

1999 DRAFTING REQUEST

Bill

Received: 0212211999

Received By: kahlepj

Wanted: As time permits

Identical to LRB:

For: Sheryl Albers (608) 266-8531

By/Representing: herself

This file may be shown to any legislator: NO

Drafter: kahlepj

May Contact:

Alt. Drafters:

Subject: Dom. Rel. - divorce
Dom. Rel. - miscellaneous

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Awarding or revising maintenance payments on the basis of debt discharge in bankruptcy

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reaured</u>
I?	kahlepj 02/23/1999	ptellez 02/26/1999		_____			Local
/1			martykr 03/01/1999	_____	gretskl 03/01/1999	lrb_docadmin 01/21/2000	

FE Sent For:

↪ 02-10-00

<END>

1999 DRAFTING REQUEST

Bill

Received: **02/22/99**

Received By: **kahlepj**

Wanted: **As time permits**

Identical to LRB:

For: **Sheryl Albers (608) 266-8531**

By/Representing: **herself**

This file may be shown to any legislator: NO

Drafter: **kahlepj**

May Contact:

Alt. Drafters:

Subject: **Dom. Rel. - divorce**
Dom. Rel. - miscellaneous

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Awarding or revising maintenance payments on the basis of debt discharge in bankruptcy

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
I?	kahlepj 02/23/99	ptellez 02/26/99		_____			Local
/1			martykr 03/1/99	_____	gretskl 03/1/99		

FE Sent For:

<END>

1999 DRAFTING REQUEST

Bill

Received: **02/22/99**

Received By: **kahlepj**

Wanted: **As time permits**

Identical to LRB:

For: **Sheryl Albers (608) 266-8531**

By/Representing: **herself**

This file may be shown to any legislator: NO

Drafter: **kahlepj**

May Contact:

Alt. Drafters:

Subject: **Dom. Rel. - divorce**
Dom. Rel. - miscellaneous

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Awarding or revising maintenance payments on the basis of debt discharge in bankruptcy

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	kahlepj	1/1 pat 2/26/99	km 3/1	km 3/1			

FE Sent For:

<END>



1999-2000

1997-1998 LEGISLATURE

2307/1

LRB-27504

PJK:kdf:ama

PJF

1999 BILL

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.

and approving stipulations waiving maintenance

Regenerate ↓

- 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

is prohibited from revising

will

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.

Insert A-1

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

no 9



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

ASSEMBLY BILL 476

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 to that party 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:

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

766.70 (4) (a) 3. A division of the obligations of the spouses existing on the date of the request, after considering the classification of the obligation under s. 766.55 and the factors specified under ss. 767.255 and 767.26 (1).

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

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

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

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

assigned the debt

Proof w/ STATS.



4

ASSEMBLY BILL 476

Insert 3-2

Insert 3-16

for amendment, divorce or legal separation

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 thk party, if all of the following apply:

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

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

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

18 c (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. → Insert 3-20

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





1 2 3 4 5

6 7 8

9

10 11 12

13

Section #. 767.32 (1) (a) of the statutes is amended to read:

767.32 (1) (a) After a judgment or order providing for child support under this chapter or s. 48.355 (2) (b) 4., 48.357 (5m), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m), 938.363 (2) or 948.22 (7), maintenance payments under s. 767.26 or family support payments under this chapter, or for the appointment of trustees under s. 767.3 1, the court may, from time to time, on the petition, motion or order to show cause of either of the parties, or upon the petition, motion or order to show cause of the department, a county department under s. 46.2 15, 46.22 or 46.23 or a county child support agency under s. 59.53 (5) if an assignment has been made under s. 46.261, 48.57 (3m) (b) 2. or (3n) (b) 2., 49.19 (4) (h) or 49.45 (19) or if either party or their minor children receive aid under s. 48.57 (3m) or (3n) or ch. 49, and upon notice to the family court commissioner, revise and alter such judgment or order respecting the amount of such maintenance or child support and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any judgment or order respecting any of the matters that such court might have made in the original action, except that a judgment or order that waives maintenance payments for either party shall not thereafter be revised or altered in that respect nor shall the provisions of a judgment or order with respect to final division of property be subject to revision or modification. A revision, under this section, of a judgment or order with respect to an amount of child or family support may be made only upon a finding of a substantial change in circumstances.

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

under this section

History: 1971 c. 220; 1977 c. 105 ss. 38, 48, 49; 1977 c. 418; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.32; 1981 c. 20 s. 2202 (20) (m); 1981 c. 314 s. 146; 1983 a. 27; 1985 a. 176; 1987 a. 27, 355, 413; 1989 a. 212; 1991 a. 39; 1993 a. 16, 481, 491; 1995 a. 27 s. 9126 (19); 1995 a. 77, 201, 225, 279, 289, 404, 417; 1997 a. 27, 35, 105, 191, 237, 273.

