

**1999 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-AB740)**

Received: **03/07/2000**

Received By: **kahlepj**

Wanted: **Soon**

Identical to LRB:

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

By/Representing: **Scott Southworth**

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:**

Revision of maintenance on 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> |
|--------------|-----------------------|-----------------------|-----------------------|----------------|----------------------------|----------------------------|-----------------|
| /?           | kahlepj<br>03/08/2000 | jgeller<br>03/08/2000 |                       | _____          |                            |                            |                 |
| /1           |                       |                       | martykr<br>03/08/2000 | _____          | lrb-docadmin<br>03/08/2000 | lrb-docadmin<br>03/08/2000 |                 |

FE Sent For:

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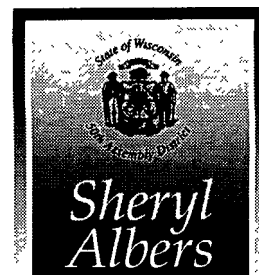
See Attached

Drafting History:

Table with columns: Vers., Drafted, Reviewed, Typed, Proofed, Submitted, Jacketed, Required. Includes handwritten entries for dates and initials.

FE Sent For:

<END>



To: Attorney Pamela Kahler, LRB  
From: Attorney Scott Harold Southworth, Research Assistant *SHS*

Date: March 6, 2000

Subject: 1999 Assembly Bill 740 - Divorce Maintenance

Reference: Attached information from the Wisconsin State Bar Association

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The Wisconsin State Bar Association requested two changes to AB 740. One is a renumbering issue; the other is a language clarification. We agree with the bar's recommendations, and would like an amendment for the committee to take up and pass when they exec on the bill on March 14. As I realize LRB is quite busy right now, I drafted the simple amendment for you. After I drafted the amendment, however, I realized that so many small changes were made due to the renumbering issue that a substitute amendment would be more appropriate to avoid confusion.

Note that I created 767.257, which is chronologically after the award of maintenance payments in 767.26 - unfortunately, .261, .262, etc. are all used after 767.26, so I had to go before .26 instead of after. Though I don't like this statutory construction, it appears to be the only way to keep the two issues together in the statutes and still leave 767.26 alone completely.

Given the number of changes, I may have missed something. Feel free to make any changes you deem appropriate to accomplish our goal. Thanks for your help, and best wishes, Pam.

At the locations indicated, amend the bill as follows:

- 1.** Page 1, line 1: delete "*to renumber 767.26*;"
2. Page 1, line 2: delete "767.26 (2)" and substitute "767.257".
3. Page 2, line 1: delete lines 1 through 4.
4. Page 2, line 5: delete "2." and substitute "1."
- 5.** Page 2, line 6: delete "767.25 or" and substitute "767.25, 767.257 or"
- 6.** Page 2, line 7: delete "(1)".
- 7.** Page 3, line 3: delete "3." and substitute "2."
8. Page 3, line 8: after "under" insert "s.767.257,".
- 9.** Page 3, line 10: delete "4." and substitute "3."
10. Page 3, line 21: delete "767.26 (1)" and substitute "767.26".

Office: P.O. Box 8952 . State Capitol . Madison, WI 53708-8952 . (608) 266-8531  
Home: S6696 Seeley Creek Road . Loganville, WI 53943 . (606) 727-5084

February 23, 2000

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1999- 2000

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State Representative Sheryl Albers  
State Capitol  
P.O. Box 8952  
Madison, Wisconsin 53708

Dear Representative Albers:

The Family Law Section supports Assembly Bill 740 and appreciates your continued efforts to protect a party from being forced to pay their ex-spouses debts.

Under current law, good lawyers often "hold open" maintenance as security in the event the other spouse discharges in bankruptcy a marital debt they were required to pay. The legislation gives that benefit to everyone, irrespective of whether they are represented by an attorney.

In fact, Assembly Bill 740 will be especially beneficial for those individuals who cannot afford or choose not to be represented by an attorney.

