

SENATE BILL NO. 153

BY SENATORS BROOME AND PETERSON AND REPRESENTATIVES BARROW,
KATRINA JACKSON, MORENO, NORTON, SMITH, ST. GERMAIN
AND THIERRY (On Recommendation of the Louisiana State Law
Institute)

1 AN ACT

2 To amend and reenact Subpart E of Part III of Chapter 1 of Code Title V of Code Book I of
3 Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:355.1
4 through 355.19, to enact R.S. 9:357, and to direct the Louisiana State Law Institute
5 to add a comment under Civil Code Article 134, relative to child custody and the
6 relocation of the residence of a child; to provide for definitions; to provide for
7 applicability; to provide for the proposal of relocation; to provide for notice; to
8 provide for an objection; to provide for a limitation on an objection; to provide for
9 the failure to object; to provide for the burden of proof; to provide for court
10 authorization to relocate; to provide for a temporary order; to provide for the priority
11 for trial; to provide for factors to determine a contested relocation; to provide for the
12 appointment of a mental health expert; to provide for a modification of custody; to
13 provide for a posting of security; to provide for sanctions; to provide for the use of
14 technology; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. Subpart E of Part III of Chapter 1 of Code Title V of Code Book I of Title
17 9 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:355.1 through 355.19, is
18 hereby amended and reenacted to read as follows:

19 SUBPART E. RELOCATING A CHILD'S RESIDENCE

20 §355.1. Definitions

21 As used in this Subpart:

22 (1) ~~"Equal physical custody" means that the parents share equal parental~~
23 ~~authority of the child absent a court order to the contrary.~~

1 govern the relocation of the child.

2 **B. This Subpart shall apply to a proposed relocation when any of the**
 3 **following exist:**

4 **(1) There is intent to establish the principal residence of a child at any**
 5 **location outside the state.**

6 **(2) There is no court order awarding custody and there is an intent to**
 7 **establish the principal residence of a child at any location within the state that**
 8 **is at a distance of more than seventy-five miles from the domicile of the other**
 9 **parent.**

10 **(3) There is a court order awarding custody and there is an intent to**
 11 **establish the principal residence of a child at any location within the state that**
 12 **is at a distance of more than seventy-five miles from the principal residence of**
 13 **the child at the time that the most recent custody decree was rendered.**

14 **(4) If either no principal residence of a child has been designated by the**
 15 **court or the parties have equal physical custody, and there is an intent to**
 16 **establish the principal residence of a child at any location within the state that**
 17 **is at a distance of more than seventy-five miles from the domicile of a person**
 18 **entitled to object to relocation.**

19 ~~B.C.~~ To the extent that ~~a provision of~~ this Subpart conflicts with an existing
 20 custody order, this Subpart shall not apply to the terms of that order that ~~governs~~
 21 **govern** relocation of the child.

22 ~~C.D.~~ This Subpart shall not apply when **either of the following**
 23 **circumstances exist:**

24 (1) ~~The parents of a child~~ **persons required to give notice of and the**
 25 **persons entitled to object to a proposed relocation** have entered into an express
 26 written agreement for ~~the~~ a temporary relocation of ~~that child's~~ **the** principal
 27 residence **of the child** regardless of the duration of the temporary relocation.

28 (2) ~~An~~ **There is in effect an** order issued pursuant to Domestic Abuse
 29 Assistance, **R.S. 46:2131, et seq., Protection from Dating Violence, R.S. 46:2151,**
 30 Part II of Chapter 28 of Title 46 or the Post-Separation Family Violence Relief Act

1 or Injunctions and Incidental Orders, Parts IV and V of Chapter 1 of Code Title V
 2 of Code Book I of Title 9, except R.S. 9:372.1, all of the Louisiana Revised Statutes
 3 of 1950, Domestic Abuse Assistance, Chapter 8 of Title XV of the Children's Code,
 4 or any other restraining order, preliminary injunction, permanent injunction, or any
 5 protective order prohibiting a ~~spouse~~ person from harming or going near or in the
 6 proximity of the other ~~spouse is in effect~~ person.

