

ENROLLED HOUSE
BILL NO. 2974

By: Hoskin, Pittman, Shumate
and Shelton of the House

and

Burrage of the Senate

An Act relating to marriage; amending Section 8, Chapter 400, O.S.L. 2002 (43 O.S. Supp. 2007, Section 112.3), which relates to notice of relocation of child; specifying notice requirements; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 8, Chapter 400, O.S.L. 2002 (43 O.S. Supp. 2007, Section 112.3), is amended to read as follows:

Section 112.3 A. As used in this section:

1. "Change of residence address" means a change in the primary residence of an adult;

2. "Child" means a child under the age of eighteen (18) who has not been judicially emancipated;

3. "Person entitled to custody of or visitation with a child" means a person so entitled by virtue of a court order or by an express agreement that is subject to court enforcement;

4. "Principal residence of a child" means:

a. the location designated by a court to be the primary residence of the child,

- b. in the absence of a court order, the location at which the parties have expressly agreed that the child will primarily reside, or
- c. in the absence of a court order or an express agreement, the location, if any, at which the child, preceding the time involved, lived with the child's parents, a parent, or a person acting as parent for at least six (6) consecutive months and, in the case of a child less than six (6) months old, the location at which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period; and

5. "Relocation" means a change in the principal residence of a child over seventy-five (75) miles from the child's principal residence for a period of sixty (60) days or more, but does not include a temporary absence from the principal residence.

B. 1. Except as otherwise provided by this section, a person who has the right to establish the principal residence of the child shall notify every other person entitled to visitation with the child of a proposed relocation of the child's principal residence as required by this section.

2. Except as otherwise provided by this section, an adult entitled to visitation with a child shall notify every other person entitled to custody of or visitation with the child of an intended change in the primary residence address of the adult as required by this section.

C. 1. Except as provided by this section, notice of a proposed relocation of the principal residence of a child or notice of an intended change of the primary residence address of an adult must be given:

- a. by mail to the last-known address of the person to be notified, and
- b. no later than:
 - (1) the sixtieth day before the date of the intended move or proposed relocation, or

- (2) the tenth day after the date that the person knows the information required to be furnished pursuant to this subsection, if the person did not know and could not reasonably have known the information in sufficient time to comply with the sixty-day notice, and it is not reasonably possible to extend the time for relocation of the child.

2. Except as provided by this section, the following information, if available, must be included with the notice of intended relocation of the child or change of primary residence of an adult:

- a. the intended new residence, including the specific address, if known,
- b. the mailing address, if not the same,
- c. the home telephone number, if known,
- d. the date of the intended move or proposed relocation,
- e. a brief statement of the specific reasons for the proposed relocation of a child, if applicable,
- f. a proposal for a revised schedule of visitation with the child, if any, and
- g. a warning to the nonrelocating parent that an objection to the relocation must be made within thirty (30) days or the relocation will be permitted.

3. A person required to give notice of a proposed relocation or change of residence address under this subsection has a continuing duty to provide a change in or addition to the information required by this subsection as that information becomes known.

D. After the effective date of this act, an order issued by a court directed to a person entitled to custody of or visitation with a child shall include the following or substantially similar terms:

"You, as a party in this action, are ordered to notify every other party to this action in writing of a proposed relocation of

the child, change of your primary residence address, and the following information:

1. The intended new residence, including the specific address, if known;
2. The mailing address, if not the same;
3. The home telephone number, if known;
4. The date of the intended move or proposed relocation;
5. A brief statement of the specific reasons for the proposed relocation of a child, if applicable; and
6. A proposal for a revised schedule of visitation with the child, if any.

You are further ordered to give written notice of the proposed relocation or change of residence address on or before the sixtieth day before a proposed change. If you do not know and could not have reasonably known of the change in sufficient time to provide a sixty-day notice, you are ordered to give written notice of the change on or before the tenth day after the date that you know of the change.

Your obligation to furnish this information to every other party continues as long as you, or any other person, by virtue of this order, are entitled to custody of or visitation with a child covered by this order.

Your failure to obey the order of this court to provide every other party with notice of information regarding the proposed relocation or change of residence address may result in further litigation to enforce the order, including contempt of court.

In addition, your failure to notify of a relocation of the child may be taken into account in a modification of custody of, visitation with, possession of or access to the child. Reasonable costs and attorney fees also may be assessed against you if you fail to give the required notice.

If you, as the nonrelocating parent, do not file a proceeding seeking a temporary or permanent order to prevent the relocation within thirty (30) days after receipt of notice of the intent of the

other party to relocate the residence of the child, relocation is authorized."

E. 1. On a finding by the court that the health, safety, or liberty of a person or a child would be unreasonably put at risk by the disclosure of the required identifying information in conjunction with a proposed relocation of the child or change of residence of an adult, the court may order that:

- a. the specific residence address and telephone number of the child or of the adult and other identifying information shall not be disclosed in the pleadings, other documents filed in the proceeding, or the final order, except for an in camera disclosure,
- b. the notice requirements provided by this article be waived to the extent necessary to protect confidentiality and the health, safety or liberty of a person or child, and
- c. any other remedial action that the court considers necessary to facilitate the legitimate needs of the parties and the best interest of the child.

