SLS 12RS-449 ENGROSSED

Regular Session, 2012

SENATE BILL NO. 153

BY SENATOR BROOME (On Recommendation of the Louisiana State Law Institute)

CHILDREN. Provides for relocation of the residence of a child. (8/1/12)

1 AN ACT

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To amend and reenact Subpart E of Part III of Chapter 1 of Code Title V of Code Book I of

Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:355.1

through 355.19, to enact R.S. 9:357, and to direct the Louisiana State Law Institute

to add a comment under Civil Code Article 134, relative to child custody and the

relocation of the residence of a child; to provide for definitions; to provide for

applicability; to provide for the proposal of relocation; to provide for notice; to

provide for an objection; to provide for a limitation on an objection; to provide for

the failure to object; to provide for the burden of proof; to provide for court

authorization to relocate; to provide for a temporary order; to provide for the priority

for trial; to provide for factors to determine a contested relocation; to provide for the

appointment of a mental health expert; to provide for a modification of custody; to

provide for a posting of security; to provide for sanctions; to provide for the use of

technology; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Subpart E of Part III of Chapter 1 of Code Title V of Code Book I of Title 9 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:355.1 through 355.19, is

1	hereby amended and reenacted to read as follows:
2	SUBPART E. RELOCATING A CHILD'S RESIDENCE
3	§355.1. Definitions
4	As used in this Subpart:
5	(1) "Equal physical custody" means that the parents share equal parental
6	authority of the child absent a court order to the contrary.
7	(2) "Parent entitled to primary custody" means a parent designated by a court
8	order as the sole or primary custodian or domiciliary parent within a joint custody
9	arrangement, but does not include a parent who has equal physical custody.
10	(3) (1) "Principal residence of a child" means:
11	(a) The location designated by a court to be the primary residence of the
12	child.
13	(b) In the absence of a court order, the location at which the parties have
14	expressly agreed that the child will primarily reside.
15	(c) In the absence of a court order or an express agreement, the location, if
16	any, at which the child has spent the majority of time during the prior six months.
17	(4)(2) "Relocation" means: means a
18	(a) Intent to establish legal residence with the child at any location outside
19	of the state.
20	(b) If there is no court order awarding custody, an intent to establish legal
21	residence with the child at any location within the state that is at a distance of more
22	than one hundred fifty miles from the other parent. If there is a court order awarding
23	custody, then an intent to establish legal residence with the child at a distance of
24	more than one hundred fifty miles from the domicile of the primary custodian at the
25	time the custody decree was rendered.
26	(c) A change in the principal residence of a child for a period of sixty days
27	or more, but does not include a temporary absence from the principal residence.
28	Comments - 2012 Revision
29 30	(a) This revision moves the geographic threshold for application of the relocation statutes to R.S. 9:355.2.

1 2 3	(b) Absences of more than sixty days which are temporary - including, for instance, a summer holiday - are not relocation as defined in this Subpart.
4	§355.2. Applicability
5	A. This Subpart shall apply to an order regarding custody of or visitation
6	with a child issued:
7	(1) On or after August 15, 1997.
8	(2) Before August 15, 1997, if the existing custody order does not expressly
9	govern the relocation of the child.
10	B. This Subpart shall apply to a proposed relocation when any of the
11	following exist:
12	(1) There is intent to establish the principal residence of a child at any
13	location outside the state.
14	(2) There is no court order awarding custody and there is an intent to
15	establish the principal residence of a child at any location within the state that
16	is at a distance of more than seventy-five miles from the domicile of the other
17	parent.
18	(3) There is a court order awarding custody and there is an intent to
19	establish the principal residence of a child at any location within the state that
20	is at a distance of more than seventy-five miles from the principal residence of
21	the child at the time that the most recent custody decree was rendered.
22	(4) If either no principal residence of a child has been designated by the
23	court or the parties have equal physical custody, and there is an intent to
24	establish the principal residence of a child at any location within the state that
25	is at a distance of more than seventy-five miles from the domicile of a person
26	entitled to object to relocation.
27	B.C. To the extent that a provision of this Subpart conflicts with an existing
28	custody order, this Subpart shall not apply to the terms of that order that governs
29	govern relocation of the child.
30	C.D. This Subpart shall not apply when either of the following
31	<u>circumstances exist</u> :