The Family Law Section recommends two minor technical amendments to the bill:

First, the renumbering of 767.26 is problematic. Current section 767.26, which was enacted in 1979, enumerates in subsections (1) through (10) the factors courts must consider in deciding maintenance. There is substantial case law interpreting those ten subsections since its enactment 21 years ago. A renumbering of those ten subsections will complicate future research and access to that body of case law.

Enclosed you find a page from the 1985 Shenard's Wisconsin Citations to give you an idea of the number of citations impacted. The Section recommends that the Legislative Reference Bureau find a different way to draft the substantive provisions without renumbering the existing maintenance factors.

Second, the legislation needs clarification that a party can seek maintenance if they have been held "liable" to satisfy a marital debt that the other spouse discharged in bankruptcy. In many cases, a creditor of

P.O. Box 7158  
MADISON, WI 53707-7158  
5302 EAST PARK BLVD.  
MADISON, WI 53718-2101

(608) 257-3838

FAX (608) 257-5502

a marital debt will simply forgive the indebtedness upon a discharge in bankruptcy rather than pursue the former spouse. If the former spouse has not been held liable to pay a debt that was not their responsibility, they should not have the right to obtain maintenance to pay the debt. That strikes a better balance between the interest of the former spouse to be protected in the event of bankruptcy, while preserving the constitutional and statutory right of the other spouse to discharge debts in bankruptcy. Enclosed you will find suggested revisions for your consideration.

Again, thank you for your efforts in moving Assembly Bill 740. Please let me know if the Family Law Section can be of any assistance.

Sincerely,



Linda Barth

Public Affairs Director

250-6140

[lbarth@wisbar.org](mailto:lbarth@wisbar.org)