7 Comments - 2012 Revision

8 (a) This revision reduces the threshold distance for application of the
 9 relocation statutes from one hundred fifty miles to seventy-five miles in recognition
 10 of the likelihood that weekday visitation and the general ability to participate in the
 11 child's daily life will be substantially affected by distances of more than seventy-five
 12 miles. The relocation laws of a number of other states hinge upon relocations
 13 involving even shorter distances. See, e.g., Ala. Code 1975 §30-3-162 (60 miles);
 14 Florida Stat. §61.13001 (50 miles); Maine Rev. Stat. §1657 (60 miles); Or. Rev. Stat.
 15 §107.159 (60 miles).

16 (b) "Equal physical custody" in Paragraph (4) of Subsection B of this Section
 17 refers to a custody arrangement under which persons have equal or approximately
 18 equal physical custody. It should be interpreted to mean one-half or an
 19 approximately equal amount of time, expressed in percentages such as forty-nine
 20 percent/fifty-one percent. "Equal physical custody" is distinguished from "shared
 21 custody" under R.S. 9:315.9, which Louisiana courts have interpreted to include
 22 custody arrangements with a split of sixty-three percent/thirty-seven percent. See,
 23 e.g., *Westcott v. Westcott*, 927 So. 2d 377 (La. App. 1st Cir. 2005). Such a split is
 24 not "equal physical custody" under this statute.
 25

26 (c) If a person proposes relocation of a child within the state and within
 27 distances shorter than those prescribed under Subsection B of this Section,
 28 Louisiana's relocation statutes have no application, and the person seeking to relocate
 29 has no obligation to provide notice or seek court approval in advance of the move.
 30

31 (d) Paragraph (3) of Subsection B of this Section changes the focus of the
 32 distance threshold from the domicile of the primary custodian at the time that the
 33 custody decree was rendered to the principal residence of the child at the time of the
 34 custody decree in light of the notion that the body of relocation statutes focuses on
 35 a relocation of the child and not his caregivers.
 36

37 (e) See R.S. 9:355.7 and 355.8 regarding the persons entitled to object to a
 38 proposed relocation. Not all persons entitled to notice of a relocation are permitted
 39 to object.
 40

41 (f) The purpose of Paragraph (2) of Subsection D of this Section is to prevent
 42 the application of Louisiana's child relocation statutes, requiring the party proposing
 43 relocation to notify a person entitled to receive notice of the details of the proposed
 44 move, in situations involving family violence, domestic abuse, and the like. The
 45 reference to "Part V of Chapter 1 of Code Title V of Code Book I of Title 9,"
 46 however, includes R.S. 9:372.1, which governs an injunction prohibiting harassment.
 47 When an injunction has been issued only under R.S. 9:372.1, there is insufficient
 48 justification for exempting the proposed relocation from the requirements of the
 49 child relocation statutes.
 50

51 **§355.3. Persons authorized to propose relocation of principal residence of a**
 52

1 child

2 The following persons are authorized to propose relocation of the
 3 principal residence of a child by complying with the notice requirements of this

4 Subpart:

5 (1) A person designated in a current court decree as the sole custodian.

6 (2) A person designated in a current court decree as a domiciliary
 7 parent in a joint custody arrangement.

8 (3) A person sharing equal physical custody under a current court
 9 decree.

10 (4) A person sharing equal parental authority under Chapter 5 of Title
 11 VII of Book I of the Louisiana Civil Code.

12 (5) A person who is the natural tutor of a child born outside of marriage.

