



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2485/E2

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~~PRELIMINARY DRAFT NOT READY FOR INTRODUCTION~~

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1 AN ACT *to renumber* 767.25 (1m) (a), 767.25 (1m) (b), 767.25 (1m) (bj), 767.25
2 (1m) (bp), 767.25 (1m) (bz), 767.25 (1m) (c), 767.25 (1m) (d), 767.25 (1m) (e),
3 767.25 (1m) (ej), 767.25 (1m) (em), 767.25 (1m) (f), 767.25 (1m) (g), 767.25 (1m)
4 (h), 767.25 (1m) (hm), 767.25 (1m) (hs) and 767.25 (1m) (i); *to renumber and*
5 *amend* 767.25 (1m) (intro.), 767.32 (2m) and 948.22 (7) (bm); *to amend* 46.10
6 (14) (b), 46.247, 48.30 (6) (b), 48.31 (7) (b), 48.357 (5m) (a), 48.363 (1) (c), 49.22
7 (9), 301.12 (14) (b), 301.12 (14) (g), 767.085 (2) (b), 767.085 (2m) (a) 2., 767.23
8 (1n), 767.25 (1j), 767.295 (2) (c), 767.32 (1) (b) 4., 767.32 (2), 767.33 (1) (a), 767.33
9 (1) (b), 767.45 (7), 767.455 (6), 767.477 (2), 938.30 (6) (b), 938.31 (7) (b), 938.357
10 (5m) (a) and 938.363 (1) (c); and *to create* 767.085 (1) (dm), 767.25 (1m) (bm),
11 767.25 (1r), 767.32 (2m) (a) 2., 767.32 (2m) (b) and 948.22 (7) (bm) 2. of the
12 statutes; **relating to:** use of the percentage standard in special cases, (a)

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consideration of income
disparity in determining child
support

~~rebuttable presumption related to when use of the percentage standard is
unfair to the payer and information in family action petition~~

support
to be included

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 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

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parent. This bill creates a rebuttable presumption that use of the percentage standard is unfair to the payer if the payer's income and earning capacity are significantly lower than the payee's. If the presumption is not rebutted, the court may modify the amount of support that would be ordered by using the percentage standard. The presumption 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 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:

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

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

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

46.247 Application of child support standard for certain children. For purposes of determining child support under s. 46.10 (14) (b), the department shall promulgate rules related to the application of the standard established by the

1 department of workforce development under s. 49.22 (9) (a) to a child support
2 obligation for the care and maintenance of a child who is placed by a court order
3 under s. 48.355 or 48.357 in a residential, nonmedical facility. The rules shall take
4 into account the needs of any person, including dependent children other than the
5 child, whom either parent is legally obligated to support.

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

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

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

19 48.31 (7) (b) If it appears to the court that disposition of the case may include
20 placement of the child outside the child's home, the court shall order the child's
21 parent to provide a statement of income, assets, debts, and living expenses to the
22 court or the designated agency under s. 48.33 (1) at least 5 days before the scheduled
23 date of the dispositional hearing or as otherwise ordered by the court. The clerk of
24 court shall provide, without charge, to any parent ordered to provide a statement of
25 income, assets, debts, and living expenses a document setting forth the percentage

1 standard established by the department of workforce development under s. 49.22 (9)
2 (a) and the manner of its application established by the department of health and
3 family services under s. 46.247 and listing the factors that a court may consider
4 under s. 46.10 (14) (c).

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

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

18 **SECTION 6.** 48.363[✓] (1) (c) of the statutes is amended to read:

19 48.363 (1) (c) If the proposed revision is for a change in the amount of child
20 support to be paid by a parent, the court shall order the child's parent to provide a
21 statement of income, assets, debts, and living expenses to the court and the person
22 or agency primarily responsible for implementing the dispositional order by a date
23 specified by the court. The clerk of court shall provide, without charge, to any parent
24 ordered to provide a statement of income, assets, debts, and living expenses a
25 document setting forth the percentage standard established by the department of

1 workforce development under s. 49.22 (9) (a) and the manner of its application
2 established by the department of health and family services under s. 46.247 and
3 listing the factors that a court may consider under s. 46.10 (14) (c).

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

5 49.22 (9) (a) The department shall promulgate rules that provide a standard
6 for courts to use in determining a child support obligation based upon a percentage
7 of the gross income and assets of either or both parents.

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

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

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

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

1 301.12 (14) (g) For purposes of determining child support under par. (b), the
2 department shall promulgate rules related to the application of the standard
3 established by the department of workforce development under s. 49.22 (9) (a) to a
4 child support obligation for the care and maintenance of a child who is placed by a
5 court order under s. 938.183, 938.355, or 938.357 in a residential, nonmedical facility.
6 The rules shall take into account the needs of any person, including dependent
7 children other than the child, whom either parent is legally obligated to support.

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

9 767.085 (1) (dm) Whether either of the parties is obligated to pay child or family
10 support under a judgment or order issued by a court and, if so, the name of the court
11 that issued each judgment or order and the amount of child or family support owed
12 under each judgment or order, if known.

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

14 767.085 (2) (b) The clerk of court shall provide without charge, to each person
15 filing a petition requesting child support, a document setting forth the percentage
16 standard established by the department under s. 49.22 (9) (a) and listing the factors
17 ~~which~~ that a court may consider under s. 767.25 (1m) and (1r).

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

19 767.085 (2m) (a) 2. Shall be accompanied by a document, provided without
20 charge by the clerk of court, setting forth the percentage standard established by the
21 department under s. 49.22 (9) (a) and listing the factors ~~which~~ that a court may
22 consider under s. 767.25 (1m) and (1r).

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

24 767.23 (1n) Before making any temporary order under sub. (1), the court or
25 circuit court commissioner shall consider those factors that the court is required by

1 this chapter to consider before entering a final judgment on the same subject matter.
2 In making a determination under sub. (1) (a) or (am), the court or circuit court
3 commissioner shall consider the factors under s. 767.24 (5). If the court or circuit
4 court commissioner makes a temporary child support order that deviates from the
5 amount of support that would be required by using the percentage standard
6 established by the department under s. 49.22 (9) (a) or by using the method of
7 calculating child support under s. 767.25 (1r), the court or circuit court commissioner
8 shall comply with the requirements of s. 767.25 (1n). A temporary order under sub.
9 (1) may be based upon the written stipulation of the parties, subject to the approval
10 of the court or circuit court commissioner. Temporary orders made by a circuit court
11 commissioner may be reviewed by the court.

