors that a court may consider
11 under s. 46.10 (14) (c). If the child is placed outside the child's home, the court shall
12 determine the liability of the parent in the manner provided in s. 46.10 (14).

13 **SECTION 6.** 48.363 (1) (c) of the statutes is amended to read:

14 48.363 **(1)** (c) If the proposed revision is for a change in the amount of child
15 support to be paid by a parent, the court shall order the child's parent to provide a
16 statement of income, assets, debts, and living expenses to the court and the person
17 or agency primarily responsible for implementing the dispositional order by a date
18 specified by the court. The clerk of court shall provide, without charge, to any parent
19 ordered to provide a statement of income, assets, debts, and living expenses a
20 document setting forth the percentage standard established by the department of
21 workforce development under s. 49.22 (9) (a) and the manner of its application
22 established by the department of health and family services under s. 46.247 and
23 listing the factors that a court may consider under s. 46.10 (14) (c).

24 **SECTION 7.** 49.22 (9) of the statutes is amended to read:

SENATE BILL 257

1 49.22 (9) (a) The department shall promulgate rules that provide a standard
2 for courts to use in determining a child support obligation based upon a percentage
3 of the gross income and assets of either or both parents.

4 (b) ~~The department shall promulgate rules shall that provide for consideration~~
5 ~~of the income of each parent and the amount of physical placement with each parent~~
6 ~~adjustments to the standard promulgated under par. (a) that a court, in its~~
7 ~~discretion, may use in determining a child support obligation in cases in which a~~
8 ~~child has substantial periods of physical placement with each parent or in which a~~
9 ~~parent has a preexisting obligation to support a child.~~

10 **SECTION 8.** 301.12 (14) (b) of the statutes is amended to read:

11 301.12 (14) (b) Except as provided in par. (c) and subject to par. (cm), liability
12 of a parent specified in sub. (2) or s. 301.03 (18) for the care and maintenance of the
13 parent's minor child who has been placed by a court order under s. 938.183, 938.355,
14 or 938.357 in a residential, nonmedical facility such as a group home, foster home,
15 treatment foster home, residential care center for children and youth, or juvenile
16 correctional institution shall be determined by the court by using the percentage
17 standard established by the department of workforce development under s. 49.22 (9)
18 (a) and by applying the percentage standard in the manner established by the
19 department under par. (g).

20 **SECTION 9.** 301.12 (14) (g) of the statutes is amended to read:

21 301.12 (14) (g) For purposes of determining child support under par. (b), the
22 department shall promulgate rules related to the application of the standard
23 established by the department of workforce development under s. 49.22 (9) (a) to a
24 child support obligation for the care and maintenance of a child who is placed by a
25 court order under s. 938.183, 938.355, or 938.357 in a residential, nonmedical facility.

SENATE BILL 257

1 The rules shall take into account the needs of any person, including dependent
2 children other than the child, whom either parent is legally obligated to support.

3 **SECTION 10.** 767.085 (1) (dm) of the statutes is created to read:

4 767.085 (1) (dm) Whether either of the parties is obligated to pay child or family
5 support under a judgment or order issued by a court and, if so, the name of the court
6 that issued each judgment or order and the amount of child or family support owed
7 under each judgment or order, if known.

8 **SECTION 11.** 767.085 (2) (b) of the statutes is amended to read:

9 767.085 (2) (b) The clerk of court shall provide without charge, to each person
10 filing a petition requesting child support, a document setting forth the percentage
11 standard established by the department under s. 49.22 (9) (a) and listing the factors
12 which that a court may consider under s. 767.25 (1m) and (1r).

13 **SECTION 12.** 767.085 (2m) (a) 2. of the statutes is amended to read:

14 767.085 (2m) (a) 2. Shall be accompanied by a document, provided without
15 charge by the clerk of court, setting forth the percentage standard established by the
16 department under s. 49.22 (9) (a) and listing the factors ~~which~~ that a court may
17 consider under s. 767.25 (1m) and (1r).

