



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3081/1
PJK:sac:rs

2013 ASSEMBLY BILL 540

December 6, 2013 – Introduced by Representatives KLEEFISCH, BORN, KESTELL and PRIDEMORE. Referred to Committee on Family Law.

1 **AN ACT** *to renumber* 767.531 (1), 767.531 (2) and 767.531 (3); *to renumber and*
2 *amend* 767.511 (1j) and 767.531 (intro.) (except 767.531 (title)); *to amend*
3 49.22 (9), 767.225 (1n) (b) 1., 767.41 (4) (a) 2., 767.511 (1j) (title), 767.511 (1m)
4 (intro.), 767.511 (1n), 767.513 (2), 767.55 (2) (c), 767.553 (1) (a), 767.553 (1) (b),
5 767.59 (1c) (a) (intro.), 767.59 (1c) (a) 1., 767.59 (1f) (b) (intro.), 767.59 (1f) (b)
6 4., 767.59 (1f) (c) (intro.), 767.59 (2) (a), 767.59 (2) (b) and 767.85 (2); and *to*
7 **create** 767.41 (5) (am) 5m., 767.511 (1j) (b), 767.511 (1j) (c), 767.511 (1j) (d),
8 767.511 (1r), 767.59 (1c) (c), 767.59 (1f) (bm) and 767.59 (2m) of the statutes;
9 **relating to:** a presumption that equalizing physical placement to the highest
10 degree is in the child’s best interest and child support changes, including
11 prohibiting basing support on income over \$150,000 per year, deducting the
12 amount of health insurance premiums from the support amount, prohibiting
13 increasing support above the standard amount, prohibiting orders that set

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1 minimum future support amounts, and requiring a support revision if there has
2 been a substantial change in circumstances.

Analysis by the Legislative Reference Bureau***Equal placement presumption***

Under current law, in an action affecting the family, such as a divorce or a paternity action, a court must determine the legal custody of a minor child based on the best interest of the child. In current law, there is a presumption that joint legal custody is in the child's best interest. The court also must allocate periods of physical placement between the parties. The court is required to set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes the amount of time the child may spend with each parent, taking into consideration geographic separation and accommodations for different households. The court may deny periods of physical placement with a parent only if the court finds that the physical placement would endanger the child's physical, mental, or emotional health. When determining custody and periods of physical placement, the court is required, under current law, to consider a number of factors (custody and placement factors), such as the wishes of the child and of the parties, the interaction and interrelationship of the child with his or her parents, the amount and quality of time that each party has spent with the child in the past, the child's adjustment to the home, school, and community, and the cooperation and communication between the parties.

This bill provides that, when the court allocates periods of physical placement, instead of maximizing the amount of time a child may spend with each parent, taking into consideration geographic separation and accommodations for different households, the court must presume that a placement schedule that equalizes to the highest degree the amount of time the child may spend with each parent is in the child's best interest. This presumption may be rebutted if the court finds by clear and convincing evidence, after considering the custody and placement factors, that equalizing physical placement would not be in the child's best interest. The bill also makes the geographic separation of the parties an additional custody and placement factor for the court to consider in every case when determining custody and periods of physical placement.

Child support

Under current law, in divorces, paternity actions, and other actions affecting the family in which there are minor children the court is required to order either or both parents to pay an amount that is reasonable or necessary to fulfill a duty to support a child. The court must generally determine child support payments by using the percentage standard set out in the Wisconsin Administrative Code (code) and established by the Department of Children and Families (DCF). The percentage standard is a percentage of the child support payer's monthly income available for support. The percentage that the child support payer must pay varies with the number of children to be supported. Under the percentage standard, a payer must

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pay 17 percent of his or her monthly income available for support 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. Generally, the parent who has physical placement with a child for less time is ordered to pay child support to the other parent on the basis of the percentage standard.

