

Senate Bill 16

By: Senator Harp of the 16th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 9 of Title 19 of the Official Code of Georgia Annotated, relating to child
2 custody proceedings, so as to provide for a new article regarding the relocation of children
3 subject to custody or visitation orders or agreements; to provide for definitions and
4 applicability; to provide for notices of proposed relocations and changes of residence; to
5 provide for court orders regarding notices of proposed relocations; to provide exceptions for
6 certain disclosures; to provide for failure to comply with required notices of proposed
7 relocations and changes of residence; to provide for additional grounds to modify custody
8 or visitation orders or agreements; to provide for relocations; to provide for hearings; to
9 provide for factors in considering a change in custody and for initial determinations of
10 custody or visitation; to provide for security guarantees; to provide for judicial and other
11 sanctions; to repeal an existing notification requirement; to repeal conflicting laws; and for
12 other purposes.

13 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

14 **SECTION 1.**

15 Chapter 9 of Title 19 of the Official Code of Georgia Annotated, relating to child custody
16 proceedings, is amended by adding at the end a new article to read as follows:

17 **"ARTICLE 4**

18 19-9-90.

19 As used in this article, the term:

- 20 (1) 'Change of residence address of an individual' means a change in the primary
21 residence of an individual entitled to custody of or visitation with a child.
22 (2) 'Child' means a minor.
23 (3) 'Enforceable agreement' means a written agreement that is subject to court
24 enforcement.

1 (4) 'Individual entitled to custody of or visitation with a child' means a person so entitled
2 by virtue of a court order or by an enforceable agreement.

3 (5) 'Principal residence of a child' means:

4 (A) The location designated by a court to be the primary residence of the child;

5 (B) In the absence of a court order, the location at which the parties, by an enforceable
6 agreement, have agreed that the child will primarily reside; or

7 (C) In the absence of a court order or an enforceable agreement, the location, if any,
8 at which the child, immediately preceding the time involved, lived with the child's
9 parents, a parent, or a person acting as parent for at least six consecutive months or, in
10 the case of a child less than six months old, the location at which the child lived from
11 birth with any of the persons mentioned. Periods of temporary absence of any of the
12 named persons are counted as part of the six-month or other period.

13 (6) 'Relocation' means a change in the principal residence of a child for a period of 60
14 days or more but does not include a temporary absence from the principal residence.

15 19-9-91.

16 (a) The provisions of this article apply to an order or enforceable agreement regarding
17 custody of or visitation with a child issued or entered into:

18 (1) On or after the effective date of this article; or

19 (2) Before the effective date of this article, if such order or enforceable agreement does
20 not expressly govern the relocation of the child or there is a change in the primary
21 residence address of a party to the order or agreement.

22 (b) To the extent that a provision of this article conflicts with an existing custody or
23 visitation order or enforceable agreement, this article does not apply to the terms of that
24 order or agreement that govern relocation of the child or a change of residence address of
25 an individual who is a party to that order or agreement.

26 19-9-92.

27 Except as provided by Code Section 19-9-96:

28 (1) A person who has the right to establish the principal residence of a child shall notify
29 every other individual entitled to custody of or visitation with that child of a proposed
30 relocation of the child as required by Code Section 19-9-94; and

31 (2) When both parents of a child have joint legal custody of that child, either parent who
32 proposes relocation of that child shall notify the other parent and every other individual
33 entitled to custody of or visitation with that child of such proposed relocation as required
34 by Code Section 19-9-94.

1 19-9-93.

2 Except as provided by Code Section 19-9-96, an individual who is entitled to custody of
3 or visitation with a child and who intends to make a change of residence address of that
4 individual shall notify every other individual entitled to custody of or visitation with that
5 child of that intended change as required by Code Section 19-9-94.

6 19-9-94.

7 (a) Except as provided by Code Section 19-9-96, notice of a proposed relocation or notice
8 of an intended change of residence address of an individual as provided in this article must
9 be:

10 (1) Given by certified mail, return receipt requested, or statutory overnight delivery to
11 the last known address of the person to be notified; and

12 (2) Mailed or sent no later than:

13 (A) The sixtieth day before the date of the intended move or proposed relocation; or

14 (B) The tenth day after the date that the relocating person knows the information
15 required to be furnished by subsection (b) of this Code section, if the person did not
16 know and could not reasonably have known the information in sufficient time to
17 comply with the 60 day notice requirement and it is not reasonably possible to extend
18 the time for relocation of the child.

19 (b) Except as provided by Code Section 19-9-96, the following information, if available,
20 must be included with the notice of intended relocation of the child or change of residence
21 address of an individual:

22 (1) The information specified in paragraphs (1) through (6) of Code Section 19-9-95; and

23 (2) A notice to the nonrelocating parent that a petition to modify custody based on the
24 relocation, when that relocation results in the child's principal residence being more than
25 100 miles from the primary residence of the nonrelocating parent, must be filed within
26 33 days after the date the notice was mailed or sent via statutory overnight delivery or
27 relocation alone will not be sufficient grounds for a change of custody.

