

- 1       **AN ACT** *to amend* 767.75 (1f); *to repeal and recreate* 767.56; and *to create* 102.27  
2           (2) (c) of the statutes; **relating to:** amount and duration of maintenance awards.

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

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** This bill draft, relating to the amount and the duration of maintenance awards, was prepared for the Joint Legislative Council's Special Committee on Review of Spousal Maintenance Awards in Divorce Proceedings.

At various points in the draft, alternative provisions or language for committee consideration are presented in brackets. In most cases, the source of the bracketed alternative language is highlighted in bold print at the beginning of the alternative.

**Background**

Seeking to make maintenance awards more uniform and predictable, and to provide guidance that would be available to all parties regardless of legal representation, the committee utilized the two universal factors that are considerations in all annulment, divorce, or legal separation cases: the income of the parties and the length of the marriage.

However, the committee recognized that there are many variations in circumstances, and that the amount and duration of a maintenance award arrived at using simply the income of the parties and the length of the marriage may not always reflect the unique circumstances of the parties. Therefore, deviation factors are included to address the more common situations where an adjustment to the formula standards may be necessary.

This bill draft largely adopts a committee member's suggestion for formulating the amount and duration of maintenance awards.

### **Current Law**

Under current law [s. 767.56, stats.], maintenance may be awarded to a party for a limited or indefinite length of time, for an amount not defined by statute, after considering a list of statutory factors that includes the length of the marriage, the age and physical and emotional health of the parties, the educational levels of the parties, the earning capacity of the party seeking maintenance, the feasibility that the party seeking maintenance can become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the contribution by one party to the education, training, or increased earning power of the other party.

### **Bill Draft**

This bill draft repeals and recreates the maintenance statute. It provides that the formula standards, specified in the new statute, should be used to determine the amount and duration of a maintenance award, unless a party shows that use of the formula standards would be unfair to either of the parties based on a limited list of circumstances for deviating from the standards.

#### **1. Amount of Maintenance Award**

This bill draft provides that the amount of a maintenance award is determined as 1% of the payer's gross income per year of marriage.

#### **2. Duration of Maintenance Award**

This bill draft provides that the duration of a maintenance award is determined as 1.5 years for every 10 years of marriage.

#### **3. Deviation from Standard**

A court may deviate from the amount and duration standards only if: (a) a party has an incapacitating physical or mental disability; (b) a party is a custodian of a minor child or disabled adult child; or (c) a court determines there is such other impediment to becoming self-supporting.

#### **4. Applicability**

The provisions of this bill draft would first be applicable to actions filed on or after the date the statute takes effect.

- 1           **SECTION 1.** 102.27 (2) (c) of the statutes is created to read:
- 2           102.27 (2) (c) The definition of gross income in s. 767.56 (1) (a) may not be used to limit
- 3           the assignment of benefits under this section.

**NOTE:** Clarifies that although the portion of worker's compensation awards not intended to replace income is excluded from gross income in establishing a maintenance award, the full worker's compensation benefit is assignable for the collection of maintenance.

1           **SECTION 2.** 767.56 of the statutes is repealed and recreated to read:

2           **767.56 (1) DEFINITIONS.** In this section:

3           (a) "Gross income" means all of the following:

4           1. Salary and wages.

5           2. Income imputed based on earning capacity.

6           3. Interest and investment income.

7           4. Social Security disability and old-age insurance benefits under 42 USC 401 to 433.

8           5. Net proceeds resulting from worker's compensation or other personal injury awards  
9 intended to replace income.

10          6. Unemployment insurance.

11          7. Income continuation benefits.

12          8. Voluntary deferred compensation, employee contributions to any employee benefit  
13 plan or profit-sharing, and voluntary employee contributions to any pension or retirement  
14 account whether or not the account provides for tax deferral or avoidance.

15          9. Military allowances and veterans benefits.

16          10. Undistributed income of a corporation, including a closely-held corporation, or any  
17 partnership, including a limited or limited liability partnership, in which the party has an  
18 ownership interest sufficient to individually exercise control or to access the earnings of the  
19 business.

20          11. All other income, whether taxable or not, except that gross income does not include  
21 any of the following:

- 1 a. Child support.
- 2 b. Foster care payments under s. 48.62.
- 3 c. Kinship care payments under s. 48.57 (3m) or (3n).
- 4 d. Public assistance benefits under ch. 49, except that child care subsidy payments under
- 5 s. 49.155, shall be considered income to a child care provider.
- 6 e. Food stamps under 7 USC 2011 to 2036.
- 7 f. Cash benefits paid by counties under s. 59.53 (21).
- 8 g. Supplemental Security Income under 42 USC 1381 to 1383f and state supplemental
- 9 payments under s. 49.77.
- 10 h. Payments made for social services or any other public assistance benefits.

