



State of Wisconsin
2001 - 2002 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 1,
TO 2001 SENATE BILL 106**

June 28, 2001 – Offered by COMMITTEE ON JUDICIARY, CONSUMER AFFAIRS, AND
CAMPAIGN FINANCE REFORM.

1 **AN ACT to amend** 767.08 (2) (b), 767.23 (1) (c), 767.25 (1) (a), 767.263 (1), 767.265
2 (3m), 767.27 (2), 767.27 (2m), 767.32 (1) (a), 808.075 (4) (d) 3. and 814.04 (intro.);
3 **to repeal and recreate** 767.33; and **to create** 20.445 (3) (fs), 767.10 (2) (am)
4 and 767.32 (1) (d) of the statutes; **relating to:** expressing child support as a
5 fixed sum, expressing child support as a percentage of income in certain
6 situations, requiring a child support payer to notify the payee of a change of
7 employer or in income, requiring the payer and payee of child support annually
8 to exchange financial information, providing for annual adjustments in child
9 support, and making an appropriation.

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

10 **SECTION 1.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
11 the following amounts for the purposes indicated:

	2001-02	2002-03
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20.445 Workforce development, department of

(3) ECONOMIC SUPPORT

(fs) Child support order conversion

assistance	GPR	A	1,467,400	-0-
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SECTION 2. 20.445 (3) (fs) of the statutes is created to read:

20.445 (3) (fs) *Child support order conversion assistance*. The amounts in the schedule to provide assistance to county child support agencies for the costs of converting child support orders to fixed-sum orders, to be allocated to counties on the basis of the number of percentage-expressed or mixed orders in a county in cases in which the state is a real party in interest under s. 767.075 (1).

SECTION 3. 767.08 (2) (b) of the statutes is amended to read:

767.08 (2) (b) The court in the action shall, as provided under s. 767.25 or 767.26, determine and adjudge the amount, if any, the person should reasonably contribute to the support and maintenance of the spouse or child and how the sum should be paid. This amount ~~may~~ must be expressed as a percentage of the person's ~~income or as a fixed sum, or as a combination of both in the alternative by requiring~~ payment of the greater or lesser of either a percentage of the person's income or a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the payer's income and the requirements under s. 767.10 (2) (am) 1. to 3. are satisfied. The amount so ordered to be paid may be changed or modified by the court upon notice of motion or order to show cause by either party upon sufficient evidence.

1 **SECTION 4.** 767.10 (2) (am) of the statutes is created to read:

2 767.10 **(2)** (am) A court may not approve a stipulation for expressing child
3 support or family support as a percentage of the payer's income unless all of the
4 following apply:

5 1. The state is not a real party in interest in the action under any of the
6 circumstances specified in s. 767.075 (1).

7 2. The payer is not subject to any other order, in any other action, for the
8 payment of child or family support or maintenance.

9 3. All payment obligations included in the order, other than the annual
10 receiving and disbursing fee under s. 767.29 (1) (d), are expressed as a percentage
11 of the payer's income.

12 **SECTION 5.** 767.23 (1) (c) of the statutes is amended to read:

13 767.23 **(1)** (c) Subject to s. 767.477, requiring either party or both parties to
14 make payments for the support of minor children, which payment amounts ~~may~~
15 must be expressed as a percentage of parental income or as a fixed sum, or as a
16 combination of both in the alternative by requiring payment of the greater or lesser
17 of either a percentage of parental income or a fixed sum unless the parties have
18 stipulated to expressing the amount as a percentage of the payer's income and the
19 requirements under s. 767.10 (2) (am) 1. to 3. are satisfied.

20 **SECTION 6.** 767.25 (1) (a) of the statutes is amended to read:

21 767.25 **(1)** (a) Order either or both parents to pay an amount reasonable or
22 necessary to fulfill a duty to support a child. The support amount ~~may~~ must be
23 expressed as a percentage of parental income or as a fixed sum, or as a combination
24 of both in the alternative by requiring payment of the greater or lesser of either a
25 percentage of parental income or a fixed sum unless the parties have stipulated to

1 expressing the amount as a percentage of the payer's income and the requirements
2 under s. 767.10 (2) (am) 1. to 3. are satisfied.

3 **SECTION 7.** 767.263 (1) of the statutes is amended to read:

4 767.263 (1) Each order for child support, family support, or maintenance
5 payments shall include an order that the payer and payee notify the county child
6 support agency under s. 59.53 (5) of any change of address within 10 business days
7 of such change. Each order for child support, family support, or maintenance
8 payments shall also include an order that the payer notify the county child support
9 agency under s. 59.53 (5) and the payee, within 10 business days, of any change of
10 employer and of any substantial change in the amount of his or her income, including
11 receipt of bonus compensation, such that his or her ability to pay child support,
12 family support, or maintenance is affected. The order shall also include a statement
13 that clarifies that notification of any substantial change in the amount of the payer's
14 income will not result in a change of the order unless a revision of the order under
15 s. 767.32 or an annual adjustment of the child or family support amount under s.
16 767.33 is sought.