28 (c) A person required to give notice of a proposed relocation or change of residence
29 address of an individual under this Code section has a continuing duty to provide notice of
30 a change in or addition to the information required by this Code section as that information
31 becomes known.

32 19-9-95.

33 On and after the effective date of this article, an order issued by a court directed to an
34 individual entitled to custody of or visitation with a child shall include the following terms:

1 'You, as a party in this action, are ordered to notify every other individual entitled to
2 custody of or visitation with the child covered by this order of a proposed relocation of
3 that child or change of your primary residence address unless you obtain a court order
4 under Code Section 19-9-96 finding that the health, safety, or liberty of you or the child
5 would be unreasonably put at risk. The notice must include the following information:

- 6 (1) The intended new residence, including the specific address, if known;
- 7 (2) The mailing address, if not the same;
- 8 (3) The home telephone number, if known;
- 9 (4) The date of the intended move or proposed relocation;
- 10 (5) A brief statement of the specific reasons for the proposed relocation of the child, if
11 applicable; and
- 12 (6) A proposal for a revised schedule of visitation with the child, if any.

13 You are further ordered to give notice of the proposed relocation or change of primary
14 residence address on or before the sixtieth day before a proposed change. If you do not
15 know and could not have reasonably known of the change in sufficient time to comply
16 with the 60 day notice requirement, you are ordered to give notice of the change on or
17 before the tenth day after the date that you know of the change. Notice shall be given by
18 certified mail, return receipt requested, or statutory overnight delivery.

19 Your obligation to furnish this information to every other individual entitled to custody
20 of or visitation with that child continues as long as you or any other person, by virtue of
21 this order, are entitled to custody of or visitation with the child covered by this order.

22 Your failure to obey the order of this court to provide every other individual entitled to
23 custody of or visitation with that child covered by this order with notice of information
24 regarding the proposed relocation or change of residence address may result in further
25 litigation to enforce this order, including contempt of court and the filing of a petition to
26 modify custody. A finding of contempt may be punished by fine and reasonable
27 expenses and attorney's fees for obtaining a contempt order.

28 In addition, your failure to notify of a relocation of that child may be taken into account
29 in a modification of custody of, visitation with, possession of, or access to the child.

30 If you, as the nonrelocating parent, do not file a petition to modify custody within 33 days
31 after receipt of notice of the intent of the other party to relocate the residence of the child,
32 when that relocation results in the child's principal residence being more than 100 miles
33 from the primary residence of the nonrelocating parent, or, if no notice is provided,
34 within 90 days after such relocation occurs, relocation alone will not be sufficient
35 grounds for a change of custody.'

1 19-9-96.

2 (a) On a finding by the court that the health, safety, or liberty of an individual or a child
3 would be unreasonably put at risk by the disclosure of the required identifying information
4 in conjunction with a proposed relocation or change of residence address of an individual,
5 the court may order that:

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

9 (2) The notice requirements provided by this article be waived to the extent necessary
10 to protect confidentiality and the health, safety, or liberty of an individual or child; and

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

13 (b) If appropriate, the court may conduct an ex parte hearing under this Code section.

14 19-9-97.

15 (a) The court may consider a failure to provide notice of a proposed relocation of a child
16 or change of residence address of an individual as provided by Code Sections 19-9-92
17 through 19-9-95 as:

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

19 (2) A basis for ordering the return of the child if the relocation has taken place without
20 notice; and

21 (3) Sufficient cause to order the person seeking to relocate the child to pay reasonable
22 expenses and attorney's fees incurred by the person entitled to notice.

23 (b) In addition to the sanctions provided by subsection (a) of this Code section, the court
24 may make a finding of contempt if a party violates the notice requirement provided by
25 Code Section 19-9-95 and may only impose as sanctions for contempt a fine not to exceed
26 \$500.00, notwithstanding the provisions of Code Section 15-6-8, and reasonable expenses
27 and attorney' fees in obtaining a contempt order.

28 19-9-98.

29 The relocation of a child by a parent, when that relocation results in the child's principal
30 residence being more than 100 miles from the primary residence of the nonrelocating
31 parent, whether or not the relocation is made in compliance with this article, shall be a
32 change in material conditions or circumstances sufficient to constitute grounds for the other
33 parent to bring an action to modify an order or enforceable agreement governing the
34 custody of that child if the action is filed within 33 days after the notice of relocation is
35 mailed or sent or, if no notice is provided, filed within 90 days after the relocation occurs.

1 19-9-99.

