



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-5286/1
SWB:amn&skw

2021 SENATE BILL 739

November 30, 2021 - Introduced by Senator WIMBERGER, cosponsored by Representatives TUSLER, SNYDER, DITTRICH and SPIROS. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT to amend** 767.35 (3); and **to create** 767.333 of the statutes; **relating to:**
2 stipulated orders before judgment in actions for divorce, annulment, or legal
3 separation.

Analysis by the Legislative Reference Bureau

This bill allows a judge to enter the terms of certain stipulations as initial orders before judgment in some actions affecting the family. Under the bill, parties to an action for divorce, annulment, or legal separation may reach agreement regarding physical placement, legal custody, child support, property division, maintenance, or related provisions and file a stipulation with the court specifying the terms of that agreement. The bill requires that before entering an initial order based on a stipulation, the judge must hold a hearing on the record with both parties and the child support agency, if a party, to determine the parties' understanding of the stipulation and ensure that it is intended by both parties as the initial order on the terms set forth. The hearing may be held via telephone, video, or electronic means, and a party or a party's attorney may appear via telephone or video for good cause shown, but each party must attend the hearing by telephone, video, electronic means, or in person.

Under the bill, a judge shall incorporate and enter the terms of a stipulation regarding legal custody, physical placement, or related provisions as an initial order of physical placement or legal custody after the judge conducts the analysis required in any action affecting the family with respect to placement and custody, unless the judge finds that the terms of the stipulation are not in the best interest of the child.

SENATE BILL 739

The bill provides that a stipulation regarding legal custody or physical placement is effective and enforceable as an initial order when entered. Under the bill, the provisions for modification of orders relating to legal custody or physical placement start on the date of entry of the order, not the date of judgment. For purposes of initial orders based on stipulations under the bill, if the judge finds that a parent has engaged in a pattern or serious incident of interspousal battery or domestic abuse, the safety and well-being of the child and the safety of the parent who was the victim of the battery or abuse are required to be paramount concerns in determining legal custody and periods of physical placement.

Under the bill, before a judge may approve a stipulation relating to child support, maintenance, or property division, the judge must comply with the statutory requirements otherwise applicable to such determinations in actions affecting the family under current law. A party seeking modification of a stipulation on child support or maintenance must comply with existing statutory requirements for revision of support and maintenance orders. The bill also provides that a party seeking relief from a stipulation entered as an initial order relating to property division must comply with existing statutory requirements for relief from a judgment or order.

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

1 **SECTION 1.** 767.333 of the statutes is created to read:

2 **767.333 Initial orders based on stipulation prior to judgment. (1)**

3 INITIAL ORDERS BASED ON STIPULATION ALLOWED. Prior to obtaining a judgment of
4 divorce, annulment, or legal separation, the parties may agree to physical
5 placement, legal custody, child support, property division, maintenance, or related
6 provisions. If the parties agree on one or more of the issues set forth under this
7 section, the parties shall file a stipulation with the court that specifies the
8 agreed-upon terms.

9 **(2) STIPULATIONS REGARDING LEGAL CUSTODY, PHYSICAL PLACEMENT, OR RELATED**
10 PROVISIONS. (a) If the judge approves the stipulation, the judge shall incorporate and
11 enter the terms of a stipulation regarding legal custody, physical placement, or

SENATE BILL 739

1 related provisions as an initial order of physical placement or legal custody unless
2 the judge finds that the terms are not in the best interest of the child.

3 (b) The provisions for modifications of orders regarding legal custody or
4 physical placement under this section shall commence on the date of entry of the
5 order, not the date of judgment, for purposes of s. 767.451.

6 (c) Prior to entering a stipulation under this section, the judge shall comply
7 with any requirements under s. 767.41.

8 (d) If the judge finds that a parent has engaged in a pattern or serious incident
9 of interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic
10 abuse, as defined in s. 813.12 (1) (am), the safety and well-being of the child and the
11 safety of the parent who was the victim of the battery or abuse shall be paramount
12 concerns in determining legal custody and periods of physical placement.

13 (e) A stipulation under this section is effective and enforceable as an initial
14 order regarding legal custody or physical placement when entered, pursuant to s.
15 767.41.

16 **(3) STIPULATIONS REGARDING CHILD SUPPORT.** Prior to approving a stipulation
17 under this section regarding child support, the judge shall comply with any
18 requirements under s. 767.511. A party seeking modification of a stipulation entered
19 under this section regarding child support must comply with s. 767.59.

20 **(4) STIPULATIONS REGARDING MAINTENANCE.** Prior to approving a stipulation
21 under this section regarding maintenance, the judge shall comply with any
22 requirements under s. 767.56. A party seeking modification of a stipulation entered
23 under this section regarding maintenance must comply with s. 767.59.

24 **(5) STIPULATIONS REGARDING PROPERTY DIVISION.** Prior to approving a stipulation
25 under this section regarding property division, the judge shall comply with any

SENATE BILL 739**SECTION 1**

1 requirements under s. 767.61. A party seeking relief from a stipulation entered
2 under this section regarding property division must comply with s. 806.07.

3 **(6) HEARING.** (a) Prior to entering a stipulation under this section, the judge
4 shall hold a hearing on the record with both parties and the child support agency, if
5 a party, to determine the parties' understanding of the stipulation and ensure that
6 it is intended by both parties as the initial order on the terms set forth.

7 (b) Any hearing held under par. (a) may be held by telephone, video, or
8 electronic means. A party or a party's attorney may appear via telephone or video
9 for good cause shown, but each party is required to attend the hearing by telephone,
10 video, electronic means, or in person.

11 **SECTION 2.** 767.35 (3) of the statutes is amended to read:

12 767.35 **(3) WHEN DIVORCE JUDGMENT EFFECTIVE.** A judgment of divorce is
13 effective when granted. A court granting a judgment of divorce shall inform the
14 parties appearing in court that the judgment is effective when granted but that it is
15 unlawful under s. 765.03 (2) for a party to marry again until 6 months after the
16 judgment is granted. This section does not prevent application of enforceable orders
17 prior to the divorce judgment as set forth in s. 767.333.

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(END)