13 Comments - 2012 Revision

14 (a) Persons authorized to propose relocation of a child's principal residence
 15 are generally those with legal decision-making authority over the child, including the
 16 sole custodian or domiciliary parent in a joint custody arrangement or the natural
 17 tutor of a child born outside of marriage. When parents are married and sharing
 18 equal parental authority, both are entitled to propose relocation. Regardless of who
 19 holds decision-making authority for the child, however, persons who share equal
 20 physical custody of the child under a court decree are equally authorized to propose
 21 relocation.

22
 23 (b) For the definition of "equal physical custody," see R.S. 9:355.2,
 24 Comment (b).
 25

26 ~~§355.3.~~§355.4. Notice of proposed relocation of child to ~~other parent~~ court
 27 authorization to relocate

28 A. A parent ~~entitled to primary custody of a child~~ person proposing
 29 relocation of a child's principal residence shall notify ~~the other~~ any person
 30 recognized as a parent of a proposed relocation of the child's principal residence
 31 and any other person awarded custody or visitation under a court decree as
 32 required by R.S. 9:355.4, R.S. 9:355.5 but before relocation shall obtain either court
 33 authorization to relocate, ~~after a contradictory hearing, or the written consent of the~~
 34 ~~other parent prior to any relocation.~~

35 B. If both parents multiple persons have equal physical custody of a child

1 under a court decree, a parent the person proposing relocation shall notify the
 2 other parent of a proposed relocation of the child's principal residence of the child
 3 as required by ~~R.S. 9:355.4~~, but R.S. 9:355.5, and before relocation shall obtain
 4 either court authorization to relocate, after a contradictory hearing, or the express
 5 written consent of the other parent ~~prior to any relocation~~ person.

6 Comments - 2012 Revision

7 (a) See R.S. 9:355.3 for a list of persons authorized to propose relocation of
 8 a child's principal residence.

9
 10 (b) For the definition of "equal physical custody," see R.S. 9:355.2,
 11 Comment (b).

12
 13 (c) A "person recognized as a parent" under this provision includes persons
 14 who have been recognized by a court as parents in a filiation or avowal action,
 15 persons who are presumed to be parents under Louisiana Civil Code Articles 185 or
 16 195, and persons who have formally acknowledged a child, as set out in Louisiana
 17 Civil Code Article 196, though they have not been judicially recognized as such.

18
 19 ~~§355.4.~~§355.5. Mailing notice of proposed relocation address

20 A. Notice of a proposed relocation of the principal residence of a child shall
 21 be given by registered or certified mail, return receipt requested, or delivered by
 22 commercial courier as defined in R.S. 13:3204(D), to the last known address of the
 23 parent person entitled to notice under R.S. 9:355.4 no later than either any of the
 24 following:

25 (1) The sixtieth day before the date of the ~~intended move~~ or proposed
 26 relocation.

27 (2) The tenth day after the date that the parent person proposing relocation
 28 knows the information required to be furnished by Subsection B of this Section, if
 29 the parent person did not know and could not reasonably have known the
 30 information in sufficient time to ~~comply with~~ provide the sixty-day notice, and it is
 31 not reasonably possible to extend the time for relocation of the child.

32 B. The following information, ~~if available~~, shall be included with the notice
 33 of intended relocation of the child:

34 (1) The current mailing address of the person proposing relocation.

35 ~~(1)~~(2) The intended new residence, including the specific physical address,
 36 if known.

1 ~~(2)~~**(3)** The **intended new** mailing address, if not the same.

2 ~~(3)~~**(4)** The home **and cellular** telephone ~~number~~ **numbers of the person**
 3 **proposing relocation**, if known.

4 ~~(4)~~**(5)** The date of the ~~intended move or~~ proposed relocation.

5 ~~(5)~~**(6)** A brief statement of the specific reasons for the proposed relocation
 6 of a child, ~~if applicable~~.

7 ~~(6)~~**(7)** A proposal for a revised schedule of **physical custody or** visitation
 8 with the child.