In addition to the percentage standard, the code provides special methods that the court may, but is not required to, use for calculating child support in special situations, including for high-income payers. For high-income payers, child support may be determined by multiplying annual income available for support that is less than \$84,000 by the usual percentages of the percentage standard, income between \$84,000 and \$150,000 by a different schedule of percentages that are about 80 percent of the usual percentages, and income above \$150,000 by another schedule of percentages that are about 60 percent of the usual percentages. For example, for a payer with annual income available for support above \$150,000, child support for one child may be determined by multiplying the payer's monthly income under \$7,000 by 17 percent, multiplying the additional monthly income between \$7,000 and \$12,500 by 14 percent, multiplying the additional monthly income over \$12,500 by 10 percent, and adding together the amounts obtained.

The code provides that the court must determine a parent's monthly income that is available for child support by dividing by 12 the sum of the parent's gross annual income, or gross annual income modified for business expenses, the parent's annual imputed income based on earning capacity, and the parent's annual income imputed from assets. Under the code, the court may impute income to a payer if the court determines that the payer's income is less than his or her earning capacity or if the payer has unproductive assets or has diverted income into assets to avoid paying child support. For imputing income based on earning capacity, the court assesses the parent's education, training, previous work experience and income level, and the availability of work in or near the parent's community. Income imputation for unproductive assets involves multiplying the net value of the parent's assets by the current six-month treasury bill rate or another reasonable rate.

Under the statutes, a court is authorized, upon a party's request, to modify the amount of child support that would be ordered by using the percentage standard if the court finds that use of the percentage standard is unfair to the child or either of the parties. In making this finding, the court must consider a number of factors, such as the earning capacity of each parent, the desirability that the custodian remain in the home as a full-time parent, and extraordinary travel expenses incurred in exercising physical placement rights.

This bill makes a few modifications to the way in which child support is determined. The bill provides that child support may be based only on a parent's actual income or imputed income based on earning capacity, as determined by the court. The bill provides that child support may not be based on any of a parent's assets and that it may not be based on any portion of a parent's annual gross income that exceeds \$150,000, annually adjusted in accordance with the consumer price index. The bill conforms the statutory provision that authorizes DCF to promulgate rules establishing the percentage standard with these changes.

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Under current law, in addition to ordering child support for a child, the court is required to assign responsibility for payment of the child's health care expenses and may require a parent to initiate or continue health insurance coverage for the child. Under the bill, after determining a parent's child support payments, the court must deduct from that amount any amount the parent currently pays, or is ordered to pay, for health insurance premiums for the child for whom support is determined.

Under the bill, a court still may, upon a party's request, modify the amount of child support determined if the court finds that the amount is unfair to the child or either of the parties after considering the factors under current law. However, the court may modify the amount of child support it has determined in the manner provided in the statutes only by reducing that amount. The requirement that a court may only reduce the amount of support that it has determined in the manner provided in the statutes also applies to temporary support orders and to revisions of support orders.

Under current law, the court may revise the amount of child support under an existing order only if the court finds that there has been a substantial change in circumstances. The bill does not change this requirement; however, the bill also provides that, if the court does find that there has been a substantial change in circumstances, the court must revise the amount of child support under an existing order. In addition, the bill provides that, in an action to revise the amount of child or family support under an existing order, if the amount under the existing order exceeds by 10 percent or more the amount that would have been ordered using the new requirements, the court must find a substantial change in circumstances that requires the court to revise the existing child support order.

The bill makes a few other changes relating to support. Under current law, family support is an order that combines child support and maintenance (formerly called alimony) into a single support amount. The bill provides that a family support order may not include a child support amount that exceeds the amount of child support that would be determined otherwise in the manner provided in the statutes. The bill prohibits a court from including a provision in a support order that sets a minimum amount of child support that may be ordered at a future time if the support order is revised. The bill also provides that, in an action to revise an order with respect to the amount of child support, regardless of when the order was granted, if it includes a provision that sets a minimum amount of support that may be ordered at a future time, that provision is void and may not be given effect.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 49.22 (9) of the statutes is amended to read:

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1 49.22 (9) The department shall promulgate rules that provide a standard for
2 courts to use in determining a child support obligation based upon a percentage of
3 the gross income ~~and assets~~ of either or both parents. The rules shall provide for
4 consideration of the income of each parent and the amount of physical placement
5 with each parent in determining a child support obligation in cases in which a child
6 has substantial periods of physical placement with each parent. The rules may not
7 base any amount of child support on any portion of a parent's gross income that
8 exceeds \$150,000 per year, which gross income amount shall be adjusted annually,
9 beginning in 2015, to reflect changes in the consumer price index for all urban
10 consumers, U.S. city average, as determined by the U.S. department of labor.

11 **SECTION 2.** 767.225 (1n) (b) 1. of the statutes is amended to read:

12 767.225 (1n) (b) 1. If the court makes a temporary child support order that
13 deviates from the amount of support that would be required ~~by using the percentage~~
14 ~~standard established by the department under s. 49.22 (9) 767.511 (1j),~~ the court
15 shall comply with the requirements of s. 767.511 (1n). The court may make a
16 temporary child support order that deviates from the amount that would be required
17 under s. 767.511 (1j) by reducing, but not by increasing, that amount.

18 **SECTION 3.** 767.41 (4) (a) 2. of the statutes is amended to read:

19 767.41 (4) (a) 2. In determining the allocation of periods of physical placement,
20 the court shall ~~consider each case on the basis of the factors in sub. (5) (am), subject~~
21 ~~to sub. (5) (bm).~~ The court shall set presume that a placement schedule that allows
22 the child to have regularly occurring, meaningful periods of physical placement with
23 each parent and that maximizes equalizes to the highest degree the amount of time
24 the child may spend with each parent, taking into account geographic separation and
25 accommodations for different households is in the best interest of the child. The

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1 presumption under this subdivision is rebutted if the court finds by clear and
2 convincing evidence, after considering all of the factors in sub. (5) (am), subject to
3 sub. (5) (bm), that equalizing physical placement to the highest degree would not be
4 in the child's best interest.

5 **SECTION 4.** 767.41 (5) (am) 5m. of the statutes is created to read:

6 767.41 (5) (am) 5m. The geographic separation of the parties.

7 **SECTION 5.** 767.511 (1j) (title) of the statutes is amended to read:

8 767.511 (1j) (title) ~~PERCENTAGE~~ CALCULATION; PERCENTAGE STANDARD GENERALLY
9 REQUIRED.

10 **SECTION 6.** 767.511 (1j) of the statutes is renumbered 767.511 (1j) (intro.) and
11 amended to read:

12 767.511 (1j) (intro.) Except as provided in sub. (1m), the court shall determine
13 child support payments ~~by using~~ in the following manner:

14 (a) Except as otherwise provided in this subsection, the court shall use the
15 percentage standard established by the department under s. 49.22 (9).

16 **SECTION 7.** 767.511 (1j) (b) of the statutes is created to read:

17 767.511 (1j) (b) The court may not order any amount of child support based on
18 any portion of a parent's gross income that exceeds \$150,000 per year. This income
19 amount shall be adjusted annually, beginning in 2015, to reflect changes in the
20 consumer price index for all urban consumers, U.S. city average, as determined by
21 the U.S. department of labor.

22 **SECTION 8.** 767.511 (1j) (c) of the statutes is created to read:

23 767.511 (1j) (c) The court shall base child support payments only on a parent's
24 actual income or on imputed income based on earning capacity, as determined by the

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1 court, and may not order any amount of child support based on the value of any of
2 a parent's assets.

3 **SECTION 9.** 767.511 (1j) (d) of the statutes is created to read:

4 767.511 (1j) (d) When the court calculates the amount of a parent's child
5 support payments, unless the parties agree otherwise in writing or orally in open
6 court, the court shall reduce the amount determined under pars. (a) to (c) by the
7 amount per month that the parent currently pays or is ordered to pay for health
8 insurance premiums attributable to the child for whom the support is being
9 determined.