1 (1) The parents of a child persons required to give notice of and the 2 persons entitled to object to a proposed relocation have entered into an express written agreement for the a temporary relocation of that child's the principal 3 residence of the child regardless of the duration of the temporary relocation. 4 (2) An There is in effect an order issued pursuant to Domestic Abuse 5 Assistance, R.S. 46:2131, et seq., Protection from Dating Violence, R.S. 46:2151, 6 Part II of Chapter 28 of Title 46 or the Post-Separation Family Violence Relief Act 7 8 or Injunctions and Incidental Orders, Parts IV and V of Chapter 1 of Code Title V 9 of Code Book I of Title 9, except R.S. 9:372.1, all of the Louisiana Revised Statutes 10 of 1950, Domestic Abuse Assistance, Chapter 8 of Title XV of the Children's Code, or any other restraining order, preliminary injunction, permanent injunction, or any 11 12 protective order prohibiting a spouse from harming or going near or in the proximity 13 of the other spouse is in effect. Comments - 2012 Revision 14 15 (a) This revision reduces the threshold distance for application of the relocation statutes from one hundred fifty miles to seventy-five miles in recognition 16 17 of the likelihood that weekday visitation and the general ability to participate in the 18 child's daily life will be substantially affected by distances of more than seventy-five 19 miles. The relocation laws of a number of other states hinge upon relocations 20 involving even shorter distances. See, e.g., Ala. Code 1975 §30-3-162 (60 miles); 21 Florida Stat. §61.13001 (50 miles); Maine Rev. Stat. §1657 (60 miles); Or. Rev. Stat. §107.159 (60 miles). 22 23 24 (b) "Equal physical custody" in Paragraph (4) of Subsection B of this Section 25 refers to a custody arrangement under which persons have equal or approximately equal physical custody. It should be interpreted to mean one-half or an 26 approximately equal amount of time, expressed in percentages such as forty-nine 27 percent/fifty-one percent. "Equal physical custody" is distinguished from "shared 28 custody" under R.S. 9:315.9, which Louisiana courts have interpreted to include 29 30 custody arrangements with a split of sixty-three percent/thirty-seven percent. See, e.g., Westcott v. Westcott, 927 So. 2d 377 (La. App. 1st Cir. 2005). Such a split is 31 not "equal physical custody" under this statute. 32 33 34 (c) If a person proposes relocation of a child within the state and within 35 distances shorter than those prescribed under Subsection B of this Section, Louisiana's relocation statutes have no application, and the person seeking to relocate 36 has no obligation to provide notice or seek court approval in advance of the move. 37 38 39 (d) Paragraph (3) of Subsection B of this Section changes the focus of the 40 distance threshold from the domicile of the primary custodian at the time that the custody decree was rendered to the principal residence of the child at the time of the 41 42 custody decree in light of the notion that the body of relocation statutes focuses on 43 a relocation of the child and not his caregivers. 44

2 3	proposed relocation. Not all persons entitled to notice of a relocation are permitted to object.
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5	(f) The purpose of Paragraph (2) of Subsection D of this Section is to prevent
6	the application of Louisiana's child relocation statutes, requiring the party proposing
7	relocation to notify a person entitled to receive notice of the details of the proposed
8	move, in situations involving family violence, domestic abuse, and the like. The
9	reference to "Part V of Chapter 1 of Code Title V of Code Book I of Title 9,"
10 11	however, includes R.S. 9:372.1, which governs an injunction prohibiting harassment. When an injunction has been issued only under R.S. 9:372.1, there is insufficient
12	justification for exempting the proposed relocation from the requirements of the
13	child relocation statutes.
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15	§355.3. Persons authorized to propose relocation of principal residence of a
16	<u>child</u>
17	The following persons are authorized to propose relocation of the
18	principal residence of a child by complying with the notice requirements of this
19	Subpart:
20	(1) A person designated in a current court decree as the sole custodian.
21	(2) A person designated in a current court decree as a domiciliary
22	parent in a joint custody arrangement.
23	(3) A person sharing equal physical custody under a current court
24	decree.
25	(4) A person sharing equal parental authority under Chapter 5 of Title
26	VII of Book I of the Louisiana Civil Code.
27	(5) A person who is the natural tutor of a child born outside of marriage.
28	Comments - 2012 Revision
29	(a) Persons authorized to propose relocation of a child's principal residence
30	are generally those with legal decision-making authority over the child, including the
31	sole custodian or domiciliary parent in a joint custody arrangement or the natural
32	tutor of a child born outside of marriage. When parents are married and sharing
33	equal parental authority, both are entitled to propose relocation. Regardless of who
34	holds decision-making authority for the child, however, persons who share equal
35	physical custody of the child under a court decree are equally authorized to propose
36	relocation.
37 38	(b) For the definition of "equal physical custody," see R.S. 9:355.2,
39	Comment (b).
40	(0).
41	§355.3.§355.4. Notice of proposed relocation of child to other parent ;court
42	authorization to relocate

