

2001 ASSEMBLY BILL 447

June 21, 2001 – Introduced by Representatives STASKUNAS, DUFF, STARZYK, RYBA, SHERMAN, BOYLE, ALBERS, LADWIG, J. LEHMAN, LASSA and MONTGOMERY, cosponsored by Senators PLACHE and HUELSMAN. Referred to Committee on Family Law.

1 **AN ACT** *to amend* 767.02 (1) (c) and 767.13 (5) (a); and *to create* 767.105 of the
2 statutes; **relating to:** creating a joint simplified divorce procedure.

Analysis by the Legislative Reference Bureau

Current law specifies the requirements and procedures for obtaining a divorce and the guidelines and requirements for judges to follow in adjudicating the issues involved in divorce actions. Because many divorce situations may be very complicated in nature (especially if minor children or unusual property arrangements are involved), and because parties to a divorce do not always agree on how to resolve the issues that may be present in the divorce action, most parties to a divorce action require the services of an attorney, although there is no legal requirement that a party be represented by an attorney. Current law does allow for parties who agree on any or all of the issues involved in their divorce, such as property division, child support, maintenance payments, and legal custody and physical placement of minor children, to stipulate to the resolution of those issues. Such a stipulation is subject to court approval.

This bill creates a joint simplified divorce action, which is intended to enable parties to a divorce who fulfill certain criteria to represent themselves in the divorce. (There is no requirement, however, that a party not be represented by an attorney.) Married persons may jointly initiate a joint simplified divorce action if they agree that the marriage is irretrievably broken, they have been married for five years or less, no children were born to or adopted by them, neither one owns real property, the fair market value of their assets is less than \$20,000, and their combined annual gross income is less than \$40,000. The parties must use forms provided by the clerk

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of circuit court for the action and must file, along with the petition and financial disclosure statements, a written agreement that divides all of their assets and liabilities between them. A judge or family court commissioner may hear the matter and must grant a judgment of divorce if the parties fulfill the specified criteria for initiating an action. Unless the agreement is inequitable to one of the parties, the court or family court commissioner must incorporate into the judgment the terms of the parties' agreement on dividing their assets and liabilities. A joint simplified divorce judgment may not be appealed. The bill requires the clerk of court to provide, to any person who requests, a brochure with information about a joint simplified divorce action.

For further information see the *state and 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.** 767.02 (1) (c) of the statutes is amended to read:

2 767.02 (1) (c) Divorce, including a joint simplified divorce action under s.
3 767.105.

4 **SECTION 2.** 767.105 of the statutes is created to read:

5 **767.105 Joint simplified divorce action. (1)** The parties to a marriage may
6 jointly initiate a simplified divorce action under this section if all of the following
7 apply:

8 (a) The residency requirement under s. 767.05 (1m) is satisfied.

9 (b) The parties agree that the marriage is irretrievably broken and attempts
10 at reconciliation have failed or would be impracticable and not in the best interests
11 of the parties.

12 (c) The length of the marriage is not more than 5 years.

13 (d) No children were born to or adopted by the parties, and the wife is not
14 pregnant.

15 (e) Each party waives any right to maintenance from the other party.

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1 (f) Neither party has any interest in real property.

2 (g) The total fair market value of all property of the parties, after deducting
3 encumbrances, is less than \$20,000, and the combined annual gross income of the
4 parties is less than \$40,000.

5 (h) The parties have disclosed to each other all assets and their tax returns for
6 every year of the marriage.

7 (i) The parties have executed a written agreement that divides all of their
8 assets in excess of \$100 in value and that allocates responsibility between the parties
9 for all of their debts and liabilities.

10 **(2)** The clerk of circuit court shall provide the parties to a joint simplified
11 divorce action with all of the forms necessary to commence and conduct an action
12 under this section, including a joint petition that complies with s. 767.085 (1) and
13 that contains the declarations under sub. (1) and financial disclosure forms under
14 s. 767.27. The parties to such an action shall use the forms provided by the clerk.
15 After the parties have signed and filed the joint petition, the clerk shall submit the
16 joint petition to the court, along with the parties' completed financial disclosure
17 statements and the written agreement under sub. (1) (i).

18 **(3)** (a) The court, or family court commissioner under s. 767.13 (5) (a), shall hold
19 a hearing on the matter as soon as practicable after the expiration of the waiting
20 period under s. 767.083 (1), unless s. 767.083 (2) applies, and may examine the
21 parties or otherwise allow the parties to present testimony or other evidence. The
22 court or family court commissioner shall grant a judgment of divorce if it finds that
23 the requirements under sub. (1) are satisfied, and shall incorporate the terms of the
24 written agreement under sub. (1) (i) into the judgment unless the court or family

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1 court commissioner determines that the terms are inequitable to either of the
2 parties.

3 (b) Upon payment of the appropriate fees under s. 814.61 (5) (b) and (10) (b),
4 the clerk shall enter the judgment of divorce and provide a certified copy of the
5 judgment to each of the parties.

6 (c) A judgment of divorce granted under this section is final and may not be
7 appealed, except that a party may commence an action to set aside a final judgment
8 on the grounds of fraud, mistake, inadvertence, or other grounds that exist at law or
9 in equity.

10 **(4)** The clerk of circuit court shall provide, to any person who requests, a
11 brochure that describes the requirements for and the nature and effects of a joint
12 simplified divorce action. The brochure shall contain the following:

13 (a) A statement that the brochure is intended only as a guide for
14 self-representation in a joint simplified divorce action and that it is in the best
15 interest of each party to consult an attorney regarding the dissolution of the
16 marriage.

17 (b) A concise summary of the joint simplified divorce action procedure.

18 (c) Information about the nature and availability of marriage counseling
19 services in the community.

20 (d) A statement informing the parties that if each waives maintenance, as
21 required for a joint simplified divorce action, neither party may seek or obtain
22 court-ordered maintenance from the other party at any time in the future.

23 (e) A statement in boldface type that a judgment of divorce in a joint simplified
24 divorce action permanently adjudicates all financial rights arising out of the
25 marriage, including property rights and the right to maintenance from the other

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1 spouse, that a judgment of divorce is final, and that the parties waive their right to
2 appeal any part of the judgment, except that a party may commence an action to set
3 aside a final judgment on the grounds of fraud, mistake, inadvertence, or other
4 grounds that exist at law or in equity.

5 (f) A statement that the parties to a joint simplified divorce action remain
6 married persons until the judgment of divorce is granted and that the parties may
7 not marry again until 6 months after the judgment of divorce is granted.

8 **SECTION 3.** 767.13 (5) (a) of the statutes is amended to read:

9 767.13 (5) (a) *Divorce.* On authority delegated by a judge, which may be by a
10 standard order, and with the approval of the chief judge of the judicial administrative
11 district, a family court commissioner may preside at any hearing held to determine
12 whether a judgment of divorce shall be granted, if both parties state that the
13 marriage is irretrievably broken and that all material issues, including but not
14 limited to division of property or estate, legal custody, physical placement, child
15 support, spousal maintenance, and family support, are resolved; if the action is a
16 joint simplified divorce action under s. 767.105; or if one party does not participate
17 in the action for divorce. The family court commissioner may grant and enter
18 judgment in any action over which he or she presides under this paragraph unless
19 the judgment modifies an agreement between the parties on material issues. If the
20 family court commissioner does not approve an agreement between the parties on
21 material issues, the action shall be certified to the court for trial.

22 (END)