10 **SECTION 10.** 767.511 (1m) (intro.) of the statutes is amended to read:

11 767.511 (1m) DEVIATION FROM STANDARD; FACTORS. (intro.) Upon request by a
12 party, the court may modify, by reducing but not by increasing, the amount of child
13 support payments determined under sub. (1j) if, after considering the following
14 factors, the court finds by the greater weight of the credible evidence that ~~use of the~~
15 ~~percentage standard~~ the amount of child support determined under sub. (1j) is unfair
16 to the child or to any of the parties:

17 **SECTION 11.** 767.511 (1n) of the statutes is amended to read:

18 767.511 (1n) DEVIATION FROM STANDARD; RECORD. If the court finds under sub.
19 (1m) that ~~use of the percentage standard~~ the amount of child support determined
20 under sub. (1j) is unfair to the child or the requesting party, the court shall state in
21 writing or on the record the amount of support that would be required ~~by using the~~
22 ~~percentage standard~~ under sub. (1j), the amount by which the court's order deviates
23 is reduced from that amount, its reasons for finding that ~~use of the percentage~~
24 ~~standard~~ the amount of child support determined under sub. (1j) is unfair to the child

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1 or the party, its reasons for the amount of the ~~modification~~ reduction, and the basis
2 for the ~~modification~~ reduction.

3 **SECTION 12.** 767.511 (1r) of the statutes is created to read:

4 767.511 (1r) MINIMUM REVISION AMOUNTS PROHIBITED. The court may not grant
5 a child support order that sets a minimum amount of support that may be ordered
6 in the future in the event that the child support order is revised under s. 767.59 or
7 a substantially similar law of another state.

8 **SECTION 13.** 767.513 (2) of the statutes is amended to read:

9 767.513 (2) RESPONSIBILITY AND PAYMENT. In addition to ordering child support
10 for a child under s. 767.511 (1), and subject to s. 767.511 (1j) (d), the court shall
11 specifically assign responsibility for and direct the manner of payment of the child's
12 health care expenses. In assigning responsibility for a child's health care expenses,
13 the court shall consider whether a child is covered under a parent's health insurance
14 policy or plan at the time the court approves a stipulation for child support under s.
15 767.34, enters a judgment of annulment, divorce, or legal separation, or enters an
16 order or a judgment in a paternity action or in an action under s. 767.001 (1) (f) or
17 (j), 767.501, or 767.805 (3), the availability of health insurance to each parent
18 through an employer or other organization, the extent of coverage available to a
19 child, and the costs to the parent for the coverage of the child. A parent may be
20 required to initiate or continue health care insurance coverage for a child under this
21 section. If a parent is required to do so, he or she shall provide copies of necessary
22 program or policy identification to the custodial parent and is liable for any health
23 care costs for which he or she receives direct payment from an insurer. This section
24 shall not be construed to limit the authority of the court to enter or modify support

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1 orders containing provisions for payment of medical expenses, medical costs, or
2 insurance premiums that are in addition to and not inconsistent with this section.

3 **SECTION 14.** 767.531 (intro.) (except 767.531 (title)) of the statutes, as affected
4 by 2013 Wisconsin Act 20, is renumbered 767.531 (1m) and amended to read:

5 767.531 (1m) The court may make a financial order designated “family
6 support” as a substitute for child support orders under s. 767.511 and maintenance
7 payment orders under s. 767.56. As part of a family support order, the court may not
8 order a party to pay an amount of child support that exceeds the child support
9 payments that the party would be required to pay under s. 767.511 (1j).

10 **(2m)** Subject to s. 767.511 (6m), a party ordered to pay family support under
11 this section shall pay simple interest at the rate of 1% per month on any amount in
12 arrears that is equal to or greater than the amount of child support due in one month.
13 Subject to s. 767.511 (6m), if the party no longer has a current obligation to pay child
14 support, interest at the rate of 1% per month shall accrue on the total amount of child
15 support in arrears, if any. Interest under this section is in lieu of interest computed
16 under s. 807.01 (4), 814.04 (4), or 815.05 (8) and is paid to the department or its
17 designee under s. 767.57.