1	A. A parent entitled to primary custody of a child person proposing
2	relocation of a child's principal residence shall notify the other any person
3	recognized as a parent of a proposed relocation of the child's principal residence
4	and any other person awarded custody or visitation under a court decree as
5	required by R.S. 9:355.4, R.S. 9:355.5 but before relocation shall obtain either court
6	authorization to relocate, after a contradictory hearing, or the written consent of the
7	other parent prior to any relocation.
8	B. If both parents multiple persons have equal physical custody of a child
9	under a court decree, a parent the person proposing relocation shall notify the
10	other parent of a proposed relocation of the child's principal residence of the child
11	as required by R.S. 9:355.4, but R.S. 9:355.5, and before relocation shall obtain
12	either court authorization to relocate, after a contradictory hearing, or the express
13	written consent of the other parent prior to any relocation person.
14	Comments - 2012 Revision
15 16 17	(a) See R.S. 9:355.3 for a list of persons authorized to propose relocation of a child's principal residence.
18 19 20	(b) For the definition of "equal physical custody," see R.S. 9:355.2, Comment (b).
21 22 23 24 25	(c) A "person recognized as a parent" under this provision includes persons who have been recognized by a court as parents in a filiation or avowal action, persons who are presumed to be parents under Louisiana Civil Code Articles 185 or 195, and persons who have formally acknowledged a child, as set out in Louisiana Civil Code Article 196, though they have not been judicially recognized as such.
26 27	§355.4.§355.5. Mailing notice of proposed relocation address
28	A. Notice of a proposed relocation of the principal residence of a child shall
29	be given by registered or certified mail, return receipt requested, or delivered by
30	commercial courier as defined in R.S. 13:3204(D), to the last known address of the
31	parent person entitled to notice under R.S. 9:355.4 no later than either any of the
32	<u>following</u> :
33	(1) The sixtieth day before the date of the intended move or proposed
34	relocation.
35	(2) The tenth day after the date that the parent person proposing relocation

1	knows the information required to be furnished by Subsection B of this Section, if
2	the parent person did not know and could not reasonably have known the
3	information in sufficient time to comply with provide the sixty-day notice, and it is
4	not reasonably possible to extend the time for relocation of the child.
5	B. The following information, if available, shall be included with the notice
6	of intended relocation of the child:
7	(1) The current mailing address of the person proposing relocation.
8	(1)(2) The intended new residence, including the specific physical address,
9	if known.
10	(2)(3) The <u>intended new</u> mailing address, if not the same.
11	(3)(4) The home <u>and cellular</u> telephone number <u>numbers of the person</u>
12	proposing relocation, if known.
13	(4)(5) The date of the intended move or proposed relocation.
14	(5)(6) A brief statement of the specific reasons for the proposed relocation
15	of a child , if applicable .
16	(6)(7) A proposal for a revised schedule of physical custody or visitation
17	with the child.
18	(7)(8) A statement informing the other parent that an the person entitled to
19	object shall make any objection to the proposed relocation shall be filed in writing
20	by registered or certified mail, return receipt requested, within thirty days of
21	receipt of the notice and that the other parent should seek legal advice immediately.
22	C. A parent person required to give notice of a proposed relocation shall
23	have a continuing duty to provide the information required by this Section as that
24	information becomes known.
25	Comment - 2012 Revision
26 27 28 29 30 31	The proposal for a revised custody and visitation schedule described in Paragraph (7) of Subsection B of this Section has no legal effect. Any existing custody or visitation order remains in effect unless and until a court orders a modification of custody or visitation. The intent, however, is to require the person proposing relocation to consider and describe in writing how all persons entitled to custody or visitation under an existing order may continue to maintain their relationship with the child after the proposed relocation.

