



1995 SENATE BILL 132

April 6, 1995 - Introduced by Senators WEEDEN, PETAK, BRESKE, HUELSMAN, A. LASEE and ROSENZWEIG, cosponsored by Representatives AINSWORTH, WOOD, GOETSCH, SCHNEIDER, GROTHMAN, REYNOLDS, UNDERHEIM, NASS, BRANDEMUEHL and OLSEN. Referred to Committee on Judiciary.

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

Analysis by the Legislative Reference Bureau

Under current law, if a court grants periods of physical placement with a child to both parents in a divorce, a parent who has sole or joint legal custody of the child must give the other parent notice if he or she intends to establish his or her legal residence outside the state and remove the child from the state for more than 90 consecutive days or establish his or her legal residence and remove the child within the state at a distance of 150 miles or more from the other parent. The parent receiving the notice may send to the parent proposing the action, with a copy to the court, a notice of objection. The court or family court commissioner must then refer the parties to mediation. If mediation is not successful in resolving the dispute, the parent who opposes the move may file with the court a petition, motion or order to show cause for modification of legal custody or physical placement. The court may modify legal custody or physical placement if the move will result in a substantial change of circumstances since the last order affecting legal custody or physical placement and if modification is in the child's best interest. The court must consider whether the proposed action is reasonable; the nature and extent of the child's relationship with the other parent and the disruption to the relationship that the proposed action may cause; and the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent. There is

a rebuttable presumption that it is in the child's best interest to remain with the parent with whom the child currently resides for the greater period of time.

This bill requires a parent who has legal custody of and physical placement with a child to provide notice to the other parent if he or she intends to establish his or her legal residence with the child at any location outside the state or at any location within the state at a distance of 150 miles or more from the other parent or if he or she intends to remove the child from the state for more than 90 consecutive days. The bill requires that the notice specifically include the planned date of the move, or the beginning and ending dates of the removal, and the specific location of the move or removal. If the other parent sends a notice of objection, the parent proposing the move or removal is prohibited from taking the proposed action until the dispute is resolved, unless the parent obtains a temporary order from the court or family court commissioner allowing the move or removal. As under current law, if mediation is not successful, the parent objecting to the proposed action may file a petition, motion or order to show cause for modification of legal custody or physical placement, and the matter proceeds to a hearing before the court. The bill provides that, as an alternative to modification of legal custody or physical placement, the objecting parent may request an order prohibiting the move or the removal of the child. The court considers the same factors as under current law in making its determination of whether to prohibit the move or the removal of the child. The court may prohibit the move or the removal if it finds that doing so is in the child's best interest. The burden of proof is on the parent objecting to the move or removal.

The bill also provides that the rebuttable presumption that it is in the child's best interest to remain with the parent with whom the child currently resides for the greater period of time, which applies when the court is asked to modify legal custody or physical placement, may be overcome by a showing that the move or removal is unreasonable and not in the child's best interest.

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

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

2 767.02 (1) (k) Concerning periods of physical placement or visitation rights to
3 children, including an action to prohibit a move with or the removal of a child under
4 s. 767.327 (3) (c).

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

6 767.23 (1) (bm) Allowing a party to move with or remove a child after a notice
7 of objection has been filed under s. 767.327 (2) (a).

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

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

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

5 767.327 (1) (a) 2. Establish his or her legal residence ~~and remove~~ with the child,
6 at any location within this state, that is at a distance of 150 miles or more from the
7 other parent.

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

9 767.327 (1) (a) 3. Remove the child from this state for more than 90 consecutive
10 days.

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

12 767.327 (1) (b) The parent shall send the notice under par. (a) by certified mail.
13 The notice shall state the parent's proposed action, including the specific date and
14 location of the move or specific beginning and ending dates and location of the
15 removal, and that the other parent may object within the time specified in sub. (2)
16 (a).

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

18 767.327 (2) (title) ~~OBJECTION TO MOVE;~~ PROHIBITION; MEDIATION.

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

21 767.327 (2) (a) Within 15 days after receiving the notice under sub. (1), the
22 other parent may send to the parent proposing the move or removal, with a copy to
23 the court, a written notice of objection to the proposed action. ~~The~~

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

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

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

6 767.327 (2) (b) If the parent who is proposing the move or removal receives a
7 notice of objection under par. (a) within 20 days after sending a notice under sub. (1)
8 (a), the parent may not move with or remove the child pending resolution of the
9 dispute, or final order of the court under sub. (3), unless the parent obtains a
10 temporary order to do so under s. 767.23 (1) (bm).

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

12 767.327 (3) (title) STANDARDS FOR MODIFICATION OR PROHIBITION IF MOVE OR
13 REMOVAL CONTESTED.

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

15 767.327 (3) (a) 1. (intro.) Except as provided under par. (b), if the parent
16 proposing the move or removal has sole legal or joint legal custody of the child and
17 the child resides with that parent for the greater period of time, the parent objecting
18 to the move or removal may file a petition, motion or order to show cause for
19 modification of the legal custody or physical placement order affecting the child. The
20 court may modify the legal custody or physical placement order if, after considering
21 the factors under sub. (5), the court finds all of the following:

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

23 767.327 (3) (a) 1. b. The move or removal will result in a substantial change of
24 circumstances since the entry of the last order affecting legal custody or the last order
25 substantially affecting physical placement.

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

2 767.327 (3) (a) 2. a. There is a rebuttable presumption that continuing the
3 current allocation of decision making under a legal custody order or continuing the
4 child's physical placement with the parent with whom the child resides for the
5 greater period of time is in the best interest of the child. This presumption may be
6 overcome by a showing that the move or removal is unreasonable and not in the best
7 interest of the child.

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

9 767.327 (3) (a) 3. Under this paragraph, the burden of proof is on the parent
10 objecting to the move or removal.

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

12 767.327 (3) (b) 1. (intro.) If the parents have joint legal custody and have
13 substantially equal periods of physical placement with a the child, either parent may
14 file a petition, motion or order to show cause for modification of the legal custody or
15 physical placement order. The court may modify an order of legal custody or physical
16 placement if, after considering the factors under sub. (5), the court finds all of the
17 following:

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

19 767.327 (3) (c) 1. If the parent proposing the move or removal has sole legal or
20 joint legal custody of the child and the child resides with that parent for the greater
21 period of time or the parents have substantially equal periods of physical placement
22 with the child, as an alternative to the petition, motion or order to show cause under
23 par. (a) or (b), the parent objecting to the move or removal may file a petition, motion
24 or order to show cause for an order prohibiting the move or removal. The court may

1 prohibit the move or removal if, after considering the factors under sub. (5), the court
2 finds that the prohibition is in the best interest of the child.

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

5 **SECTION 17. Initial applicability.**

6 (1) This act first applies to notices to move with or remove a child under section
7 767.327 (1) (a) of the statutes that are sent on the effective date of this subsection.

8 (END)