11 (b) "Income imputed based on earning capacity" means the amount of income that

12 exceeds the party's actual income and represents the party's ability to earn, based on the party's

13 education, training and recent work experience, earnings during previous periods, current

14 physical and mental health, history of child care responsibilities as the party with primary

15 physical placement, and the availability of work in or near the party's community.

**NOTE:** The definitions given in new s. 767.56 (1) (a) and (b) are also specified in s. DCF 150.02, Wis. Adm. Code, for purposes of determining child support.

16 (2) **WHEN ORDERED.** Upon a judgment of annulment, divorce, or legal separation, or in

17 rendering a judgment in an action under s. 767.001 (1) (g) or (j), the court may grant an order

18 requiring maintenance payments to either party subject to the provisions of this section.

**NOTE:** Revises current s. 767.56, stats., to reflect the new maintenance provisions in this bill draft. Current law provides that the court may award maintenance for a limited or indefinite period of time and specifies factors the court must consider in determining the amount and the duration of any maintenance payments.

1           **(3) AMOUNT.** Except as provided in sub. (5), the court shall determine the amount of  
2 a maintenance award as 1 percent of the payer's gross income for each year of the parties'  
3 marriage.

**NOTE:** For example, if the parties were married 20 years, the amount of  
the maintenance award is 20 percent of the payer's gross income.

4           **(4) LENGTH.** Except as provided in sub. (5), the court shall determine the duration of  
5 a maintenance award as 1.5 years for every 10 years of marriage.

**NOTE:** For example, if the parties were married 20 years, the duration of  
the maintenance award is for 3 years.

6           **(5) FACTORS FOR DEVIATION FROM STANDARDS.** Upon request by a party, the court may  
7 modify the amount or duration of a maintenance award determined under sub. (3) or (4) if,  
8 after considering the following factors, the court finds by the greater weight of the credible  
9 evidence that use of either applicable standard is unfair to either of the parties:

10           (a) A party has an incapacitating physical or mental disability.

11           (b) A party is the custodian of a minor child or disabled adult child.

12           (c) Such other impediment to becoming self-supporting as the court determines to be  
13 relevant.

14           **(6) DETERMINE MAINTENANCE BEFORE CHILD SUPPORT.** If a payer will have obligations  
15 for both child support and maintenance to the same payee, the court shall determine the payer's  
16 maintenance obligation under this section before determining the payer's child support  
17 obligation under s. 767.511. Gross income for determining child support shall include any  
18 maintenance amount received and shall subtract any maintenance amount paid under this  
19 section.

**NOTE:** Provides that if a party is required to pay both child support and  
maintenance to the same party in a specified action affecting the family,

the court must determine the payer's maintenance obligation first before determining the payer's child support obligation.

1           **(7) DEVIATION FROM STANDARD; RECORD.** If the court finds under sub. (5) that use of the  
2 standards under sub. (3) or (4) is unfair to either party, the court shall state in writing or on the  
3 record the amount or duration of a maintenance award that would be required under sub. (3)  
4 or (4), the amount by which the court's order deviates from either standard, its reasons for  
5 finding that use of either standard is unfair to either party, its reasons for the amount of the  
6 deviation, and the basis for the deviation.

**NOTE:** Requires that if the court finds that the use of the standards for determining the amount [sub. (3)] or duration [sub. (4)] of a maintenance award is unfair to either party, the court must state, in writing or on the record: (1) the amount or duration of a maintenance award that would be required using the applicable standard; (2) the amount by which the court's order deviates from the applicable standard; (3) its reasons for finding the use of the standard unfair; and (4) its reasons for the amount of the deviation and the basis for the deviation.

7           **SECTION 3.** 767.75 (1f) of the statutes is amended to read:

8           **767.75 (1f) PAYMENT ORDER AS ASSIGNMENT OF INCOME.** A payment order constitutes  
9 an assignment of all commissions, earnings, salaries, wages, pension benefits, benefits under  
10 ch. 102 or 108, lottery prizes that are payable in installments, and other money due or to be  
11 due in the future to the department or its designee. The assignment shall be for an amount  
12 sufficient to ensure payment under the order, obligation, or stipulation and to pay any  
13 arrearages due at a periodic rate not to exceed 50% of the amount of support due under the  
14 order, obligation, or stipulation so long as the addition of the amount toward arrearages does  
15 not leave the party at an income below the poverty line established under 42 USC 9902 (2).  
16 The definition of gross income given in s. 767.56 (1) (a), may not be used to limit income  
17 withholding under this section.