1	§355.6. Failure to give notice of relocation
2	The court may consider a failure to provide notice of a proposed relocation
3	of a child as:
4	(1) A factor in making its determination regarding the relocation of a child.
5	(2) A basis for ordering the return of the child if the relocation has taken
6	place without notice or court authorization.
7	(3) Sufficient cause to order the parent seeking to relocate the child person
8	proposing relocation to pay reasonable expenses and attorney fees incurred by the
9	person objecting to the relocation.
10	§355.7. Objection to relocation of child
11	Except for a person with equal physical custody of a child under a court
12	decree, a person who is entitled to object to a proposed relocation of the
13	principal residence of a child shall make any objection within thirty days after
14	receipt of the notice. The objection shall be made in writing by registered or
15	certified mail, return receipt requested, or delivered by commercial courier as
16	defined in R.S. 13:3204(D), to the mailing address provided for the person
17	proposing relocation in the notice of proposed relocation.
18	A person with equal physical custody of a child under a court decree
19	need not make an objection under this Section. The rights of persons with equal
20	physical custody are governed by R.S. 9:355.4(B).
21	Comments - 2012 Revision
22 23 24 25 26	(a) The objection procedure described in this Section is subject to the limitations described in R.S. 9:355.8. Some persons entitled to receive notice of a proposed relocation of a child's residence are not permitted to object to the proposed relocation.
27 28 29 30 31	(b) A person who is entitled to object to a proposed relocation but chooses not to do so may nonetheless commence an action to change legal or physical custody or the visitation schedule in light of the changed circumstances of the relocation.
32 33 34 35	(c) In the absence of timely objection, retaining an attorney to handle an objection to relocation is not sufficient to require the person proposing relocation to initiate a proceeding.
36 37	(d) For the definition of "equal physical custody," see R.S. 9:355.2, Comment (b).

SB NO. 153 §355.8. Limitation on objection by non-parents

custody. A non-parent who has been awarded visitation may initiate a proceeding to obtain a revised visitation schedule.

A non-parent may object to the relocation only if he has been awarded

Comments - 2012 Revision

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(a) This Section recognizes the primacy of parental rights over non-parent rights regarding relocation of a child. See generally *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed. 49 (2000) (holding that Washington's non-parent visitation statute violated mother's fundamental right to raise her children as she saw fit). Although a non-parent who has not been awarded custody may be entitled to notice of a proposed relocation and may not object to a relocation, the non-parent may, if granted visitation, commence an action to revise the visitation schedule in light of the changed circumstances of the relocation.

(b) This provision governs objections by non-parents only. It does not limit the right of a parent to object to a proposed relocation.

§355.9. Effect of objection or failure to object to notice of proposed relocation

Except as otherwise provided by R.S. 9:355.4(B), the person required to give notice may relocate the principal residence of a child after providing the required notice unless a person entitled to object does so in compliance with

If a written objection is sent in compliance with R.S. 9:355.7, the person proposing relocation of the principal residence of the child shall initiate within thirty days after receiving the objection a summary proceeding to obtain court approval to relocate. Court approval to relocate shall be granted only after a contradictory hearing.

Comment - 2012 Revision

If, at any time, the person proposing relocation and those entitled to object enter into the express written agreement on relocation described in R.S. 9:355.2(D), no summary proceeding or court approval to relocate is necessary. The relocation statutes do not apply to restrict moves for which the parties agree. R.S. 9:355.2(D).

§355.13. **§355.10.** Burden of proof

R.S. 9:355.7.

The relocating parent person proposing relocation has the burden of proof that the proposed relocation is made in good faith and is in the best interest of the child. In determining the child's best interest, the court shall consider the benefits

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which the child will derive either directly or indirectly from an enhancement in the 2 relocating parent's general quality of life. 3 Comments - 2012 Revision 4 (a) Although the person proposing relocation has the burden to prove that the 5 relocation attempt is made both in good faith and in the best interest of the child, there is no presumption in favor of or against relocation of the child's residence. 6 7 This Section places the burden of proof on the person proposing relocation. If an 8 objection to the relocation is made in accordance with R.S. 9:355.7, the person 9 wishing to relocate must prove by a preponderance of the evidence, on contradictory 10 hearing, that relocation meets the good faith and best interest standards. 11 12 (b) This revision eliminates reference to the court's consideration of an 13 enhancement in the quality of life of the person seeking relocation in determining the 14 best interest of the child. It does not, however, change the law. A detailed list of 15 factors to be considered in determining whether relocation is in the best interest of the child is set out in R.S. 9:355.14, and among them is a consideration of "how the 16 relocation of the child will affect the general quality of life for the child, including 17 but not limited to financial or emotional benefit or education opportunity." 18 19 §355.5.§355.11. Court authorization to relocate 20 21 A parent seeking to relocate the principal residence of a child If timely objection to a proposed relocation is made by a person entitled to object, the 22 person proposing relocation shall not, absent express written consent, remove of 23 24 the objecting person, relocate the child pending resolution of the dispute, or by final order of the court, unless the parent person proposing relocation obtains a 25 temporary order to do so pursuant to R.S. 9:355.10 R.S. 9:355.12. 26 27 §355.10.**§355.12.** Temporary order 28 A. The court may grant a temporary order allowing a parent to relocate 29 relocation. 30 B. The court, upon the request of the moving parent party, may hold a limited evidentiary an expedited preliminary hearing on the proposed relocation 31 32 but may shall not grant court authorization to remove relocate the child on an ex parte basis. 33 34 C. If the court issues a temporary order authorizing a parent to relocate with 35 the child relocation, the court may shall not give undue weight to the temporary relocation as a factor in reaching its final determination. 36