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

13 767.25 (1j) Except as provided in sub. subs. (1m) and (1r), the court shall
14 determine child support payments by using the percentage standard established by
15 the department under s. 49.22 (9) (a).

16 **SECTION 15.** 767.25 (1m) (intro.) of the statutes is renumbered 767.25 (1m) (am)
17 (intro.) and amended to read:

18 ~~767.25 (1m) (am) (intro.) Upon Subject to par. (bm), upon request by a party,~~
19 ~~the court may modify the amount of child support payments determined under sub.~~
20 ~~(1j) if, after considering the following factors, the court finds by the greater weight~~
21 ~~of the credible evidence that use of the percentage standard is unfair to the child or~~
22 ~~to any of the parties.~~

23 **SECTION 16.** 767.25 (1m) (a) of the statutes is renumbered 767.25 (1m) (am) 1.

24 **SECTION 17.** 767.25 (1m) (b) of the statutes is renumbered 767.25 (1m) (am) 2.

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SECTION 18. 767.25 (1m) (bj) of the statutes is renumbered 767.25 (1m) (am)

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SECTION 19. 767.25 (1m) (bm) of the statutes is created to read:

767.25 (1m) (bm) If the gross income and earning capacity of the payer are significantly lower than the gross income and earning capacity of the payee, there is a rebuttable presumption that use of the percentage standard is unfair to the payer.

SECTION 20. 767.25 (1m) (bp) of the statutes is renumbered 767.25 (1m) (am)

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SECTION 21. 767.25 (1m) (bz) of the statutes is renumbered 767.25 (1m) (am)

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SECTION 22. 767.25 (1m) (c) of the statutes is renumbered 767.25 (1m) (am) 6.

SECTION 23. 767.25 (1m) (d) of the statutes is renumbered 767.25 (1m) (am) 7.

SECTION 24. 767.25 (1m) (e) of the statutes is renumbered 767.25 (1m) (am) 8.

SECTION 25. 767.25 (1m) (ej) of the statutes is renumbered 767.25 (1m) (am)

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SECTION 26. 767.25 (1m) (em) of the statutes is renumbered 767.25 (1m) (am)

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SECTION 27. 767.25 (1m) (f) of the statutes is renumbered 767.25 (1m) (am) 11.

SECTION 28. 767.25 (1m) (g) of the statutes is renumbered 767.25 (1m) (am) 12.

SECTION 29. 767.25 (1m) (h) of the statutes is renumbered 767.25 (1m) (am) 13.

SECTION 30. 767.25 (1m) (hm) of the statutes is renumbered 767.25 (1m) (am)

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SECTION 31. 767.25 (1m) (hs) of the statutes is renumbered 767.25 (1m) (am)

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1 ~~SECTION 32. 767.25 (1m) (i) of the statutes is renumbered 767.25 (1m) (am) 16.~~

2 SECTION ~~33.~~ 767.25 (1r) of the statutes is created to read:

3 767.25 (1r) Notwithstanding sub. (1m), 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. (1j) in the manner provided by rule under s. 49.22 (9) (b). The court is not
8 required to provide the information specified in sub. (1n) if the court determines child
9 support payments under this subsection.

10 SECTION ~~34.~~ 767.295 (2) (c) of the statutes is amended to read:

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

23 SECTION ~~35.~~ 767.32 (1) (b) 4. of the statutes is amended to read:

24 767.32 (1) (b) 4. A difference between the amount of child support ordered by
25 the court to be paid by the payer and the amount that the payer would have been

1 required to pay based on the percentage standard established by the department
2 under s. 49.22 (9) (a), or based on the method of calculating child support under s.
3 767.25 (1r), if the court did not use the percentage standard or the method under s.
4 767.25 (1r) in determining the child support payments and did not provide the
5 information required under s. 46.10 (14) (d), 301.12 (14) (d), or 767.25 (1n), whichever
6 is appropriate.

7 **SECTION ~~36~~ 36.** 767.32 (2) of the statutes is amended to read:

8 767.32 (2) Except as provided in sub. (2m) or (2r), if the court revises a
9 judgment or order with respect to child support payments, it shall do so by using the
10 percentage standard established by the department under s. 49.22 (9) (a).

11 **SECTION 37.** 767.32 (2m) of the statutes is renumbered 767.32 (2m) (a) 1. and
12 amended to read:

13 767.32 (2m) (a) 1. ~~Upon Subject to subd. 2., upon~~ request by a party, the court
14 ~~may modify~~ the amount of revised child support payments determined under sub. (2)
15 if, after considering the factors listed in s. 767.25 (1m) (am), the court finds, by the
16 greater weight of the credible evidence, that the use of the percentage standard is
17 unfair to the child or to any of the parties.

18 **SECTION 38.** 767.32 (2m) (a) 2. of the statutes is created to read:

19 767.32 (2m) (a) 2. If the gross income and earning capacity of the payer are
20 significantly lower than the gross income and earning capacity of the payee, there
21 is a rebuttable presumption that use of the percentage standard is unfair to the
22 payer.

23 **SECTION ~~39~~ 39.** 767.32 (2m) (b) of the statutes is created to read:

24 767.32 (2m) (b) Notwithstanding par. (a), in cases in which a child has
25 substantial periods of physical placement with each parent or in which a parent has

SECTION # . RN, 767.32 (2m), 767.32 (2m) (a)

1 a preexisting obligation to support a child, upon request by a party or on its own
2 motion, the court may modify the amount of child support payments determined
3 under sub. (2) in the manner provided by rule under s. 49.22 (9) (b). The court is not
4 required to provide the information specified in s. 767.25 (1n) if the court determines
5 child support payments under this paragraph.

6 SECTION ~~40~~[✓] 767.33 (1) (a) of the statutes is amended to read:

7 767.33 (1) (a) An order for child or family support under this chapter may
8 provide for an annual adjustment in the amount to be paid based on a change in the
9 payer's income if the amount of child or family support is expressed in the order as
10 a fixed sum and based on the percentage standard established by the department
11 under s. 49.22 (9) (a) or on the method of calculating child support under s. 767.25
12 (1r). No adjustment may be made under this section unless the order provides for
13 the adjustment.

14 SECTION ~~41~~[✓] 767.33 (1) (b) of the statutes is amended to read:

15 767.33 (1) (b) An adjustment under this section may not be made more than
16 once in a year and shall be determined on the basis of the percentage standard
17 established by the department under s. 49.22 (9) (a) or the method of calculating child
18 support under s. 767.25 (1r).