17 **SECTION 8.** 767.265 (3m) of the statutes is amended to read:

18 767.265 (3m) Benefits under ch. 108 may be assigned and withheld only in the
19 manner provided in s. 108.13 (4). Any order to withhold benefits under ch. 108 ~~may~~
20 shall be for a percentage of benefits payable or for a fixed sum, or for a combination
21 of both in the alternative by requiring the withholding of the greater or lesser of
22 either a percentage of benefits payable or a fixed sum unless the court-ordered
23 obligation on which the withholding order is based is expressed in the court order as
24 a percentage of the payer's income, in which case an order to withhold benefits under
25 ch. 108 shall be for a percentage of benefits payable. When money is to be withheld

1 from these benefits, no fee may be deducted from the amount withheld and no fine
2 may be levied for failure to withhold the money.

3 **SECTION 9.** 767.27 (2) of the statutes is amended to read:

4 767.27 (2) ~~Except as provided in sub. (2m), disclosure~~ Disclosure forms
5 required under this section shall be filed within 90 days after the service of summons
6 or the filing of a joint petition or at such other time as ordered by the court or family
7 court commissioner. Information contained on such forms shall be updated on the
8 record to the date of hearing.

9 **SECTION 10.** 767.27 (2m) of the statutes is amended to read:

10 767.27 (2m) In every action in which the court has ordered a party to pay child
11 support under s. 767.25, 767.51 or 767.62 (4) or family support under s. 767.261 and
12 the circumstances specified in s. 767.075 (1) apply this chapter, including an action
13 to revise a judgment or order under s. 767.32, the court shall require the party who
14 is ordered to pay the support to annually furnish the disclosure form required under
15 this section and may require that party to annually furnish a copy of his or her most
16 recently filed state and federal income tax returns to the county child support agency
17 under s. 59.53 (5) for the county in which the order was entered. In any action in
18 which the court has ordered a party to pay child support under s. 767.25, 767.51 or
19 767.62 (4) or family support under s. 767.261, the court may require the party who
20 is ordered to pay the support to annually furnish the disclosure form required under
21 this section and a copy of his or her most recently filed state and federal income tax
22 returns to the party for whom the support has been awarded parties annually to
23 exchange financial information. A party who fails to furnish the information as
24 required by the court under this subsection may be proceeded against for contempt
25 of court under ch. 785. If the court finds that a party has failed to furnish the

1 information required under this subsection, the court may award to the party
2 bringing the action costs and, notwithstanding s. 814.04 (1), reasonable attorney
3 fees.

4 **SECTION 11.** 767.32 (1) (a) of the statutes is amended to read:

5 767.32 (1) (a) After a judgment or order providing for child support under this
6 chapter or s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b)
7 4., 938.357 (5m) (a), 938.363 (2), or 948.22 (7), maintenance payments under s.
8 767.26, or family support payments under this chapter, or for the appointment of
9 trustees under s. 767.31, the court may, from time to time, on the petition, motion,
10 or order to show cause of either of the parties, or upon the petition, motion, or order
11 to show cause of the department, a county department under s. 46.215, 46.22, or
12 46.23, or a county child support agency under s. 59.53 (5) if an assignment has been
13 made under s. 46.261, 48.57 (3m) (b) 2. or (3n) (b) 2., 49.19 (4) (h), or 49.45 (19) or if
14 either party or their minor children receive aid under s. 48.57 (3m) or (3n) or ch. 49,
15 and upon notice to the family court commissioner, revise and alter such judgment or
16 order respecting the amount of such maintenance or child support and the payment
17 thereof, and also respecting the appropriation and payment of the principal and
18 income of the property so held in trust, and may make any judgment or order
19 respecting any of the matters that such court might have made in the original action,
20 except that a judgment or order that waives maintenance payments for either party
21 shall not thereafter be revised or altered in that respect nor shall the provisions of
22 a judgment or order with respect to final division of property be subject to revision
23 or modification. ~~A~~ Except as provided in par. (d), a revision, under this section, of
24 a judgment or order with respect to an amount of child or family support may be made
25 only upon a finding of a substantial change in circumstances. In any action under

1 this section to revise a judgment or order with respect to maintenance payments, a
2 substantial change in the cost of living by either party or as measured by the federal
3 bureau of labor statistics may be sufficient to justify a revision of judgment or order
4 with respect to the amount of maintenance, except that a change in an obligor's cost
5 of living is not in itself sufficient if payments are expressed as a percentage of income.

6 **SECTION 12.** 767.32 (1) (d) of the statutes is created to read:

7 767.32 (1) (d) In an action under this section to revise a judgment or order with
8 respect to child or family support, the court is not required to make a finding of a
9 substantial change in circumstances to change to a fixed sum the manner in which
10 the amount of child or family support is expressed in the judgment or order.

11 **SECTION 13.** 767.33 of the statutes is repealed and recreated to read:

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

18 (b) An adjustment under this section may not be made more than once in a year
19 and shall be determined on the basis of the percentage standard established by the
20 department under s. 49.22 (9).

21 (c) In the order the court or family court commissioner shall specify what
22 information the parties must exchange to determine whether the payer's income has
23 changed, and shall specify the manner and timing of the information exchange.

