

2005 DRAFTING REQUEST

Bill

Received: 11/29/2004

Received By: rnelson2

Wanted: As time permits

Identical to LRB:

For: Gregg Underheim (608) 266-2254

By/Representing: Randy T

This file may be shown to any legislator: NO

Drafter: pkahler

May Contact:

Addl. Drafters:

Subject: Courts - miscellaneous
Dom. Rel. - divorce

Extra Copies:

Submit via email: YES

Requester's email: Rep.Underheim@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Jury trial in divorce actions Requested by Richard Hulpert

Instructions:

Allow parties to a divorce action to a jury trial regarding child custody or placement, alimony or maintenance, and child support

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 12/16/2004			_____			Local
/P1	rnelson2 12/16/2004	jdyer 02/12/2005	rschluet 02/14/2005	_____	sbasford 02/14/2005		Local
	pkahler 02/10/2005			_____			
	rnelson2 02/11/2005			_____			

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	pkahler 02/15/2005	jdyer 02/16/2005	rschluet 02/16/2005	_____	lemery 02/16/2005	Inorthro 05/25/2005	

FE Sent For:

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↳ At
Intro.

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Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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Dom. Rel. - divorce**

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767.12 (1)

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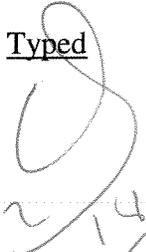
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/?	pkahler	PI 2/12 jld					

FE Sent For:

<END>



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1015/P1
RPN&PJK:.....

JLD

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-N

Gen

1 AN ACT ...; relating to: the right to a jury in divorce actions. ✓

Analysis by the Legislative Reference Bureau

Under current law, with limited exceptions, all hearings and trials in actions affecting the family are before the judge. ✓ (There are exceptions for certain hearings, such as for establishing or revising a child support order, which may be before a circuit court commissioner, and for the determination of paternity in a paternity action, which may be before a jury.) ✓ This bill provides that a party in a divorce action may request a jury trial with respect to determining custody, physical placement, child or family support, or maintenance. A party may also request a jury trial for revising a custody, physical placement, child or family support, or maintenance order if the original order was entered in a divorce action. Under the bill, if a jury trial is requested, a circuit court commissioner may not hear the matter. ✓

For further information see the **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:

2 SECTION 1. 757.69 (1) (p) (intro.) ✓ of the statutes is amended to read:

3 757.69 (1) (p) (intro.) When Except when a party demands a trial by jury under

4 s. 767.12 (1m) (b), when ✓ plain assigned to assist in matters affecting the family:

History: 1977 c. 323, 449; 1979 c. 32; 1979 c. 89; 1979 c. 209 s. 4; 1979 c. 352, 356; 1983 a. 279; 1985 a. 126, 202, 234, 332; 1987 a. 3, 27, 71, 378, 398; 1989 a. 7, 12, 31, 246; Sup. Ct. Order, 158 Wis. 2d xxv (1990); 1991 a. 39, 269; 1993 a. 318, 451, 481; 1995 a. 77; 1997 a. 191, 192, 292; 1999 a. 32; 2001 a. 16; 2001 a. 61 ss. 93 to 109, 173, 175, 177, 180; 2001 a. 105.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1015/P1dn

PJK:.....

Jld

This draft gives the parties the right to request a jury for determining custody, physical placement, child or family support, and maintenance. ✓ The right to request a jury is limited to divorce actions, although custody, physical placement, child or family support, and maintenance can be determined in other types of actions. The draft also gives the parties the right to request a jury to revise those same determinations if they were made in a divorce action. We did not require the initial determination to have been made by a jury in order for the revision to be made by a jury. Is this what you want?

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-1015/P1dn
PJK:jld:rs

February 14, 2005

This draft gives the parties the right to request a jury for determining custody, physical placement, child or family support, and maintenance. The right to request a jury is limited to divorce actions, although custody, physical placement, child or family support, and maintenance can be determined in other types of actions. The draft also gives the parties the right to request a jury to revise those same determinations if they were made in a divorce action. We did not require the initial determination to have been made by a jury in order for the revision to be made by a jury. Is this what you want?

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

2-14

Randy from Underhain's office
for 1015:

- ① limit requests for jury to actions commenced
on effective date
- ② specify that ^{request to} requesting a jury does not
constitute substantial change in
circumstances

Kahler, Pam

From: Thorson, Randy
Sent: Tuesday, February 15, 2005 9:16 AM
To: Kahler, Pam
Subject: RE: Question

Yes, Rep. Underheim said he would like to do that.

