

1999 ASSEMBLY BILL 740

February 10, 2000 – Introduced by Representatives ALBERS, MILLER, SPILLNER, MUSSER, OWENS, HUNDERTMARK and SKINDRUD, cosponsored by Senators PLACHE, PANZER and SCHULTZ. Referred to Committee on Family Law.

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), 767.10 (2) (d), 767.26 (2)
3 and 767.32 (1) (ar) of the statutes; **relating to:** awarding or revising
4 maintenance payments on the basis of debt discharge in bankruptcy and
5 approving stipulations waiving maintenance.

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 is prohibited from revising 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 will not award the party maintenance payments in the future. The bill provides that the court must approve a stipulation that conditionally waives maintenance for either party if the party conditionally waiving maintenance is liable for, or has property that could be used to satisfy, a debt that the court has assigned to the other party; if the conditional waiver is based on the condition that the party

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who is assigned the debt does not secure a discharge of the debt in bankruptcy; and if the stipulation contains a statement by the party conditionally waiving maintenance that he or she understands that, if the court approves the stipulation, the court will not award the party maintenance in the future unless the other party secures a discharge in bankruptcy of the debt for which the party conditionally waiving maintenance may be held liable. The bill authorizes a court to award maintenance after an annulment, divorce or legal separation to a party who conditionally waived maintenance in the action by stipulation as described above if the party seeking maintenance has not remarried and the other party has secured a discharge in bankruptcy of a debt that was assigned to that party and for which the party seeking maintenance may be held liable.

The bill also 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 assigned the debt.

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.

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1 The amount so ordered to be paid may be changed or modified by the court upon
2 notice of motion or order to show cause by either party upon sufficient evidence.

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

4 767.10 (2) (c) A court may not approve a stipulation that waives maintenance
5 payments for either party unless the stipulation contains a statement by the party
6 waiving maintenance that he or she understands that, if the court approves the
7 waiver of maintenance payments, the court will not award maintenance payments
8 to the party under s. 767.26 or revise or alter a judgment or order with respect to
9 maintenance payments to the party under s. 767.32.

10 **SECTION 4.** 767.10 (2) (d) of the statutes is created to read:

11 767.10 (2) (d) A court shall approve a stipulation that conditionally waives
12 maintenance payments for either party if all of the following apply:

13 1. The court assigns to the other party under s. 767.255 responsibility for the
14 repayment of any debt for which the party conditionally waiving maintenance has
15 liability or property that is available under s. 766.55 to satisfy the debt.

16 2. The waiver of maintenance is based on the condition that the party assigned
17 a debt specified in subd. 1. does not secure a discharge in bankruptcy of the debt.

18 3. The stipulation contains a statement by the party conditionally waiving
19 maintenance that he or she understands that, if the court approves the conditional
20 waiver of maintenance payments, the court will not award maintenance payments
21 to the party under s. 767.26 (1), the court will not award maintenance payments to
22 the party under s. 767.26 (2) unless the other party secures a discharge in
23 bankruptcy of a debt specified in subd. 1., and the court will not revise or alter a
24 judgment or order with respect to maintenance payments to the party under s.

ASSEMBLY BILL 740**SECTION 4**

1 767.32 unless the court awards maintenance payments to the party under s. 767.26
2 (2).

3 **SECTION 5.** 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 6.** 767.26 of the statutes is renumbered 767.26 (1).

9 **SECTION 7.** 767.26 (2) of the statutes is created to read:

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

13 (a) The party seeking maintenance under this subsection conditionally waived
14 maintenance under s. 767.10 (2) (d).

15 (b) The party seeking maintenance under this subsection has not remarried.

16 (c) The party from whom maintenance is sought under this subsection has
17 secured a discharge in bankruptcy of a debt that was assigned to that party in a
18 property division under s. 767.255 and for which the party seeking maintenance has
19 liability or property that is available under s. 766.55 to satisfy the debt.

20 **SECTION 8.** 767.32 (1) (a) of the statutes is amended to read:

21 767.32 (1) (a) After a judgment or order providing for child support under this
22 chapter or s. 48.355 (2) (b) 4., 48.357 (5m), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4.,
23 938.357 (5m), 938.363 (2) or 948.22 (7), maintenance payments under s. 767.26 or
24 family support payments under this chapter, or for the appointment of trustees
25 under s. 767.31, the court may, from time to time, on the petition, motion or order to

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

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

23 **SECTION 9.** 767.32 (1) (ar) of the statutes is created to read:

24 767.32 **(1)** (ar) Subject to par. (a), in any action under this section to revise a
25 judgment or order with respect to maintenance payments, a discharge in bankruptcy

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1 of a debt that was assigned to a party under s. 767.255, and for which the other party
2 has liability or property that is available under s. 766.55 to satisfy the debt, is
3 sufficient to justify a revision of the judgment or order with respect to the amount
4 of maintenance payments that are received or paid by the party to whom the debt was
5 assigned.

6 **SECTION 10. Initial applicability.**

7 (1) The treatment of sections 767.10 (2) (c) and (d) and 767.26 (2) of the statutes
8 first applies to stipulations that are approved by a court on the effective date of this
9 subsection.

10 (2) The treatment of section section 767.32 (1) (ar) of the statutes first applies
11 to debts that are discharged in bankruptcy on the effective date of this subsection.

12 **SECTION 11. Effective date.**

13 (1) This act takes effect on the first day of the 6th month beginning after
14 publication.

15 (END)