D. If temporary relocation of a child is permitted, the court may require the

child's life.

1 parent person relocating the child to provide reasonable security guaranteeing that 2 the court ordered court-ordered physical custody or visitation with the child will not be interrupted or interfered with by the relocating parent or that the relocating 3 parent person will return the child if court authorization for the removal relocation 5 is denied at the final hearing trial. E. An order not in compliance with the provisions of this Section is not 6 enforceable and is null and void. 7 8 Comment - 2012 Revision 9 Subsection (E) of this Section tracks the language of C.C.P. Art. 3945(E), 10 which makes temporary custody orders unenforceable and null and void if not issued in compliance. 11 12 13 §355.9.§355.13. Priority for temporary and final hearing trial 14 A hearing trial on either a temporary or permanent order permitting or restricting the proposed relocation shall be accorded appropriate priority on the 15 16 court's docket assigned within sixty days after the filing of the motion to obtain court approval to relocate. 17 Comments - 2012 Revision 18 19 (a) The trial referenced here is the final hearing on the merits of the 20 relocation; it is to be distinguished from a preliminary hearing on relocation, described in R.S. 9:355.12. 21 22 23 (b) After entry of an order on relocation, a Louisiana court may retain jurisdiction consistent with Louisiana law and the Uniform Child Custody 24 Jurisdiction and Enforcement Act. (R.S. 13:1814). 25 26 27 \$355.12.\$355.14. Factors to determine contested relocation A. In reaching its decision regarding a proposed relocation, the court shall 28 29 consider the following all relevant factors in determining whether relocation is in the best interest of the child, including the following: 30 (1) The nature, quality, extent of involvement, and duration of the child's 31 32 relationship of the child with the parent person proposing to relocate relocation and 33 with the non-relocating parent person, siblings, and other significant persons in the

1	(2) The age, developmental stage, needs of the child, and the likely impact
2	the relocation will have on the child's physical, educational, and emotional
3	development, taking into consideration any special needs of the child.
4	(3) The feasibility of preserving a good relationship between the non-
5	relocating parent person and the child through suitable physical custody or
6	visitation arrangements, considering the logistics and financial circumstances of the
7	parties.
8	(4) The child's preference views about the proposed relocation, taking into
9	consideration the age and maturity of the child.
10	(5) Whether there is an established pattern of conduct of the parent by either
11	the person seeking or the person opposing the relocation, either to promote or
12	thwart the relationship of the child and the nonrelocating other party.
13	(6) Whether <u>How</u> the relocation of the child will enhance <u>affect</u> the general
14	quality of life for both the custodial parent seeking the relocation and the child,
15	including but not limited to financial or emotional benefit or and educational
16	opportunity.
17	(7) The reasons of each parent person for seeking or opposing the relocation.
18	(8) The current employment and economic circumstances of each parent
19	person and whether or not how the proposed relocation is necessary to improve may
20	affect the circumstances of the parent seeking relocation of the child.
21	(9) The extent to which the objecting parent person has fulfilled his or her
22	financial obligations to the parent person seeking relocation, including child support,
23	spousal support, and community property, and alimentary obligations.
24	(10) The feasibility of a relocation by the objecting parent person.
25	(11) Any history of substance abuse, harassment, or violence by either
26	parent the person seeking or the person opposing relocation, including a
27	consideration of the severity of such the conduct and the failure or success of any
28	attempts at rehabilitation.

(12) Any other factors affecting the best interest of the child.