19 SECTION ~~42~~[✓] 767.45 (7) of the statutes is amended to read:

20 767.45 (7) The clerk of court shall provide without charge, to each person
21 bringing an action under this section, except to the state under sub. (1) (g) or (6m),
22 a document setting forth the percentage standard established by the department
23 under s. 49.22 (9) (a) and listing the factors ~~which~~ that a court may consider under
24 s. 767.25 (1m) and (1r).

25 SECTION ~~43~~[✓] 767.455 (6) of the statutes is amended to read:

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

5 SECTION ~~44~~ 767.477[✓] (2) of the statutes is amended to read:

6 767.477 (2) Before making any temporary order under sub. (1), the court shall
7 consider those factors that the court is required to consider when granting a final
8 judgment on the same subject matter. If the court makes a temporary child support
9 order that deviates from the amount of support that would be required by using the
10 percentage standard established by the department under s. 49.22 (9) (a) or by using
11 the method of calculating child support under s. 767.25 (1r), the court shall comply
12 with the requirements of s. 767.25 (1n).

13 SECTION ~~45~~ 938.30[✓] (6) (b) of the statutes is amended to read:

14 938.30 (6) (b) If it appears to the court that disposition of the case may include
15 placement of the juvenile outside the juvenile's home, the court shall order the
16 juvenile's parent to provide a statement of income, assets, debts, and living expenses
17 to the court or the designated agency under s. 938.33 (1) at least 5 days before the
18 scheduled date of the dispositional hearing or as otherwise ordered by the court. The
19 clerk of court shall provide, without charge, to any parent ordered to provide a
20 statement of income, assets, debts, and living expenses a document setting forth the
21 percentage standard established by the department of workforce development under
22 s. 49.22 (9) (a) and listing the factors that a court may consider under s. 301.12 (14)
23 (c).

24 SECTION ~~46~~ 938.31[✓] (7) (b) of the statutes is amended to read:

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

11 SECTION ~~47~~[✓] 938.357 (5m) (a) of the statutes is amended to read:

12 938.357 (5m) (a) If a proposed change in placement changes a juvenile's
13 placement from a placement in the juvenile's home to a placement outside the
14 juvenile's home, the court shall order the juvenile's parent to provide a statement of
15 income, assets, debts, and living expenses to the court or the person or agency
16 primarily responsible for implementing the dispositional order by a date specified by
17 the court. The clerk of court shall provide, without charge, to any parent ordered to
18 provide a statement of income, assets, debts, and living expenses a document setting
19 forth the percentage standard established by the department of workforce
20 development under s. 49.22 (9) (a) and listing the factors that a court may consider
21 under s. 301.12 (14) (c). If the juvenile is placed outside the juvenile's home, the court
22 shall determine the liability of the parent in the manner provided in s. 301.12 (14).

23 SECTION ~~48~~[✓] 938.363 (1) (c) of the statutes is amended to read:

24 938.363 (1) (c) If the proposed revision is for a change in the amount of child
25 support to be paid by a parent, the court shall order the juvenile's parent to provide

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

8 **SECTION 49.** 948.22 (7) (bm) of the statutes is renumbered 948.22 (7) (bm) 1.
9 and amended to read:

10 948.22 (7) (bm) 1. ~~Upon Subject to subd. 2., upon request, the court may modify~~
11 ~~the amount of child or spousal support payments determined under par. (b) 2. if, after~~
12 ~~considering the factors listed in s. 767.25 (1m) (am), regardless of the fact that the~~
13 ~~action is not one for a determination of paternity or an action specified in s. 767.25~~
14 ~~(1), the court finds, by the greater weight of the credible evidence, that the use of the~~
15 ~~percentage standard is unfair to the child or to either of the child's parents.~~

16 **SECTION 50.** 948.22 (7) (bm) 2. of the statutes is created to read:

17 948.22 (7) (bm) 2. If the gross income and earning capacity of the payer are
18 significantly lower than the gross income and earning capacity of the payee, there
19 is a rebuttable presumption that use of the percentage standard is unfair to the
20 payer.

21 **SECTION 51. Nonstatutory provisions.**

22 (1) No creation or amendment of a statute section by this act constitutes a
23 substantial change in circumstances on which may be based a revision under section
24 767.32 of the statutes, as affected by this act, of a judgment or order with respect to
25 an amount of child or family support.

1 SECTION ~~52~~ Initial applicability.

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

8 (2) PERCENTAGE STANDARD DOCUMENT LISTING DEVIATION FACTORS. The treatment
9 of sections 767.085 (2) (b) and (2m) (a) 2., 767.45 (7), and 767.455 (6) of the statutes
10 first applies to actions commenced on the first day of the 7th month beginning after
11 publication.

12 (3) REBUTTABLE PRESUMPTION THAT PERCENTAGE STANDARD UNFAIR. The treatment
13 of section 767.25 (1m) (intro.), (a), (b), (bj), (bm), (bp), (bz), (c), (d), (e), (ej), (em), (f),
14 (g), (h), (hm), (hs), and (i) of the statutes, the renumbering and amendment of
15 sections 767.32 (2m) (as it relates to the rebuttable presumption of unfairness to a
16 child support payer) and 948.22 (7) (bm) of the statutes, and the creation of sections
17 767.32 (2m) (a) 2. and 948.22 (7) (bm) 2. of the statutes first apply to actions,
18 proceedings, and prosecutions commenced on the effective date of this subsection.

19 ~~19~~ (4) NOTING OTHER SUPPORT ORDERS IN PETITION. The treatment of section 767.085
20 (1) (dm) of the statutes first applies to petitions filed on the first day of the 2nd month
21 beginning after the effective date of this subsection.

22 (END)

), the renumbering of section 767.32 (2m) of the statutes,

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INSERT A

WSH adds that the court must also consider the 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 cause undue hardship to the payer. This addition

(END OF INSERT A)

INSERT 10-1

1 SECTION ~~II~~[#] 767.25[✓] (1m) (b) of the statutes is amended to read:
2 767.25 (1m) (b) The financial resources of both parents, including the disparity
3 in the parties' incomes and resources, and, if the payer's income and resources are
4 lower than the payee's income and resources, whether application of the percentage
5 standard would cause undue hardship to the payer.

History: 1971 c. 157; 1977 c. 29, 105, 418; 1979 c. 32 ss. 50, 92 (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. 7101, 7102, 9126 (19); 1995 a. 201, 279, 404; 1997 a. 27, 35, 191; 1999 a. 9, 32; 2001 a. 16, 61.

(END OF INSERT 10-1)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2485/1dn

PJK:lmg:pg

Date

[Handwritten signature]

✓
This redraft removes the creation of a rebuttable presumption under s. 767.25 (1m) (bm) and replaces it with the amendment of current law s. 767.25 (1m) (b).

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2485/1dn
PJK:kjf:cph

July 16, 2003

This redraft removes the creation of a rebuttable presumption under s. 767.25 (1m) (bm) and replaces it with the amendment of current law s. 767.25 (1m) (b).

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

Kahler, Pam

From: Dan Rossmiller [DRossmiller@wisbar.org]
Sent: Monday, August 04, 2003 6:14 PM
To: pam.kahler@legis.state.wi.us.
Subject: FW: LRB-2485/1dn (Child Support Pam,

I don't know if this was forwarded to you or not. I sent it to Sara just before I left for vacation and now she has left. Please let me know if you have any questions about it.

Dan Rossmiller
(250-6140)

-----Original Message-----

From: Dan Rossmiller
Sent: Friday, July 18, 2003 4:58 PM
To: 'Jermstad, Sara'
Subject: LRB-2485/1dn (Child Support Revisions)

Sara,

With apologies to you and to Pam Kahler, after discussing the draft, I think it would be best to go back to the original language recommended by the Child Support Guidelines Advisory Committee's original recommendation to amend 767.25 (1m) (b) as follows:

S. 767.25(1m)(b) The financial resources and standard of living of both parents as determined by the court including any significant disparity between the parties' gross income or earning capacities. (underlined verbiage is language added under the Committee recommended revision.)

We everyone recognizes that this language does not overrule the decision in the Luciani case, it does have the advantage of having been approved by the Family Law Section Board. I don't want to be a situation where we ask Sen. Roessler to introduce something and the have to go back and say we, "whoops , that's really not what we wanted. While we will look for language that better accomplishes out goal, in the mean time I think it is best to get a draft finalized and ready to circulate. If the Family Law Section Board can put its collective thinking cap on and can come up with a better alternative, I would hope that Sen. Roessler would be amendable to amending the bill to include the new and improved language at a later date. As we discussed in our meeting, the Family Law Section Board next meets on August 15th and I will work to have them review alternatives at that meeting.

Thanks for all your help.

Dan Rossmiller
Public Affairs Director
State Bar of Wisconsin
(608) 250-6140 (voice)
(608) 257-4343 (fax)

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State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2485/2
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2003 BILL

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Regen

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

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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 ~~parties'~~ 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 cause undue hardship to the payer. 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 affecting the family to indicate whether either of the parties is obligated to pay child

standards of living and any significant disparity between their gross incomes or earning capacities

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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:

20 48.30 (6) (b) If it appears to the court that disposition of the case may include
21 placement of the child outside the child's home, the court shall order the child's

BILL**SECTION 3**

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

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

11 48.31 (7) (b) If it appears to the court that disposition of the case may include
12 placement of the child outside the child's home, the court shall order the child's
13 parent to provide a statement of income, assets, debts, and living expenses to the
14 court or the designated agency under s. 48.33 (1) at least 5 days before the scheduled
15 date of the dispositional hearing or as otherwise ordered by the court. The clerk of
16 court shall provide, without charge, to any parent ordered to provide a statement of
17 income, assets, debts, and living expenses a document setting forth the percentage
18 standard established by the department of workforce development under s. 49.22 (9)
19 (a) and the manner of its application established by the department of health and
20 family services under s. 46.247 and listing the factors that a court may consider
21 under s. 46.10 (14) (c).

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

23 48.357 (5m) (a) If a proposed change in placement changes a child's placement
24 from a placement in the child's home to a placement outside the child's home, the
25 court shall order the child's parent to provide a statement of income, assets, debts,

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

10 **SECTION 6.** 48.363[✓] (1) (c) of the statutes is amended to read:

11 48.363 (1) (c) If the proposed revision is for a change in the amount of child
12 support to be paid by a parent, the court shall order the child's parent to provide a
13 statement of income, assets, debts, and living expenses to the court and the person
14 or agency primarily responsible for implementing the dispositional order by a date
15 specified by the court. The clerk of court shall provide, without charge, to any parent
16 ordered to provide a statement of income, assets, debts, and living expenses a
17 document setting forth the percentage standard established by the department of
18 workforce development under s. 49.22 (9) (a) and the manner of its application
19 established by the department of health and family services under s. 46.247 and
20 listing the factors that a court may consider under s. 46.10 (14) (c).

21 **SECTION 7.** 49.22[✓] (9) of the statutes is amended to read:

22 49.22 (9) (a) The department shall promulgate rules that provide a standard
23 for courts to use in determining a child support obligation based upon a percentage
24 of the gross income and assets of either or both parents.

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

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

8 301.12 (14) (b) Except as provided in par. (c) and subject to par. (cm), liability
9 of a parent specified in sub. (2) or s. 301.03 (18) for the care and maintenance of the
10 parent's minor child who has been placed by a court order under s. 938.183, 938.355,
11 or 938.357 in a residential, nonmedical facility such as a group home, foster home,
12 treatment foster home, residential care center for children and youth, or juvenile
13 correctional institution shall be determined by the court by using the percentage
14 standard established by the department of workforce development under s. 49.22 (9)
15 (a) and by applying the percentage standard in the manner established by the
16 department under par. (g).

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

18 301.12 (14) (g) For purposes of determining child support under par. (b), the
19 department shall promulgate rules related to the application of the standard
20 established by the department of workforce development under s. 49.22 (9) (a) to a
21 child support obligation for the care and maintenance of a child who is placed by a
22 court order under s. 938.183, 938.355, or 938.357 in a residential, nonmedical facility.
23 The rules shall take into account the needs of any person, including dependent
24 children other than the child, whom either parent is legally obligated to support.

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

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

5 **SECTION 11.** 767.085[✓] (2) (b) of the statutes is amended to read:

6 767.085 (2) (b) The clerk of court shall provide without charge, to each person
7 filing a petition requesting child support, a document setting forth the percentage
8 standard established by the department under s. 49.22 (9) (a) and listing the factors
9 ~~which~~ that a court may consider under s. 767.25 (1m) and (1r).