18 **(3m)** Except as provided in s. 767.57 (1m), the department or its designee shall
19 apply all payments received for family support as follows:

20 **SECTION 15.** 767.531 (1) of the statutes is renumbered 767.531 (3m) (a).

21 **SECTION 16.** 767.531 (2) of the statutes is renumbered 767.531 (3m) (b).

22 **SECTION 17.** 767.531 (3) of the statutes is renumbered 767.531 (3m) (c).

23 **SECTION 18.** 767.55 (2) (c) of the statutes is amended to read:

24 767.55 (2) (c) If the court enters an order under par. (am), it shall order the
25 parent to pay child support equal to the amount determined ~~by applying the~~

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1 ~~percentage standard established~~ under s. ~~49.22 (9)~~ 767.511 (1j) or equal to the
2 amount of child support that the parent was ordered to pay in the most recent
3 determination of support under this chapter. The child support obligation ordered
4 under this paragraph continues until the parent makes timely payment in full for
5 3 consecutive months or until the person participates in the program under s. 49.36
6 for 16 weeks, whichever occurs first. The court shall provide in its order that the
7 parent shall make child support payments calculated under s. 767.511 (1j) or (1m)
8 after the obligation to make payments ordered under this paragraph ceases.

9 **SECTION 19.** 767.553 (1) (a) of the statutes is amended to read:

10 767.553 (1) (a) An order for child or family support under this chapter may
11 provide for an annual adjustment in the amount to be paid based on a change in the
12 payer's income if the amount of child or family support is expressed in the order as
13 a fixed sum and ~~based on the percentage standard established by the department~~
14 determined in the manner provided under s. ~~49.22 (9)~~ 767.511 (1j). No adjustment
15 may be made under this section unless the order provides for the adjustment.

16 **SECTION 20.** 767.553 (1) (b) of the statutes is amended to read:

17 767.553 (1) (b) An adjustment under this section may not be made more than
18 once in a year and shall be determined ~~on the basis of the percentage standard~~
19 established by the department in the manner provided under s. ~~49.22 (9)~~ 767.511 (1j).

20 **SECTION 21.** 767.59 (1c) (a) (intro.) of the statutes is amended to read:

21 767.59 (1c) (a) (intro.) On the petition, motion, or order to show cause of either
22 of the parties, the department, a county department under s. 46.215, 46.22, or 46.23,
23 or a county child support agency under s. 59.53 (5) if an assignment has been made
24 under s. 48.57 (3m) (b) 2. or (3n) (b) 2., 48.645 (3), 49.19 (4) (h), or 49.45 (19) or if either

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1 party or their minor children receive aid under s. 48.57 (3m) or (3n) or 48.645 or ch.
2 49, a court may, except as provided in ~~par. pars.~~ (b) and (c), do any of the following:

3 **SECTION 22.** 767.59 (1c) (a) 1. of the statutes is amended to read:

4 767.59 (1c) (a) 1. Revise and alter a support or maintenance order as to the
5 amount and payment of maintenance or child support and the appropriation and
6 payment of the principal and income of property held in trust. The court may revise
7 and alter a child support order regardless of whether the amount of support was
8 determined by the court, by court approval of a stipulation of the parties, or through
9 arbitration.

10 **SECTION 23.** 767.59 (1c) (c) of the statutes is created to read:

11 767.59 (1c) (c) In an action under this section to revise a judgment or order as
12 to the amount of child or family support, the court must revise the judgment or order
13 as to the amount of child or family support if the court finds a substantial change in
14 circumstances.

