

SENATE BILL 369 (LRB -3460)

An Act to renumber and amend 767.51 (3) (e) and 767.62 (4) (d); and to create 767.51 (3) (e) 2. and 767.62 (4) (d) 2. of the statutes; relating to: requiring a court to establish a father's obligation for birth expenses.

2005

- 03-07. S. Introduced by Senators **Roessler, Brown, Darling and Lassa**; cosponsored by Representatives **Kestell, Gunderson, Hahn, Hines, Lehman, LeMahieu, Musser, Ott, Strachota, Van Roy and Vos**.
- 10-07. S. Read first time and referred to committee on Health, Children, Families, Aging and Long Term Care 390
- 10-20. S. Public hearing held.

2006

- 02-08. S. Executive action taken.
- 02-09. S. Report introduction and adoption of Senate Amendment 1 recommended by committee on Health, Children, Families, Aging and Long Term Care, Ayes 5, Noes 0 (**LRB a2122**) 591
- 02-09. S. Report passage as amended recommended by committee on Health, Children, Families, Aging and Long Term Care, Ayes 4, Noes 1 591
- 02-09. S. Available for scheduling.
- 02-22. S. Placed on calendar 2-23-2006 by committee on Senate Organization.
- 02-23. S. Read a second time 622
- 02-23. S. **Senate amendment 1 adopted** 622
- 02-23. S. Ordered to a third reading 622
- 02-23. S. Rules suspended 622
- 02-23. S. Read a third time and **passed**, Ayes 33, Noes 0 622
- 02-23. S. Senator Taylor added as a coauthor 621
- 02-23. S. Ordered immediately messaged 624
- 02-27. A. Received from Senate 850
- 02-27. A. Read first time and referred to committee on Rules 851
- 03-02. A. Placed on calendar 3-7-2006 by committee on Rules.
- 03-02. A. Made a special order of business at 11:38 A.M. on 3-7-2006 pursuant to Assembly Resolution 50 899
- 03-07. A. Read a second time 921
- 03-07. A. Ordered to a third reading 921
- 03-07. A. Rules suspended 921
- 03-07. A. Read a third time and **concurred in** 921
- 03-07. A. Ordered immediately messaged 921
- 03-08. S. Received from Assembly concurred in.

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**2005
ENROLLED BILL**

05en S B-369

ADOPTED DOCUMENTS:

Orig Engr SubAmdt

05 -3460/3

Amendments to above (if none, write "NONE"): SAI - a 2/22/1

Corrections - show date (if none, write "NONE"): None

Topic Rel

3/10/06 JR Miller
Date Enrolling Drafter

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2005 SENATE BILL 369

October 7, 2005 – Introduced by Senators ROESSLER, BROWN, DARLING and LASSA, cosponsored by Representatives KESTELL, GUNDERSON, HAHN, HINES, LEHMAN, LEMAHIEU, MUSSER, OTT, STRACHOTA, VAN ROY and VOS. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

1 **AN ACT to renumber and amend** 767.51 (3) (e) and 767.62 (4) (d); and **to create**
2 767.51 (3) (e) 2. and 767.62 (4) (d) 2. of the statutes; **relating to:** requiring a
3 court to establish a father's obligation for birth expenses.

Analysis by the Legislative Reference Bureau

Under current law, in a paternity judgment or order the court must include an order that requires the man who is determined to be the father to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth based on the man's ability to pay. A recent Wisconsin Court of Appeals decision based on this statute held that, if the father has no present ability to pay, a circuit court has no authority to set an obligation to pay lying-in expenses, even if payments are held in abeyance.

This bill modifies the requirement under current law so that in a judgment or order determining paternity, including one based on a voluntary acknowledgment of paternity, the court must establish the amount of the father's obligation to pay or contribute to those expenses and requires the court to set the father's obligation at not more than one-half of the total actual and reasonable pregnancy and birth expenses. The bill requires the court to specify in the judgment or order whether periodic payments are due on the obligation, based on the father's ability to pay, and provides that, if the court does not require periodic payments because the father does not have the present ability to pay, the court may modify the paternity judgment or

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order at a later date to require periodic payments if the father has the ability to pay at that time.

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

INSERT 1

INSERT 2

1 ~~SECTION 1.~~ 767.51 (3) (e) of the statutes is renumbered 767.51 (3) (e) 1. and
2 amended to read:

3 767.51 (3) (e) 1. An order ~~requiring the father~~ establishing the amount of the
4 father's obligation to pay or contribute to the reasonable expenses of the mother's
5 pregnancy and the child's birth. The amount established may not exceed one-half
6 of the total actual and reasonable pregnancy and birth expenses. The order also shall
7 specify whether periodic payments are due on the obligation, based on the father's
8 ability to pay or contribute to those expenses.

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9 SECTION 2. 767.51 (3) (e) 2. of the statutes is created to read:

10 767.51 (3) (e) 2. If the order does not require periodic payments because the
11 father has no present ability to pay or contribute to the expenses, the court may
12 modify the judgment or order at a later date to require periodic payments if the father
13 has the ability to pay at that time.

14 SECTION 3. 767.62 (4) (d) of the statutes is renumbered 767.62 (4) (d) 1. and
15 amended to read:

16 767.62 (4) (d) 1. An order ~~requiring the father~~ establishing the amount of the
17 father's obligation to pay or contribute to the reasonable expenses of the mother's
18 pregnancy and the child's birth. The amount established may not exceed one-half
19 of the total actual and reasonable pregnancy and birth expenses. The order also shall
20 specify whether periodic payments are due on the obligation, based on the father's
21 ability to pay or contribute to those expenses.

