

A bill to be entitled

An act relating to parental relocation with a child; creating s. 61.13001, F.S.; providing definitions; providing for notification of certain persons of the intent to relocate the child and providing procedures therefor; requiring certain information to be provided on a Notice of Intent to Relocate; providing procedures for objecting to the relocation of a child; limiting disclosure of certain information relating to cases of domestic violence; providing for content of an objection to relocation; authorizing the court to grant a temporary order restraining the relocation of a child under certain circumstances; prohibiting certain presumptions and requiring certain factors to be evaluated by the court with regard to relocation of a child; assigning the burden of proof in cases of relocation of a child; authorizing the court to order certain contact with the child by the nonrelocating party; granting priority for certain hearings and trials under s. 61.13001, F.S.; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 61.13001, Florida Statutes, is created to read:

61.13001 Parental relocation with a child.--

(1) DEFINITIONS.--As used in this section, unless the context otherwise requires:

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29 (a) "Change of residence address" means the relocation of
30 a child to a primary residence more than 50 miles away from his
31 or her current primary place of residence, unless the move
32 places the primary residence of the minor child less than 50
33 miles from the nonresidential parent.

34 (b) "Child" means any person who is under the jurisdiction
35 of a state court pursuant to the Uniform Child Custody
36 Jurisdiction and Enforcement Act or is the subject of any order
37 granting to a parent or other person any right to residential
38 care, custody, or visitation as provided under state law.

39 (c) "Court" means the circuit court in an original
40 proceeding which has proper venue and jurisdiction in accordance
41 with the Uniform Child Custody Jurisdiction and Enforcement Act,
42 the circuit court in the county in which either parent and the
43 child reside, or the circuit court in which the original action
44 was adjudicated.

45 (d) "Other person" means an individual who is not the
46 parent and who, by court order, maintains the primary residence
47 of a child or has visitation rights with a child.

48 (e) "Parent" means any person so named by court order or
49 express written agreement that is subject to court enforcement
50 or a person reflected as a parent on a birth certificate and in
51 whose home a child maintains a primary or secondary residence.

52 (f) "Person entitled to be the primary residential parent
53 of a child" means a person so designated by court order or by an
54 express written agreement that is subject to court enforcement
55 or a person seeking such a designation, or, when neither parent

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56 has been designated as primary residential parent, the person
57 seeking to relocate with a child.

58 (g) "Principal or primary residence of a child" means the
59 home of the designated primary residential parent. When rotating
60 custody is in effect, each parent shall be considered to be the
61 primary residential parent.

62 (h) "Relocation" means a change in the principal residence
63 of a child for a period of 60 consecutive days or more but does
64 not include a temporary absence from the principal residence for
65 purposes of vacation, education, or the provision of health care
66 for the child.

67 (2) NOTICE OF INTENT TO RELOCATE WITH A CHILD.--A parent
68 who has the right to primary residence of the child shall notify
69 the other parent and every other person entitled to visitation
70 with the child of the proposed relocation of the child's
71 principal residence.

72 (a) Verified confirmation by written notice on a form
73 entitled "Certificate of Filing Notice of Intent to Relocate" of
74 the proposed intent of the primary residential parent to
75 relocate with the child must be filed with the court no later
76 than the 45th day before the date of the proposed relocation and
77 be personally served pursuant to chapter 48 on the other parent
78 and on every other person entitled to visitation with the child,
79 together with the Notice of Intent to Relocate. When personal
80 service of process cannot be had, service of process shall be by
81 publication, in accordance with s. 49.021. If there is a pending
82 action or proceeding in which service of process has already
83 been made, service of process shall occur in accordance with

84 Rule 1.080, Florida Rules of Civil Procedure, and is a valid
 85 service of the Certificate of Filing Notice of Intent to
 86 Relocate.

87 (b) The Notice of Intent to Relocate shall be served with
 88 the Certificate of Filing Notice of Intent to Relocate and shall
 89 be fully and completely answered. The following information must
 90 be included with the Notice of Intent to Relocate and signed
 91 under oath under penalty of perjury:

92 1. A description of the location of the intended new
 93 residence, including the state, city, and specific physical
 94 address, if known.

95 2. The mailing address, if not the same as the physical
 96 address, if known.

97 3. The home telephone number of the intended new
 98 residence, if known.

99 4. The date of the intended move or proposed relocation.

100 5. A detailed statement of the specific reasons for the
 101 proposed relocation of the child. If one of the reasons is based
 102 upon a job offer which has been reduced to writing, that written
 103 job offer must be attached to the Notice of Intent to Relocate.

104 6. A proposal for a revised postrelocation schedule of
 105 visitation with the child.

106 7. A warning to the nonrelocating parent or other person
 107 that an objection to the relocation must be made in writing,
 108 filed with the court, and served on the parent or other person
 109 seeking to relocate within 30 days after service of the
 110 Certificate of Filing Notice of Intent to Relocate along with
 111 the Notice of Intent to Relocate, or the relocation shall be

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112 permitted. If the objection is timely filed, the burden shifts
113 to the parent or person seeking to relocate to initiate court
114 proceedings to obtain court permission to relocate prior to
115 doing so.

