

2005 ASSEMBLY BILL 400

May 5, 2005 – Introduced by Representatives KESTELL, VOS, LEMAHIEU, TOWNS, HAHN, PETTIS, F. LASEE, MUSSER, STRACHOTA, KRAWCZYK, OTT, NASS, GUNDERSON, HINES, DAVIS and J. FITZGERALD, cosponsored by Senator PLALE. Referred to Committee on Family Law.

1 **AN ACT** *to repeal* 767.327 (5m); *to renumber* 767.327 (2) (b); *to amend* 767.327
 2 (1) (a) 2., 767.327 (3) (a) 1. (intro.), 767.327 (3) (a) 2. a., 767.327 (3) (b) 1. (intro.),
 3 767.327 (3) (b) 1. a., 767.327 (3) (b) 2., 767.327 (3) (c) 1. and 767.327 (3) (c) 2.;
 4 and *to create* 767.327 (1) (a) 2m., 767.327 (2) (b) 2., 767.327 (3) (b) 1m. and
 5 767.327 (4m) of the statutes; **relating to:** moving with a child.

Analysis by the Legislative Reference Bureau

Under current law, if both parents of a child have periods of physical placement with the child (such as after a divorce), and a parent who has sole or joint legal custody and physical placement rights intends to move with the child outside the state, move with the child in the state at a distance of 150 miles or more from the other parent, or remove the child from the state for 90 or more consecutive days, that parent (parent A) must give 60 days, written notice of his or her intention to the other parent (parent B). Parent B may file an objection to the move or removal. The options available to the court in that case, upon the proper motions and proofs, are to allow the move or removal, to modify legal custody or physical placement or both, or to prohibit the move or removal.

This bill makes the following changes to the provisions related to moving with or removing a child:

1. Under the bill, the notice requirements are the same, but, if the parents live less than 20 miles from each other, parent A must provide notice to parent B if parent A intends to move with the child to a location in the state that is 20 miles or more from parent B (instead of 150 miles or more).

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2. Under current law, if parent B files an objection to the move or removal, parent A is prohibited from moving with or removing the child until the matter is resolved, unless parent A obtains a temporary order authorizing the move or removal. The bill requires the court to find parent A in contempt of court, upon the motion of parent B, and to order parent A to pay costs and reasonable attorney fees to parent B if parent A moves with or removes the child before the matter is resolved and without obtaining a temporary order to do so.

3. Under current law, if parent A has either sole or joint legal custody and physical placement with the child for the greater period of time, parent B may request modification of the legal custody or physical placement order, there is a rebuttable presumption that continuing the physical placement with parent A for the greater period of time is in the child's best interest, and parent B has the burden of proving that modification of the legal custody or physical placement order is in the child's best interest. Under the bill, parent B may request modification of the legal custody or physical placement order, is subject to the rebuttable presumption that the current allocation of physical placement is in the child's best interest, and has the burden of proving that modification is in the child's best interest if parent A has physical placement with the child for at least 90 percent of the time.

4. Under current law, if the parents have joint legal custody and substantially equal periods of physical placement, either parent may request modification of the legal custody or physical placement order. The court may grant the request if the court finds that circumstances make it impractical for the parents to continue to have substantially equal periods of physical placement and the modification is in the best interest of the child. The parent requesting the modification has the burden of proof. The bill changes this so that either parent may request modification of the legal custody or physical placement order if parent A has sole or joint legal custody and physical placement for less than 90 percent of the time. In addition, the bill creates a rebuttable presumption that it is in the child's best interest to remain in the community to which the child has become adjusted, requires the court to modify legal custody or physical placement if the court makes the findings required under current law, and changes the burden of proof to the parent proposing the move or removal, regardless of which parent requests modification of the legal custody or physical placement order. Thus, if parent B requests modification of the legal custody or physical placement order, parent A must prove that modification is *not* in the child's best interest, and if parent A requests the modification, parent A must prove that modification *is* in the child's best interest.

5. Under current law, the court may prohibit the move or removal on the request of parent B if parent A has sole or joint legal custody, parent A has physical placement for the greater period of time or the parents have substantially equal periods of physical placement, and the court finds that prohibiting the move or removal is in the child's best interest. Parent B, who is requesting that the move or removal be prohibited, has the burden of proving that prohibiting the move or removal is in the child's best interest. The bill changes this so that, regardless of the allocation of physical placement, the court must prohibit the move or removal on the request of parent B unless the court finds that prohibiting the move or removal would

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be harmful to the child's best interest. The burden of proof is also changed so that parent A has the burden of proving that prohibiting the move or removal would be harmful to the child's best interest.