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1 **SECTION 4.** 767.62 (4) (d) 2. of the statutes is created to read:

2 767.62 (4) (d) 2. If the order does not require periodic payments because the
3 father has no present ability to pay or contribute to the expenses, the court may
4 modify the judgment or order at a later date to require periodic payments if the father
5 has the ability to pay at that time.

6 **SECTION 5. Initial applicability.**

7 (1) The renumbering and amendment of sections 767.51 (3) (e) and 767.62 (4)
8 (d) of the statutes first applies to judgments or orders that are granted on the
9 effective date of this subsection.

10

(END)

**SENATE AMENDMENT 1,
TO 2005 SENATE BILL 369**

February 9, 2006 – Offered by COMMITTEE ON HEALTH, CHILDREN, FAMILIES, AGING
AND LONG TERM CARE.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 1: before that line insert:

3 **SECTION 1c.** 49.855 (3) of the statutes is amended to read:

4 49.855 (3) Receipt of a certification by the department of revenue shall
5 constitute a lien, equal to the amount certified, on any state tax refunds or credits
6 owed to the obligor. The lien shall be foreclosed by the department of revenue as a
7 setoff under s. 71.93 (3), (6), and (7). When the department of revenue determines
8 that the obligor is otherwise entitled to a state tax refund or credit, it shall notify the
9 obligor that the state intends to reduce any state tax refund or credit due the obligor
10 by the amount the obligor is delinquent under the support, maintenance, or receiving
11 and disbursing fee order or obligation, by the outstanding amount for past support,
12 medical expenses, or birth expenses under the court order, or by the amount due
13 under s. 46.10 (4) or 301.12 (4). The notice shall provide that within 20 days the

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1 obligor may request a hearing before the circuit court rendering the order under
2 which the obligation arose. Within 10 days after receiving a request for hearing
3 under this subsection, the court shall set the matter for hearing. Pending further
4 order by the court or a circuit court commissioner, the department of workforce
5 development or its designee, whichever is appropriate, is prohibited from disbursing
6 the obligor's state tax refund or credit. A circuit court commissioner may conduct the
7 hearing. The sole issues at that hearing shall be whether the obligor owes the
8 amount certified and, if not and it is a support or maintenance order, whether the
9 money withheld from a tax refund or credit shall be paid to the obligor or held for
10 future support or maintenance, except that the obligor's ability to pay shall also be
11 an issue at the hearing if the obligation relates to an order under s. 767.51 (3) (e) 1.
12 or 767.62 (4) (d) 1. and the order specifies that the court found that the obligor's
13 income was at or below the poverty line established under 42 USC 9902 (2).

14 **SECTION 1h.** 49.855 (4m) (b) of the statutes is amended to read:

15 49.855 (4m) (b) The department of revenue may provide a certification that it
16 receives under sub. (1), (2m), or (2p) to the department of administration. Upon
17 receipt of the certification, the department of administration shall determine
18 whether the obligor is a vendor or is receiving any other payments from this state,
19 except for wages, retirement benefits, or assistance under s. 45.352, 1971 stats., s.
20 45.40 (1), this chapter, or ch. 46, 108, or 301. If the department of administration
21 determines that the obligor is a vendor or is receiving payments from this state,
22 except for wages, retirement benefits, or assistance under s. 45.352, 1971 stats., s.
23 45.40 (1), this chapter, or ch. 46, 108, or 301, it shall begin to withhold the amount
24 certified from those payments and shall notify the obligor that the state intends to
25 reduce any payments due the obligor by the amount the obligor is delinquent under

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1 the support, maintenance, or receiving and disbursing fee order or obligation, by the
2 outstanding amount for past support, medical expenses, or birth expenses under the
3 court order, or by the amount due under s. 46.10 (4) or 301.12 (4). The notice shall
4 provide that within 20 days after receipt of the notice the obligor may request a
5 hearing before the circuit court rendering the order under which the obligation arose.
6 An obligor may, within 20 days after receiving notice, request a hearing under this
7 paragraph. Within 10 days after receiving a request for hearing under this
8 paragraph, the court shall set the matter for hearing. A circuit court commissioner
9 may conduct the hearing. Pending further order by the court or circuit court
10 commissioner, the department of workforce development or its designee, whichever
11 is appropriate, may not disburse the payments withheld from the obligor. The sole
12 issues at the hearing are whether the obligor owes the amount certified and, if not
13 and it is a support or maintenance order, whether the money withheld shall be paid
14 to the obligor or held for future support or maintenance, except that the obligor's
15 ability to pay is also an issue at the hearing if the obligation relates to an order under
16 s. 767.51 (3) (e) 1. or 767.62 (4) (d) 1. and the order specifies that the court found that
17 the obligor's income was at or below the poverty line established under 42 USC 9902
18 (2)."

19 **2.** Page 2, line 1: delete "SECTION 1" and substitute "SECTION 1s".

20 **3.** Page 2, line 7: on lines 7 and 20, after "specify" insert "the court's findings
21 as to whether the father's income is at or below the poverty line established under
22 42 USC 9902 (2), and shall specify".

23 (END)