116 8. The mailing address of the parent or other person
117 seeking to relocate to which the objection filed under
118 subsection (4) to the Notice of Intent to Relocate should be
119 sent.

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121 The contents of the Notice of Intent to Relocate are not
122 privileged. For purposes of encouraging amicable resolution of
123 the relocation issue, the Notice of Intent to Relocate shall
124 initially not be filed with the court but instead served upon
125 the nonrelocating parent, other person, and every other person
126 entitled to visitation with the child and a copy thereof shall
127 be maintained by the parent or other person seeking to relocate.

128 (c) A person required to give notice of a proposed
129 relocation or change of residence address under this section has
130 a continuing duty to provide current and updated information
131 required by this section when that information becomes known.

132 (d) The act of relocating the child after failure to
133 comply with the notice of intent to relocate procedure described
134 in this subsection subjects the party in violation thereof to
135 contempt and other proceedings to compel the return of the child
136 and may be taken into account by the court in any initial or
137 postjudgment action seeking a determination or modification of
138 residence, custody, or visitation with the child as:

- 139 1. A factor in making a determination regarding the
 140 relocation of a child.
- 141 2. A factor in determining whether residence or contact,
 142 access, visitation, and time-sharing arrangements should be
 143 modified.
- 144 3. A basis for ordering the temporary or permanent return
 145 of the child.
- 146 4. Sufficient cause to order the parent or other person
 147 seeking to relocate the child to pay reasonable expenses and
 148 attorney's fees incurred by the party objecting to the
 149 relocation.
- 150 5. For the award of reasonable attorney's fees and costs,
 151 including interim travel expenses incident to visitation or
 152 securing the return of the child.
- 153 (e) If the parent or other person receiving the Notice of
 154 Intent to Relocate does not, within 30 days after service of the
 155 notice, file a written objection, the relocation is
 156 automatically deemed authorized and may occur.
- 157 (3) DISCLOSURE REQUIREMENTS INVOLVING DOMESTIC
 158 VIOLENCE.--On a finding by the court, pursuant to Rule 2.051(c),
 159 Florida Rules of Judicial Administration, that the health,
 160 safety, or liberty of a person or a child would be unreasonably
 161 put at risk by the disclosure of the required identifying
 162 information in conjunction with a proposed relocation of the
 163 child, the court may ex parte:
- 164 (a) Order that the specific residence address and
 165 telephone number, including the identity or location of any
 166 domestic violence shelter, of the child, the parent, or other

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167 person and other identifying information shall not be disclosed
168 in the notice, pleadings, other documents filed in the
169 proceeding, or the final order, except for an in camera
170 disclosure;

171 (b) Order that the notice requirements provided in this
172 section be modified to the extent necessary to protect
173 confidentiality and the health, safety, or liberty of a parent,
174 other person, or child;

175 (c) Impose any other remedial action that the court
176 considers necessary to facilitate the legitimate needs of the
177 parties and the best interest of the child; or

178 (d) At the request of a parent, other person, or child,
179 appoint an attorney ad litem upon whom the objection to the
180 Notice of Intent to Relocate may be served.

181 (4) CONTENT OF OBJECTION TO RELOCATION.--The objection
182 seeking to prevent the relocation of a child shall be verified
183 and served within 30 days after service of the Notice of Intent
184 to Relocate according to the Florida Rules of Civil Procedure
185 and shall include the specific factual basis supporting the
186 reasons for seeking a prohibition of the relocation, including a
187 statement of the amount of participation or involvement the
188 objecting party currently has or has had in the life of the
189 child.

190 (5) TEMPORARY ORDER.--

191 (a) The court may grant a temporary order restraining the
192 relocation of a child or ordering the return of the child, if a
193 relocation has previously taken place, or other appropriate
194 remedial relief, if the court finds:

195 1. The required notice of a proposed relocation of a child
 196 was not provided in a timely manner.

197 2. The child already has been relocated without notice or
 198 written agreement of the parties or without court approval.

199 3. From an examination of the evidence presented at the
 200 preliminary hearing that there is a likelihood that upon final
 201 hearing the court will not approve the relocation of the primary
 202 residence of the child.

203 (b) The court may grant a temporary order permitting the
 204 relocation of the child pending final hearing, if the court:

205 1. Finds that the required Notice of Intent to Relocate
 206 was provided in a timely manner.

207 2. Finds from an examination of the evidence presented at
 208 the preliminary hearing that there is a likelihood that on final
 209 hearing the court will approve the relocation of the primary
 210 residence of the child, which findings must be supported by the
 211 same factual basis as would be necessary to support the
 212 permitting of relocation in a final judgment.

213 (c) If the court has issued a temporary order authorizing
 214 a party seeking to relocate or move a child before a final
 215 judgment is rendered, the court may not give any weight to the
 216 temporary relocation as a factor in reaching its final decision.

217 (d) If temporary relocation of a child is permitted, the
 218 court may require the person relocating the child to provide
 219 reasonable security, financial or otherwise, and guarantee that
 220 the court-ordered contact with the child will not be interrupted
 221 or interfered with by the relocating party.