15 **SECTION 24.** 767.59 (1f) (b) (intro.) of the statutes is amended to read:

16 767.59 (1f) (b) (intro.) In an action under this section to revise a judgment or
17 order with respect to the amount of child support, any of the following constitutes a
18 rebuttable presumption of a substantial change in circumstances sufficient to justify
19 require a revision of the judgment or order:

20 **SECTION 25.** 767.59 (1f) (b) 4. of the statutes is amended to read:

21 767.59 (1f) (b) 4. A If the action is one to revise a judgment or order with respect
22 to child support ordered under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183
23 (4), 938.355 (2) (b) 4., 938.357 (5m) (a), 938.363 (2), or 948.22 (7), a difference between
24 the amount of child support ordered by the court to be paid by the payer and the
25 amount that the payer would have been required to pay based on the percentage

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1 standard established by the department under s. 49.22 (9) if the court did not use the
2 percentage standard in determining the child support payments and did not provide
3 the information required under s. 46.10 (14) (d), 49.345 (14) (d), or 301.12 (14) (d),
4 ~~or 767.511 (1n)~~, whichever is appropriate.

5 **SECTION 26.** 767.59 (1f) (bm) of the statutes is created to read:

6 767.59 (1f) (bm) In an action under this section to revise a judgment or order
7 with respect to an amount of child or family support ordered under this chapter, the
8 court shall find a substantial change in circumstances sufficient to require revision
9 of the judgment or order if the amount of child support ordered by the court to be paid
10 by the payer exceeds the amount that the payer would have been required to pay
11 under s. 767.511 (1j) (a) to (d), had the court determined child support payments in
12 the manner provided under s. 767.511 (1j) (a) to (d), by 10 percent or more of the latter
13 amount.

14 **SECTION 27.** 767.59 (1f) (c) (intro.) of the statutes is amended to read:

15 767.59 (1f) (c) (intro.) In an action under this section to revise a judgment or
16 order with respect to an amount of child support, any of the following may constitute
17 a substantial change of in circumstances sufficient to ~~justify~~ require revision of the
18 judgment or order:

19 **SECTION 28.** 767.59 (2) (a) of the statutes is amended to read:

20 767.59 (2) (a) Except as provided in par. (b) or (c), if the court revises a judgment
21 or order with respect to child support payments, it shall do so ~~by using the percentage~~
22 ~~standard established by the department~~ in the manner provided under s. ~~49.22 (9)~~
23 767.511 (1j).

24 **SECTION 29.** 767.59 (2) (b) of the statutes is amended to read:

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1 767.59 (2) (b) Upon request by a party, the court may modify, by reducing but
2 not by increasing, the amount of revised child support payments determined under
3 par. (a) if, after considering the factors listed in s. 767.511 (1m), the court finds, by
4 the greater weight of the credible evidence, that the ~~use of the percentage standard~~
5 amount of child support determined in the manner provided under s. 767.511 (1j) is
6 unfair to the child or to any of the parties.

7 **SECTION 30.** 767.59 (2m) of the statutes is created to read:

8 767.59 (2m) MINIMUMS ARE VOID. In an action under this section to revise a
9 judgment or order with respect to the amount of child support, any provision in the
10 judgment or order that sets a minimum amount of child support that may be ordered
11 in the future in the event that the child support order is revised under this section
12 or a substantially similar law of another state is void and may not be given effect by
13 the court, regardless of when the judgment or order was granted.

14 **SECTION 31.** 767.85 (2) of the statutes is amended to read:

15 767.85 (2) CONSIDERATIONS. Before making any temporary order under sub. (1),
16 the court shall consider those factors that the court is required to consider when
17 granting a final judgment on the same subject matter. If the court makes a
18 temporary child support order that deviates from the amount of support that would
19 be required by ~~using the percentage standard established by the department under~~
20 ~~s. 49.22 (9)~~ 767.511 (1j), the court shall comply with the requirements of s. 767.511
21 (1n). The court may make a temporary child support order that deviates from the
22 amount that would be required under s. 767.511 (1j) by reducing, but not by
23 increasing, that amount.

24 **SECTION 32. Initial applicability.**