6. Current law sets out factors that the court *must* consider for making its determinations, such as whether the proposed action is reasonable and the nature and extent of the child's relationship with parent B, and one factor that the court *may* consider: the child's adjustment to the home, school, religion, and community. The bill eliminates the factor that the court may, but is not required to, consider.

7. Finally, the bill provides that, if the court does not prohibit the move or removal, the court must require parent A to pay for any additional transportation costs that parent B incurs in exercising physical placement with the child as a result of the move or removal.

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

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

2 767.327 (1) (a) 2. ~~Establish~~ Except as provided in subd. 2m., establish his or
3 her legal residence with the child at any location within this state that is at a distance
4 of 150 miles or more from the other parent.

5 **SECTION 2.** 767.327 (1) (a) 2m. of the statutes is created to read:

6 767.327 (1) (a) 2m. If the parent's current residence is less than 20 miles from
7 the other parent, establish his or her legal residence with the child at any location
8 within this state that is at a distance of 20 miles or more from the other parent.

9 **SECTION 3.** 767.327 (2) (b) of the statutes is renumbered 767.327 (2) (b) 1.

10 **SECTION 4.** 767.327 (2) (b) 2. of the statutes is created to read:

11 767.327 (2) (b) 2. If a parent under subd. 1. moves with or removes the child
12 in violation of subd. 1., the court shall find the parent in contempt of court under ch.
13 785, upon the motion of the parent filing the notice of objection under par. (a), and
14 shall order the parent under subd. 1. to pay the court costs and, notwithstanding s.

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1 814.04 (1), reasonable attorney fees incurred by the parent filing the notice of
2 objection.

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

4 767.327 **(3)** (a) 1. (intro.) Except as provided under par. (b), if the parent
5 proposing the move or removal has sole legal or joint legal custody of the child and
6 has physical placement with the child resides with that parent for the greater period
7 for at least 90 percent of time, the parent objecting to the move or removal may file
8 a petition, motion, or order to show cause for modification of the legal custody or
9 physical placement order affecting the child. The court may modify the legal custody
10 or physical placement order if, after considering the factors under sub. (5), the court
11 finds all of the following:

12 **SECTION 6.** 767.327 (3) (a) 2. a. of the statutes is amended to read:

13 767.327 **(3)** (a) 2. a. There is a rebuttable presumption that continuing the
14 current allocation of decision making under a legal custody order or continuing the
15 child's current allocation of physical placement with the parent with whom the child
16 resides for the greater period of time is in the best interest of the child. This
17 presumption may be overcome by a showing that the move or removal is
18 unreasonable and not in the best interest of the child.

19 **SECTION 7.** 767.327 (3) (b) 1. (intro.) of the statutes is amended to read:

20 767.327 **(3)** (b) 1. (intro.) If the ~~parents have~~ parent proposing the move or
21 removal has sole legal or joint legal custody of the child and ~~substantially equal~~
22 ~~periods of~~ has physical placement with the child for less than 90 percent of the time,
23 either parent may file a petition, motion, or order to show cause for modification of
24 the legal custody or physical placement order. The court ~~may~~ shall modify an order

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1 of legal custody or physical placement if, after considering the factors under sub. (5),
2 the court finds all of the following:

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

4 767.327 (3) (b) 1. a. Circumstances make it impractical for the parties to
5 continue to have substantially equal periods the current allocation of physical
6 placement.

7 **SECTION 9.** 767.327 (3) (b) 1m. of the statutes is created to read:

8 767.327 (3) (b) 1m. With respect to subd. 1., there is a rebuttable presumption
9 that it is in the child's best interest to remain in the community to which the child
10 has become adjusted before the proposed move or removal.

11 **SECTION 10.** 767.327 (3) (b) 2. of the statutes is amended to read:

12 767.327 (3) (b) 2. Under this paragraph, the burden of proof is on the parent
13 ~~filing the petition, motion or order to show cause~~ proposing the move or removal.

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

15 767.327 (3) (c) 1. If the parent proposing the move or removal has sole legal or
16 joint legal custody of the child ~~and the child resides with that parent for the greater~~
17 ~~period of time or the parents have substantially equal periods of physical placement~~
18 ~~with the child,~~ regardless of the allocation of physical placement, as an alternative
19 to the petition, motion, or order to show cause under par. (a) or (b), the parent
20 objecting to the move or removal may file a petition, motion, or order to show cause
21 for an order prohibiting the move or removal. The court ~~may~~ shall prohibit the move
22 or removal ~~if~~ unless, after considering the factors under sub. (5), the court finds that
23 ~~the prohibition is in~~ prohibiting the move or removal would be harmful to the best
24 interest of the child.

25 **SECTION 12.** 767.327 (3) (c) 2. of the statutes is amended to read:

