

2005 ASSEMBLY BILL 654

September 9, 2005 – Introduced by Representatives KESTELL, PETTIS, NELSON, OTT, MUSSER, F. LASEE, HAHN, GUNDERSON, M. WILLIAMS, NASS, FRISKE and KERKMAN, cosponsored by Senator GROTHMAN. Referred to Committee on Children and Families.

1 **AN ACT** *to amend* 767.25 (1m) (b); and *to create* 767.085 (1) (dm) of the statutes;
2 **relating to:** consideration of income disparity in determining child support
3 and 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 percent of his or her gross income for one child, 25 percent for two children, 29 percent for three children, 31 percent for four children, and 34 percent for five or more children. Upon the request of a party, a court may modify the amount of child support that would be ordered by using the percentage standard if the court, after considering a number of factors, finds that use of the percentage standard is unfair to the child or to either of the parties. Among the factors under current law that the court must consider are the financial resources and earning capacity of each parent. This bill adds that the court must also consider the resulting disparity in the parties' incomes and resources and, if the payer's income and resources are lower than the payee's, whether application of the percentage standard would create substantially disparate standards of living between the parties. This addition is intended to address the decision in *Luciani v. Montemurro-Luciani*, 199 Wis. 2d 280, 544 N.W. 2d 561 (1996), which some perceive as unfair to the child support payer. In that case, the parent with less physical placement with the couple's two children and whose income was much lower than the

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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:

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

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

6 **SECTION 2.** 767.25 (1m) (b) of the statutes is amended to read:

7 767.25 (1m) (b) The financial resources of both parents, including the resulting
8 disparity in the parties' incomes and resources, and, if the payer's income and
9 resources are lower than the payee's income and resources, whether application of
10 the percentage standard would create substantially disparate standards of living
11 between the parties.

12 **SECTION 3. Nonstatutory provisions.**

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

17 **SECTION 4. Initial applicability.**