2. If appropriate, the court may conduct an ex parte hearing pursuant to this subsection.

F. 1. The court may consider a failure to provide notice of a proposed relocation of a child as provided by this section as:

- a. a factor in making its determination regarding the relocation of a child,
- b. a factor in determining whether custody or visitation should be modified,
- c. a basis for ordering the return of the child if the relocation has taken place without notice, and
- d. sufficient cause to order the person seeking to relocate the child to pay reasonable expenses and attorney fees incurred by the person objecting to the relocation.

2. In addition to the sanctions provided by this subsection, the court may make a finding of contempt if a party violates the notice requirement required by this section and may impose the sanctions authorized for contempt of a court order.

G. 1. The person entitled to custody of a child may relocate the principal residence of a child after providing notice as provided by this section unless a parent entitled to notice files a proceeding seeking a temporary or permanent order to prevent the relocation within thirty (30) days after receipt of the notice.

2. A parent entitled by court order or written agreement to visitation with a child may file a proceeding objecting to a proposed relocation of the principal residence of a child and seek a temporary or permanent order to prevent the relocation.

3. If relocation of the child is proposed, a nonparent entitled by court order or written agreement to visitation with a child may file a proceeding to obtain a revised schedule of visitation, but may not object to the proposed relocation or seek a temporary or permanent order to prevent the relocation.

4. A proceeding filed pursuant to this subsection must be filed within thirty (30) days of receipt of notice of a proposed relocation.

H. 1. The court may grant a temporary order restraining the relocation of a child, or ordering return of the child if a relocation has previously taken place, if the court finds:

- a. the required notice of a proposed relocation of a child as provided by this section was not provided in a timely manner and the parties have not presented an agreed-upon revised schedule for visitation with the child for the court's approval,
- b. the child already has been relocated without notice, agreement of the parties, or court approval, or
- c. from an examination of the evidence presented at the temporary hearing there is a likelihood that on final hearing the court will not approve the relocation of the primary residence of the child.

2. The court may grant a temporary order permitting the relocation of the child pending final hearing if the court:

- a. finds that the required notice of a proposed relocation of a child as provided by this section was provided in a timely manner and issues an order for a revised schedule for temporary visitation with the child, and
- b. finds from an examination of the evidence presented at the temporary hearing there is a likelihood that on final hearing the court will approve the relocation of the primary residence of the child.

I. A proposed relocation of a child may be a factor in considering a change of custody.

J. 1. In reaching its decision regarding a proposed relocation, the court shall consider the following factors:

- a. the nature, quality, extent of involvement, and duration of the child's relationship with the person proposing to relocate and with the nonrelocating person, siblings, and other significant persons in the child's life,
- b. the age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child,
- c. the feasibility of preserving the relationship between the nonrelocating person and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties,
- d. the child's preference, taking into consideration the age and maturity of the child,
- e. whether there is an established pattern of conduct of the person seeking the relocation, either to promote or thwart the relationship of the child and the nonrelocating person,

- f. whether the relocation of the child will enhance the general quality of life for both the custodial party seeking the relocation and the child, including but not limited to financial or emotional benefit or educational opportunity,
- g. the reasons of each person for seeking or opposing the relocation, and
- h. any other factor affecting the best interest of the child.

2. The court may not:

- a. give undue weight to the temporary relocation as a factor in reaching its final decision, if the court has issued a temporary order authorizing a party seeking to relocate a child to move before final judgment is issued, or
- b. consider whether the person seeking relocation of the child has declared that he or she will not relocate if relocation of the child is denied.

K. The relocating person has the burden of proof that the proposed relocation is made in good faith. If that burden of proof is met, the burden shifts to the nonrelocating person to show that the proposed relocation is not in the best interest of the child.

L. 1. After notice and a reasonable opportunity to respond, the court may impose a sanction on a person proposing a relocation of the child or objecting to a proposed relocation of a child if it determines that the proposal was made or the objection was filed:

- a. to harass a person or to cause unnecessary delay or needless increase in the cost of litigation,
- b. without being warranted by existing law or was based on frivolous argument, or
- c. based on allegations and other factual contentions which had no evidentiary support or, if specifically so identified, could not have been reasonably believed to be likely to have evidentiary support after further investigation.

2. A sanction imposed under this subsection shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. The sanction may include directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the other party of some or all of the reasonable attorney fees and other expenses incurred as a direct result of the violation.

M. If the issue of relocation is presented at the initial hearing to determine custody of and visitation with a child, the court shall apply the factors set forth in this section in making its initial determination.

N. 1. The provisions of this section apply to an order regarding custody of or visitation with a child issued:

- a. after the effective date of this act, and
- b. before the effective date of this act, if the existing custody order or enforceable agreement does not expressly govern the relocation of the child or there is a change in the primary residence address of an adult affected by the order.

2. To the extent that a provision of this section conflicts with an existing custody order or enforceable agreement, this section does not apply to the terms of that order or agreement that govern relocation of the child or a change in the primary residence address of an adult.

SECTION 2. This act shall become effective November 1, 2008.

Passed the House of Representatives the 25th day of February,
2008.

Presiding Officer of the House of
Representatives

Passed the Senate the 8th day of April, 2008.

Presiding Officer of the Senate