18 **SECTION 13.** 767.23 (1n) of the statutes is amended to read:

19 767.23 (1n) Before making any temporary order under sub. (1), the court or
20 circuit court commissioner shall consider those factors that the court is required by
21 this chapter to consider before entering a final judgment on the same subject matter.
22 In making a determination under sub. (1) (a) or (am), the court or circuit court
23 commissioner shall consider the factors under s. 767.24 (5). If the court or circuit
24 court commissioner makes a temporary child support order that deviates from the
25 amount of support that would be required by using the percentage standard

SENATE BILL 257

1 established by the department under s. 49.22 (9) (a) or by using the method of
2 calculating child support under s. 767.25 (1r), the court or circuit court commissioner
3 shall comply with the requirements of s. 767.25 (1n). A temporary order under sub.
4 (1) may be based upon the written stipulation of the parties, subject to the approval
5 of the court or circuit court commissioner. Temporary orders made by a circuit court
6 commissioner may be reviewed by the court.

7 **SECTION 14.** 767.25 (1j) of the statutes is amended to read:

8 767.25 **(1j)** Except as provided in ~~sub.~~ subs. (1m) and (1r), the court shall
9 determine child support payments by using the percentage standard established by
10 the department under s. 49.22 (9) (a).

11 **SECTION 15.** 767.25 (1m) (b) of the statutes is amended to read:

12 767.25 **(1m)** (b) The financial resources of both parents, including the resulting
13 disparity in the parties' incomes and resources, and, if the payer's income and
14 resources are lower than the payee's income and resources, whether application of
15 the percentage standard would create substantially disparate standards of living
16 between the parties.

17 **SECTION 16.** 767.25 (1r) of the statutes is created to read:

18 767.25 **(1r)** Notwithstanding sub. (1m), in cases in which a child has
19 substantial periods of physical placement with each parent or in which a parent has
20 a preexisting obligation to support a child, upon request by a party or on its own
21 motion, the court may modify the amount of child support payments determined
22 under sub. (1j) in the manner provided by rule under s. 49.22 (9) (b). The court is not
23 required to provide the information specified in sub. (1n) if the court determines child
24 support payments under this subsection.

25 **SECTION 17.** 767.295 (2) (c) of the statutes is amended to read:

SENATE BILL 257

1 767.295 (2) (c) If the court enters an order under par. (a), it shall order the
2 parent to pay child support equal to the amount determined by applying the
3 percentage standard established under s. 49.22 (9) (a) to the income a person would
4 earn by working 40 hours per week for the federal minimum hourly wage under 29
5 USC 206 (a) (1) or equal to the amount of child support that the parent was ordered
6 to pay in the most recent determination of support under this chapter. The child
7 support obligation ordered under this paragraph continues until the parent makes
8 timely payment in full for 3 consecutive months or until the person participates in
9 the program under s. 49.36 for 16 weeks, whichever comes first. The court shall
10 provide in its order that the parent must make child support payments calculated
11 under s. 767.25 (1j) ~~or (1m)~~, or (1r) after the obligation to make payments ordered
12 under this paragraph ceases.

13 **SECTION 18.** 767.32 (1) (b) 4. of the statutes is amended to read:

14 767.32 (1) (b) 4. A difference between the amount of child support ordered by
15 the court to be paid by the payer and the amount that the payer would have been
16 required to pay based on the percentage standard established by the department
17 under s. 49.22 (9) (a), or based on the method of calculating child support under s.
18 767.25 (1r), if the court did not use the percentage standard or the method under s.
19 767.25 (1r) in determining the child support payments and did not provide the
20 information required under s. 46.10 (14) (d), 301.12 (14) (d), or 767.25 (1n), whichever
21 is appropriate.