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| <p>343NW80<br/>355NW24<br/>405NW308<br/>417NW423<br/>426NW98<br/>477NW640<br/>499NW269<br/>Cir. 7<br/>32BRW364</p> <p>Subsec. 4<br/>93Wis2d133<br/>143Wis2d350<br/>145Wis2d259<br/>153Wis2d759<br/>286NW866<br/>421NW507<br/>426NW98<br/>452NW161</p> <p>Subsec. s<br/>98Wis2d61<br/>107Wis2d11<br/>117Wis2d217<br/>296NW769<br/>318NW923<br/>343NW804<br/>66q1 L516<br/>1978WLR962<br/>63NYL772</p> <p>Subsec. 6<br/>98Wis2d61<br/>103Wis2d352<br/>107Wis2d12<br/>117Wis2d217<br/>145Wis2d259<br/>296NW769<br/>309NW355<br/>318NW923<br/>343NW80<br/>426NW98<br/>Cir. 7<br/>36BRW45</p> <p>Subsec. 7<br/>A 1987Act355<br/>103Wis2d341<br/>107Wis2d494<br/>112Wis2d12<br/>119Wis2d291<br/>122Wis2d37<br/>165Wis2d139<br/>309NW350<br/>319NW847<br/>331NW846<br/>350NW720<br/>361NW646<br/>477NW640</p> <p>Subsec. 8<br/>WTAI-12068<br/>117Wis2d217<br/>120Wis2d254<br/>152Wis2d21<br/>11WTA1095<br/>343NW804<br/>355NW24<br/>447NW68</p> | <p>Cir. 7<br/>6BRW45<br/>48BRW48<br/>1NYL379</p> <p>Subsec. 9<br/>11Wis2d634<br/>10Wis2d7<br/>03Wis2d615<br/>07Wis2d13<br/>20Wis2d254<br/>140Wis2d140<br/>142Wis2d12<br/>145Wis2d259<br/>161NW459<br/>180NW296<br/>309NW382<br/>318NW924<br/>355NW24<br/>110NW199<br/>416NW663<br/>426NW98</p> <p>Subsec. 10<br/>WTAI-8914<br/>90Wis2d9<br/>93Wis2d133<br/>120Wis2d254<br/>126Wis2d480<br/>140Wis2d143<br/>145Wis2d419<br/>158Wis2d518<br/>11WTA356<br/>280NW297<br/>286NW866<br/>355NW24<br/>377NW194<br/>410NW201<br/>427NW135<br/>463NW373<br/>68MqL459<br/>9A624n<br/>9A643n</p> <p>Subsec. 11<br/>98Wis2d219<br/>108Wis2d20<br/>117Wis2d82<br/>122Wis2d79<br/>128Wis2d469<br/>130Wis2d344<br/>130Wis2d526<br/>131Wis2d86<br/>131Wis2d336<br/>137Wis2d518<br/>145Wis2d413<br/>147Wis2d711<br/>154Wis2d779<br/>175Wis2d432<br/>295NW813<br/>321NW244<br/>342NW781<br/>365NW17<br/>383NW508<br/>387NW81<br/>388NW171<br/>388NW547</p> | <p>388NW913<br/>405NW308<br/>427NW133<br/>433NW298<br/>454NW38<br/>499NW271<br/>68MqL421<br/>68MqL466<br/>70MqL51<br/>199WLR783<br/>132PaL1408<br/>3A3491n</p> <p>Subsec. 12<br/>93Wis2d123<br/>102Wis2d495<br/>111Wis2d342<br/>120Wis2d253<br/>125Wis2d21<br/>139Wis2d785<br/>145Wis2d262<br/>148Wis2d56<br/>154Wis2d789<br/>175Wis2d433<br/>286NW862<br/>307NW310<br/>330NW240<br/>355NW24<br/>370NW800<br/>407NW234<br/>426NW99<br/>435NW243<br/>454NW42<br/>499NW271<br/>58MqL454<br/>76MqL518</p> <p>767.26</p> <p>A 1979C196<br/>WTAI-12068<br/>WTAI-6784<br/>WTAI-9004<br/>78Wis2d150<br/>86Wis2d102<br/>89Wis2d668<br/>93Wis2d681<br/>98Wis2d63<br/>99Wis2d125<br/>100Wis2d630<br/>102Wis2d60<br/>105Wis2d223<br/>108Wis2d523<br/>107Wis2d12<br/>107Wis2d22<br/>107Wis2d78<br/>107Wis2d348<br/>107Wis2d495<br/>108Wis2d190<br/>110Wis2d193<br/>113Wis2d181<br/>116Wis2d341<br/>117Wis2d77<br/>117Wis2d205<br/>122Wis2d130<br/>125Wis2d417<br/>126Wis2d229<br/>126Wis2d386</p> | <p>26Wis2d488<br/>139Wis2d31<br/>140Wis2d155<br/>141Wis2d573<br/>142Wis2d529<br/>143Wis2d116<br/>143Wis2d350<br/>144Wis2d778<br/>145Wis2d222<br/>146Wis2d837<br/>146Wis2d838<br/>147Wis2d151<br/>151Wis2d586<br/>158Wis2d189<br/>158Wis2d520<br/>158Wis2d546<br/>162Wis2d785<br/>165Wis2d119<br/>167Wis2d416<br/>167Wis2d447<br/>168Wis2d282<br/>170Wis2d10<br/>172Wis2d130<br/>172Wis2d290<br/>174Wis2d84<br/>176Wis2d334<br/>177Wis2d201<br/>178Wis2d543<br/>181Wis2d275<br/>1WTA541<br/>1WTA1095<br/>WTA I-23068<br/>254NW205<br/>271NW860<br/>278NW881<br/>287NW784<br/>296NW770<br/>299NW225<br/>302NW478<br/>306NW18<br/>313NW815<br/>314NW334<br/>318NW360<br/>318NW395<br/>318NW923<br/>319NW848<br/>320NW223<br/>321NW238<br/>327NW677<br/>336NW175<br/>342NW65<br/>343NW135<br/>343NW799<br/>362NW136<br/>373NW54<br/>376NW384<br/>376NW846<br/>377NW198<br/>406NW739<br/>410NW205<br/>415NW588<br/>419NW228<br/>420NW394<br/>421NW507<br/>424NW762<br/>426NW86<br/>432NW643<br/>432NW667</p> | <p>445NW680<br/>462NW548<br/>463NW374<br/>463NW384<br/>471NW2<br/>477NW60<br/>481NW507<br/>482NW142<br/>483NW293<br/>486NW578<br/>493NW35<br/>493NW740<br/>496NW773<br/>500NW360<br/>501NW873<br/>504NW435<br/>510NW764</p> <p>Cir. 7<br/>36BRW45<br/>37BRW124<br/>79BRW402</p> <p>Cir. 11<br/>84BRW819<br/>66MqL516<br/>68MqL384<br/>1981WLR304<br/>1983WLR804<br/>6OchL104</p> <p>Subsecs. 