Thank you

Randy Thorson
Research Assistant to
Gregg Underheim
State Representative
54th Assembly District

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

From: Kahler, Pam
Sent: Monday, February 14, 2005 2:04 PM
To: Thorson, Randy
Subject: Question

Randy:

As I was making the additions we discussed, a question came up. The Initial Applicability will make the right to request a jury trial first apply to *actions* commenced on the effective date. Normally that would mean the initial divorce action *or* the action to revise an order granted in a divorce action. You could, however, apply the Initial Applicability only to the initial divorce action, so that any action to revise would have to be based on a divorce that was commenced on or after the effective date. That would further cut down on the possible jury trials. Do you want to do that? Give me a call if you have any questions.

Pam



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1015/1
RPN&PJK:jld:rs

Y mis run

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

D-note

Reger

1 AN ACT *to amend* 757.69 (1) (p) (intro.) and 767.12 (1); and *to create* 767.12 (1m)
2 of the statutes; **relating to:** the right to a jury in divorce actions.

Analysis by the Legislative Reference Bureau

Under current law, with limited exceptions, all hearings and trials in actions affecting the family are before the judge. (There are exceptions for certain hearings, such as for establishing or revising a child support order, which may be before a circuit court commissioner, and for the determination of paternity in a paternity action, which may be before a jury.) This bill provides that a party in a divorce action may request a jury trial with respect to determining custody, physical placement, child or family support, or maintenance. A party may also request a jury trial for revising a custody, physical placement, child or family support, or maintenance order if the original order was entered in a divorce action. Under the bill, if a jury trial is requested, a circuit court commissioner may not hear the matter.

For further information see the **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:

3 SECTION 1. 757.69 (1) (p) (intro.) of the statutes is amended to read:
4 757.69 (1) (p) (intro.) When Except when a party demands a trial by jury under
5 s. 767.12 (1m) (b), when assigned to assist in matters affecting the family:

1 SECTION 2. 767.12 (1) of the statutes is amended to read:

2 767.12 (1) PROCEEDINGS. ~~In~~ Except as provided in sub. (1m) and s. 767.50 (1),
3 in actions affecting the family, all hearings and trials to determine whether judgment
4 shall be granted, except hearings under s. 757.69 (1) (p) 3., shall be before the court
5 judge. The testimony shall be taken by the reporter and shall be written out and filed
6 with the record if so ordered by the court. Custody proceedings shall receive priority
7 in being set for hearing.

8 SECTION 3. 767.12 (1m) of the statutes is created to read:

9 767.12 (1m) JURY TRIAL. (a) The parties shall have the right to a jury trial in
10 an action for divorce with respect to determining any of the following, or in an action
11 to revise a divorce judgment or order with respect to any of the following:

- 12 1. Custody.
- 13 2. Physical placement.
- 14 3. Child support.
- 15 4. Family support.
- 16 5. Maintenance.

17 (b) Any party may, upon payment of the fees prescribed in ss. 814.61 (4) and
18 814.62 (3) (e), file a written demand for trial by jury. If no party demands a trial by
19 jury, the right to trial by jury is waived forever. If a jury is requested, the trial shall
20 be before a jury selected under s. 805.08.

21 (END)

Insert 2-20

note

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1015/lins
RPN&PJK:jld:rs

INSERT 2-20

1

(c) This subsection ^{only} applies to ~~all of~~ the following: ^{actions}

2

1. Divorce actions that are commenced on or after the effective date of this
3 subdivision [✓] [revisor inserts date].

4

2. Actions under s. 767.32 or 767.325 [✓] to revise or modify judgments or orders
5 entered in divorce actions specified under [✓] subd. 1.

(END OF INSERT 2-20)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1015/1dn
RPN&PJK:jld:rs

We no longer need to specify that the right to request a jury trial in an action to revise a divorce judgment or order^v is not a substantial change in circumstances, because the right to a jury trial in those actions will have existed when the divorce action took place.

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-1015/1dn
PJK:jld:rs

February 16, 2005

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

Northrop, Lori

From: Hough, Michelle
Sent: Wednesday, May 25, 2005 10:42 AM
To: LRB.Legal
Subject: Draft review: LRB 05-1015/1 Topic: Jury trial in divorce actions Requested by Richard Hulpert

It has been requested by <Hough, Michelle> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-1015/1 Topic: Jury trial in divorce actions Requested by Richard Hulpert