

2017 DRAFTING REQUEST

Bill

For: **Jessie Rodriguez (608) 266-0610** Drafter: **ewheeler**
 By: **Vince** Secondary Drafters:
 Date: **11/15/2016** May Contact:
 Same as LRB: **-4358**

Submit via email: **YES**
 Requester's email: **Rep.Rodriguez@legis.wisconsin.gov**
 Carbon copy (CC) to: **sarah.walkenhorstbarber@legis.wisconsin.gov**
Elizabeth.Wheeler@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Allowing custody and placement orders based on a future contingency

Instructions:

Redraft 15-4707

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	ewheeler 11/23/2016	jdyer 11/29/2016			
/P1	ewheeler 9/25/2017	jdyer 9/26/2017	rmilford 11/29/2016		
/1			dwalker 9/26/2017	dwalker 9/26/2017	

FE Sent For:

*Not
needed*

<END>

“RESEARCH APPENDIX”

... Drafting History Reproduction Request Form ...



DRAFTING ATTORNEYS:

PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN

(Request Made By: EAW) (Date: 11 / 22 / 2016)

Note: BOTH DRAFTS SHOULD HAVE THE SAME “REQUESTOR” (exception: companion bills)



Please transfer the drafting file for

2015 LRB 4707 (For: Rep. / Sen. Rodriguez)

to the drafting file for

2017 LRB 0793 (For: Rep. / Sen. Rodriguez)

- - - OR - - -



Please copy the drafting file for

2017 LRB _____ (include the version) (For: Rep. / Sen. _____)

and place it in the drafting file for

2017 LRB _____ (For: Rep. / Sen. _____)



Are These “Companion Bills” ?? ... Yes No

If yes, who in the initial requestor’s office authorized the copy/transfer of the drafting history (“guts”) from the original file: _____



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4707/P2 0793/P1
PJK/jld
d Ems - keep

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

In: 11/22/16
Due: 11/29/16

Gen

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AN ACT to amend 767.461; and to create 767.34 (3), 767.41 (5m) and 767.451 (3r) of the statutes; relating to: modifications to legal custody or physical placement contingent upon the occurrence of a specified future event.

Analysis by the Legislative Reference Bureau

This bill authorizes a court to approve a stipulation for modifications to legal custody or physical placement that are contingent upon the occurrence of a specified future event.

According to case law, a court's authority in actions affecting the family, such as annulments, divorces, legal separations, and paternity actions, is based entirely on the statutes, which with respect to determining legal custody and physical placement "embody a sense of contemporaneity..." *In re Marriage of Koeller v. Koeller*, 195 Wis. 2d 660, 666 (1995). Therefore, the court lacks the authority to include in a custody or physical placement order a prospective modification of custody or physical placement that is contingent upon the occurrence of a future event or a change in current conditions.

Under this bill, in an action affecting the family, the court may approve a stipulated agreement between the parties for modifications to legal custody or physical placement upon the occurrence of a specified future event that is reasonably certain to occur within two years of the date of the parties' stipulation. The bill authorizes the court to approve a stipulation for future modifications filed in an action initially determining legal custody and physical placement, filed for the

*

purpose of modifying an initial order of legal custody or physical placement, or filed in an action revising a legal custody or physical placement order.✓

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

1 **SECTION 1.** 767.34 (3)✓ of the statutes is created to read:

2 767.34 (3) APPROVAL OF MODIFICATIONS CONTINGENT ON FUTURE EVENT.✓ A court
3 may approve a stipulation for legal custody and physical placement that includes
4 modifications to legal custody or physical placement upon the occurrence of a
5 specified future event that is reasonably certain to occur within 2✓ years of the date
6 of the stipulation.

7 **SECTION 2.** 767.41 (5m)✓ of the statutes is created to read:

8 767.41 (5m) APPROVAL OF STIPULATION FOR MODIFICATIONS CONTINGENT ON FUTURE
9 EVENT.✓ In making an order of legal custody under sub. (2)✓ or (3)✓ or physical placement
10 under sub. (4)✓, the court may approve a stipulation for modifications to legal custody
11 or physical placement upon the occurrence of a specified future event that is
12 reasonably certain to occur within 2✓ years of the date of the stipulation and
13 incorporate the terms of the stipulation into the order.✓

14 **SECTION 3.** 767.451 (3r)✓ of the statutes is created to read:

15 767.451 (3r)✓ APPROVAL OF STIPULATION FOR MODIFICATIONS CONTINGENT ON FUTURE
16 EVENT. Notwithstanding sub. (1)✓, in an action to modify a legal custody or physical
17 placement order, the court may approve a stipulation for further modifications to
18 legal custody or physical placement upon the occurrence of a specified future event
19 that is reasonably certain to occur within 2✓ years of the date of the stipulation and
20 incorporate the terms of the stipulation into any revised legal custody or physical
21 placement order granted by the court.✓

1 **SECTION 4.** 767.461^{✓x} of the statutes is amended to read:

2 **767.461 Revisions agreed to by stipulation.** If after an initial order is
3 entered under s. 767.41 the parties agree to a modification in an order of physical
4 placement or legal custody and file a stipulation with the court that specifies the
5 agreed upon modification, including a modification to physical placement or legal
6 custody upon the occurrence of a specified future event that is reasonably certain to
7 occur within 2[✓] years of the date of the stipulation[✓], the court shall incorporate the
8 terms of the stipulation into a revised order of physical placement or legal custody
9 unless the court finds that the modification is not in the best interest of the child.

10 **SECTION 5. Initial applicability.**

11 (1) The treatment of sections 767.34 (3)[✓], 767.41 (5m)[✓], and 767.451 (3r)[✓] of the
12 statutes first applies to actions or proceedings, including actions or proceedings to
13 modify a judgment[✓] or order previously granted, that are commenced on the effective
14 date of this subsection.[✓]

15 (2) The treatment of section 767.461[✓] of the statutes first applies to stipulations
16 filed with the court on the effective date of this subsection.[✓]

17 **(END)**



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-0793/P1
EAW:jld

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

9/26

No
Changes

✓ Regen

1 AN ACT *to amend* 767.461; and *to create* 767.34 (3), 767.41 (5m) and 767.451
2 (3r) of the statutes; **relating to:** modifications to legal custody or physical
3 placement contingent upon a future event.

Analysis by the Legislative Reference Bureau

This bill authorizes a court to approve a stipulation for modifications to legal custody or physical placement that are contingent upon the occurrence of a specified future event.

According to case law, a court's authority in actions affecting the family, such as annulments, divorces, legal separations, and paternity actions, is based entirely on the statutes, which with respect to determining legal custody and physical placement "embody a sense of contemporaneity..." *In re Marriage of Koeller v. Koeller*, 195 Wis. 2d 660, 666 (1995). Therefore, the court lacks the authority to include in a custody or physical placement order a prospective modification of custody or physical placement that is contingent upon the occurrence of a future event or a change in current conditions.

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purpose of modifying an initial order of legal custody or physical placement, or filed in an action revising a legal custody or physical placement order.

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8 **767.41 (5m)** APPROVAL OF STIPULATION FOR MODIFICATIONS CONTINGENT ON FUTURE
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13 modify a judgment or order previously granted, that are commenced on the effective
14 date of this subsection.

15 (2) The treatment of section 767.461 of the statutes first applies to stipulations
16 filed with the court on the effective date of this subsection.

17 **(END)**

Walker, Dan

From: Bentz, Nick
Sent: Tuesday, September 26, 2017 8:54 AM
To: LRB.Legal
Subject: Draft Review: LRB -0793/1

Please Jacket LRB -0793/1 for the ASSEMBLY.