1 to 9<br/>146Wis2d838<br/>432NW667</p> <p>Subsec. 1<br/>1a2Wis2d535<br/>419NW230</p> <p>Subd. d<br/>86Wis2d113<br/>271NW865</p> <p>Subd. e<br/>86Wis2d113<br/>271NW865</p> <p>Subd. f<br/>86Wis2d113<br/>271NW865</p> <p>Subsec. 2<br/>143Wis2d350<br/>153Wis2d759<br/>421NW507<br/>452NW161</p> <p>Subsec. 3<br/>107Wis2d13<br/>107Wis2d80<br/>116Wis2d344<br/>117Wis2d216<br/>118Wis2d597<br/>139Wis2d34<br/>145Wis2d225<br/>152Wis2d22<br/>154Wis2d788<br/>318NW396<br/>318NW924</p> | <p>342NW67<br/>343NW804<br/>348NW503<br/>406NW740<br/>426NW88<br/>447NW68<br/>454NW42<br/>Cir. 7<br/>148BRW48</p> <p>Subsec. 4<br/>98Wis2d61<br/>107Wis2d13<br/>117Wis2d216<br/>296NW769<br/>318NW924<br/>343NW804</p> <p>Subsec. 5<br/>98Wis2d61<br/>103Wis2d352<br/>107Wis2d12<br/>139Wis2d34<br/>178Wis2d543<br/>296NW769<br/>309NW355<br/>318NW360<br/>406NW740<br/>504NW435<br/>Cir. 7<br/>36BRW45</p> <p>Subsec. 6<br/>102Wis2d63<br/>107Wis2d13<br/>107Wis2d83<br/>126Wis2d22<br/>139Wis2d35<br/>141Wis2d57<br/>147Wis2d15<br/>159Wis2d81<br/>165Wis2d11<br/>174Wis2d88<br/>306NW19<br/>318NW397<br/>318NW924<br/>376NW385<br/>406NW740<br/>415NW590<br/>432NW64<br/>465NW25<br/>477NW60<br/>496NW775<br/>Cir. 7<br/>36BRW45</p> <p>Subsec. 7<br/>142Wis2d<br/>68MqL459</p> <p>Subsec. 8<br/>98Wis2d6<br/>296NW76<br/>68MqL42</p> <p>Subsec. 9<br/>Ad 1979C1<br/>107Wis2d</p> | <p>Wis2d495<br/>Wis2d216<br/>Wis925<br/>Wis848<br/>Wis804</p> <p>Subsec. 10<br/>Wis2d229<br/>Wis2d13<br/>Wis2d495<br/>Wis2d205<br/>Wis2d37<br/>Wis2d837<br/>Wis2d838<br/>Wis2d789<br/>Wis2d819<br/>Wis2d280<br/>Wis818<br/>Wis924<br/>Wis7848<br/>Wis682<br/>Wis741<br/>Wis230<br/>Wis667<br/>Wis42<br/>Wis258<br/>Wis765<br/>Wis517</p> <p>767.281 to<br/>767.263</p> <p>767C105</p> <p>767.261</p> <p>Act27<br/>Act29<br/>Wis2d630<br/>Wis2d66<br/>Wis2d348<br/>Wis2d481<br/>Wis2d553<br/>Wis2d290<br/>Act91-1-04<br/>Wis478<br/>Wis797<br/>Wis223<br/>Wis195<br/>Wis914<br/>Wis740<br/>Wis566<br/>Wis384</p> <p>767.282</p> <p>Act352<br/>Act27<br/>Wis2d630<br/>Wis2d509<br/>Wis2d387<br/>Wis2d290<br/>Wis2d525<br/>Wis2d346<br/>Wis2d230<br/>Wis2d382<br/>Wis2d148<br/>Wis2d40</p> | <p>302NW478<br/>319NW854<br/>332NW856<br/>350NW719<br/>355NW847<br/>357NW133<br/>407NW298<br/>415NW546<br/>422NW642<br/>443NW222</p> <p>Cir. 7<br/>816FS191<br/>23BRW311</p> <p>Subsec. 1<br/>Subd. a<br/>168Wis2d40<br/>483NW222</p> <p>Subset. 2<br/>158Wis2d40<br/>483NW222</p> <p>Subsec. 3<br/>168Wis2d41<br/>483NW222</p> <p>767.263</p> <p>A 1989Act212<br/>176Wis2d337<br/>177Wis2d549<br/>300NW361<br/>302NW874</p> <p>767.265</p> <p>A 967C220<br/>A 1969C236<br/>A 971C110<br/>A 1975C199<br/>A 1975C94<br/>A 1977C105<br/>A 1979C196<br/>A 1979C221<br/>A 1983Act27<br/>A 1985 Act29<br/>A 1989 Act31<br/>A 1989Act56<br/>A 1989Act212<br/>100Wis2d631<br/>140Wis2d688<br/>174Wis2d465<br/>302NW478<br/>497NW775<br/>434US390<br/>54LE633<br/>98SC683<br/>Cir. 7<br/>418FS1072<br/>79BRW402<br/>68WiAG106<br/>50MqL14<br/>1979WLR11<br/>75McL933</p> <p>Subsec. 1<br/>A 1979C196<br/>A 1981C186</p> |
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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., *for which the party seeking* and the court will not revise or alter a  
24 judgment or order with respect to maintenance payments to the party under s.