9 ~~(7)~~**(8)** A statement informing the other parent that an **the person entitled to**
 10 **object shall make any** objection to the proposed relocation ~~shall be filed~~ **in writing**
 11 **by registered or certified mail, return receipt requested**, within thirty days of
 12 receipt of the notice and ~~that the other parent~~ should seek legal advice immediately.

13 C. A ~~parent~~ **person** required to give notice of a proposed relocation shall
 14 have a continuing duty to provide the information required by this Section as that
 15 information becomes known.

16 Comment - 2012 Revision

17 The proposal for a revised custody and visitation schedule described in
 18 Paragraph (7) of Subsection B of this Section has no legal effect. Any existing
 19 custody or visitation order remains in effect unless and until a court orders a
 20 modification of custody or visitation. The intent, however, is to require the person
 21 proposing relocation to consider and describe in writing how all persons entitled to
 22 custody or visitation under an existing order may continue to maintain their
 23 relationship with the child after the proposed relocation.
 24

25 §355.6. Failure to give notice of relocation

26 The court may consider a failure to provide notice of a proposed relocation
 27 of a child as:

28 (1) A factor in making its determination regarding the relocation of a child.

29 (2) A basis for ordering the return of the child if the relocation has taken
 30 place without notice or court authorization.

31 (3) Sufficient cause to order the ~~parent seeking to relocate the child~~ **person**
 32 **proposing relocation** to pay reasonable expenses ~~and attorney fees~~ incurred by the
 33 person objecting to 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 R.S. 9:355.7.

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

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 which the child will derive either directly or indirectly from an enhancement in the relocating parent's general quality of life.~~

Comments - 2012 Revision

(a) Although the person proposing relocation has the burden to prove that the 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. This Section places the burden of proof on the person proposing relocation. If an objection to the relocation is made in accordance with R.S. 9:355.7, the person wishing to relocate must prove by a preponderance of the evidence, on contradictory hearing, that relocation meets the good faith and best interest standards.

(b) This revision eliminates reference to the court's consideration of an enhancement in the quality of life of the person seeking relocation in determining the best interest of the child. It does not, however, change the law. A detailed list of 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

1 relocation of the child will affect the general quality of life for the child, including
2 but not limited to financial or emotional benefit or education opportunity."

3
4 ~~§355.5.~~**§355.11.** Court authorization to relocate

5 ~~A parent seeking to relocate the principal residence of a child~~ **If timely**
6 **objection to a proposed relocation is made by a person entitled to object, the**
7 **person proposing relocation** shall not, absent **express written** consent, ~~remove of~~
8 **the objecting person, relocate** the child pending resolution of **the** dispute, ~~or by~~
9 final order of the court, unless the ~~parent~~ **person proposing relocation** obtains a
10 temporary order ~~to do so~~ pursuant to ~~R.S. 9:355.10~~ **R.S. 9:355.12.**

11 ~~§355.10.~~**§355.12.** Temporary order

12 A. The court may grant a temporary order allowing ~~a parent to relocate~~
13 **relocation.**

14 B. The court, upon the request of the moving ~~parent~~ **party**, may hold a
15 ~~limited evidentiary~~ **an expedited preliminary** hearing on the proposed relocation
16 but ~~may~~ **shall** not grant ~~court~~ authorization to ~~remove~~ **relocate** the child on an ex
17 parte basis.

18 C. If the court issues a temporary order authorizing ~~a parent to relocate with~~
19 ~~the child~~ **relocation**, the court ~~may~~ **shall** not give undue weight to the temporary
20 relocation as a factor in reaching its final determination.