ASSEMBLY BILL 476**SECTION 7**

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:



ASSEMBLY BILL 476

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.

insert 5-3

6

(END)

insert 5-5

INSERTS
19994000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2307?ins
PJK.....

INSERT A-1 ✓

Who is

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 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.

(END OF INSERT A-1)

**ASSEMBLY AMENDMENT 1,
TO 1997 ASSEMBLY BILL 476**

Insert 3-2 182

January 15, 1998 - Offered by COMMITTEE ON JUDICIARY.

1 At the locations indicated, amend the bill as follows:

2 1. Page 1, line 3: after "awarding" insert "or".

3 2. Page 3, line 2: after that line insert:

4 ~~SECTION 767.10~~ SECTION 767.10 (2) (d) of the statutes is created to read:

5 767.10 (2) (d) A court shall approve a stipulation that conditionally waives
6 maintenance payments for either party if all of the following apply:

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

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

12 3. The stipulation contains a statement by the party conditionally waiving
13 maintenance that he or she understands that, if the court approves the conditional



Ins 3-2 contd 292

1 waiver of maintenance payments, the court will not award maintenance payments
2 to the party under s. 767.26 (1), the court will not award maintenance payments to
3 the party under s. 767.26 (2) unless the other party secures a discharge in
4 bankruptcy of a debt specified in subd. 1., and the court will not revise or alter a
5 judgment or order with respect to maintenance payments to the party under s.
6 767.32 unless the court awards maintenance payments to the party under s. 767.26

7 (2).
(end of ins 3-2)

8 **3.** Page 3, line 10: delete "specified in sub. (1)" and substitute "for annulment,
9 divorce or legal separation."

10 **4.** Page 3, line 13: delete lines 13 to 16 and substitute:

11 (a) The party seeking maintenance under this subsection conditionally waived
12 maintenance under s. 767.10 (2) (d).
Insert 3-16

13 **5.** Page 3, line 17: delete "(c)" and substitute "(b)".

14 **6.** Page 3, line 17: after "maintenance" insert "under this subsection".

15 **7.** Page 3, line 18: delete "(d)" and substitute "(c)".

16 **8.** Page 3, line 18: after "sought" insert "under this subsection".

17 **9.** Page 3, line 20: after "767.255" insert "and for which the party seeking
18 maintenance has liability or property that is available under s. 766.55 to satisfy the
19 debt".
Insert 3-20

20 **10.** Page 5, line 3: after "767.255" insert "and for which the other party has
21 liability or property that is available under s. 766.55 to satisfy the debt".
Insert 5-3

22 **11.** Page 5, line 5: after that line insert: *Insert 5-5 1 of 2*

23 **SECTION 9. Initial applicability.**





Ins. 5-5 cont'd 2 of 2

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

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

6 **SECTION 10. Effective date.**

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

9 (END) *ins 5-5*

[end of inserts]

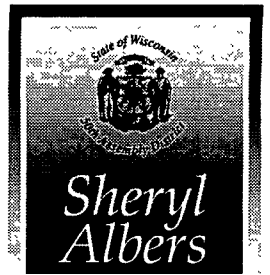
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1

2

3

PJK
~



To: LRB Drafting
From: Representative Sheryl K. Albers

Date: February 22, 1999
Subject: Re-draft of Maintenance Payments Bill (1997 AB 476)

Please re-draft 1997 AB 476 (LRB 2750/1) - in combination with Assembly Amendment 1 to AB 476 (LRB 1269/3) - as a 1999 bill. Pleased see attached copies of both the bill and the amendment.

Thank you.



**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 3/1/99

To: Representative Albers

Relating to LRB drafting number: LRB-2307


Topic

Awarding or revising maintenance payments on the basis of debt discharge in bankruptcy

Subject(s)

Dom. Rel. - divorce, Dom. Rel. - miscellaneous

1. **JACKET** the draft for introduction



20 Jan 00

in the **Senate** or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____

A-revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____

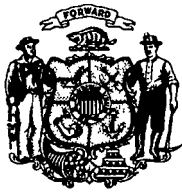
If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Pamela J. Kahler, Senior Legislative Attorney
Telephone: (608) 266-2682

10
11
12





1999 ASSEMBLY BILL 740

Very soon (2-21)

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.

Regen

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 ~~is prohibited from revising~~ 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

may revise

