2005 DRAFTING REQUEST

Bill

Received: **05/10/2005**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Marlin Schneider (608) 266-0215**

By/Representing: **Cynthia Kieper**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Dom. Rel. - maintenance**

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Requirements for ordering maintenance

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	pkahler 05/10/2005	kfollett 06/01/2005		_____ _____			
/1			rschluet 06/01/2005	_____ _____	lnorthro 06/01/2005	mbarman 06/01/2005	

FE Sent For:

<END>

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/?	pkahler	11 lgf 6/1	6/5				

FE Sent For:

<END>

Kahler, Pam

From: Kieper, Cynthia L.
Sent: Tuesday, May 10, 2005 11:07 AM
To: Kahler, Pam
Subject: RE: Rep Schneider would like to reintroduce LRB-3051/P2-Thanks

Sorry Pam,

The most current version we did.
Cynthia

From: Kahler, Pam
Sent: Tuesday, May 10, 2005 11:06 AM
To: Kieper, Cynthia L.
Subject: RE: Rep Schneider would like to reintroduce LRB-3051/P2-Thanks

Cynthia:

From 2003-04, right? Looks like that one went to a "/1". Is it the previous version - "/P2" - that you want to introduce instead?

Pam

-----Original Message-----
From: Kieper, Cynthia L.
Sent: Tuesday, May 10, 2005 11:01 AM
To: Kahler, Pam
Subject: Rep Schneider would like to reintroduce LRB-3051/P2-Thanks

2003 AB 823

State of Wisconsin
2003 – 2004 LEGISLATURE
2005 – 2006

LRB–3051/1
PJK:kmg:rs

2003 ASSEMBLY BILL 823

February 9, 2004 – Introduced by Representatives SCHNEIDER and HAHN. Referred to Committee on Family Law.

AN ACT ***to repeal*** 767.26 (6), 767.26 (7) and 767.26 (8); ***to renumber*** 767.26 (1), 767.26 (4), 767.26 (5) and 767.26 (10); ***to renumber and amend*** 767.26 (intro.), 767.26 (2), 767.26 (3) and 767.26 (9); ***to amend*** 767.32 (3); and ***to create*** 767.26 (2m), 767.26 (3m), 767.26 (4m) and 767.26 (5m) of the statutes; **relating to:** requirements for ordering maintenance.

Analysis by the Legislative Reference Bureau

Under current law, in an annulment, divorce, or legal separation, the court may order one party to pay maintenance (formerly known as alimony) to the other party. The statutes set out factors that a court must consider in ordering maintenance, such as the length of the marriage, the educational level of the parties at the time of the marriage and at the commencement of the action, the age and physical and emotional health of each party, and the contribution that a party has made to the increased earning power of the other party. The amount of maintenance and the length of time that it must be paid are in the court's discretion.

This bill provides, as an overall guiding principle, that maintenance is a rehabilitative measure to enable the party for whom it is ordered to acquire the education or skills to become self–supporting and sets out more specific standards for courts to use in ordering maintenance. Under the bill, a court may not order maintenance unless the parties have been married for at least 15 years, which eliminates the availability of maintenance in most annulment actions, and the party seeking maintenance shows either: 1) that because of the marriage he or she lacks

sufficient resources to provide for his or her minimal, reasonable needs; or 2) that employment is difficult for the party to obtain or maintain because of a physical or mental disability that was incurred during the marriage.

The bill, for the most part, retains the factors under current law for the court to consider when ordering maintenance, but eliminates some of the factors under current law, such as the tax consequences to each party and any mutual agreements made before or during marriage concerning any arrangement for the financial support of the parties. The bill adds as factors to consider all financial resources of the party seeking maintenance in addition to the property division, the contributions and sacrifices of each of the parties during the marriage, and the efforts of the party seeking maintenance to obtain suitable employment before and during the pendency of the action. The bill provides that, regardless of the court's findings after considering the other factors, the court may deny maintenance if the party seeking maintenance engaged in extramarital activities during the marriage or has not made reasonable efforts to obtain employment or develop skills to become self–supporting.

The bill limits the length of maintenance to the shortest time necessary for the payee to become employed at a level that provides for minimal, reasonable needs, but not more than three years, with two exceptions. If the payee contributed to the education of the payer, maintenance may continue until it equals the amount that the payee contributed; if the payee became disabled during the marriage, maintenance may continue for the shorter of: 1) as long as the disability continues but not past the age at which a person the same age as the payee would be eligible for unreduced social security benefits; or 2) until the payee receives or is eligible to receive disability payments or other benefits on account of the disability. The bill limits the amount of maintenance to the amount necessary to meet minimal, reasonable needs, but not more than 20 percent of the payer's monthly income, based on a 40–hour work week or the payer's base pay.

Under current law, the court is required to terminate maintenance, upon application by the payer, if the payee remarries. The bill adds that the court must also terminate maintenance, upon application by the payer, if the payee cohabits with another adult person of the opposite sex.

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

1 **SECTION 1.** 767.26 (intro.) of the statutes is renumbered 767.26 (1m) and
2 amended to read:

3 767.26 **(1m)** ORDER OF COURT. Upon ~~every~~ a judgment of annulment, divorce,
4 or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (g)
5 or (j), the court may, subject to sub. (2m), grant an order requiring maintenance

payments to either party ~~for a limited or indefinite length of time after considering:~~, in the manner provided in this section, as a rehabilitative measure to enable the party for whom maintenance is ordered to acquire the education or skills necessary to become self–supporting.