22 **SECTION 19.** 767.32 (2) of the statutes is amended to read:

23 767.32 (2) Except as provided in sub. (2m) or (2r), if the court revises a
24 judgment or order with respect to child support payments, it shall do so by using the
25 percentage standard established by the department under s. 49.22 (9) (a).

SENATE BILL 257

1 **SECTION 20.** 767.32 (2m) of the statutes is renumbered 767.32 (2m) (a).

2 **SECTION 21.** 767.32 (2m) (b) of the statutes is created to read:

3 767.32 **(2m)** (b) Notwithstanding par. (a), in cases in which a child has
4 substantial periods of physical placement with each parent or in which a parent has
5 a preexisting obligation to support a child, upon request by a party or on its own
6 motion, the court may modify the amount of child support payments determined
7 under sub. (2) in the manner provided by rule under s. 49.22 (9) (b). The court is not
8 required to provide the information specified in s. 767.25 (1n) if the court determines
9 child support payments under this paragraph.

10 **SECTION 22.** 767.33 (1) (a) of the statutes is amended to read:

11 767.33 **(1)** (a) An order for child or family support under this chapter may
12 provide for an annual adjustment in the amount to be paid based on a change in the
13 payer's income if the amount of child or family support is expressed in the order as
14 a fixed sum and based on the percentage standard established by the department
15 under s. 49.22 (9) (a) or on the method of calculating child support under s. 767.25
16 (1r). No adjustment may be made under this section unless the order provides for
17 the adjustment.

18 **SECTION 23.** 767.33 (1) (b) of the statutes is amended to read:

19 767.33 **(1)** (b) An adjustment under this section may not be made more than
20 once in a year and shall be determined on the basis of the percentage standard
21 established by the department under s. 49.22 (9) (a) or the method of calculating child
22 support under s. 767.25 (1r).

23 **SECTION 24.** 767.45 (7) of the statutes is amended to read:

24 767.45 **(7)** The clerk of court shall provide without charge, to each person
25 bringing an action under this section, except to the state under sub. (1) (g) or (6m),

SENATE BILL 257

1 a document setting forth the percentage standard established by the department
2 under s. 49.22 (9) (a) and listing the factors which that a court may consider under
3 s. 767.25 (1m) and (1r).

4 **SECTION 25.** 767.455 (6) of the statutes is amended to read:

5 767.455 **(6)** DOCUMENT. The summons served on the respondent shall be
6 accompanied by a document, provided without charge by the clerk of court, setting
7 forth the percentage standard established by the department under s. 49.22 (9) (a)
8 and listing the factors which that a court may consider under s. 767.25 (1m) and (1r).

9 **SECTION 26.** 767.477 (2) of the statutes is amended to read:

10 767.477 **(2)** Before making any temporary order under sub. (1), the court shall
11 consider those factors that the court is required to consider when granting a final
12 judgment on the same subject matter. If the court makes a temporary child support
13 order that deviates from the amount of support that would be required by using the
14 percentage standard established by the department under s. 49.22 (9) (a) or by using
15 the method of calculating child support under s. 767.25 (1r), the court shall comply
16 with the requirements of s. 767.25 (1n).

17 **SECTION 27.** 938.30 (6) (b) of the statutes is amended to read:

18 938.30 **(6)** (b) If it appears to the court that disposition of the case may include
19 placement of the juvenile outside the juvenile's home, the court shall order the
20 juvenile's parent to provide a statement of income, assets, debts, and living expenses
21 to the court or the designated agency under s. 938.33 (1) at least 5 days before the
22 scheduled date of the dispositional hearing or as otherwise ordered by the court. The
23 clerk of court shall provide, without charge, to any parent ordered to provide a
24 statement of income, assets, debts, and living expenses a document setting forth the
25 percentage standard established by the department of workforce development under

SENATE BILL 257

1 s. 49.22 (9) (a) and listing the factors that a court may consider under s. 301.12 (14)
2 (c).