10 **SECTION 12.** 767.085[✓] (2m) (a) 2. of the statutes is amended to read:

11 767.085 (2m) (a) 2. Shall be accompanied by a document, provided without
12 charge by the clerk of court, setting forth the percentage standard established by the
13 department under s. 49.22 (9) (a) and listing the factors ~~which~~ that a court may
14 consider under s. 767.25 (1m) and (1r).

15 **SECTION 13.** 767.23[✓] (1n) of the statutes is amended to read:

16 767.23 (1n) Before making any temporary order under sub. (1), the court or
17 circuit court commissioner shall consider those factors that the court is required by
18 this chapter to consider before entering a final judgment on the same subject matter.
19 In making a determination under sub. (1) (a) or (am), the court or circuit court
20 commissioner shall consider the factors under s. 767.24 (5). If the court or circuit
21 court commissioner makes a temporary child support order that deviates from the
22 amount of support that would be required by using the percentage standard
23 established by the department under s. 49.22 (9) (a) or by using the method of
24 calculating child support under s. 767.25 (1r), the court or circuit court commissioner
25 shall comply with the requirements of s. 767.25 (1n). A temporary order under sub.

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(1) may be based upon the written stipulation of the parties, subject to the approval of the court or circuit court commissioner. Temporary orders made by a circuit court commissioner may be reviewed by the court.

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

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

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

767.25 (1m) (b) The financial resources of both parents, including ~~the~~ disparity between the parties' incomes ^{gross} resources, and if the payer's income and resources are lower than the payee's income and resources, whether application of the percentage standard would cause undue hardship to the payee, ^{or earning capacities}

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

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

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

767.295 (2) (c) If the court enters an order under par. (a), it shall order the parent to pay child support equal to the amount determined by applying the percentage standard established under s. 49.22 (9) (a) to the income a person would earn by working 40 hours per week for the federal minimum hourly wage under 29

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1 USC 206 (a) (1) or equal to the amount of child support that the parent was ordered
2 to pay in the most recent determination of support under this chapter. The child
3 support obligation ordered under this paragraph continues until the parent makes
4 timely payment in full for 3 consecutive months or until the person participates in
5 the program under s. 49.36 for 16 weeks, whichever comes first. The court shall
6 provide in its order that the parent must make child support payments calculated
7 under s. 767.25 (1j) ~~or~~, (1m), or (1r) after the obligation to make payments ordered
8 under this paragraph ceases.

9 **SECTION 18.** 767.32[✓] (1) (b) 4. of the statutes is amended to read:

10 767.32 (1) (b) 4. A difference between the amount of child support ordered by
11 the court to be paid by the payer and the amount that the payer would have been
12 required to pay based on the percentage standard established by the department
13 under s. 49.22 (9) (a), or based on the method of calculating child support under s.
14 767.25 (1r), if the court did not use the percentage standard or the method under s.
15 767.25 (1r) in determining the child support payments and did not provide the
16 information required under s. 46.10 (14) (d), 301.12 (14) (d), or 767.25 (1n), whichever
17 is appropriate.

18 **SECTION 19.** 767.32[✓] (2) of the statutes is amended to read:

19 767.32 (2) Except as provided in sub. (2m) or (2r), if the court revises a
20 judgment or order with respect to child support payments, it shall do so by using the
21 percentage standard established by the department under s. 49.22 (9) (a).

22 **SECTION 20.** 767.32[✓] (2m) of the statutes is renumbered 767.32 (2m) (a).

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

24 767.32 (2m) (b) Notwithstanding par. (a), in cases in which a child has
25 substantial periods of physical placement with each parent or in which a parent has

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1 a preexisting obligation to support a child, upon request by a party or on its own
2 motion, the court may modify the amount of child support payments determined
3 under sub. (2) in the manner provided by rule under s. 49.22 (9) (b). The court is not
4 required to provide the information specified in s. 767.25 (1n) if the court determines
5 child support payments under this paragraph.

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

7 767.33 (1) (a) An order for child or family support under this chapter may
8 provide for an annual adjustment in the amount to be paid based on a change in the
9 payer's income if the amount of child or family support is expressed in the order as
10 a fixed sum and based on the percentage standard established by the department
11 under s. 49.22 (9) (a) or on the method of calculating child support under s. 767.25
12 (1r). No adjustment may be made under this section unless the order provides for
13 the adjustment.

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

15 767.33 (1) (b) An adjustment under this section may not be made more than
16 once in a year and shall be determined on the basis of the percentage standard
17 established by the department under s. 49.22 (9) (a) or the method of calculating child
18 support under s. 767.25 (1r).

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

20 767.45 (7) The clerk of court shall provide without charge, to each person
21 bringing an action under this section, except to the state under sub. (1) (g) or (6m),
22 a document setting forth the percentage standard established by the department
23 under s. 49.22 (9) (a) and listing the factors ~~which~~ that a court may consider under
24 s. 767.25 (1m) and (1r).

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

BILL

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

5 **SECTION 26.** 767.477[✓] (2) of the statutes is amended to read:

6 767.477 (2) Before making any temporary order under sub. (1), the court shall
7 consider those factors that the court is required to consider when granting a final
8 judgment on the same subject matter. If the court makes a temporary child support
9 order that deviates from the amount of support that would be required by using the
10 percentage standard established by the department under s. 49.22 (9) (a) or by using
11 the method of calculating child support under s. 767.25 (1r), the court shall comply
12 with the requirements of s. 767.25 (1n).

13 **SECTION 27.** 938.30[✓] (6) (b) of the statutes is amended to read:

14 938.30 (6) (b) If it appears to the court that disposition of the case may include
15 placement of the juvenile outside the juvenile's home, the court shall order the
16 juvenile's parent to provide a statement of income, assets, debts, and living expenses
17 to the court or the designated agency under s. 938.33 (1) at least 5 days before the
18 scheduled date of the dispositional hearing or as otherwise ordered by the court. The
19 clerk of court shall provide, without charge, to any parent ordered to provide a
20 statement of income, assets, debts, and living expenses a document setting forth the
21 percentage standard established by the department of workforce development under
22 s. 49.22 (9) (a) and listing the factors that a court may consider under s. 301.12 (14)
23 (c).

