

HB 1047

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CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to parental relocation with a child;
7 amending s. 61.13, F.S.; deleting standards for
8 determining whether to allow a primary residential parent
9 to move a child; creating s. 61.13001, F.S.; providing
10 definitions; providing for notification of certain persons
11 of the intent to relocate the child and providing
12 procedures therefor; requiring certain information to be
13 provided on a Notice of Intent to Relocate; providing
14 procedures for objecting to the relocation of a child;
15 providing applicability of public records law; providing
16 for content of an objection to relocation; authorizing the
17 court to grant a temporary order restraining the
18 relocation of a child under certain circumstances;
19 prohibiting certain presumptions and requiring certain
20 factors to be evaluated by the court with regard to
21 relocation of a child; assigning the burden of proof in
22 cases of relocation of a child; authorizing the court to
23 order certain contact with the child by the nonrelocating

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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24 party; granting priority for certain hearings and trials
25 under s. 61.13001, F.S.; providing applicability;
26 providing an effective date.

27

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

29

30 Section 1. Paragraph (d) of subsection (2) of section
31 61.13, Florida Statutes, is amended to read:

32 61.13 Custody and support of children; visitation rights;
33 power of court in making orders.--

34 (2)

35 ~~(d) No presumption shall arise in favor of or against a~~
36 ~~request to relocate when a primary residential parent seeks to~~
37 ~~move the child and the move will materially affect the current~~
38 ~~schedule of contact and access with the secondary residential~~
39 ~~parent. In making a determination as to whether the primary~~
40 ~~residential parent may relocate with a child, the court must~~
41 ~~consider the following factors:~~

42 1. ~~Whether the move would be likely to improve the general~~
43 ~~quality of life for both the residential parent and the child.~~

44 2. ~~The extent to which visitation rights have been allowed~~
45 ~~and exercised.~~

46 3. ~~Whether the primary residential parent, once out of the~~
47 ~~jurisdiction, will be likely to comply with any substitute~~
48 ~~visitation arrangements.~~

49 4. ~~Whether the substitute visitation will be adequate to~~
50 ~~foster a continuing meaningful relationship between the child~~
51 ~~and the secondary residential parent.~~

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52 | ~~5. Whether the cost of transportation is financially~~
53 | ~~affordable by one or both parties.~~

54 | ~~6. Whether the move is in the best interests of the child.~~

55 | Section 2. Section 61.13001, Florida Statutes, is created
56 | to read:

57 | 61.13001 Parental relocation with a child.--

58 | (1) DEFINITIONS.--As used in this section:

59 | (a) "Change of residence address" means the relocation of
60 | a child to a primary residence more than 50 miles away from his
61 | or her current primary place of residence, unless the move
62 | places the primary residence of the minor child less than 50
63 | miles from the nonresidential parent.

64 | (b) "Child" means any person who is under the jurisdiction
65 | of a state court pursuant to the Uniform Child Custody
66 | Jurisdiction and Enforcement Act or is the subject of any order
67 | granting to a parent or other person any right to residential
68 | care, custody, or visitation as provided under state law.

69 | (c) "Court" means the circuit court in an original
70 | proceeding which has proper venue and jurisdiction in accordance
71 | with the Uniform Child Custody Jurisdiction and Enforcement Act,
72 | the circuit court in the county in which either parent and the
73 | child reside, or the circuit court in which the original action
74 | was adjudicated.

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

78 | (e) "Parent" means any person so named by court order or
79 | express written agreement that is subject to court enforcement

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80 or a person reflected as a parent on a birth certificate and in
 81 whose home a child maintains a primary or secondary residence.

82 (f) "Person entitled to be the primary residential parent
 83 of a child" means a person so designated by court order or by an
 84 express written agreement that is subject to court enforcement
 85 or a person seeking such a designation, or, when neither parent
 86 has been designated as primary residential parent, the person
 87 seeking to relocate with a child.

88 (g) "Principal or primary residence of a child" means the
 89 home of the designated primary residential parent. For purposes
 90 of this section only, when rotating custody is in effect, each
 91 parent shall be considered to be the primary residential parent.

92 (h) "Relocation" means a change in the principal residence
 93 of a child for a period of 60 consecutive days or more but does
 94 not include a temporary absence from the principal residence for
 95 purposes of vacation, education, or the provision of health care
 96 for the child.