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1 B. The court may not consider whether or not the person seeking relocation 2 of the child will may relocate without the child if relocation is denied or whether or not the person opposing relocation will may also relocate if relocation is allowed. 3 4 Comments - 2012 Revision 5 (a) This revision changes the opening language of the statute to make it clear that, as in cases requiring the application of the factors of Civil Code Article 134, a 6 7 court need not make a factual finding on every factor. 8 9 (b) In considering the needs of the child and the developmental impact of 10 relocation, the court may take into account not only the general needs of similarly 11 situated children, but also any special needs of the particular child under 12 consideration. 13 (c) The "logistics" referred to in Paragraph (3) of Subsection A of this 14 15 Section may include a consideration of the amount of time the child will be required to spend traveling in order to maintain a meaningful relationship with the person 16 17 objecting to the relocation, the distance involved, and the proximity, availability, and 18 safety of travel arrangements. 19 (d) A consideration of the child's "preference" is a traditional factor in cases 20 21 involving custody. The word "views" is used here in order to broaden the inquiry and 22 to decrease the potentially harmful impact of asking a child to choose in a relocation 23 contest. 24 25 (e) Because the focus of the best interest inquiry in relocation is on the child, references to improvements in the custodial parent's quality of life and the necessity 26 27 of improving the circumstances of a parent in Paragraphs (6) and (8) of Subsection A of this Section have been eliminated. A child may benefit or suffer detriment 28 29 either directly or indirectly from a change in the quality of life or economic 30 circumstances of any person exercising custody or visitation with him, and such 31 benefits and detriments are to be considered by the court. The assessment must focus on the effect of relocation on the child, however, and not the benefit that 32 33 relocation will provide to the adults exercising custody or visitation rights. 34 35 (f) The promotion of or interference with the relationship between the child and the other parent described in Paragraphs (3) and (5) of Subsection A of this 36 Section may include a parent's willingness to make travel arrangements that allow 37 the child meaningful time with both parents and that minimize the negative impact 38 39 of long-distance parenting on the child. 40 (g) Paragraph (7) of Subsection A of this Section may lead to a consideration 41 of the mental and emotional well-being of both the person seeking relocation and the 42 43 person opposing it. The substantial mental and emotional toll of custody 44 proceedings should be considered in the relocation context, just as it is in Civil Code 45 Article 134, on factors affecting the best interest of the child in custody disputes in 46 general. 47 48 §355.8.§355.15. Mental health expert; appointment 49 The court, on motion of either party or on its own motion, may promptly appoint an independent mental health expert to render a determination as to whether 50

1 the proposed relocation is in a report to assist the court in determining the best interest of the child. 2 \$355.15.\\$355.16. Application of factors at initial hearing 3 If the issue of relocation is presented at the initial hearing to determine 5 custody of and visitation with a child, the court shall apply consider also the factors set forth in R.S. 9:355.12 R.S. 9:355.14 in making its initial determination. 6 7 Comment - 2012 Revision 8 In an initial custody determination, the court will generally consider the 9 factors concerning best interest of the child set out in Civil Code Article 134. This 10 statute requires the court to consider application of the relevant factors specific to 11 relocation in R.S. 9:355.14 as well as the Article 134 factors. Dicta in McLain v. 12 McLain, 974 So.2d 726, 733 (La. App. 4th Cir. 2007), stating that the Article 134 factors are "arguably not applicable" when relocation is at issue in the initial custody 13 hearing, are no longer accurate under this revision. 14 15 16 §355.17. Continuing jurisdiction 17 If the court grants authorization to relocate, the court may retain continuing, 18 exclusive jurisdiction of the case after relocation of the child as long as the non-19 relocating parent remains in the state. 20 §355.11.§355.17. Proposed relocation not basis for modification Modification of 21 custody 22 Providing notice of a proposed relocation of a child shall does not constitute 23 a change of circumstance warranting a change of custody. Moving Relocating without prior notice if there is a court order awarding custody or moving 24 25 **relocating** in violation of a court order may constitute a change of circumstances 26 warranting a modification of custody. 27 Any change in the principal residence of a child, including one not meeting the threshold distance set out in R.S. 9:355.2, may constitute a change 28 of circumstances warranting a modification of custody. 29 Comments - 2012 Revision 30 31 (a) In accordance with R.S. 9:355.8, not all persons receiving notice of a proposed relocation are entitled to object. Moving without prior notice or in 32 violation of a court order may constitute a change of circumstances warranting a 33 34 modification of custody, but only in a contest between a person proposing relocation

and a person entitled to object to the proposed relocation.