24 **SECTION 28.** 938.31[✓] (7) (b) of the statutes is amended to read:

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

11 ✓
SECTION 29. 938.357 (5m) (a) of the statutes is amended to read:

12 938.357 (5m) (a) If a proposed change in placement changes a juvenile's
13 placement from a placement in the juvenile's home to a placement outside the
14 juvenile's home, the court shall order the juvenile's parent to provide a statement of
15 income, assets, debts, and living expenses to the court or the person or agency
16 primarily responsible for implementing the dispositional order by a date specified by
17 the court. The clerk of court shall provide, without charge, to any parent ordered to
18 provide a statement of income, assets, debts, and living expenses a document setting
19 forth the percentage standard established by the department of workforce
20 development under s. 49.22 (9) (a) and listing the factors that a court may consider
21 under s. 301.12 (14) (c). If the juvenile is placed outside the juvenile's home, the court
22 shall determine the liability of the parent in the manner provided in s. 301.12 (14).

23 ✓
SECTION 30. 938.363 (1) (c) of the statutes is amended to read:

24 938.363 (1) (c) If the proposed revision is for a change in the amount of child
25 support to be paid by a parent, the court shall order the juvenile's parent to provide

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

SECTION 31. Nonstatutory provisions.

8
9 (1) No creation or amendment of a statute section by this act constitutes a
10 substantial change in circumstances on which may be based a revision under section
11 767.32 of the statutes, as affected by this act, of a judgment or order with respect to
12 an amount of child or family support.

SECTION 32. Initial applicability.

13
14 (1) CALCULATING CHILD SUPPORT IN SPECIAL CIRCUMSTANCES. The treatment of
15 sections 767.23 (1n), 767.25 (1j) and (1r), 767.295 (2) (c), 767.32 (1) (b) 4., 767.33 (1)
16 (a) and (b), and 767.477 (2) of the statutes, the renumbering of section 767.32 (2m)
17 of the statutes, and the creation of section 767.32 (2m) (b) of the statutes first apply
18 to child support orders that are granted on the effective date of this subsection,
19 including orders in actions or proceedings to modify a judgment or order that was
20 granted before the effective date of this subsection.

21 (2) PERCENTAGE STANDARD DOCUMENT LISTING DEVIATION FACTORS. The treatment
22 of sections 767.085 (2) (b) and (2m) (a) 2., 767.45 (7), and 767.455 (6) of the statutes
23 first applies to actions commenced on the first day of the 7th month beginning after
24 publication.

Kahler, Pam

From: Halbur, Jennifer
Sent: Tuesday, August 19, 2003 11:00 AM
To: Kahler, Pam
Subject: LRB 2485/1 relating to child support

Pam,

Senator Roessler would like changes made to LRB 2485/1. I know you have done a /2 already but the State Bar Assoc. decided to work off of the /1 version.

The changes are in the following e-mail send to me from Dan Rossmiller of the State Bar.

Please let me know if you have any questions or concerns.

Thank you!

Jennifer Halbur
Office of Senator Carol Roessler
266-5300



RE: LRB 2485/2
relating to per...

Kahler, Pam

From: Dan Rossmiller [DRossmiller@wisbar.org]
Sent: Monday, August 18, 2003 5:18 PM
To: Halbur, Jennifer
Subject: RE: LRB 2485/2 relating to percentage standard in special Jennifer ,

The Family Law Section Board met last Friday and reviewed LRB 2485/1 and LRB 2485/2. They actually decided to make revisions to the earlier "LRB 2485/1" version as follows:

At page 8, line 8 of that draft, the language currently reads:

SECTION 15. 767.25 (1m) (b) of the statutes is amended to read:
767.25 (1m) (b) The financial resources of both parents, including the disparity in the parties' incomes and resources, and, if the payer's income and resources are lower than the payee's income and resources, whether application of the percentage standard would cause undue hardship to the payer.

Under the Family Law Section's new suggested language, it would read:

SECTION 15. 767.25 (1m) (b) of the statutes is amended to read:
767.25 (1m) (b) The financial resources of both parents, including the resulting disparity in the parties' incomes and resources, and, if the payer's income and resources are lower than the payee's income and resources, whether application of the percentage standard would create a substantially disparate standard of living between the parties.

I hope the color change shows up on your machine. The new language should appear in red. Please let me know if you have any questions. Please feel free to share this with Pam Kahler. (I spoke to her earlier about this and told her I would put the change in writing.)

Dan Rossmiller
Public Affairs Director
State Bar of Wisconsin
(608) 250-6140 (voice)
(608) 257-4343 (fax)

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P.S.:

Jennifer,

Assuming the changes outlined in this email are made, the draft would be ready to go and the Family Law Section will strongly support the entire draft. Again, let me know if you have any questions.

-----Original Message-----

From: Halbur, Jennifer [<mailto:Jennifer.Halbur@legis.state.wi.us>]
Sent: Wednesday, August 13, 2003 4:11 PM
To: Dan Rossmiller; Richard, JoAnna - DWD; Chesnik, Constance; Pfeiffer, Susan
Subject: LRB 2485/2 relating to percentage standard in special cases...

08/19/2003

<<03-2485/2>>

Hi,

I just recieved this child support draft. Please take a look at it and let me know if this draft meets your intent.

I have taken over for Sara Jermstad and will be the point person on this issue. I apologize for not yet knowing the history behind this bill. Please share your comments about the draft with me.

Thanks,

Jennifer Halbur
Office of Senator Carol Roessler
608-266-5300

08/19/2003



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2485/3
PJK:kmg&kjf:ch

rm not run

2003 BILL

pp 248

Gen. Cat.

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

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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 parties' standards of living and any significant disparity between their gross incomes or earning capacities. 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 affecting the family to indicate whether either of the parties is obligated to pay child

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the parties' standards of living and any significant disparity between their gross incomes or earning capacities

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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:

20 48.30 (6) (b) If it appears to the court that disposition of the case may include
21 placement of the child outside the child's home, the court shall order the child's

BILL**SECTION 3**

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

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

11 48.31 (7) (b) If it appears to the court that disposition of the case may include
12 placement of the child outside the child's home, the court shall order the child's
13 parent to provide a statement of income, assets, debts, and living expenses to the
14 court or the designated agency under s. 48.33 (1) at least 5 days before the scheduled
15 date of the dispositional hearing or as otherwise ordered by the court. The clerk of
16 court shall provide, without charge, to any parent ordered to provide a statement of
17 income, assets, debts, and living expenses a document setting forth the percentage
18 standard established by the department of workforce development under s. 49.22 (9)
19 (a) and the manner of its application established by the department of health and
20 family services under s. 46.247 and listing the factors that a court may consider
21 under s. 46.10 (14) (c).

