

# State of Wisconsin



1995 Senate Bill 132

Date of enactment: **November 16, 1995**

Date of publication\*: **December 1, 1995**

## 1995 WISCONSIN ACT 70

**AN ACT** to renumber and amend 767.327 (2); to amend 767.02 (1) (k), 767.327 (1) (a) 1., 767.327 (1) (a) 2., 767.327 (1) (b), 767.327 (2) (title), 767.327 (3) (title), 767.327 (3) (a) 1. (intro.), 767.327 (3) (a) 1. b., 767.327 (3) (a) 2. a., 767.327 (3) (a) 3. and 767.327 (3) (b) 1. (intro.); and to create 767.23 (1) (bm), 767.327 (1) (a) 3., 767.327 (2) (b) and 767.327 (3) (c) of the statutes; relating to: a custodial parent moving with, or removing, a child after divorce.

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

**SECTION 1.** 767.02 (1) (k) of the statutes is amended to read:

767.02 (1) (k) Concerning periods of physical placement or visitation rights to children, including an action to prohibit a move with or the removal of a child under s. 767.327 (3) (c).

**SECTION 2.** 767.23 (1) (bm) of the statutes is created to read:

767.23 (1) (bm) Allowing a party to move with or remove a child after a notice of objection has been filed under s. 767.327 (2) (a).

**SECTION 3.** 767.327 (1) (a) 1. of the statutes is amended to read:

767.327 (1) (a) 1. Establish his or her legal residence with the child at any location outside the state ~~and remove the child from this state for a period of time exceeding 90 consecutive days.~~

**SECTION 4.** 767.327 (1) (a) 2. of the statutes is amended to read:

767.327 (1) (a) 2. Establish his or her legal residence ~~and remove~~ with the child, at any location within this state, that is at a distance of 150 miles or more from the other parent.

**SECTION 5.** 767.327 (1) (a) 3. of the statutes is created to read:

767.327 (1) (a) 3. Remove the child from this state for more than 90 consecutive days.

**SECTION 6.** 767.327 (1) (b) of the statutes is amended to read:

767.327 (1) (b) The parent shall send the notice under par. (a) by certified mail. The notice shall state the parent's proposed action, including the specific date and location of the move or specific beginning and ending dates and location of the removal, and that the other parent may object within the time specified in sub. (2) (a).

**SECTION 7.** 767.327 (2) (title) of the statutes is amended to read:

767.327 (2) (title) ~~OBJECTION TO MOVE; PROHIBITION;~~ OBJECTION TO MOVE; PROHIBITION; MEDIATION.

**SECTION 8.** 767.327 (2) of the statutes is renumbered 767.327 (2) (a) and amended to read:

767.327 (2) (a) Within 15 days after receiving the notice under sub. (1), the other parent may send to the parent proposing the move or removal, with a copy to the court, a written notice of objection to the proposed action. The

(c) Upon receipt of a copy of a notice of objection under par. (a), the court or family court commissioner shall promptly refer the parents for mediation or other family

\* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

court counseling services under s. 767.11 and may appoint a guardian ad litem. Unless the parents agree to extend the time period, if mediation or counseling services do not resolve the dispute within 30 days after referral, the matter shall proceed under subs. (3) to (5).

**SECTION 9.** 767.327 (2) (b) of the statutes is created to read:

767.327 (2) (b) If the parent who is proposing the move or removal receives a notice of objection under par. (a) within 20 days after sending a notice under sub. (1) (a), the parent may not move with or remove the child pending resolution of the dispute, or final order of the court under sub. (3), unless the parent obtains a temporary order to do so under s. 767.23 (1) (bm).

**SECTION 10.** 767.327 (3) (title) of the statutes is amended to read:

767.327 (3) (title) STANDARDS FOR MODIFICATION OR PROHIBITION IF MOVE OR REMOVAL CONTESTED.

**SECTION 11.** 767.327 (3) (a) 1. (intro.) of the statutes is amended to read:

767.327 (3) (a) 1. (intro.) Except as provided under par. (b), if the parent proposing the move or removal has sole legal or joint legal custody of the child and the child resides with that parent for the greater period of time, the parent objecting to the move or removal may file a petition, motion or order to show cause for modification of the legal custody or physical placement order affecting the child. The court may modify the legal custody or physical placement order if, after considering the factors under sub. (5), the court finds all of the following:

**SECTION 12.** 767.327 (3) (a) 1. b. of the statutes is amended to read:

767.327 (3) (a) 1. b. The move or removal will result in a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.

**SECTION 13.** 767.327 (3) (a) 2. a. of the statutes is amended to read:

767.327 (3) (a) 2. a. There is a rebuttable presumption that continuing the current allocation of decision

making under a legal custody order or continuing the child's physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child. This presumption may be overcome by a showing that the move or removal is unreasonable and not in the best interest of the child.

**SECTION 14.** 767.327 (3) (a) 3. of the statutes is amended to read:

767.327 (3) (a) 3. Under this paragraph, the burden of proof is on the parent objecting to the move or removal.

**SECTION 15.** 767.327 (3) (b) 1. (intro.) of the statutes is amended to read:

767.327 (3) (b) 1. (intro.) If the parents have joint legal custody and ~~have~~ substantially equal periods of physical placement with a the child, either parent may file a petition, motion or order to show cause for modification of the legal custody or physical placement order. The court may modify an order of legal custody or physical placement if, after considering the factors under sub. (5), the court finds all of the following:

**SECTION 16.** 767.327 (3) (c) of the statutes is created to read:

767.327 (3) (c) 1. If the parent proposing the move or removal has sole legal or joint legal custody of the child and the child resides with that parent for the greater period of time or the parents have substantially equal periods of physical placement with the child, as an alternative to the petition, motion or order to show cause under par. (a) or (b), the parent objecting to the move or removal may file a petition, motion or order to show cause for an order prohibiting the move or removal. The court may prohibit the move or removal if, after considering the factors under sub. (5), the court finds that the prohibition is in the best interest of the child.

2. Under this paragraph, the burden of proof is on the parent objecting to the move or removal.

**SECTION 17. Initial applicability.**

(1) This act first applies to notices to move with or remove a child under section 767.327 (1) (a) of the statutes that are sent on the effective date of this subsection.