

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 740**

March 14, 2000 – Offered by COMMITTEE ON FAMILY LAW.

1 **AN ACT** *to amend* 565.30 (5m) (a), 767.261 (intro.), 767.265 (1), 767.30 (1),
2 767.305, 767.32 (1) (a) and 802.12 (3) (c) 2.; and *to create* 767.10 (2) (c), 767.10
3 (2) (d), 767.2605 and 767.32 (1) (ar) of the statutes; **relating to:** awarding or
4 revising maintenance payments on the basis of debt discharge in bankruptcy
5 and approving stipulations waiving maintenance.

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

6 **SECTION 1.** 565.30 (5m) (a) of the statutes, as affected by 1999 Wisconsin Act
7 9, section 3025pa, is amended to read:

8 565.30 **(5m)** (a) The administrator shall report to the department of workforce
9 development the name, address and social security number of each winner of a
10 lottery prize that is payable in instalments and the name, address and social security
11 number or federal income tax number of the person who has been assigned a lottery
12 prize that is payable in instalments. Upon receipt of the report, the department of

1 workforce development shall certify to the administrator whether any payee or
2 assignee named in the report is obligated to provide child support, spousal support,
3 maintenance or family support under s. 767.02 (1) (f) or (g), 767.10, 767.23, 767.25,
4 767.26, 767.2605, 767.261, 767.458 (3), 767.465 (2m), 767.477, 767.51 (3), 767.62 (4)
5 or 948.22 (7) or ch. 769 and the amount required to be withheld from the lottery prize
6 under s. 767.265. Subject to par. (b), the administrator shall withhold the certified
7 amount from each payment made to the winner or assignee and remit the certified
8 amount to the department of workforce development.

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

10 767.10 (2) (c) A court may not approve a stipulation that waives maintenance
11 payments for either party unless the stipulation contains a statement by the party
12 waiving maintenance that he or she understands that, if the court approves the
13 waiver of maintenance payments, the court will not award maintenance payments
14 to the party under s. 767.26 or 767.2605 or revise or alter a judgment or order with
15 respect to maintenance payments to the party under s. 767.32.

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

17 767.10 (2) (d) A court shall approve a stipulation that conditionally waives
18 maintenance payments for either party if all of the following apply:

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

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

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

1 waiver of maintenance payments, the court will not award maintenance payments
2 to the party under s. 767.26, the court will not award maintenance payments to the
3 party under s. 767.2605 unless the other party secures a discharge in bankruptcy of
4 a debt specified in subd. 1. for which the party conditionally waiving maintenance
5 is held liable, and the court will not revise or alter a judgment or order with respect
6 to maintenance payments to the party under s. 767.32 unless the court awards
7 maintenance payments to the party under s. 767.2605.

8 **SECTION 4.** 767.2605 of the statutes is created to read:

9 **767.2605 Awarding maintenance after final judgment.** After judgment
10 has been granted in an action for annulment, divorce or legal separation, the court
11 may award maintenance payments to a party, upon the petition, motion or order to
12 show cause of the party, if all of the following apply:

13 **(1)** The party seeking maintenance under this section conditionally waived
14 maintenance under s. 767.10 (2) (d).

15 **(2)** The party seeking maintenance under this section has not remarried.

16 **(3)** The party from whom maintenance is sought under this section has secured
17 a discharge in bankruptcy of a debt that was assigned to that party in a property
18 division under s. 767.255 and for which the party seeking maintenance has been held
19 liable.

20 **SECTION 5.** 767.261 (intro.) of the statutes, as affected by 1999 Wisconsin Act
21 9, is amended to read:

22 **767.261 Family support.** (intro.) The court may make a financial order
23 designated “family support” as a substitute for child support orders under s. 767.25
24 and maintenance payment orders under s. 767.26 or 767.2605. A party ordered to
25 pay family support under this section shall pay simple interest at the rate of 1% per

1 month on any amount in arrears that is equal to or greater than the amount of child
2 support due in one month. If the party no longer has a current obligation to pay child
3 support, interest at the rate of 1% per month shall accrue on the total amount of child
4 support in arrears, if any. Interest under this section is in lieu of interest computed
5 under s. 807.01 (4), 814.04 (4) or 815.05 (8) and is paid to the department or its
6 designee under s. 767.29. Except as provided in s. 767.29 (1m), the department or
7 its designee, whichever is appropriate, shall apply all payments received for family
8 support as follows:

9 **SECTION 6.** 767.265 (1) of the statutes, as affected by 1999 Wisconsin Act 9,
10 section 3055c, is amended to read:

11 767.265 (1) Each order for child support under this chapter, for maintenance
12 payments under s. 767.23 ~~or~~, 767.26 or 767.2605, for family support under this
13 chapter, for costs ordered under s. 767.51 (3) or 767.62 (4), for support by a spouse
14 under s. 767.02 (1) (f), for maintenance payments under s. 767.02 (1) (g) or for the
15 annual receiving and disbursing fee under s. 767.29 (1) (d), each order for a revision
16 in a judgment or order with respect to child support, maintenance or family support
17 payments under s. 767.32, each stipulation approved by the court or the family court
18 commissioner for child support under this chapter and each order for child or spousal
19 support entered under s. 948.22 (7) constitutes an assignment of all commissions,
20 earnings, salaries, wages, pension benefits, benefits under ch. 102 or 108, lottery
21 prizes that are payable in instalments and other money due or to be due in the future
22 to the department or its designee. The assignment shall be for an amount sufficient
23 to ensure payment under the order or stipulation and to pay any arrearages due at
24 a periodic rate not to exceed 50% of the amount of support due under the order or

1 stipulation so long as the addition of the amount toward arrearages does not leave
2 the party at an income below the poverty line established under 42 USC 9902 (2).