SECTION 2. 767.26 (1) of the statutes is renumbered 767.26 (3m) (a) 1.

SECTION 3. 767.26 (2) of the statutes is renumbered 767.26 (3m) (a) 2. and amended to read:

767.26 **(3m)** (a) 2. The age and physical and emotional health of the parties, both before and during the marriage.

SECTION 4. 767.26 (2m) of the statutes is created to read:

767.26 **(2m)** ELIGIBILITY CRITERIA. The court may order maintenance to a party only if both of the following conditions are satisfied:

(a) The parties have been married for at least 15 years.

(b) The party seeking maintenance shows either of the following:

1. That because of the marriage he or she lacks sufficient resources to provide for his or her minimal, reasonable needs.

2. That employment is difficult for the party to maintain, or that gainful employment is not possible for the party to obtain, because of a physical or mental disability that was incurred by the party during the marriage and that is certified by a physician.

SECTION 5. 767.26 (3) of the statutes is renumbered 767.26 (3m) (a) 3. and amended to read:

767.26 **(3m)** (a) 3. The division of property made under s. 767.255, and all other financial resources of the party seeking maintenance.

SECTION 6. 767.26 (3m) of the statutes is created to read:

767.26 **(3m)** FACTORS TO CONSIDER. (a) In determining whether to order maintenance and, subject to sub. (5m), the amount of maintenance to order, the court shall consider all of the following that apply:

7. The efforts of the party seeking maintenance to obtain suitable employment before and during the pendency of the action.

(b) Notwithstanding the court's findings under par. (a), the court may deny maintenance to a party if any of the following applies:

1. The party seeking maintenance engaged in extramarital activities during the marriage.

2. The party seeking maintenance has not made reasonable efforts to obtain employment or develop the skills necessary to become self–supporting.

SECTION 7. 767.26 (4) of the statutes is renumbered 767.26 (3m) (a) 4.

SECTION 8. 767.26 (4m) of the statutes is created to read:

767.26 **(4m)** LENGTH OF ORDER. (a) If the court orders maintenance, it shall require payment for the shortest time necessary for the payee to become employed at a level that provides for the payee's minimal, reasonable needs, but in no case for longer than 3 years.

(b) Notwithstanding par. (a), if the payee during the marriage contributed to the education of the payer, the court may order maintenance to continue until the total amount of maintenance paid equals the amount the payee contributed.

(c) Notwithstanding par. (a), if the payee became disabled during the marriage, the court may order maintenance to continue for either of the following periods of time, whichever is shorter:

1. For as long as the disability continues, but in no case after the payee reaches the age that, for a retired worker who was born on the same date as the payee, is full retirement age for the purpose of receiving unreduced social security benefits.

2. Until the payee receives or becomes eligible to receive disability payments or other benefits paid on account of his or her disability.

SECTION 9. 767.26 (5) of the statutes is renumbered 767.26 (3m) (a) 5.

SECTION 10. 767.26 (5m) of the statutes is created to read:

767.26 **(5m)** AMOUNT OF MAINTENANCE. If the court orders maintenance, it shall set the amount at a level that does not exceed a monthly amount necessary to meet the minimal, reasonable needs of the payee, but in no case at more than 20 percent of the payer's monthly income, based on a 40–hour work week or the payer's base pay.

SECTION 11. 767.26 (6) of the statutes is repealed.

SECTION 12. 767.26 (7) of the statutes is repealed.

SECTION 13. 767.26 (8) of the statutes is repealed.

SECTION 14. 767.26 (9) of the statutes is renumbered 767.26 (3m) (a) 6. and amended to read:

767.26 **(3m)** (a) 6. The contributions and sacrifices of each of the parties during the marriage, including the contribution by one party to the education, training, or increased earning power of the other.

SECTION 15. 767.26 (10) of the statutes is renumbered 767.26 (3m) (a) 8.

SECTION 16. 767.32 (3) of the statutes is amended to read:

767.32 **(3)** After a final judgment requiring maintenance payments has been rendered ~~and~~, if the payee ~~has remarried~~ remarries or cohabits with another adult person of the opposite sex, the court shall, on application of the payer with notice to

the payee and upon proof of the remarriage or cohabitation, vacate the order requiring such payments.

SECTION 17. Initial applicability.

(1) NEW ORDERS. The treatment of section 767.26 (intro.), (1), (2), (2m), (3), (3m), (4), (4m), (5), (5m), (6), (7), (8), (9), and (10) of the statutes first applies to actions or proceedings in which maintenance is sought that are commenced on the effective date of this subsection.

(2) REVISIONS. The treatment of section 767.32 (3) of the statutes first applies to actions or proceedings to vacate maintenance orders that are commenced on the effective date of this subsection.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–2994/1dn
PJK:...

Date

1. Given the uncertainty of how social security will operate in the future, you may want to change proposed s. 767.26 (4m) (c) 1. Will "full retirement age" and still be a relevant concept? Will "unreduced social security benefits" mean what it means today?

2. You might also want to consider modifying the proposed change to s. 767.32 (3) by removing the limitation to the opposite sex.

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–2994/1dn
PJK:kjf:rs

June 1, 2005

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Pamela J. Kahler
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E–mail: pam.kahler@legis.state.wi.us

Barman, Mike

From: Schneider, Marlin
Sent: Wednesday, June 01, 2005 12:29 PM
To: LRB.Legal
Subject: Draft review: LRB 05-2994/1 Topic: Requirements for ordering maintenance

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

Draft review: LRB 05-2994/1 Topic: Requirements for ordering maintenance