



2011 ASSEMBLY BILL 134

May 17, 2011 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Children and Families.

1 **AN ACT** *to renumber and amend* 767.56; *to amend* 766.70 (4) (a) 3., 767.58 (1)
2 and 767.59 (3); and *to create* 767.56 (2c) and 767.58 (1) (c) of the statutes;
3 **relating to:** termination of maintenance upon the payee's or payer's death and
4 notices relating to maintenance.

Analysis by the Legislative Reference Bureau

Under current law, in an action for divorce, annulment, or legal separation, a court may order one party (payer) to pay maintenance (formerly known as alimony) to the other party (payee) for a limited or indefinite length of time. Current law also provides that, if a payee of maintenance remarries, the court must vacate the maintenance order upon the application of the payer and proof of the payee's remarriage.

This bill provides that, when a court orders maintenance or family support (a combination of child support and maintenance), the court must include in the order a requirement that the payee notify the court and the payer if the payee remarries. Under the bill, a court must vacate a maintenance order upon notice from the payee that he or she has remarried, in addition to vacating the order upon the application of the payer and proof of the payee's remarriage. The bill also provides that, unless already terminated for another reason, such as the payee's remarriage or the expiration of a limited time under an order, maintenance terminates upon the death of the payee or the payer, whichever occurs first. Under an Internal Revenue Service rule, maintenance must end at the payee's death in order for the payer to be able to deduct the payments from his or her gross income for income tax purposes.

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This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill, relating to termination of maintenance upon the payee's or payer's death and notices relating to maintenance, was prepared for the Joint Legislative Council's Special Committee on Review of Spousal Maintenance Awards in Divorce Proceedings.

1 **SECTION 1.** 766.70 (4) (a) 3. of the statutes is amended to read:

2 766.70 (4) (a) 3. A division of the obligations of the spouses existing on the date
3 of the request, after considering the classification of the obligation under s. 766.55
4 and the factors specified under ss. 767.56 (1c) and 767.61.

5 **SECTION 2.** 767.56 of the statutes is renumbered 767.56 (1c), and 767.56 (1c)
6 (intro.), as renumbered, is amended to read:

7 767.56 (1c) FACTORS TO CONSIDER FOR GRANTING. (intro.) Upon a judgment of
8 annulment, divorce, or legal separation, or in rendering a judgment in an action
9 under s. 767.001 (1) (g) or (j), the court may grant an order requiring maintenance
10 payments to either party for a limited or indefinite length of time, subject to sub. (2c),
11 after considering all of the following:

12 **SECTION 3.** 767.56 (2c) of the statutes is created to read:

13 767.56 (2c) TERMINATES AT DEATH OF PAYEE OR PAYER. Unless already terminated
14 for another reason, maintenance granted under this section terminates upon the
15 death of the payee or the payer, whichever occurs first.

16 **SECTION 4.** 767.58 (1) of the statutes is amended to read:

17 767.58 (1) (a) Each order for child support, family support, or maintenance
18 payments shall include an order that the payer and payee notify the county child

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1 support agency under s. 59.53 (5) of any change of address within 10 business days
2 of such change.

3 (b) Each order for child support, family support, or maintenance payments
4 shall also include an order that the payer notify the county child support agency
5 under s. 59.53 (5) and the payee, within 10 business days, of any change of employer
6 and of any substantial change in the amount of his or her income, including receipt
7 of bonus compensation, affecting his or her ability to pay child support, family
8 support, or maintenance. The order shall also include a statement that notification
9 of any substantial change in the amount of the payer's income will not result in a
10 change of the order unless a revision of the order under s. 767.59 or an annual
11 adjustment of the child or family support amount under s. 767.553 is sought.

12 (d) An order under this subsection is enforceable under ch. 785.

13 **SECTION 5.** 767.58 (1) (c) of the statutes is created to read:

14 767.58 (1) (c) Each order for family support or maintenance payments shall
15 include an order requiring the payee to notify the court and the payer within 10
16 business days of the payee's remarriage.

NOTE: Requires the court, in an order granting family support or maintenance payments, to order the payee to notify the court and the payer within 10 business days of the payer's remarriage.

17 **SECTION 6.** 767.59 (3) of the statutes is amended to read:

18 767.59 (3) REMARRIAGE; VACATING MAINTENANCE ORDER. After a final judgment
19 requiring maintenance payments has been rendered and the payee has remarried,
20 the court shall, on application of the payer with notice to the payee and upon proof
21 of the payee's remarriage, or upon receiving notice from the payee of the payee's
22 remarriage, as required under s. 767.58 (1) (c), vacate the order requiring the
23 payments.

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NOTE: Requires the court, upon receiving notice from the payee of the payee's remarriage, as required under new s. 767.58 (1) (c) in this bill, to vacate the order requiring maintenance payments. Current law, maintained in this bill, already requires the court to vacate such an order on application of the payer, with notice to the payee, and upon proof of the payee's remarriage [s. 767.59 (3), stats.].

1 SECTION 7. Initial applicability.

2 (1) REQUIRING NOTICE OF REMARRIAGE. The creation of section 767.58 (1) (c) of the
3 statutes first applies to orders for family support or maintenance payments that are
4 granted on the effective date of this subsection.

5 (END)