3 **SECTION 28.** 938.31 (7) (b) of the statutes is amended to read:

4 938.31 (7) (b) If it appears to the court that disposition of the case may include
5 placement of the juvenile outside the juvenile's home, the court shall order the
6 juvenile's parent to provide a statement of income, assets, debts, and living expenses
7 to the court or the designated agency under s. 938.33 (1) at least 5 days before the
8 scheduled date of the dispositional hearing or as otherwise ordered by the court. The
9 clerk of court shall provide, without charge, to any parent ordered to provide a
10 statement of income, assets, debts, and living expenses a document setting forth the
11 percentage standard established by the department of workforce development under
12 s. 49.22 (9) (a) and listing the factors that a court may consider under s. 301.12 (14)
13 (c).

14 **SECTION 29.** 938.357 (5m) (a) of the statutes is amended to read:

15 938.357 (5m) (a) If a proposed change in placement changes a juvenile's
16 placement from a placement in the juvenile's home to a placement outside the
17 juvenile's home, the court shall order the juvenile's parent to provide a statement of
18 income, assets, debts, and living expenses to the court or the person or agency
19 primarily responsible for implementing the dispositional order by a date specified by
20 the court. The clerk of court shall provide, without charge, to any parent ordered to
21 provide a statement of income, assets, debts, and living expenses a document setting
22 forth the percentage standard established by the department of workforce
23 development under s. 49.22 (9) (a) and listing the factors that a court may consider
24 under s. 301.12 (14) (c). If the juvenile is placed outside the juvenile's home, the court
25 shall determine the liability of the parent in the manner provided in s. 301.12 (14).

SENATE BILL 257

1 **SECTION 30.** 938.363 (1) (c) of the statutes is amended to read:

2 938.363 (1) (c) If the proposed revision is for a change in the amount of child
3 support to be paid by a parent, the court shall order the juvenile's parent to provide
4 a statement of income, assets, debts, and living expenses to the court and the person
5 or agency primarily responsible for implementing the dispositional order by a date
6 specified by the court. The clerk of court shall provide, without charge, to any parent
7 ordered to provide a statement of income, assets, debts, and living expenses a
8 document setting forth the percentage standard established by the department of
9 workforce development under s. 49.22 (9) (a) and listing the factors that a court may
10 consider under s. 301.12 (14) (c).

11 **SECTION 31. Nonstatutory provisions.**

12 (1) No creation or amendment of a statute section by this act constitutes a
13 substantial change in circumstances on which may be based a revision under section
14 767.32 of the statutes, as affected by this act, of a judgment or order with respect to
15 an amount of child or family support.

16 **SECTION 32. Initial applicability.**

17 (1) CALCULATING CHILD SUPPORT IN SPECIAL CIRCUMSTANCES. The treatment of
18 sections 767.23 (1n), 767.25 (1j) and (1r), 767.295 (2) (c), 767.32 (1) (b) 4., 767.33 (1)
19 (a) and (b), and 767.477 (2) of the statutes, the renumbering of section 767.32 (2m)
20 of the statutes, and the creation of section 767.32 (2m) (b) of the statutes first apply
21 to child support orders that are granted on the effective date of this subsection,
22 including orders in actions or proceedings to modify a judgment or order that was
23 granted before the effective date of this subsection.

24 (2) PERCENTAGE STANDARD DOCUMENT LISTING DEVIATION FACTORS. The treatment
25 of sections 767.085 (2) (b) and (2m) (a) 2., 767.45 (7), and 767.455 (6) of the statutes

SENATE BILL 257

1 first applies to actions commenced on the first day of the 7th month beginning after
2 publication.

3 (3) NOTING OTHER SUPPORT ORDERS IN PETITION. The treatment of section 767.085
4 (1) (dm) of the statutes first applies to petitions filed on the first day of the 2nd month
5 beginning after the effective date of this subsection.

6 (END)