97 (2) NOTICE OF INTENT TO RELOCATE WITH A CHILD.--A parent
 98 who is entitled to primary residence of the child shall notify
 99 the other parent, and every other person entitled to visitation
 100 with the child, of a proposed relocation of the child's
 101 principal residence. The form of notice shall be according to
 102 this section:

103 (a) The parent seeking to relocate shall prepare a Notice
 104 of Intent to Relocate. The following information must be
 105 included with the Notice of Intent to Relocate and signed under
 106 oath under penalty of perjury:

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- 107 1. A description of the location of the intended new
 108 residence, including the state, city, and specific physical
 109 address, if known.
- 110 2. The mailing address of the intended new residence, if
 111 not the same as the physical address, if known.
- 112 3. The home telephone number of the intended new
 113 residence, if known.
- 114 4. The date of the intended move or proposed relocation.
- 115 5. A detailed statement of the specific reasons for the
 116 proposed relocation of the child. If one of the reasons is based
 117 upon a job offer which has been reduced to writing, that written
 118 job offer must be attached to the Notice of Intent to Relocate.
- 119 6. A proposal for a revised postrelocation schedule of
 120 visitation with the child.
- 121 7. Substantially the following statement, in all capital
 122 letters and in the same size type, or larger, as the type in the
 123 remainder of the notice:
- 124
- 125 AN OBJECTION TO THE PROPOSED RELOCATION MUST BE MADE IN
 126 WRITING, FILED WITH THE COURT, AND SERVED ON THE PARENT OR
 127 OTHER PERSON SEEKING TO RELOCATE WITHIN 30 DAYS AFTER
 128 SERVICE OF THIS NOTICE OF INTENT TO RELOCATE. IF YOU FAIL
 129 TO TIMELY OBJECT TO THE RELOCATION, THE RELOCATION WILL BE
 130 ALLOWED WITHOUT FURTHER NOTICE AND WITHOUT A HEARING.
- 131
- 132 8. The mailing address of the parent or other person
 133 seeking to relocate to which the objection filed under

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134 subsection (4) to the Notice of Intent to Relocate should be
135 sent.

136
137 The contents of the Notice of Intent to Relocate are not
138 privileged. For purposes of encouraging amicable resolution of
139 the relocation issue, a copy of the Notice of Intent to Relocate
140 shall initially not be filed with the court but instead served
141 upon the nonrelocating parent, other person, and every other
142 person entitled to visitation with the child, and the original
143 thereof shall be maintained by the parent or other person
144 seeking to relocate.

145 (b) The parent seeking to relocate shall also prepare a
146 Certificate of Filing Notice of Intent to Relocate. The
147 certificate shall certify the date that the Notice of Intent to
148 Relocate was served on the other parent and on every other
149 person entitled to visitation with the child.

150 (c) The Notice of Intent to Relocate, and the Certificate
151 of Filing Notice of Intent to Relocate, shall be served on the
152 other parent and on every other person entitled to visitation
153 with the child. If there is a pending court action regarding the
154 child, service of process may be according to court rule.
155 Otherwise, service of process shall be according to chapters 48
156 and 49.

157 (d) A person giving notice of a proposed relocation or
158 change of residence address under this section has a continuing
159 duty to provide current and updated information required by this
160 section when that information becomes known.

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161 (e) If the other parent and any other person entitled to
162 visitation with the child fails to timely file an objection, the
163 relocation shall be allowed and the court shall enter an order.
164 If an objection is timely filed, the burden shifts to the parent
165 or person seeking to relocate to initiate court proceedings to
166 obtain court permission to relocate prior to doing so.

167 (f) The act of relocating the child after failure to
168 comply with the notice of intent to relocate procedure described
169 in this subsection subjects the party in violation thereof to
170 contempt and other proceedings to compel the return of the child
171 and may be taken into account by the court in any initial or
172 postjudgment action seeking a determination or modification of
173 residence, custody, or visitation with the child as:

174 1. A factor in making a determination regarding the
175 relocation of a child.

176 2. A factor in determining whether residence or contact,
177 access, visitation, and time-sharing arrangements should be
178 modified.

179 3. A basis for ordering the temporary or permanent return
180 of the child.

181 4. Sufficient cause to order the parent or other person
182 seeking to relocate the child to pay reasonable expenses and
183 attorney's fees incurred by the party objecting to the
184 relocation.

185 5. For the award of reasonable attorney's fees and costs,
186 including interim travel expenses incident to visitation or
187 securing the return of the child.

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188 (3) APPLICABILITY OF PUBLIC RECORDS LAW.--If the parent or
189 other person seeking to relocate a child, or the child, is
190 entitled to prevent disclosure of location information under any
191 public records exemption applicable to that person, the court
192 may enter any order necessary to modify the disclosure
193 requirements of this section in compliance with the public
194 records exemption.

195 (4) CONTENT OF OBJECTION TO RELOCATION.--An objection
196 seeking to prevent the relocation of a child shall be verified
197 and served within 30 days after service of the Notice of Intent
198 to Relocate. The objection shall include the specific factual
199 basis supporting the reasons for seeking a prohibition of the
200 relocation, including a statement of the amount of participation
201 or involvement the objecting party currently has or has had in
202 the life of the child.