2 The person entitled to custody of a child may relocate the principal residence of a child on
3 or after the date specified in the notice after providing notice as provided by this article
4 unless a court orders otherwise.

5 19-9-100.

6 If relocation of the child is proposed, a nonparent entitled by court order or enforceable
7 agreement to visitation with a child may file a proceeding to obtain a revised schedule of
8 visitation but may not object to the proposed relocation. A proceeding filed under this
9 Code section must be filed within 33 days of mailing or sending of notice of a proposed
10 relocation or, if no notice is provided, within 90 days after the relocation occurs.

11 19-9-101.

12 A hearing on a modification of custody based on a relocation as authorized pursuant to this
13 article shall be expedited so as not to prejudice the best interest of the child.

14 19-9-102.

15 In reaching its decision regarding a custody modification based upon a proposed relocation
16 of a child and in addition to any other factors required by law, the court may consider the
17 following factors:

18 (1) The nature, quality, extent of involvement, and duration of the child's relationship
19 with the person proposing to relocate and with the nonrelocating person, siblings, and
20 other significant persons in the child's life;

21 (2) The age, developmental stage, and needs of the child and the likely impact the
22 relocation will have on the child's physical, educational, and emotional development,
23 taking into consideration any special needs of the child;

24 (3) The feasibility of preserving the relationship between the nonrelocating person and
25 the child through suitable visitation arrangements, considering the logistics and financial
26 circumstances of the parties;

27 (4) The child's preference, taking into consideration the age and maturity of the child;

28 (5) Whether there is an established pattern of conduct of the person seeking the
29 relocation, either to promote or thwart the relationship of the child and the nonrelocating
30 person;

31 (6) Whether the relocation of the child will enhance the general quality of life for both
32 the custodial party seeking the relocation and the child, including but not limited to
33 financial or emotional benefit or educational opportunity;

34 (7) The reasons of each person for seeking or opposing the relocation; and

1 (8) Any other factor affecting the best interest of the child.

2 19-9-103.

3 (a) After notice and a reasonable opportunity to respond, the court may impose a sanction
4 on a person proposing a relocation of a child or filing for modification of custody based on
5 a proposed relocation of a child if it determines that the proposal was made or the request
6 for modification was filed:

7 (1) To harass a person or to cause unnecessary delay or needless increase in the cost of
8 litigation;

9 (2) Without being warranted by existing law or was based on frivolous argument; or

10 (3) Based on allegations and other factual contentions which had no evidentiary support
11 nor, if specifically so identified, could have been reasonably believed to be likely to have
12 evidentiary support after further investigation.

13 (b) A sanction imposed under this Code section shall be limited to what is sufficient to
14 deter repetition of such conduct or comparable conduct by others similarly situated. The
15 sanction may include directives of a nonmonetary nature, an order to pay a penalty into
16 court, or, if imposed on motion and warranted for effective deterrence, an order directing
17 payment to the other party of some or all of the reasonable attorney's fees and other
18 expenses incurred as a direct result of the violation or reasonable transportation costs
19 associated with visitation.

20 19-9-104.

21 If the issue of relocation is presented at the initial hearing to determine custody of or
22 visitation with a child, the court shall apply the factors set forth in this article in making its
23 initial determination."

24

SECTION 2.

25 Said chapter is further amended by striking in its entirety subsection (c) of Code Section
26 19-9-1, relating to determining child custody, and inserting in lieu thereof the following:

27 ~~"(c)(1) Reserved. In any case in which a judgment awarding the custody of a minor has~~
28 ~~been entered, the court entering such judgment shall retain jurisdiction of the case for the~~
29 ~~purpose of ordering the custodial parent to notify the court of any changes in the~~
30 ~~residence of the child.~~

31 ~~(2) In any case in which visitation rights have been provided to the noncustodial parent~~
32 ~~and the court orders that the custodial parent provide notice of a change in address of the~~
33 ~~place for pickup and delivery of the child for visitation, the custodial parent shall notify~~
34 ~~the noncustodial parent, in writing, of any change in such address. Such written~~

1 ~~notification shall provide a street address or other description of the new location for~~
2 ~~pickup and delivery so that the noncustodial parent may exercise such parent's visitation~~
3 ~~rights.~~

4 ~~(3) Except where otherwise provided by court order, in any case under this subsection~~
5 ~~in which a parent changes his or her residence, he or she must give notification of such~~
6 ~~change to the other parent and, if the parent changing residence is the custodial parent,~~
7 ~~to any other person granted visitation rights under this title or a court order. Such~~
8 ~~notification shall be given at least 30 days prior to the anticipated change of residence and~~
9 ~~shall include the full address of the new residence."~~

10

SECTION 3.

11 All laws and parts of laws in conflict with this Act are repealed.