

1 THE STATE SENATE
2 Tuesday, March 25, 2008

3 ENGROSSED

4 House Bill No. 2974

5 ENGROSSED HOUSE BILL NO. 2974 - By: Hoskin, Pittman, Shumate and
6 Shelton of the House and Burrage of the Senate.

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

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

12 SECTION 1. AMENDATORY Section 8, Chapter 400, O.S.L.
13 2002 (43 O.S. Supp. 2007, Section 112.3), is amended to read as
14 follows:

15 Section 112.3 A. As used in this section:

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

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

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

23 4. "Principal residence of a child" means:

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

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

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

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

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

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

- 10 a. by mail to the last-known address of the person to be
11 notified, and
- 12 b. no later than:
- 13 (1) the sixtieth day before the date of the intended
14 move or proposed relocation, or
- 15 (2) the tenth day after the date that the person
16 knows the information required to be furnished
17 pursuant to this subsection, if the person did
18 not know and could not reasonably have known the
19 information in sufficient time to comply with the
20 sixty-day notice, and it is not reasonably
21 possible to extend the time for relocation of the
22 child.

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

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

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

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

1 "You, as a party in this action, are ordered to notify every
2 other party to this action in writing of a proposed relocation of
3 the child, change of your primary residence address, and the
4 following information:

5 1. The intended new residence, including the specific address,
6 if known;

7 2. The mailing address, if not the same;

8 3. The home telephone number, if known;

9 4. The date of the intended move or proposed relocation;

10 5. A brief statement of the specific reasons for the proposed
11 relocation of a child, if applicable; and

12 6. A proposal for a revised schedule of visitation with the
13 child, if any.

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

21 Your obligation to furnish this information to every other party
22 continues as long as you, or any other person, by virtue of this

1 order, are entitled to custody of or visitation with a child covered
2 by this order.

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

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

12 If you, as the nonrelocating parent, do not file a proceeding
13 seeking a temporary or permanent order to prevent the relocation
14 within thirty (30) days after receipt of notice of the intent of the
15 other party to relocate the residence of the child, relocation is
16 authorized."

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

22 a. the specific residence address and telephone number of
23 the child or of the adult and other identifying

1 information shall not be disclosed in the pleadings,
2 other documents filed in the proceeding, or the final
3 order, except for an in camera disclosure,
4 b. the notice requirements provided by this article be
5 waived to the extent necessary to protect
6 confidentiality and the health, safety or liberty of a
7 person or child, and
8 c. any other remedial action that the court considers
9 necessary to facilitate the legitimate needs of the
10 parties and the best interest of the child.

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

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

- 15 a. a factor in making its determination regarding the
16 relocation of a child,
17 b. a factor in determining whether custody or visitation
18 should be modified,
19 c. a basis for ordering the return of the child if the
20 relocation has taken place without notice, and
21 d. sufficient cause to order the person seeking to
22 relocate the child to pay reasonable expenses and

1 attorney fees incurred by the person objecting to the
2 relocation.

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

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

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

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

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

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

4 a. the required notice of a proposed relocation of a
5 child as provided by this section was not provided in
6 a timely manner and the parties have not presented an
7 agreed-upon revised schedule for visitation with the
8 child for the court's approval,

9 b. the child already has been relocated without notice,
10 agreement of the parties, or court approval, or

11 c. from an examination of the evidence presented at the
12 temporary hearing there is a likelihood that on final
13 hearing the court will not approve the relocation of
14 the primary residence of the child.

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

17 a. finds that the required notice of a proposed
18 relocation of a child as provided by this section was
19 provided in a timely manner and issues an order for a
20 revised schedule for temporary visitation with the
21 child, and

22 b. finds from an examination of the evidence presented at
23 the temporary hearing there is a likelihood that on

1 final hearing the court will approve the relocation of
2 the primary residence of the child.

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

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

- 7 a. the nature, quality, extent of involvement, and
8 duration of the child's relationship with the person
9 proposing to relocate and with the nonrelocating
10 person, siblings, and other significant persons in the
11 child's life,
- 12 b. the age, developmental stage, needs of the child, and
13 the likely impact the relocation will have on the
14 child's physical, educational, and emotional
15 development, taking into consideration any special
16 needs of the child,
- 17 c. the feasibility of preserving the relationship between
18 the nonrelocating person and the child through
19 suitable visitation arrangements, considering the
20 logistics and financial circumstances of the parties,
- 21 d. the child's preference, taking into consideration the
22 age and maturity of the child,

- 1 e. whether there is an established pattern of conduct of
2 the person seeking the relocation, either to promote
3 or thwart the relationship of the child and the
4 nonrelocating person,
- 5 f. whether the relocation of the child will enhance the
6 general quality of life for both the custodial party
7 seeking the relocation and the child, including but
8 not limited to financial or emotional benefit or
9 educational opportunity,
- 10 g. the reasons of each person for seeking or opposing the
11 relocation, and
- 12 h. any other factor affecting the best interest of the
13 child.
- 14 2. The court may not:
- 15 a. give undue weight to the temporary relocation as a
16 factor in reaching its final decision, if the court
17 has issued a temporary order authorizing a party
18 seeking to relocate a child to move before final
19 judgment is issued, or
- 20 b. consider whether the person seeking relocation of the
21 child has declared that he or she will not relocate if
22 relocation of the child is denied.

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

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

9 a. to harass a person or to cause unnecessary delay or
10 needless increase in the cost of litigation,

11 b. without being warranted by existing law or was based
12 on frivolous argument, or

13 c. based on allegations and other factual contentions
14 which had no evidentiary support or, if specifically
15 so identified, could not have been reasonably believed
16 to be likely to have evidentiary support after further
17 investigation.

18 2. A sanction imposed under this subsection shall be limited to
19 what is sufficient to deter repetition of such conduct or comparable
20 conduct by others similarly situated. The sanction may include
21 directives of a nonmonetary nature, an order to pay a penalty into
22 court, or, if imposed on motion and warranted for effective
23 deterrence, an order directing payment to the other party of some or

1 all of the reasonable attorney fees and other expenses incurred as a
2 direct result of the violation.

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

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

9 a. after the effective date of this act, and

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

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

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

21 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-25-08 - DO
22 PASS.