21 D. If temporary relocation of a child is permitted, the court may require the
22 ~~parent~~ **person** relocating the child to provide reasonable security guaranteeing that
23 the ~~court ordered~~ **court-ordered physical custody or** visitation with the child will
24 not be interrupted or interfered with ~~by the relocating parent~~ or that the relocating
25 ~~parent~~ **person** will return the child if court authorization for the ~~removal~~ **relocation**
26 is denied at ~~the final hearing~~ **trial.**

27 **E. An order not in compliance with the provisions of this Section is not**
28 **enforceable and is null and void.**

29 Comment - 2012 Revision

30 Subsection (E) of this Section tracks the language of C.C.P. Art. 3945(E),
31 which makes temporary custody orders unenforceable and null and void if not issued
32 in compliance.
33

1 thwart the relationship of the child and the ~~nonrelocating~~ other party.

2 (6) ~~Whether~~ How the relocation of the child will ~~enhance~~ affect the general
3 quality of life for ~~both the custodial parent seeking the relocation and~~ the child,
4 including but not limited to financial or emotional benefit ~~or~~ and educational
5 opportunity.

6 (7) The reasons of each ~~parent~~ parent person for seeking or opposing the relocation.

7 (8) The current employment and economic circumstances of each ~~parent~~
8 person and ~~whether or not~~ how the proposed relocation is ~~necessary to improve~~ may
9 affect the circumstances of the ~~parent seeking relocation of the~~ child.

10 (9) The extent to which the objecting ~~parent~~ parent person has fulfilled his ~~or her~~
11 financial obligations to the ~~parent~~ parent person seeking relocation, including child support,
12 spousal support, and community property, and alimentary obligations.

13 (10) The feasibility of a relocation by the objecting ~~parent~~ parent person.

14 (11) Any history of substance abuse, harassment, or violence by either
15 ~~parent~~ the person seeking or the person opposing relocation, including a
16 consideration of the severity of ~~such~~ the conduct and the failure or success of any
17 attempts at rehabilitation.

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

19 B. The court may not consider whether ~~or not~~ the person seeking relocation
20 of the child ~~will~~ may relocate without the child if relocation is denied or whether ~~or~~
21 ~~not~~ the person opposing relocation ~~will~~ may also relocate if relocation is allowed.

22 Comments - 2012 Revision

23 (a) This revision changes the opening language of the statute to make it clear
24 that, as in cases requiring the application of the factors of Civil Code Article 134, a
25 court need not make a factual finding on every factor.

26 (b) In considering the needs of the child and the developmental impact of
27 relocation, the court may take into account not only the general needs of similarly
28 situated children, but also any special needs of the particular child under
29 consideration.
30

31 (c) The "logistics" referred to in Paragraph (3) of Subsection A of this
32 Section may include a consideration of the amount of time the child will be required
33 to spend traveling in order to maintain a meaningful relationship with the person
34 objecting to the relocation, the distance involved, and the proximity, availability, and
35 safety of travel arrangements.
36
37

1 (d) A consideration of the child's "preference" is a traditional factor in cases
 2 involving custody. The word "views" is used here in order to broaden the inquiry and
 3 to decrease the potentially harmful impact of asking a child to choose in a relocation
 4 contest.
 5

6 (e) Because the focus of the best interest inquiry in relocation is on the child,
 7 references to improvements in the custodial parent's quality of life and the necessity
 8 of improving the circumstances of a parent in Paragraphs (6) and (8) of Subsection
 9 A of this Section have been eliminated. A child may benefit or suffer detriment
 10 either directly or indirectly from a change in the quality of life or economic
 11 circumstances of any person exercising custody or visitation with him, and such
 12 benefits and detriments are to be considered by the court. The assessment must
 13 focus on the effect of relocation on the child, however, and not the benefit that
 14 relocation will provide to the adults exercising custody or visitation rights.
 15

16 (f) The promotion of or interference with the relationship between the child
 17 and the other parent described in Paragraphs (3) and (5) of Subsection A of this
 18 Section may include a parent's willingness to make travel arrangements that allow
 19 the child meaningful time with both parents and that minimize the negative impact
 20 of long-distance parenting on the child.
 21

