



1997 ASSEMBLY BILL 476

August 19, 1997 - Introduced by Representatives ALBERS, HANSON, STASKUNAS, LADWIG, MUSSER, POWERS, BRANDEMUEHL, OWENS, PORTER, SYKORA, GOETSCH, SERATTI, GUNDERSON and KEDZIE, cosponsored by Senators HUELSMAN, ROESSLER and FITZGERALD. Referred to Committee on Judiciary.

1 **AN ACT to renumber** 767.26; **to amend** 766.70 (4) (a) 3., 767.08 (2) (b), 767.255
2 (3) (i) and 767.32 (1) (a); and **to create** 767.10 (2) (c), 767.26 (2) and 767.32 (1)
3 (ar) of the statutes; **relating to:** awarding revising maintenance payments on
4 the basis of debt discharge in bankruptcy.

Analysis by the Legislative Reference Bureau

Under current law, a court may order a party to pay maintenance (formerly known as alimony) to the other party in an action for annulment, divorce or legal separation. The court may revise the amount of maintenance after the action, depending upon changed circumstances. If a party waived maintenance in the action, however, the court may not revise the judgment in the action at a later date to provide for maintenance to that party.

This bill provides that, in an action for annulment, divorce or legal separation, the court may not approve a stipulation between the parties that waives maintenance to either party unless the stipulation contains a statement by a party waiving maintenance that he or she understands that, if the court approves the stipulation, the court may not award the party maintenance payments in the future. The bill provides that, if a debt that was assigned to a party in an action for annulment, divorce or legal separation is discharged in bankruptcy, the court may award maintenance to the other party if that party has not remarried and did not waive maintenance in the action for annulment, divorce or legal separation, and if the court did not award maintenance to either party in the action. The bill also

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provides that, if a debt that was assigned to a party in an action for annulment, divorce or legal separation is discharged in bankruptcy and the court awarded maintenance to a party in the action, the discharge of the debt is sufficient to justify a revision in the amount of maintenance that is paid or received by the party who was awarded maintenance in the action.

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:

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. 767.255 and 767.26 (1).

5 **SECTION 2.** 767.08 (2) (b) of the statutes is amended to read:

6 767.08 (2) (b) The court in the action shall, as provided under s. 767.25 or
7 767.26 (1), determine and adjudge the amount, if any, the person should reasonably
8 contribute to the support and maintenance of the spouse or child and how the sum
9 should be paid. This amount may be expressed as a percentage of the person's income
10 or as a fixed sum, or as a combination of both in the alternative by requiring payment
11 of the greater or lesser of either a percentage of the person's income or a fixed sum.
12 The amount so ordered to be paid may be changed or modified by the court upon
13 notice of motion or order to show cause by either party upon sufficient evidence.

14 **SECTION 3.** 767.10 (2) (c) of the statutes is created to read:

15 767.10 (2) (c) A court may not approve a stipulation that waives maintenance
16 payments for either party unless the stipulation contains a statement by the party
17 waiving maintenance that he or she understands that, if the court approves the
18 waiver of maintenance payments, the court will not award maintenance payments

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1 to the party under s. 767.26 or revise or alter a judgment or order with respect to
2 maintenance payments to the party under s. 767.32.

3 **SECTION 4.** 767.255 (3) (i) of the statutes is amended to read:

4 767.255 (3) (i) The amount and duration of an order under s. 767.26 (1) granting
5 maintenance payments to either party, any order for periodic family support
6 payments under s. 767.261 and whether the property division is in lieu of such
7 payments.

8 **SECTION 5.** 767.26 of the statutes is renumbered 767.26 (1).

9 **SECTION 6.** 767.26 (2) of the statutes is created to read:

10 767.26 (2) After judgment has been granted in an action specified in sub. (1),
11 the court may award maintenance payments to a party, upon the petition, motion or
12 order to show cause of the party, if all of the following apply:

13 (a) The court ordered no maintenance payments to either party in the action
14 specified in sub. (1).

15 (b) The party seeking maintenance did not waive maintenance in the action
16 specified in sub. (1).

17 (c) The party seeking maintenance has not remarried.

18 (d) The party from whom maintenance is sought has secured a discharge in
19 bankruptcy of a debt that was assigned to that party in a property division under s.
20 767.255.

21 **SECTION 7.** 767.32 (1) (a) of the statutes is amended to read:

22 767.32 (1) (a) After a judgment or order providing for child support under this
23 chapter or s. 48.355 (2) (b) 4., 48.357 (5m), 48.363 (2), 938.183 (2), 938.355 (2) (b) 4.,
24 938.357 (5m), 938.363 (2) or 948.22 (7), maintenance payments under s. 767.26 or
25 family support payments under this chapter, or for the appointment of trustees

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1 under s. 767.31, the court may, from time to time, on the petition, motion or order to
2 show cause of either of the parties, or upon the petition, motion or order to show cause
3 of the department, a county department under s. 46.215, 46.22 or 46.23 or a child
4 support program designee under s. 59.53 (5) if an assignment has been made under
5 s. 46.261, 48.57 (3m) (b) 2., 49.153 (3), 49.19 (4) (h) or 49.45 (19) or if either party or
6 their minor children receive aid under s. 48.57 (3m) or ch. 49, and upon notice to the
7 family court commissioner, revise and alter such judgment or order respecting the
8 amount of such maintenance or child support and the payment thereof, and also
9 respecting the appropriation and payment of the principal and income of the
10 property so held in trust, and may make any judgment or order respecting any of the
11 matters that such court might have made in the original action, except that a
12 judgment or order that waives maintenance payments for either party shall not
13 thereafter be revised or altered in that respect nor shall the provisions of a judgment
14 or order with respect to final division of property be subject to revision or
15 modification. A revision, under this section, of a judgment or order with respect to
16 an amount of child or family support may be made only upon a finding of a
17 substantial change in circumstances.

18 In (am) Subject to par. (a), in any action under this section to revise a judgment
19 or order with respect to maintenance payments, a substantial change in the cost of
20 living by either party or as measured by the federal bureau of labor statistics may
21 be sufficient to justify a revision of judgment or order with respect to the amount of
22 maintenance, except that a change in an obligor's cost of living is not in itself
23 sufficient if payments are expressed as a percentage of income.

24 **SECTION 8.** 767.32 (1) (ar) of the statutes is created to read:

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1 767.32 (1) (ar) Subject to par. (a), in any action under this section to revise a
2 judgment or order with respect to maintenance payments, a discharge in bankruptcy
3 of a debt that was assigned to a party under s. 767.255 is sufficient to justify a
4 revision of the judgment or order with respect to the amount of maintenance
5 payments that are received or paid by the party to whom the debt was assigned.

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(END)