*maintenance has been held liable*

**ASSEMBLY BILL 740**

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).

*- This re-numbering will be problematic*

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~~ *been held liable 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



**ASSEMBLY BILL 740**

*seeking  
maintenance*

1 of a debt that was assigned to a party under s. 767.255, and for which the ~~other party~~  
 2 *been held liable* 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.

**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.

**SECTION 11. Effective date.**

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

15 (END)



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRBs0382/

PJK.....

*Handwritten initials/signature*

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

**ASSEMBLY SUBSTITUTE AMENDMENT,**

**TO 1999 ASSEMBLY BILL 740**

*Friday, please*

*gen cat*

**AN ACT** <sup>A</sup>; relating to: awarding or revising maintenance payments on the basis of debt discharge in bankruptcy and approving stipulations waiving maintenance. ✓

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

*(END)*



ASSEMBLY BILL 740

Insert 3-2

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.

or 767.2605

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 the court will not award maintenance payments to  
22 the party under s. ~~767.26~~ unless the other party secures a discharge in

767.2605

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.

for which the party conditionally waiving maintenance is held liable

for which the party conditionally waiving maintenance is held liable

ASSEMBLY BILL 740

767.2605

1 767.32 unless the court awards maintenance payments to the party under s. ~~767.26~~

2 ~~767.26~~

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. ~~767.2605~~ of the statutes is created to read:

10 ~~After~~ 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(1) ~~The~~ The party seeking maintenance under this ~~section~~ conditionally waived

14 maintenance under s. 767.10 (2) (d).