203 (5) TEMPORARY ORDER.--

204 (a) The court may grant a temporary order restraining the
205 relocation of a child or ordering the return of the child, if a
206 relocation has previously taken place, or other appropriate
207 remedial relief, if the court finds:

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

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

212 3. From an examination of the evidence presented at the
213 preliminary hearing that there is a likelihood that upon final
214 hearing the court will not approve the relocation of the primary
215 residence of the child.

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

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

220 2. Finds from an examination of the evidence presented at
221 the preliminary hearing that there is a likelihood that on final
222 hearing the court will approve the relocation of the primary
223 residence of the child, which findings must be supported by the
224 same factual basis as would be necessary to support the
225 permitting of relocation in a final judgment.

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

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

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

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243 (a) The nature, quality, extent of involvement, and
244 duration of the child's relationship with the parent proposing
245 to relocate with the child and with the nonrelocating parent,
246 other persons, siblings, half-siblings, and other significant
247 persons in the child's life.

248 (b) The age and developmental stage of the child, the
249 needs of the child, and the likely impact the relocation will
250 have on the child's physical, educational, and emotional
251 development, taking into consideration any special needs of the
252 child.

253 (c) The feasibility of preserving the relationship between
254 the nonrelocating parent or other person and the child through
255 substitute arrangements that take into consideration the
256 logistics of contact, access, visitation, and time sharing, as
257 well as the financial circumstances of the parties; whether
258 those factors are sufficient to foster a continuing meaningful
259 relationship between the child and the nonrelocating parent or
260 other person; and the likelihood of compliance with the
261 substitute arrangements by the relocating parent once he or she
262 is out of the jurisdiction of the court.

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

265 (e) Whether the relocation will enhance the general
266 quality of life for both the parent seeking the relocation and
267 the child, including, but not limited to, financial or emotional
268 benefits or educational opportunities.

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

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271 (g) The current employment and economic circumstances of
272 each parent or other person and whether or not the proposed
273 relocation is necessary to improve the economic circumstances of
274 the parent or other person seeking relocation of the child.

275 (h) That the relocation is sought in good faith, the
276 extent to which the objecting parent has fulfilled his or her
277 financial obligations to the parent or other person seeking
278 relocation, including child support, spousal support, and
279 marital property and marital debt obligations.

280 (i) The career and other opportunities available to the
281 objecting parent or objecting other person if the relocation
282 occurs.

283 (j) A history of substance abuse or domestic violence as
284 defined in s. 741.28 or which meets the criteria of s.
285 39.806(1)(d) by either parent, including a consideration of the
286 severity of such conduct and the failure or success of any
287 attempts at rehabilitation.

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

290 (7) BURDEN OF PROOF.--The parent or other person wishing
291 to relocate has the burden of proof if an objection is filed and
292 must then initiate a proceeding seeking court permission for
293 relocation. The initial burden is on the parent or person
294 wishing to relocate to prove by a preponderance of the evidence
295 that relocation is in the best interest of the child. If that
296 burden of proof is met, the burden shifts to the nonrelocating
297 parent or other person to show by a preponderance of the

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298 evidence that the proposed relocation is not in the best
299 interest of the child.

300 (8) ORDER REGARDING RELOCATION.--If relocation is
301 permitted:

302 (a) The court may, in its discretion, order contact with
303 the nonrelocating parent, including access, visitation, time
304 sharing, telephone, Internet, web-cam, and other arrangements
305 sufficient to ensure that the child has frequent, continuing,
306 and meaningful contact, access, visitation, and time sharing
307 with the nonrelocating parent or other persons, if contact is
308 financially affordable and in the best interest of the child.

309 (b) If applicable, the court shall specify how the
310 transportation costs will be allocated between the parents and
311 other persons entitled to contact, access, visitation, and time
312 sharing and may adjust the child support award, as appropriate,
313 considering the costs of transportation and the respective net
314 incomes of the parents in accordance with state child support
315 guidelines.

316 (9) PRIORITY FOR HEARING OR TRIAL.--An evidentiary hearing
317 or nonjury trial on a pleading seeking temporary or permanent
318 relief filed pursuant to this section shall be accorded priority
319 on the court's calendar.

320 (10) APPLICABILITY.--

321 (a) The provisions of this section apply:

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

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325 2. To an order, whether temporary or permanent, regarding
326 primary residence of a child or visitation with a child issued
327 after July 1, 2006.

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

331 (b) To the extent that a provision of this section
332 conflicts with an existing order or enforceable written
333 agreement signed by both parents, this section does not apply to
334 the terms of that order or agreement that govern relocation of
335 the child or a change in the principal residence address of a
336 parent.

337 Section 3. This act shall take effect July 1, 2006.