

SECOND REGULAR SESSION

HOUSE BILL NO. 2186

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES KELLY (27), OSTMANN, SMITH, FARES, FRASER,
RIBACK WILSON (25), WILLIAMS, BARTELSMEYER (Co-sponsors), LONG, LADD BAKER, HARLAN,
RICHARDSON, ROSS, BRAY, BERKSTRESSER AND DAUS.

Read 1st time March 14, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

3834L.02I

AN ACT

To repeal section 452.377, RSMo, and to enact in lieu thereof one new section relating to relocation of a child.

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

Section A. Section 452.377, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.377, to read as follows: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 for a period of ninety days or more, but does not include a temporary absence from the principal residence.

2. **Except as otherwise provided in subsection 3 of this section:**

(1) Notice of a proposed relocation of the residence of the child, 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)] (a) The intended new residence, including the specific address and mailing address, if known, and if not known, the city;

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

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

[(4)] (d) A brief statement of the specific reasons for the proposed relocation of a child,

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

16 if applicable; and

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

19 3.]; and

20 (2) A party required to give notice of a proposed relocation pursuant to **this** subsection
21 [2 of this section] has a continuing duty to provide a change in or addition to the information
22 required by this section as soon as such information becomes known.

23 [4. In exceptional circumstances where] **3. If any party believes exigent circumstances**
24 **exist, including circumstances where the health or safety of any adult or child would be**
25 **unreasonably placed at risk by providing the notice or disclosures required in subsection**
26 **2 of this section, the following procedure shall apply:**

27 (1) By January 1, 2003, the state courts administrator shall develop and adopt a
28 uniform form for providing notice to a nonrelocating party of a proposed relocation with
29 exigent circumstances. Such form shall be provided to each circuit clerk and shall contain,
30 but is not limited to, the following:

31 (a) A description of the nature of the exigent circumstances;

32 (b) An estimate of the distance to the intended new resident in miles, rounded to
33 the nearest fifty miles;

34 (c) Whether the relocation will change the school district of the child being
35 relocated; and

36 (d) Notification to the nonrelocating party that the child may be relocated unless
37 the party files a motion seeking an order to prevent the proposed relocation within thirty
38 days after receipt of such notice.

39

40 The current address and the specific intended new residence address of the relocating
41 party shall not be provided to the nonrelocating party;

42 (2) The party believing exigent circumstances exist and the health or safety of any
43 adult or child would be unreasonably placed at risk by providing the notice or disclosures
44 required in subsection 2 of this section shall complete the uniform form created in
45 subdivision (1) of this subsection and provide such limited notice to the nonrelocating
46 party;

47 (3) If the nonrelocating party does not file a motion seeking an order to prevent the
48 relocation within thirty days after receipt of the notice provided pursuant to this
49 subsection, the residence of the child may be relocated immediately;

50 (4) If the nonrelocating party files a motion seeking an order to prevent the
51 relocation within thirty days after receipt of the notice provided pursuant to this

52 **subsection, a hearing shall be held and if** the court makes a finding that the health or safety
53 of any adult or child would be unreasonably placed at risk by the disclosure of the required
54 identifying information concerning a proposed relocation of the child, the court may order that:

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

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

60 [(3)] (c) Any other remedial action the court considers necessary to facilitate the
61 legitimate needs of the parties and the best interest of the child[.];

62 [5.] (5) **If the court determines that the health or safety of any adult or child would**
63 **not be reasonably placed at risk by the disclosure of the required identifying information**
64 **concerning a proposed relocation of the child, the party shall comply with the disclosure**
65 **requirements in this section.**

66 **4. Except as otherwise provided in subsection 3 of this section,** the court shall
67 consider a failure to provide notice of a proposed relocation of a child **or any party entitled to**
68 **custody or visitation of the child** as:

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

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

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

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

79 7.] 5. The residence of the child may be relocated sixty days after providing notice, as
80 required by this section, unless a parent files a motion seeking an order to prevent the relocation
81 within thirty days after receipt of such notice. Such motion shall be accompanied by an affidavit
82 setting forth the specific factual basis supporting a prohibition of the relocation. The person
83 seeking relocation shall file a response to the motion within fourteen days, unless extended by
84 the court for good cause, and include a counter-affidavit setting forth the facts in support of the
85 relocation as well as a proposed revised parenting plan for the child.

86 [8.] 6. If relocation of the child is proposed, a third party entitled by court order to legal
87 custody of or visitation with a child and who is not a parent may file a cause of action to obtain

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

89 [9.] 7. The party seeking to relocate shall have the burden of proving that the proposed
90 relocation is made in good faith and is in the best interest of the child.

91 [10. If relocation is permitted:

92 (1)] **The nonrelocating party shall provide sufficient evidence to support such**
93 **party's opposition to the proposed relocation.**

94 **8. If the court finds that relocation is in the best interest of the child and will be**
95 **permitted, the schedule of custody and visitation, including a parenting plan, shall be**
96 **modified as follows:**

97 (1) **If the parties agree to a revised schedule of custody and visitation for the child,**
98 **including a parenting plan, they may submit the terms of such agreement to the court with**
99 **a written affidavit signed by all parties with custody or visitation assenting to the terms of**
100 **the agreement, and the court may order the revised parenting plan and applicable**
101 **visitation schedule without a hearing;**

102 (2) **If the parties cannot agree to a revised schedule of custody and visitation for the**
103 **child, including a parenting plan, the revised parenting plan approved and ordered by the**
104 **court shall be in the court's discretion and shall be in the best interest of the child. In the**
105 **revised parenting plan:**

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

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

112 [11.] 9. After August 28, 1998, every court order establishing or modifying custody or
113 visitation shall include the following language: "[Absent exigent circumstances as determined
114 by a court with jurisdiction] **Unless limited notice is provided pursuant to subsection 3 of**
115 **section 452.377, RSMo, and a court with jurisdiction determines that exigent circumstances**
116 **exist, including circumstances where the health or safety of any adult or child would be**
117 **unreasonably placed at risk by such notice or disclosure, you, as a party to this action, are**
118 **ordered to notify, in writing by certified mail, return receipt requested, and at least sixty days**
119 **prior to the proposed relocation, each party to this action of your relocation or any proposed**
120 **relocation of the principal residence of the child, including the following information:**

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

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

124 (3) The date of the intended move or proposed relocation;
125 (4) A brief statement of the specific reasons for the proposed relocation of the child; and
126 (5) A proposal for a revised schedule of custody or visitation with the child.
127
128 Your obligation to provide this information to each party continues as long as you or any other
129 party by virtue of this order is entitled to custody of a child covered by this order. Your failure
130 to obey the order of this court regarding the proposed relocation may result in further litigation
131 to enforce such order, including contempt of court. In addition, your failure to notify a party of
132 a relocation of the child may be considered in a proceeding to modify custody or visitation with
133 the child. Reasonable costs and attorney fees may be assessed against you if you fail to give the
134 required notice."

135 **[12.] 10. Except as otherwise provided in subsection 3 of this section,** violation of the
136 provisions of this section or a court order under this section may be deemed a change of
137 circumstance under section 452.410, allowing the court to modify the prior custody decree. In
138 addition, the court may utilize any and all powers relating to contempt conferred on it by law or
139 rule of the Missouri supreme court.

140 **[13.] 11.** Any party who objects in good faith to the relocation of a child's principal
141 residence shall not be ordered to pay the costs and attorney's fees of the party seeking to relocate.