24 (2) If the court or family court commissioner provides for an annual
25 adjustment, the court or family court commissioner shall make available to the

1 parties, including the state if the state is a real party in interest under s. 767.075 (1),
2 a form approved by the court or family court commissioner for the parties to use in
3 stipulating to an adjustment of the amount of child or family support and to
4 modification of any applicable income-withholding order. The form shall include an
5 order, to be signed by a judge or family court commissioner, for approval of the
6 stipulation of the parties.

7 **(3)** (a) If the payer's income changes from the amount found by the court or
8 family court commissioner or stipulated to by the parties for the current child or
9 family support order, the parties may implement an adjustment under this section
10 by stipulating, on the form under sub. (2), to the changed income amount and the
11 adjusted child or family support amount, subject to sub. (1) (b).

12 (b) The stipulation form must be signed by all parties, including the state if the
13 state is a real party in interest under s. 767.075 (1), and filed with the court. If the
14 stipulation is approved, the order shall be signed by a judge or family court
15 commissioner and implemented in the same manner as an order for a revision under
16 s. 767.32. An adjustment under this subsection shall be effective as of the date on
17 which the order is signed by the judge or family court commissioner.

18 **(4)** (a) Any party, including the state if the state is a real party in interest under
19 s. 767.075 (1), may file a motion, petition, or order to show cause for implementation
20 of an annual adjustment under this section if any of the following applies:

21 1. A party refuses to provide the information required by the court under sub.
22 (1) (c).

23 2. The payer's income changes, but a party refuses to sign the stipulation for
24 an adjustment in the amount of child or family support.

1 (b) If the court or family court commissioner determines after a hearing that
2 an adjustment should be made, the court or family court commissioner shall enter
3 an order adjusting the child or family support payments by the amount determined
4 by the court or family court commissioner, subject to sub. (1) (b). An adjustment
5 under this subsection may not take effect before the date on which the party
6 responding to the motion, petition, or order to show cause received notice of the action
7 under this subsection.

8 (c) Notwithstanding par. (b), the court or family court commissioner may direct
9 that all or part of the adjustment not take effect until such time as the court or family
10 court commissioner directs, if any of the following applies:

11 1. The payee was seeking an adjustment and the payer establishes that
12 extraordinary circumstances beyond his or her control prevent fulfillment of the
13 adjusted child or family support obligation.

14 2. The payer was seeking an adjustment and the payee establishes that the
15 payer voluntarily and unreasonably reduced his or her income below his or her
16 earning capacity.

17 3. The payer was seeking an adjustment and the payee establishes that the
18 adjustment would be unfair to the child.

19 (d) If in an action under this subsection the court or family court commissioner
20 determines that a party has unreasonably failed to provide the information required
21 under sub. (1) (c) or to provide the information on a timely basis, or unreasonably
22 failed or refused to sign a stipulation for an annual adjustment, the court or family
23 court commissioner may award to the aggrieved party actual costs, including service
24 costs, any costs attributable to time missed from employment, the cost of travel to
25 and from court, and reasonable attorney fees.

1 **(5)** (a) Nothing in this section affects a party's right to file at any time a motion,
2 petition, or order to show cause under s. 767.32 for revision of a judgment or order
3 with respect to an amount of child or family support.

4 (b) Nothing in this section affects a party's right to move the court for a finding
5 of contempt of court or for remedial sanctions under ch. 785 if the other party
6 unreasonably fails to provide or disclose information required under this section or
7 unreasonably fails or refuses to sign a stipulation for an annual adjustment.

8 **SECTION 14.** 808.075 (4) (d) 3. of the statutes is amended to read:

9 808.075 (4) (d) 3. Annual adjustment of child or family support under s. 767.33.

10 **SECTION 15.** 814.04 (intro.) of the statutes, as affected by 2001 Wisconsin Act
11 6, is amended to read:

12 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.30 (5m),
13 106.50 (6) (i) and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 767.33 (4) (d), 769.313, 814.025,
14 814.245, 895.035 (4), 895.10 (3), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212
15 (2) (b), 943.245 (2) (d) and 943.51 (2) (b), when allowed costs shall be as follows:

16 **SECTION 16. Initial applicability.**

17 (1) The treatment of sections 767.08 (2) (b), 767.10 (2) (am), 767.23 (1) (c),
18 767.25 (1) (a), 767.263 (1), 767.265 (3m), 767.33, and 814.04 (intro.) of the statutes
19 first applies to judgments and orders, including revision orders under section 767.32
20 of the statutes, as affected by this act, and temporary orders, granted on the effective
21 date of this subsection.

22 (2) The treatment of section 767.32 (1) (a) and (d) of the statutes first applies
23 to actions under section 767.32 of the statutes, as affected by this act, to revise a
24 judgment or order with respect to child or family support that are commenced on the
25 effective date of this subsection.

1 (3) The treatment of section 767.27 (2) and (2m) of the statutes first applies to
2 actions in which a child or family support order under chapter 767 of the statutes,
3 as affected by this act, including a revision order under section 767.32 of the statutes,
4 as affected by this act, is granted on the effective date of this subsection.

5

(END)