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(b) The second paragraph of this Article clarifies that even a move of less than seventy-five miles may warrant a change of custody. Although such a move would not be sufficient to trigger the protection of the relocation statutes, courts have discretion to modify the current custodial arrangement after any move that makes an existing custody order unfeasible.

§355.14.**§355.18.** Posting security

If relocation of a child is permitted, the court may require the parent person relocating the child to provide reasonable security guaranteeing that the court ordered court-ordered physical custody or visitation with the child will not be interrupted or interfered with by the relocating party.

§355.16.§355.19. Sanctions for unwarranted or frivolous proposal to relocate child or objection to relocation

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

- (1) To harass For the purpose of harassing the other parent or to cause person or causing unnecessary delay or needless increase in the cost of litigation.
- (2) Without being warranted by a basis in existing law or based on the basis of a frivolous argument.
- (3) Based on allegations and other factual contentions which have no evidentiary support nor, if specifically so identified, could not have been reasonably believed to be likely to have evidentiary support after further investigation. <u>In</u> violation of Code of Civil Procedure Article 863(B).
- B. A sanction imposed under this Section shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. The sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty to the court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney fees and other expenses incurred as a direct result of the violation reasonable expenses and attorney fees incurred as a direct

1	result of the conduct.
2	Section 2. R.S. 9:357 is hereby enacted to read as follows:
3	§357. Use of technology
4	The court shall consider ordering persons awarded custody or visitation
5	to use technology, including video calling, telephone, text messaging, Internet
6	communications, or other forms of technology, to facilitate communication with
7	the child when it is in the best interest of the child.
8	Section 3. The Louisiana State Law Institute is hereby directed to add the following
9	comment under Civil Code Article 134:
10	Art. 134. Factors in determining child's best interest
11	* * *
12	Comment - 2012 Revision
13 14 15 16 17 18	The facilitation of the relationship between the child and the other party described in factor (10) may include a party's willingness to make travel arrangements and facilitate electronic communications that allow the child meaningful time with both parties and that minimize the negative impact of long-distance parenting on the child.
19	Section 4. This Act shall not apply to any litigation pending on the effective date of
20	this Act regarding the relocation of the principal residence of a child, but shall apply to any
21	subsequent relocation after final disposition of that litigation.
	The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Julie J. Baxter.

DIGEST

Broome (SB 153)

<u>Present law</u> (R.S. 9:355.1) provides that "equal physical custody" means that the parents share equal parental authority of the child absent a court order to the contrary.

<u>Proposed law</u> (R.S. 9:355.2) provides that "equal physical custody" refers to a custody arrangement under which persons have equal or approximately equal physical custody.

Present law (R.S. 9:355.1) provides a definition of "parent entitled to primary custody".

Proposed law removes this definition as not used elsewhere in family law.

Present law (R.S. 9:355.1) provides a definition of "principal residence of a child".

<u>Proposed law</u> (R.S. 9:355.1) retains <u>present law</u>.

<u>Present law</u> (R.S. 9:355.1) provides that "relocation" means an intent to establish the residence of the child outside of the state, an intent to establish the residence of the child at any location within the state that is at a distance of more than 150 miles from the other parent, an intent to establish the residence of the child at a distance of more than 150 miles from the domicile of the primary custodian, or a change in the principal residence of a child for a period of 60 days or more.

<u>Proposed law</u> (R.S. 9:355.2) revises <u>present law</u> to provide that it shall apply when there is an intent to establish the principal residence of a child at any location within the state that is at a distance of more than 75 miles from the domicile of the other parent, when there is an intent to establish the principal residence of a child at a distance of more than 75 miles from the current principal residence of the child, or when there is an intent to establish the principal residence of a child at a distance of more than 75 miles from the domicile of a person entitled to object to relocation of the child's residence.

Present law (R.S. 9:355.2) provides for the applicability of this Subpart.

<u>Proposed law</u> (R.S. 9:355.2) revises <u>present law</u> to state a distance factor for the application of this Subpart, to change the term "parents of a child" to "persons required to give notice of and persons entitled to object to a proposed relocation", and to provide an exception for "R.S. 9:372.1" in Paragraph (2) Subsection D of Section 355.2.

<u>Proposed law</u> (R.S. 9:355.3) provides for persons authorized to propose a relocation of child's principal residence.

Present law (R.S. 9:355.3) provides for a notice of proposed relocation of child.

<u>Proposed law</u> (R.S. 9:355.4) revises <u>present law</u> to change references <u>from</u> "parent" <u>to</u> "person".