222 (6) NO PRESUMPTION; FACTORS TO DETERMINE CONTESTED
 223 RELOCATION.--No presumption shall arise in favor of or against a
 224 request to relocate with the child when a primary residential
 225 parent seeks to move the child and the move will materially
 226 affect the current schedule of contact, access, and time-sharing
 227 with the nonrelocating parent or other person. In reaching its
 228 decision regarding a proposed temporary or permanent relocation,
 229 the court shall evaluate all of the following factors:

230 (a) The nature, quality, extent of involvement, and
 231 duration of the child's relationship with the parent proposing
 232 to relocate with the child and with the nonrelocating parent,
 233 other persons, siblings, half-siblings, and other significant
 234 persons in the child's life.

235 (b) The age and developmental stage of the child, the
 236 needs of the child, and the likely impact the relocation will
 237 have on the child's physical, educational, and emotional
 238 development, taking into consideration any special needs of the
 239 child.

240 (c) The feasibility of preserving the relationship between
 241 the nonrelocating parent or other person and the child through
 242 substitute arrangements that take into consideration the
 243 logistics of contact, access, visitation, and time-sharing, as
 244 well as the financial circumstances of the parties; whether
 245 those factors are sufficient to foster a continuing meaningful
 246 relationship between the child and the nonrelocating parent or
 247 other person; and the likelihood of compliance with the
 248 substitute arrangements by the relocating parent once he or she
 249 is out of the jurisdiction of the court.

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250 (d) The child's preference, taking into consideration the
251 age and maturity of the child.

252 (e) Whether the relocation will enhance the general
253 quality of life for both the parent seeking the relocation and
254 the child, including, but not limited to, financial or emotional
255 benefits or educational opportunities.

256 (f) The reasons of each parent or other person for seeking
257 or opposing the relocation.

258 (g) The current employment and economic circumstances of
259 each parent or other person and whether or not the proposed
260 relocation is necessary to improve the economic circumstances of
261 the parent or other person seeking relocation of the child.

262 (h) That the relocation is sought in good faith, the
263 extent to which the objecting parent has fulfilled his or her
264 financial obligations to the parent or other person seeking
265 relocation, including child support, spousal support, and
266 marital property and marital debt obligations.

267 (i) The career and other opportunities available to the
268 objecting parent or objecting other person if the relocation
269 occurs.

270 (j) A history of substance abuse or domestic violence as
271 defined in s. 741.28 or which meets the criteria of s.
272 39.806(1)(d) by either parent, including a consideration of the
273 severity of such conduct and the failure or success of any
274 attempts at rehabilitation.

275 (k) Any other factor affecting the best interest of the
276 child or as set forth in s. 61.13.

277 (7) BURDEN OF PROOF.--The parent or other person wishing
 278 to relocate has the burden of proof if an objection is filed and
 279 must then initiate a proceeding seeking court permission for
 280 relocation. The initial burden is on the parent or person
 281 wishing to relocate to prove by a preponderance of the evidence
 282 that relocation is in the best interest of the child. If that
 283 burden of proof is met, the burden shifts to the nonrelocating
 284 parent or other person to show by a preponderance of the
 285 evidence that the proposed relocation is not in the best
 286 interest of the child.

287 (8) ORDER REGARDING RELOCATION.--If relocation is
 288 permitted:

289 (a) The court may, in its discretion, order contact with
 290 the nonrelocating parent, including access, visitation, time-
 291 sharing, telephone, Internet, web-cam, and other arrangements
 292 sufficient to ensure that the child has frequent, continuing,
 293 and meaningful contact, access, visitation, and time-sharing
 294 with the nonrelocating parent or other persons, if contact is
 295 financially affordable and in the best interest of the child.

296 (b) If applicable, the court shall specify how the
 297 transportation costs will be allocated between the parents and
 298 other persons entitled to contact, access, visitation, and time-
 299 sharing and may adjust the child support award, as appropriate,
 300 considering the costs of transportation and the respective net
 301 incomes of the parents in accordance with state child support
 302 guidelines.

303 (9) PRIORITY FOR HEARING OR TRIAL.--An evidentiary hearing
 304 or nonjury trial on a pleading seeking temporary or permanent

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305 relief filed pursuant to this section shall be accorded priority
 306 on the court's calendar.

307 (10) APPLICABILITY.--

308 (a) The provisions of this section apply:

309 1. Before July 1, 2006, if the existing order defining
 310 custody, primary residence, and visitation or a written
 311 agreement does not expressly govern the relocation of the child.

312 2. To an order, whether temporary or permanent, regarding
 313 primary residence of a child or visitation with a child issued
 314 after July 1, 2006.

315 3. To any relocation or proposed relocation, whether
 316 permanent or temporary, of a child during any pending proceeding
 317 wherein residence of or visitation with a child is an issue.

318 (b) To the extent that a provision of this section
 319 conflicts with an existing order or enforceable written
 320 agreement signed by both parents, this section does not apply to
 321 the terms of that order or agreement that govern relocation of
 322 the child or a change in the principal residence address of a
 323 parent.

324 Section 2. This act shall take effect July 1, 2006.