15 ~~The~~ The party seeking maintenance under this ~~section~~ has not remarried.

16 ~~The~~ The party from whom maintenance is sought under this ~~section~~ 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. 766.35 to satisfy the debt.~~

Insert 4-19

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

been had liable

or 767.2605

**ASSEMBLY BILL 740**

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. Y

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

**ASSEMBLY BILL 740**

1 of a debt that was assigned to a party under s. 767.255, and for which the other party  
 2 has ~~no~~ <sup>✓</sup> ~~property~~ <sup>property that is available under s. 767.2605 to satisfy the debt</sup> 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.

**SECTION 10. Initial applicability.**

6  
 7 (1) The treatment of sections 767.10 (2) (c) and (d) and ~~the~~ <sup>767.2605</sup> 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.

**SECTION 11. Effective date.**

12  
 13 (1) This act takes effect on the first day of the <sup>✓</sup> 6th month beginning after  
 14 publication.

(END)

Insert 6-5

been held liable

INSERT 3-2

1 SECTION 1. 565.30 (5m) <sup>X</sup>(a) of the statutes, as affected by 1999 Wisconsin Act  
2 9, section 3025pa, <sup>✓</sup>is amended to read:

3 565.30 (5m) (a) The administrator shall report to the department of workforce  
4 development the name, address and social security number of each winner of a  
5 lottery prize that is payable in instalments and the name, address and social security  
6 number or federal income tax number of the person who has been assigned a lottery  
7 prize that is payable in instalments. Upon receipt of the report, the department of  
8 workforce development shall certify to the administrator whether any payee or  
9 assignee named in the report is obligated to provide child support, spousal support,  
10 maintenance or family support under s. 767.02 (1) (f) or (g), 767.10, 767.23, 767.25,  
11 767.26, 767.2605, <sup>✓</sup>767.261, 767.458 (3), 767.465 (2m), 767.477, 767.51 (3), 767.62 (4)  
12 or 948.22 (7) or ch. 769 and the amount required to be withheld from the lottery prize  
13 under s. 767.265. Subject to par. (b), the administrator shall withhold the certified  
14 amount from each payment made to the winner or assignee and remit the certified  
15 amount to the department of workforce development.

NOTE: NOTE: Par. (a) is shown as amended eff. 5-1-00 by 1999 Wis. Act 9. Prior to 5-1-00 it reads:NOTE:

16 (a) The administrator shall report to the department of workforce development the name, address and social security number of each winner of a lottery prize  
17 that is payable in instalments and the name, address and social security number or federal income tax number of the person who has been assigned a lottery prize that  
18 is payable in instalments. Upon receipt of the report, the department of workforce development shall certify to the administrator whether any payee or assignee named  
19 in the report is obligated to provide child support, spousal support, maintenance or family support under s. 767.02 (1) (f) or (g), 767.10, 767.23, 767.25, 767.26, 767.261,  
20 767.458 (3), 767.465 (2m), 767.477, 767.51 (3), 767.62 (4) (a) or 948.22 (7) or ch. 769 and the amount required to be withheld from the lottery prize under s. 767.265.  
21 Subject to par. (b), the administrator shall withhold the certified amount from each payment made to the winner or assignee and remit the certified amount to the  
22 department of workforce development.

History: 1987 a. 119, 399; 1989 a. 31; 1989 a. 56s. 259; 1989 a. 359; 1991 a. 269; 1993 a. 16, 481; 1995 a. 27 ss. 6981j, 6981k, 9126 (19); 1995 a. 225, 404; 1997 a. 3, 27,  
35; 1997 a. 148 ss. 3 to 5; 1997 a. 191; 1999 a. 9

(END OF INSERT 3-2)

INSERT 4-10



1

✓  
4 767.2605 Awarding maintenance after final judgment.



(END OF INSERT 4-10)

INSERT 4-19

2

SECTION 2. 767.261 (intro.) of the statutes, as affected by 1999 Wisconsin Act 9, is amended to read:

3

4

767.261 Family support. (intro.) The court may make a financial order designated "family support" as a substitute for child support orders under s. 767.25 and maintenance payment orders under s. 767.26 or 767.2605. A party ordered to pay family support under this section shall pay simple interest at the rate of 1% per month on any amount in arrears that is equal to or greater than the amount of child support due in one month. If the party no longer has a current obligation to pay child support, interest at the rate of 1% per month shall accrue on the total amount of child support in arrears, if any. Interest under this section is in lieu of interest computed under s. 807.01 (4), 814.04 (4) or 815.05 (8) and is paid to the department or its designee under s. 767.29. Except as provided in s. 767.29 (1m), the department or its designee, whichever is appropriate, shall apply all payments received for family support as follows:

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NOTE: NOTE: Section 767.261 (intro.) is shown as amended eff. S-1-00 by 1999 Wis. Act 9. Prior to S-1-00 it reads:NOTE:

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767.261 Family support. The court may make a financial order designated "family support" as a substitute for child support orders under s. 767.25 and maintenance payment orders under s. 767.26. A party ordered to pay Family support under this section shall pay simple interest at the rate of 1.5% per month on any amount in arrears that is equal to or greater than the amount of child support due in one month. If the party no longer has a current obligation to pay child support, interest at the rate of 1.5% per month shall accrue on the total amount of child support in arrears, if any. Interest under this section is in lieu of interest computed under s. 807.01 (4), 814.04 (4) or 815.05 (8) and is paid to the department or its designee under s. 767.29. Except as provided ins. 767.29 (1m), the department or its designee, whichever is appropriate, shall apply all payments received for family support as follows:

History: 1977 c. 105; 1979 c. 32, ss. 50, 92 (4); Stats. 1979 s. 767.261; 1983 a. 27; 1985 a. 29; 1993 a. 481; 1995 a. 279; 1997 a. 27, 191; 1999 a. 9; s. 13.93 (2) (c).

22

SECTION 3. 767.265 (1) of the statutes, as affected by 1999 Wisconsin Act 9,

23

section 3055c, is amended to read:

24

767.265 (1) Each order for child support under this chapter, for maintenance payments under s. 767.23 or, 767.26 or 767.2605, for family support under this chapter, for costs ordered under s. 767.51 (3) or 767.62 (4), for support by a spouse

25

26



1 under s. 767.02 (1) (f), for maintenance payments under s. 767.02 (1) (g) or for the  
 2 annual receiving and disbursing fee under s. 767.29 (1) (d), each order for a revision  
 3 in a judgment or order with respect to child support, maintenance or family support  
 4 payments under s. 767.32, each stipulation approved by the court or the family court  
 5 commissioner for child support under this chapter and each order for child or spousal  
 6 support entered under s. 948.22 (7) constitutes an assignment of all commissions,  
 7 earnings, salaries, wages, pension benefits, benefits under ch. 102 or 108, lottery  
 8 prizes that are payable in instalments and other money due or to be due in the future  
 9 to the department or its designee. The assignment shall be for an amount sufficient  
 10 to ensure payment under the order or stipulation and to pay any arrearages due at  
 11 a periodic rate not to exceed 50% of the amount of support due under the order or  
 12 stipulation so long as the addition of the amount toward arrearages does not leave  
 13 the party at an income below the poverty line established under 42 USC 9902 (2).