<u>Present law</u> (R.S. 9:355.4) provides for the mailing of a notice of a proposed relocation address.

<u>Proposed law</u> (R.S. 9:355.5) revises <u>present law</u> to change references <u>from</u> "parent" <u>to</u> "person", to provide that information relative to the current mailing address of the person proposing relocation shall be given, to provide that cellular phone numbers shall be given, to provide for a proposed revised schedule of physical custody, and to provide that the person entitled to object shall make any objection in writing within thirty days of the receipt of the notice.

Present law (R.S. 9:355.6) provides for the failure to give notice of relocation.

<u>Proposed law</u> (R.S. 9:355.6) revises <u>present law</u> to change references <u>from</u> "parent" <u>to</u> "person" and to eliminate attorney fees for matters governed by this Section.

<u>Proposed law</u> (R.S. 9:355.7) provides for an objection to the relocation of a child.

<u>Proposed law</u> (R.S. 9:355.8) provides for a limitation on an objection to the relocation of a child by non-parents.

<u>Proposed law</u> (R.S. 9:355.9) provides for the failure to object to a notice of a proposed relocation of a child.

Present law (R.S. 9:355.13) provides for the burden of proof in relocation cases.

<u>Proposed law</u> (R.S. 9:355.10) revises <u>present law</u> to change references from "parent" to "person" and to delete the provision that the court shall consider the enhancement on the child's life that relocation might create.

Present law (R.S. 9:355.5) provides for a court authorization to relocate.

<u>Proposed law</u> (R.S. 9:355.11) revises <u>present law</u> to change references <u>from</u> "parent" <u>to</u> "person" and to provide for a timely objection to a proposed relocation.

Present law (R.S. 9:355.10) provides for a temporary order allowing a parent to relocate.

<u>Proposed law</u> (R.S. 9:355.12) revises <u>present law</u> to change references from "parent" to "person," to provide for physical custody, and to provide that an order not in compliance with this Section is not enforceable and is null and void.

<u>Present law</u> (R.S. 9:355.9) provides for a priority for a hearing on a temporary or final order on relocation.

<u>Proposed law</u> (R.S. 9:355.13) changes <u>present law</u> to provide that a trial on the objection to the proposed relocation shall be held within 60 days after the filing of the summary proceeding.

<u>Present law</u> (R.S. 9:355.12) provides for the factors that a court shall consider in determining if a relocation is in the best interest of the child.

<u>Proposed law</u> (R.S. 9:355.14) revises <u>present law</u> to provide that the court shall consider "all relevant factors", to change references <u>from</u> "parent" <u>to</u> "person" to provide for physical custody, and to provide for harassment by a person seeking or opposing relocation.

Present law (R.S. 9:355.8) provides for the appointment of a mental health expert.

<u>Proposed law</u> (R.S. 9:355.15) revises <u>present law</u> to provide that the court "on motion of either party or on its own motion" may appoint a mental health expert to render a report.

<u>Present law</u> (R.S. 9:355.15) provides for the application of certain factors at an initial hearing.

<u>Proposed law</u> (R.S. 9:355.16) revises <u>present law</u> to provide that the court "shall consider also" the factors in proposed R.S. 9:355.14 at an initial hearing.

Present law (R.S. 9:355.17) provides for continuing jurisdiction.

<u>Proposed law</u> removes this reference, as Louisiana law already provides for continuing jurisdiction.

<u>Present law</u> (R.S. 9:355.11) provides for a possible modification of custody as a result of a proposed relocation.

Present law (R.S. 9:355.14) provides for posting security.

<u>Proposed law</u> (R.S. 9:355.18) revises <u>present law</u> to change references <u>from</u> "parent" <u>to</u> "person" and to provide for physical custody.

Present law (R.S. 9:355.16) provides for sanctions.

 $\underline{\text{Proposed law}}$ (R.S. 9:355.19) revises $\underline{\text{present law}}$ to change references $\underline{\text{from}}$ "parent" $\underline{\text{to}}$ "person".

<u>Proposed law</u> (R.S. 9:357) provides a court with the authority to order persons awarded custody or visitation to use technology to facilitate communication with the child when it is in the best interest of the child.

<u>Proposed law</u> directs the Louisiana State Law Institute to add a comment under Civil Code Article 134 relative to electronic communications between a child and other parties.

Effective August 1, 2012.

(Amends R.S. 9:355.1 - 355.19; adds R.S. 9:357; adds Comment under Civil Code Article 134)