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

23 48.357 (5m) (a) If a proposed change in placement changes a child's placement
24 from a placement in the child's home to a placement outside the child's home, the
25 court shall order the child's parent to provide a statement of income, assets, debts,

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

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

11 48.363 (1) (c) If the proposed revision is for a change in the amount of child
12 support to be paid by a parent, the court shall order the child's parent to provide a
13 statement of income, assets, debts, and living expenses to the court and the person
14 or agency primarily responsible for implementing the dispositional order by a date
15 specified by the court. The clerk of court shall provide, without charge, to any parent
16 ordered to provide a statement of income, assets, debts, and living expenses a
17 document setting forth the percentage standard established by the department of
18 workforce development under s. 49.22 (9) (a) and the manner of its application
19 established by the department of health and family services under s. 46.247 and
20 listing the factors that a court may consider under s. 46.10 (14) (c).

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

22 49.22 (9) (a) The department shall promulgate rules that provide a standard
23 for courts to use in determining a child support obligation based upon a percentage
24 of the gross income and assets of either or both parents.

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

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

8 301.12 (14) (b) Except as provided in par. (c) and subject to par. (cm), liability
9 of a parent specified in sub. (2) or s. 301.03 (18) for the care and maintenance of the
10 parent's minor child who has been placed by a court order under s. 938.183, 938.355,
11 or 938.357 in a residential, nonmedical facility such as a group home, foster home,
12 treatment foster home, residential care center for children and youth, or juvenile
13 correctional institution shall be determined by the court by using the percentage
14 standard established by the department of workforce development under s. 49.22 (9)
15 (a) and by applying the percentage standard in the manner established by the
16 department under par. (g).

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

18 301.12 (14) (g) For purposes of determining child support under par. (b), the
19 department shall promulgate rules related to the application of the standard
20 established by the department of workforce development under s. 49.22 (9) (a) to a
21 child support obligation for the care and maintenance of a child who is placed by a
22 court order under s. 938.183, 938.355, or 938.357 in a residential, nonmedical facility.
23 The rules shall take into account the needs of any person, including dependent
24 children other than the child, whom either parent is legally obligated to support.

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

BILL

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

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

6 767.085 (2) (b) The clerk of court shall provide without charge, to each person
7 filing a petition requesting child support, a document setting forth the percentage
8 standard established by the department under s. 49.22 (9) (a) and listing the factors
9 ~~which~~ that a court may consider under s. 767.25 (1m) and (1r).

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

11 767.085 (2m) (a) 2. Shall be accompanied by a document, provided without
12 charge by the clerk of court, setting forth the percentage standard established by the
13 department under s. 49.22 (9) (a) and listing the factors ~~which~~ that a court may
14 consider under s. 767.25 (1m) and (1r).

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

16 767.23 (1n) Before making any temporary order under sub. (1), the court or
17 circuit court commissioner shall consider those factors that the court is required by
18 this chapter to consider before entering a final judgment on the same subject matter.
19 In making a determination under sub. (1) (a) or (am), the court or circuit court
20 commissioner shall consider the factors under s. 767.24 (5). If the court or circuit
21 court commissioner makes a temporary child support order that deviates from the
22 amount of support that would be required by using the percentage standard
23 established by the department under s. 49.22 (9) (a) or by using the method of
24 calculating child support under s. 767.25 (1r), the court or circuit court commissioner
25 shall comply with the requirements of s. 767.25 (1n). A temporary order under sub.

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1 (1) may be based upon the written stipulation of the parties, subject to the approval
2 of the court or circuit court commissioner. Temporary orders made by a circuit court
3 commissioner may be reviewed by the court.

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

5 767.25 (1j) Except as provided in sub. ~~subs.~~ (1m) and (1r), the court shall
6 determine child support payments by using the percentage standard established by
7 the department under s. 49.22 (9) (a).

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

9 767.25 (1m) (b) The financial resources and standards of living of both parents,
10 as determined by the court, including any significant disparity between the parties'
11 gross incomes or earning capacities.

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

13 767.25 (1r) Notwithstanding sub. (1m), in cases in which a child has
14 substantial periods of physical placement with each parent or in which a parent has
15 a preexisting obligation to support a child, upon request by a party or on its own
16 motion, the court may modify the amount of child support payments determined
17 under sub. (1j) in the manner provided by rule under s. 49.22 (9) (b). The court is not
18 required to provide the information specified in sub. (1n) if the court determines child
19 support payments under this subsection.

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

21 767.295 (2) (c) If the court enters an order under par. (a), it shall order the
22 parent to pay child support equal to the amount determined by applying the
23 percentage standard established under s. 49.22 (9) (a) to the income a person would
24 earn by working 40 hours per week for the federal minimum hourly wage under 29
25 USC 206 (a) (1) or equal to the amount of child support that the parent was ordered

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1 to pay in the most recent determination of support under this chapter. The child
2 support obligation ordered under this paragraph continues until the parent makes
3 timely payment in full for 3 consecutive months or until the person participates in
4 the program under s. 49.36 for 16 weeks, whichever comes first. The court shall
5 provide in its order that the parent must make child support payments calculated
6 under s. 767.25 (1j) ~~or~~, (1m), or (1r) after the obligation to make payments ordered
7 under this paragraph ceases.

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

9 767.32 (1) (b) 4. A difference between the amount of child support ordered by
10 the court to be paid by the payer and the amount that the payer would have been
11 required to pay based on the percentage standard established by the department
12 under s. 49.22 (9) (a), or based on the method of calculating child support under s.
13 767.25 (1r), if the court did not use the percentage standard or the method under s.
14 767.25 (1r) in determining the child support payments and did not provide the
15 information required under s. 46.10 (14) (d), 301.12 (14) (d), or 767.25 (1n), whichever
16 is appropriate.

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

18 767.32 (2) Except as provided in sub. (2m) or (2r), if the court revises a
19 judgment or order with respect to child support payments, it shall do so by using the
20 percentage standard established by the department under s. 49.22 (9) (a).

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

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

23 767.32 (2m) (b) Notwithstanding par. (a), in cases in which a child has
24 substantial periods of physical placement with each parent or in which a parent has
25 a preexisting obligation to support a child, upon request by a party or on its own

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1 motion, the court may modify the amount of child support payments determined
2 under sub. (2) in the manner provided by rule under s. 49.22 (9) (b). The court is not
3 required to provide the information specified in s. 767.25 (1n) if the court determines
4 child support payments under this paragraph.