NOTE: NOTE: Sub. (1) is shown as amended eff. 5-1-00 by 1999 Wis. Act 9. Prior to S-1-00 it reads: NOTE:

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(1) Each order for child support under this chapter, for maintenance payments under s. 767.23 or 767.26, for family support under this chapter, for costs ordered under s. 767.51 (3) or 767.62 (4) (a), for support by a spouse under s. 767.02 (1) (f), for maintenance payments under s. 767.02 (1) (g) or for the annual receiving and disbursing fee under s. 767.29 (1) (d), each order for a revision in a judgment or order with respect to child support, maintenance or family support payments under s. 767.32, each stipulation approved by the court or the family court commissioner for child support under this chapter and each order for child or spousal support entered under s. 948.22 (7) constitutes an assignment of all commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102 or 108, lottery prizes that are payable in instalments and other money due or to be due in the future to the department or its designee. The assignment shall be for an amount sufficient to ensure payment under the order or stipulation and to pay any arrearages due at a periodic rate not to exceed 50% of the amount of support due under the order or stipulation so long as the addition of the amount toward arrearages does not leave the party at an income below the poverty line established under 42 USC 9902 (2).

History: 1971 c. 110; 1975 c. 94 s. 91 (3); 1975 c. 199; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196, 221; Stats. 1979 s. 767.265; 1981 c. 20, 186; 1983 a. 27, 384; 1985 a. 29; 1987 a. 38 s. 136; 1987 a. 332 s. 64; 1987 a. 398, 403; 1989 a. 31, 56, 212, 336; 1991 a. 287; 1993 a. 16, 326, 389, 481; 1995 a. 27 s. 9130 (4); 1995 a. 279, 404; 1997 a. 27, 191; 1999 a. 9.

22 SECTION 4. 767.30 (1) of the statutes is amended to read:

23 767.30 (1) If the court orders any payment for support under s. 48.355 (2) (b)  
 24 4., 48.357 (5m), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) or 938.363 (2),  
 25 support or maintenance under s. 767.08, child support, family support or  
 26 maintenance under s. 767.23, child support under s. 767.25, maintenance under s.  
 27 767.26 or 767.2605, family support under s. 767.261, attorney fees under s. 767.262,  
 28 child support or a child's health care expenses under s. 767.477, paternity obligations  
 29 under s. 767.458 (3), 767.51 or 767.62 (4), support arrearages under s. 767.293 or

1 child or spousal support under s. 948.22 (7), the court may provide that any payment  
2 be paid in the amounts and at the times that it considers expedient.

History: 1971 c. 220; 1973 c. 401 s. 4; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196, 221; 1979 c. 257 s. 17; 1979 c. 355; Stats. 1979 s. 767.30; 1983 a. 27; 1985 a. 29; 1987 a. 332 s. 64; 1993 a. 481; 1995 a. 77, 287; 1997 a. 27, 191.

3 **SECTION 5. 767.305 of the statutes is amended to read:**

4 **767.305 Enforcement; contempt proceedings.** In all cases where a party  
5 has incurred a financial obligation under s. 48.355 (2) (b) 4., 48.357 (5m), 48.363 (2),  
6 767.23, 767.25, 767.255, 767.26, 767.2605. ✓ 767.261, 767.262, 767.293, 767.458 (3),  
7 767.477, 767.51, 767.62 (4), 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) or 938.363  
8 (2) and has failed within a reasonable time or as ordered by the court to satisfy such  
9 obligation, and where the wage assignment proceeding under s. 767.265 and the  
10 account transfer under s. 767.267 are inapplicable, impractical or unfeasible, the  
11 court may on its own initiative, and shall on the application of the receiving party,  
12 issue an order requiring the payer to show cause at some reasonable time therein  
13 specified why he or she should not be punished for such misconduct as provided in  
14 ch. 785.

History: 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 257 s. 17; Stats. 1979 s. 767.305; 1993 a. 481; 1995 a. 77; 1997 a. 27, 191.  
(END OF INSERT 4-19)

**INSERT 6-5**

15 **SECTION 6. 802.12 (3) (c) 2.** ✓ of the statutes is amended to read:

16 **802.12 (3) (c) 2. Maintenance under s. 767.26 or 767.2605.** ✓

History: Sup. Ct. Order No. 93-13, 180 Wis. 2d xv; 1995 a. 225; 1997 a. 191; 1999 a. 9.  
(END OF INSERT 6-5)