3 **SECTION 7.** 767.30 (1) of the statutes is amended to read:

4 767.30 (1) If the court orders any payment for support under s. 48.355 (2) (b)
5 4., 48.357 (5m), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) or 938.363 (2),
6 support or maintenance under s. 767.08, child support, family support or
7 maintenance under s. 767.23, child support under s. 767.25, maintenance under s.
8 767.26 or 767.2605, family support under s. 767.261, attorney fees under s. 767.262,
9 child support or a child's health care expenses under s. 767.477, paternity obligations
10 under s. 767.458 (3), 767.51 or 767.62 (4), support arrearages under s. 767.293 or
11 child or spousal support under s. 948.22 (7), the court may provide that any payment
12 be paid in the amounts and at the times that it considers expedient.

13 **SECTION 8.** 767.305 of the statutes is amended to read:

14 **767.305 Enforcement; contempt proceedings.** In all cases where a party
15 has incurred a financial obligation under s. 48.355 (2) (b) 4., 48.357 (5m), 48.363 (2),
16 767.23, 767.25, 767.255, 767.26, 767.2605, 767.261, 767.262, 767.293, 767.458 (3),
17 767.477, 767.51, 767.62 (4), 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) or 938.363
18 (2) and has failed within a reasonable time or as ordered by the court to satisfy such
19 obligation, and where the wage assignment proceeding under s. 767.265 and the
20 account transfer under s. 767.267 are inapplicable, impractical or unfeasible, the
21 court may on its own initiative, and shall on the application of the receiving party,
22 issue an order requiring the payer to show cause at some reasonable time therein
23 specified why he or she should not be punished for such misconduct as provided in
24 ch. 785.

25 **SECTION 9.** 767.32 (1) (a) of the statutes is amended to read:

1 767.32 (1) (a) After a judgment or order providing for child support under this
2 chapter or s. 48.355 (2) (b) 4., 48.357 (5m), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4.,
3 938.357 (5m), 938.363 (2) or 948.22 (7), maintenance payments under s. 767.26 or
4 767.2605 or family support payments under this chapter, or for the appointment of
5 trustees under s. 767.31, the court may, from time to time, on the petition, motion or
6 order to show cause of either of the parties, or upon the petition, motion or order to
7 show cause of the department, a county department under s. 46.215, 46.22 or 46.23
8 or a county child support agency under s. 59.53 (5) if an assignment has been made
9 under s. 46.261, 48.57 (3m) (b) 2. or (3n) (b) 2., 49.19 (4) (h) or 49.45 (19) or if either
10 party or their minor children receive aid under s. 48.57 (3m) or (3n) or ch. 49, and
11 upon notice to the family court commissioner, revise and alter such judgment or order
12 respecting the amount of such maintenance or child support and the payment
13 thereof, and also respecting the appropriation and payment of the principal and
14 income of the property so held in trust, and may make any judgment or order
15 respecting any of the matters that such court might have made in the original action,
16 except that a judgment or order that waives maintenance payments for either party
17 shall not thereafter be revised or altered under this section in that respect nor shall
18 the provisions of a judgment or order with respect to final division of property be
19 subject to revision or modification. A revision, under this section, of a judgment or
20 order with respect to an amount of child or family support may be made only upon
21 a finding of a substantial change in circumstances. ~~In~~

22 (am) Subject to par. (a), in any action under this section to revise a judgment
23 or order with respect to maintenance payments, a substantial change in the cost of
24 living by either party or as measured by the federal bureau of labor statistics may
25 be sufficient to justify a revision of judgment or order with respect to the amount of

1 maintenance, except that a change in an obligor's cost of living is not in itself
2 sufficient if payments are expressed as a percentage of income.

3 **SECTION 10.** 767.32 (1) (ar) of the statutes is created to read:

4 767.32 **(1)** (ar) Subject to par. (a), in any action under this section to revise a
5 judgment or order with respect to maintenance payments, a discharge in bankruptcy
6 of a debt that was assigned to a party under s. 767.255, and for which the other party
7 has been held liable, is sufficient to justify a revision of the judgment or order with
8 respect to the amount of maintenance payments that are received or paid by the
9 party to whom the debt was assigned.

10 **SECTION 11.** 802.12 (3) (c) 2. of the statutes is amended to read:

11 802.12 **(3)** (c) 2. Maintenance under s. 767.26 or 767.2605.

12 **SECTION 12. Initial applicability.**

13 (1) The treatment of sections 767.10 (2) (c) and (d) and 767.2605 of the statutes
14 first applies to stipulations that are approved by a court on the effective date of this
15 subsection.

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

18 **SECTION 13. Effective date.**

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

21 (END)