

1 **AN ACT** *to create* 767.59 (1L) of the statutes; **relating to:** the effect of cohabitation on
2 revision of a maintenance order in certain actions affecting the family.

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 effect of cohabitation on revision of a maintenance order in certain actions affecting the family, was prepared for the Joint Legislative Council's Special Committee on Review of Spousal Maintenance Awards in Divorce Proceedings.

Current Law: Under current law, on a petition, motion, or order to show cause, a court may revise and alter a maintenance order as to the amount and payment of maintenance. A court may not revise or modify a judgment or order that waives maintenance payments for either party. The court has the authority to: (1) revise the amount of maintenance; (2) increase, reduce, or terminate maintenance; (3) extend maintenance; and (4) limit indefinite maintenance. The criteria for a revision is whether there has been a substantial change of circumstance warranting the revision, giving consideration to both the support and fairness objectives of a maintenance award. [s. 767.59 (1) (c), stats.]

The Wisconsin Supreme Court has held that cohabitation with a member of the opposite sex does not automatically require revision of maintenance. There must be either: (1) a showing of a change in the payee spouse's financial needs; or (2) a showing that the new living arrangement was fashioned for purposes of avoiding revision. [*Van Gorder v. Van Gorder*, 110 Wis. 2d. 188 (1983).]

Bill Draft: This bill draft clarifies the effect of cohabitation on revision of a maintenance order. Under the bill draft:

- Except as otherwise agreed to by the parties in writing, there is a rebuttable presumption, affecting the burden of proof (transferring the burden from the payer to the payee), of decreased need for maintenance if the payee (the supported party) is cohabiting with an adult household member, as defined in s. 813.12 (1) (c), stats., in a dating relationship, as defined in s. 813. 12 (1) (ag), stats. Upon a determination by the court that circumstances have changed and there is a decreased need for

maintenance, the court may modify the amount or term of maintenance or may terminate maintenance.

- Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as used in this new provision.
- The court may not consider the income of the payer's subsequent spouse or an adult household member in a dating relationship, as set forth above, in making its determination, above.
- Unless maintenance is terminated, nothing in the new provision prohibits later modification or termination of maintenance under s. 767.59 (1) (c), stats. (substantial change of circumstances).

1 **SECTION 1.** 767.59 (1L) of the statutes is created to read:

2 **767.59 (1L) EFFECT OF COHABITATION ON REVISION.** (a) Except as otherwise agreed to
3 by the parties in writing, there is a rebuttable presumption, affecting the burden of proof, of
4 decreased need for maintenance if the payee is cohabiting with an adult household member,
5 as defined in s. 813.12 (1) (c), in a dating relationship, as defined in s. 813.12 (1) (ag). Upon
6 a determination by the court that circumstances have changed and there is a decreased need
7 for maintenance, the court may modify the amount or term of maintenance or may terminate
8 maintenance.

9 (b) Holding oneself out to be the husband or wife of the person with whom one is
10 cohabiting is not necessary to constitute cohabitation under par. (a).

11 (c) The court may not consider the income of the payer's subsequent spouse or an adult
12 household member in a dating relationship, as set forth under par. (a), when making a
13 determination under par. (a).

14 (d) Unless maintenance is terminated, nothing in this subsection precludes later
15 modification or termination of maintenance under this section.

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1 **SECTION 2. Initial applicability.** The treatment of section 767.59 (1L) of the statutes
2 first applies to parties filing a petition in an action for annulment, divorce, or legal separation,
3 or in actions under section 767.001 (1) (g) or (j), stats., on the effective date of this section.

NOTE: Clarifies the effect of cohabitation on revisions of a maintenance order under s. 767.59, stats., by specifying that:

1. Except as otherwise agreed to by the parties in writing, there is a rebuttable presumption, affecting the burden of proof (transferring the burden from the payer to the payee), of decreased need for maintenance if the payee (the supported party) is cohabiting with an adult household member, as defined in s. 813.12 (1) (c), stats., in a dating relationship, as defined in s. 813. 12 (1) (ag), stats. Upon a determination by the court that circumstances have changed and there is a decreased need for maintenance, the court may modify the amount or term of maintenance or may terminate maintenance.
2. Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as used in this new provision.
3. The court may not consider the income of the payer's subsequent spouse or an adult household member in a dating relationship, as set forth above, in making its determination, above.
4. Unless terminated, nothing in the new provision prohibits later modification or termination of maintenance under s. 767.59 (1) (c), stats. (substantial change of circumstances).

Section 813.12 (1) (c), stats., defines a "household member" to mean a person currently or formerly residing in a place of abode with another person. Section 813. 12 (1) (ag) defines "dating relationship" to mean a romantic or intimate social relationship between 2 adult individuals, but "dating relationship" does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context. A court is to determine if a dating relationship existed by considering the length of the relationship, the type of the relationship, and the frequency of the interaction between the adult individuals involved in the relationship.