22 (g) Paragraph (7) of Subsection A of this Section may lead to a consideration
 23 of the mental and emotional well-being of both the person seeking relocation and the
 24 person opposing it. The substantial mental and emotional toll of custody
 25 proceedings should be considered in the relocation context, just as it is in Civil Code
 26 Article 134, on factors affecting the best interest of the child in custody disputes in
 27 general.
 28

29 ~~§355.8.~~§355.15. Mental health expert; appointment

30 The court, **on motion of either party or on its own motion**, may promptly
 31 appoint an independent mental health expert to render ~~a determination as to whether~~
 32 ~~the proposed relocation is in~~ **a report to assist the court in determining** the best
 33 interest of the child.

34 ~~§355.15.~~§355.16. Application of factors at initial hearing

35 If the issue of relocation is presented at the initial hearing to determine
 36 custody of and visitation with a child, the court shall ~~apply~~ **consider also** the factors
 37 set forth in ~~R.S. 9:355.12~~ **R.S. 9:355.14** in making its initial determination.
 38

38 Comment - 2012 Revision

39 In an initial custody determination, the court will generally consider the
 40 factors concerning best interest of the child set out in Civil Code Article 134. This
 41 statute requires the court to consider application of the relevant factors specific to
 42 relocation in R.S. 9:355.14 as well as the Article 134 factors. Dicta in *McLain v.*
 43 *McLain*, 974 So.2d 726, 733 (La. App. 4th Cir. 2007), stating that the Article 134
 44 factors are "arguably not applicable" when relocation is at issue in the initial custody
 45 hearing, are no longer accurate under this revision.
 46

47 ~~§355.17.~~ Continuing jurisdiction

1 made or the objection was filed:

2 (1) ~~To harass~~ **For the purpose of harassing** the other parent or to cause
3 **person or causing** unnecessary delay or needless increase in the cost of litigation.

4 (2) Without being warranted by **a basis in** existing law or based on **the basis**
5 **of** a frivolous argument.

6 (3) ~~Based on allegations and other factual contentions which have no~~
7 ~~evidentiary support nor, if specifically so identified, could not have been reasonably~~
8 ~~believed to be likely to have evidentiary support after further investigation.~~ **In**
9 **violation of Code of Civil Procedure Article 863(B).**

10 B. A sanction imposed under this Section shall be limited to what is
11 sufficient to deter repetition of such conduct ~~or comparable conduct by others~~
12 ~~similarly situated.~~ The sanction may consist of, ~~or include, directives of a~~
13 ~~nonmonetary nature, an order to pay a penalty to the court, or, if imposed on motion~~
14 ~~and warranted for effective deterrence, an order directing payment to the movant of~~
15 ~~some or all of the reasonable attorney fees and other expenses incurred as a direct~~
16 ~~result of the violation~~ **reasonable expenses and attorney fees incurred as a direct**
17 **result of the conduct.**

18 Section 2. R.S. 9:357 is hereby enacted to read as follows:

19 **§357. Use of technology**

20 **The court shall consider ordering persons awarded custody or visitation**
21 **to use technology, including video calling, telephone, text messaging, Internet**
22 **communications, or other forms of technology, to facilitate communication with**
23 **the child when it is in the best interest of the child.**

24 Section 3. The Louisiana State Law Institute is hereby directed to add the following
25 comment under Civil Code Article 134:

26 Art. 134. Factors in determining child's best interest

27 * * *

28 Comment - 2012 Revision

29 The facilitation of the relationship between the child and the other party
30 described in factor (10) may include a party's willingness to make travel
31 arrangements and facilitate electronic communications that allow the child

1 meaningful time with both parties and that minimize the negative impact of
2 long-distance parenting on the child.

3
4 Section 4. This Act shall not apply to any litigation pending on the effective date of
5 this Act regarding the relocation of the principal residence of a child, but shall apply to any
6 subsequent relocation after final disposition of that litigation.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____