

July 30, 2013

To: Members of the Assembly Committee on Family Law  
From: Senator Glenn Grothman  
Re: Senate Bill 68

I support this commonsense legislation that makes a few technical changes to the statutes regarding maintenance that is paid after a divorce, annulment or legal separation. This legislation is brought forward at the request of the Family Law Board of the State Bar of Wisconsin.

First, this legislation will terminate maintenance upon the death of the payee. The IRS requires that the maintenance payments terminate upon the death of the payee. This change is made to make sure that decisions made by the courts or agreements entered into by the individuals fulfill this IRS requirement. No published Wisconsin decision has directly addressed this issue and therefore clarification is essential.

Second, this legislation will require the payee to notify the court and the payer within ten business days of the payee's remarriage. Wisconsin statutes state that maintenance must terminate upon the remarriage of the payee. However, the statutes do not contain a requirement that the payee inform the court or payer of the remarriage. After divorce, most divorcees have minimal contact. The payer would not know or have any reason to know that the payee had remarried. Also, it may be difficult for the payer to secure "proof of remarriage." This bill also contains a simple, small change that allows the court to vacate maintenance upon notification by the payee of the payee's own remarriage.

Please support this legislation to make small changes to help clarify current law and ensure that IRS requirements are being satisfied.

## FAMILY LAW SECTION

---

July 30, 2013

TO: Members, Assembly Committee on Family Law

FR: Attorney Jared Potter  
Family Law Section  
State Bar of Wisconsin

RE: support for Senate Bill 68

The Family Law Section is comprised of approximately 1,300 attorneys, guardians ad litem, family court commissioners, and judges from around the State who have a special interest or focus in family law. Most members specialize in family law, and work with families involved in separations, divorce, and post-divorce issues.

The Section thanks Senator Grothman and Representative Kestell for authoring and introducing this bill.

The Family Law Section strongly supports Senate Bill 68 for the reasons below.

- **REVISIONS TO Wis. Stat. § 767.56** – maintenance to a party terminates upon the death of such party.

An order requiring a party to pay maintenance to the other shifts taxable income from the payer to the payee. The IRS has additional rules before the payer can deduct maintenance and the payee must claim maintenance as income. The IRS requires that the maintenance payments terminate upon the death of the payee. We support statutory confirmation of this requirement so decisions made by the courts or agreements entered into by the parties satisfy this IRS requirement. This problem is becoming more common as the number of divorce cases increases where neither party has an attorney to properly prepare the judgment. Further, no Wisconsin published decision has directly addressed this limited issue and clarification is necessary.

- **REVISION TO Wis. Stat. § 767.58** – each order for family support or maintenance shall include an order that the payee notify the court and payer within 10 business days of the payee's remarriage.

Wis. Stat. § 767.59(3) states that maintenance terminates upon the remarriage of the payee; however, the statutes do not contain any notice requirement wherein the payee must inform the court or payer of the remarriage. After divorce, many parties have little to no contact. The payer would not know or have any reason to know that the payee has remarried. Further, the payer may not be able to secure "proof of remarriage." We support the revision to Wis. Stat. § 767.58 to require the payee to notify the payer and the court of the remarriage so that maintenance terminates in a timely manner as contemplated in Wis. Stat. 767.59(3).



**STATE BAR OF WISCONSIN**

Further, family support is "a substitute for child support orders under s. 767.511 and maintenance payment orders under s. 767.56." See Wis. Stat. § 767.531. A payer of family support is entitled to notice that the payee has remarried since the maintenance portion of the family support is no longer appropriate. Please note that in order for the family support to change, the payer must still file a motion to convert family support to an appropriate child support award.

- **REVISIONS TO Wis. Stat. § 767.59(3)** – "After a final judgment requiring maintenance payments has been rendered and the payee has remarried, the court shall, on application of the payer with notice to the payee and upon proof of remarriage, or upon receiving notice of remarriage from the payee, vacate the order requiring the payments."

Wis. Stat. § 767.59(3) states that maintenance terminates upon the remarriage of the payee. This simple change permits the court to vacate maintenance upon notification by the payee of the payee's own remarriage. The payer should not be required to petition the court to terminate the payee's maintenance if the payee notifies the court directly of the remarriage.

The Family Law Section respectfully requests your support for Senate Bill 68. If you have any questions or need additional information, please feel free to contact me or Sandy Lonergan. Thank you for your support.

\*\*\*\*\*

*The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.*

*The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.*

*If you have questions about this memorandum, please contact Sandy Lonergan, Government Relations Coordinator, at [slonergan@wisbar.org](mailto:slonergan@wisbar.org) or (608) 250-6045.*