

FIRST REGULAR SESSION

SENATE BILL NO. 539

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR YECKEL

Read 1st time February 22, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1441S.011

AN ACT

To repeal section 452.377, RSMo 2000, relating to custody of children, and to enact in lieu thereof one new section relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 452.377, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 452.377, to read as follows:

452.377. 1. For purposes of this section and section 452.375, "relocate" or "relocation" means a change in the principal residence of a child **sixty miles or greater from the child's current principal residence** for a period of ninety days or more, but does not include a temporary absence from the principal residence.

2. Notice of a proposed relocation of the residence of the child **sixty miles or greater from the child's current principal residence**, or any party entitled to custody or visitation of the child, shall be given in writing by certified mail, return receipt requested, to any party with custody or visitation rights. Absent exigent circumstances as determined by a court with jurisdiction, written notice shall be provided at least sixty days in advance of the proposed relocation. The notice of the proposed relocation shall include the following information:

- (1) The intended new residence, including the specific address and mailing address, if known, and if not known, the city;
- (2) The home telephone number of the new residence, if known;
- (3) The date of the intended move or proposed relocation;
- (4) A brief statement of the specific reasons for the proposed relocation of a child, if applicable; and

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

(5) A proposal for a revised schedule of custody or visitation with the child, if applicable.

3. A party required to give notice of a proposed relocation pursuant to subsection 2 of this section has a continuing duty to provide a change in or addition to the information required by this section as soon as such information becomes known.

4. In exceptional circumstances, **including cases with credible evidence of domestic violence**, where the court makes a finding that the health or safety of any adult or child would be unreasonably placed at risk by the disclosure of the required identifying information concerning a proposed relocation of the child, the court may order that:

(1) The specific residence address and telephone number of the child, parent or person, and other identifying information shall not be disclosed in the pleadings, notice, other documents filed in the proceeding or the final order except for an in camera disclosure;

(2) The notice requirements provided by this section shall be waived to the extent necessary to protect the health or safety of a child or any adult; or

(3) Any other remedial action the court considers necessary to facilitate the legitimate needs of the parties and the best interest of the child.

5. The court shall consider a failure to provide **any** notice of a proposed relocation of a child as:

(1) A factor in determining whether custody and visitation should be modified;

(2) A basis for ordering the return of the child if the relocation occurs without notice; and

(3) Sufficient cause to order the party seeking to relocate the child to pay reasonable expenses and attorneys fees incurred by the party objecting to the relocation.

6. If the parties agree to a revised schedule of custody and visitation for the child, which includes a parenting plan, they may submit the terms of such agreement to the court with a written affidavit signed by all parties with custody or visitation assenting to the terms of the agreement, and the court may order the revised parenting plan and applicable visitation schedule without a hearing.

7. The residence of the child may be relocated sixty days after providing notice, as required by this section, unless a parent files a motion seeking an order to prevent the relocation within thirty days after receipt of such notice. Such motion shall be accompanied by an affidavit setting forth the specific factual basis supporting a prohibition of the relocation. **Thirty days after filing such motion, the party opposing relocation shall request a hearing on such motion. Failure to do so shall result in a waiver of the objection to relocation.** The person seeking relocation shall file a response to the motion within fourteen days, unless extended by the court for good cause, and include a counter-affidavit setting forth the facts in support of the relocation as well as a proposed revised parenting plan for the child.

8. If relocation of the child is proposed, a third party entitled by court order to legal custody of or visitation with a child and who is not a parent may file a cause of action to obtain a revised

schedule of legal custody or visitation, but shall not prevent a relocation.

9. [The party seeking to relocate shall have the burden of proving that the proposed relocation is made in good faith and is in the best interest of the child.] **In ruling on the opposing party's motion, the court shall employ the following four factors to determine whether the relocation serves the best interests of the child:**

(1) Whether the prospective advantages of the relocation will improve the general quality of life for the relocating parent and child;

(2) The integrity of the relocating parent's motives in relocating;

(3) The integrity of the opposing party's motives for opposing the relocation and the extent to which it is intended to secure a financial advantage with respect to continuing child support; and

(4) The realistic opportunity for visitation which can provide an adequate basis for preserving and fostering the opposing party's relationship with the child if the relocation is permitted.

10. If relocation is permitted:

(1) The court shall order contact with the nonrelocating party including [custody or] visitation and telephone access sufficient to assure that the child has frequent, continuing and meaningful contact with the nonrelocating party unless the child's best interest warrants otherwise; and

(2) The court shall specify how the transportation costs will be allocated between the parties and adjust the child support, as appropriate, considering the costs of transportation.

11. After August 28, [1998] **2000**, every court order establishing or modifying custody or visitation shall include the following language: "Absent exigent circumstances as determined by a court with jurisdiction, you, as a party to this action, are ordered to notify, in writing by certified mail, return receipt requested, and at least sixty days prior to the proposed relocation, each party to this action of [any] a proposed relocation [of] **greater than sixty miles from** the principal residence of the child, including the following information:

(1) The intended new residence, including the specific address and mailing address, if known, and if not known, the city;

(2) The home telephone number of the new residence, if known;

(3) The date of the intended move or proposed relocation;

(4) A brief statement of the specific reasons for the proposed relocation of the child; and

(5) A proposal for a revised schedule of custody or visitation with the child.

Your obligation to provide this information to each party continues as long as you or any other party by virtue of this order is entitled to custody of a child covered by this order. Your failure to obey the order of this court regarding the proposed relocation may result in further litigation to enforce such order, including contempt of court. In addition, your failure to notify a

party of a relocation of the child may be considered in a proceeding to modify custody or visitation with the child. Reasonable costs and attorney fees may be assessed against you if you fail to give the required notice."

12. Violation of the provisions of this section or a court order under this section may be deemed a change of circumstance under section 452.410, allowing the court to modify the prior custody decree. In addition, the court may utilize any and all powers relating to contempt conferred on it by law or rule of the Missouri supreme court.

13. Any party who objects in good faith to the relocation of a child's principal residence shall not be ordered to pay the costs and attorney's fees of the party seeking to relocate.

14. Notwithstanding subsection 12 of this section, this section shall not be construed to eliminate the requirement that a motion to modify be filed and heard for purposes of modifying the custody provisions of a prior court order pursuant to section 452.410.

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