

2001 DRAFTING REQUEST

Bill

Received: 09/05/2000

Received By: kahlepj

Wanted: As time permits

Identical to LRB:

For: Tony Staskunas (608) 266-0620

By/Representing: Adrienne Ramirez

This file may be shown to any legislator: NO

Drafter: kahlepj

May Contact:

Addl. Drafters:

Subject: Dom. Rel. - divorce  
Courts - civil procedure

Extra Copies:

Submit via email: NO

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Creating a joint simplified divorce procedure

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 01/24/2001	hhagen 01/26/2001		_____			S&L
/1			martykr 02/01/2001	_____	lrb_docadmin 02/01/2001	lrb_docadmin 06/11/2001 lrb_docadmin 06/11/2001	

FE Sent For:

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At intra

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1?	kahlepj	11 kmh 1/26	dm3, dm1	KS 2 dm1			

FE Sent For:

<END>

**Kahler, Pam**

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**From:** Ramirez, Adrienne  
**Sent:** Wednesday, January 24, 2001 9:40 AM  
**To:** Kahler, Pam  
**Subject:** LRB-4943/P1dn

Pam-

Please convert this draft to a 2001-2002 bill draft, per your August 2nd drafter's note.

Thank you,

Adrienne  
Office of Rep. Staskunas



State of Wisconsin  
1999 - 2000 LEGISLATURE

0112/1  
LRB-4973/P1  
PJK:hmb&cjs:km  
hmb

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

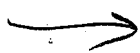
*Divorce*

*Generate*

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 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.

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*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.

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



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

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

**SECTION 3.** 767.13 (5) (a) of the statutes is amended to read:  
767.13 (5) (a) *Divorce.* On authority delegated by a judge, which may be by a standard order, and with the approval of the chief judge of the judicial administrative district, a family court commissioner may preside at any hearing held to determine whether a judgment of divorce shall be granted, if both parties state that the marriage is irretrievably broken and that all material issues, including but not limited to division of property or estate, legal custody, physical placement, child support, spousal maintenance and family support, are resolved; if the action is a joint simplified divorce action under s. 767.105; or if one party does not participate in the action for divorce. The family court commissioner may grant and enter judgment in any action over which he or she presides under this paragraph unless the judgment modifies an agreement between the parties on material issues. If the family court commissioner does not approve an agreement between the parties on material issues, the action shall be certified to the court for trial.

(END)

D-note

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0112/1dn

PJK:.....  
*hnh*

*Date*

As I mentioned in my drafter's note with LRB-4943, I deleted the requirement (which was in the 1995-96 version of this bill draft) that the parties must have lived apart for six months or more before filing a petition for, or obtaining, a joint simplified divorce. I believe you indicated to me that you did want that requirement removed, as in the draft. Let me know if I am mistaken, or if you want any other changes to this draft.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.state.wi.us](mailto:pam.kahler@legis.state.wi.us)

**DRAFTER'S NOTE**  
**FROM THE**  
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LRB-0112/1dn  
PJK:hmh:km

February 1, 2001

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# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET  
5TH FLOOR  
MADISON, WI 53701-2037

STEPHEN R. MILLER  
CHIEF

LEGAL SECTION: (608) 266-3561  
LEGAL FAX: (608) 264-6948

February 1, 2001

### MEMORANDUM

To: Representative Staskunas

From: Pamela J. Kahler, Senior Legislative Attorney

Re: LRB-0112 Creating a joint simplified divorce procedure

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY  JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-2682 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.