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

6 767.33 (1) (a) An order for child or family support under this chapter may
7 provide for an annual adjustment in the amount to be paid based on a change in the
8 payer's income if the amount of child or family support is expressed in the order as
9 a fixed sum and based on the percentage standard established by the department
10 under s. 49.22 (9) (a) or on the method of calculating child support under s. 767.25
11 (1r). No adjustment may be made under this section unless the order provides for
12 the adjustment.

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

14 767.33 (1) (b) An adjustment under this section may not be made more than
15 once in a year and shall be determined on the basis of the percentage standard
16 established by the department under s. 49.22 (9) (a) or the method of calculating child
17 support under s. 767.25 (1r).

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

19 767.45 (7) The clerk of court shall provide without charge, to each person
20 bringing an action under this section, except to the state under sub. (1) (g) or (6m),
21 a document setting forth the percentage standard established by the department
22 under s. 49.22 (9) (a) and listing the factors ~~which~~ that a court may consider under
23 s. 767.25 (1m) and (1r).

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

BILL

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

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

6 767.477 (2) Before making any temporary order under sub. (1), the court shall
7 consider those factors that the court is required to consider when granting a final
8 judgment on the same subject matter. If the court makes a temporary child support
9 order that deviates from the amount of support that would be required by using the
10 percentage standard established by the department under s. 49.22 (9) (a) or by using
11 the method of calculating child support under s. 767.25 (1r), the court shall comply
12 with the requirements of s. 767.25 (1n).

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

14 938.30 (6) (b) If it appears to the court that disposition of the case may include
15 placement of the juvenile outside the juvenile's home, the court shall order the
16 juvenile's parent to provide a statement of income, assets, debts, and living expenses
17 to the court or the designated agency under s. 938.33 (1) at least 5 days before the
18 scheduled date of the dispositional hearing or as otherwise ordered by the court. The
19 clerk of court shall provide, without charge, to any parent ordered to provide a
20 statement of income, assets, debts, and living expenses a document setting forth the
21 percentage standard established by the department of workforce development under
22 s. 49.22 (9) (a) and listing the factors that a court may consider under s. 301.12 (14)
23 (c).

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

BILL

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

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

12 938.357 (5m) (a) If a proposed change in placement changes a juvenile's
13 placement from a placement in the juvenile's home to a placement outside the
14 juvenile's home, the court shall order the juvenile's parent to provide a statement of
15 income, assets, debts, and living expenses to the court or the person or agency
16 primarily responsible for implementing the dispositional order by a date specified by
17 the court. The clerk of court shall provide, without charge, to any parent ordered to
18 provide a statement of income, assets, debts, and living expenses a document setting
19 forth the percentage standard established by the department of workforce
20 development under s. 49.22 (9) (a) and listing the factors that a court may consider
21 under s. 301.12 (14) (c). If the juvenile is placed outside the juvenile's home, the court
22 shall determine the liability of the parent in the manner provided in s. 301.12 (14).

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

24 938.363 (1) (c) If the proposed revision is for a change in the amount of child
25 support to be paid by a parent, the court shall order the juvenile's parent to provide

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

SECTION 31. Nonstatutory provisions.

8
9 (1) No creation or amendment of a statute section by this act constitutes a
10 substantial change in circumstances on which may be based a revision under section
11 767.32 of the statutes, as affected by this act, of a judgment or order with respect to
12 an amount of child or family support.

SECTION 32. Initial applicability.

13
14 (1) CALCULATING CHILD SUPPORT IN SPECIAL CIRCUMSTANCES. The treatment of
15 sections 767.23 (1n), 767.25 (1j) and (1r), 767.295 (2) (c), 767.32 (1) (b) 4., 767.33 (1)
16 (a) and (b), and 767.477 (2) of the statutes, the renumbering of section 767.32 (2m)
17 of the statutes, and the creation of section 767.32 (2m) (b) of the statutes first apply
18 to child support orders that are granted on the effective date of this subsection,
19 including orders in actions or proceedings to modify a judgment or order that was
20 granted before the effective date of this subsection.

21 (2) PERCENTAGE STANDARD DOCUMENT LISTING DEVIATION FACTORS. The treatment
22 of sections 767.085 (2) (b) and (2m) (a) 2., 767.45 (7), and 767.455 (6) of the statutes
23 first applies to actions commenced on the first day of the 7th month beginning after
24 publication.

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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 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 cause undue hardship to the payer. 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 affecting the family to indicate whether either of the parties is obligated to pay child

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the resulting effect

create substantially disparate standards of living between the parties
(end of ins A)

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SECTION 13

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1 (1) may be based upon the written stipulation of the parties, subject to the approval
2 of the court or circuit court commissioner. Temporary orders made by a circuit court
3 commissioner may be reviewed by the court.

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

5 767.25 (1j) Except as provided in sub. subs. (1m) and (1r), the court shall
6 determine child support payments by using the percentage standard established by
7 the department under s. 49.22 (9) (a).

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

9 767.25 (1m) (b) The financial resources of both parents, including ~~the~~ disparity
10 in the parties' incomes and resources, and, if the payer's income and resources are
11 lower than the payee's income and resources, whether application of the percentage

12 standard would ~~apply to the payer~~ → create substantially
disparate standards
of living

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

14 767.25 (1r) Notwithstanding sub. (1m), in cases in which a child has
15 substantial periods of physical placement with each parent or in which a parent has
16 a preexisting obligation to support a child, upon request by a party or on its own
17 motion, the court may modify the amount of child support payments determined
18 under sub. (1j) in the manner provided by rule under s. 49.22 (9) (b). The court is not
19 required to provide the information specified in sub. (1n) if the court determines child
20 support payments under this subsection.

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

22 767.295 (2) (c) If the court enters an order under par. (a), it shall order the
23 parent to pay child support equal to the amount determined by applying the
24 percentage standard established under s. 49.22 (9) (a) to the income a person would
25 earn by working 40 hours per week for the federal minimum hourly wage under 29

the resulting
between the parties

(end of ins 8-11)

Emery, Lynn

From: Halbur, Jennifer
Sent: Friday, August 29, 2003 4:38 PM
To: LRB.Legal
Subject: Draft review: LRB 03-2485/3 Topic: Miscellaneous modifications related to establishing child support

It has been requested by <Halbur, Jennifer> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-2485/3 Topic: Miscellaneous modifications related to establishing child support