

The Senate Judiciary Committee offered the following substitute to SB 16:

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 persons
3 who have children subject to custody or visitation orders or agreements; to provide for
4 definitions; to provide for applicability; to provide for notices of proposed relocations and
5 changes of residence; to provide exceptions for certain disclosures; to provide for additional
6 grounds to modify custody or visitation orders or agreements; to provide for hearings; to
7 provide for factors to consider in a modification of custody proceeding; to provide for
8 security guarantees; to provide for attorneys' fees and expenses; to provide for related
9 matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

11 Chapter 9 of Title 19 of the Official Code of Georgia Annotated, relating to child custody
12 proceedings, is amended by inserting a new article between Articles 1 and 2 to read as
13 follows:
14

"ARTICLE 1.1

15 19-9-9.

16 As used in this article, the term:

17 (1) 'Change of residence address' means a change in the primary residence of a person
18 entitled to custody of or visitation with a child.

19 (2) 'Child' means an individual who has not attained 18 years of age.

20 (3) 'Court order' means a judgment, decree, or other order of a court providing for the
21 legal custody, physical custody, or visitation with respect to a child. The term includes
22 a permanent, temporary, initial, or modification order.

23 (4) 'Joint custody' has the same meaning as provided in paragraph (1) of Code Section
24 19-9-6.
25

1 (5) 'Joint physical custody' has the same meaning as provided in paragraph (3) of Code
2 Section 19-9-6.

3 (6) 'Modification' means a child custody determination that changes, replaces,
4 supersedes, or is otherwise made after a previous determination concerning the same
5 child, whether or not it is made by a court that made the previous determination.

6 (7) 'Physical custody' means the physical care and supervision of a child.

7 (8) 'Primary physical custodian' means a person entitled to primary physical custody
8 pursuant to a court order or, if the court order does not vest primary physical custody in
9 one person, then a person who is entitled, pursuant to a court order, to have physical
10 custody of a child more than 50 percent of the time.

11 (9) 'Primary residence' means whatever location designated by a court order and if not
12 designated by a court order, the residence of the primary physical custodian.

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

15 (11) 'Sole custody' has the same meaning as provided in paragraph (4) of Code Section
16 19-9-6.

17 19-9-10.

18 The provisions of this article shall apply to a court order issued or entered into before or
19 after July 1, 2003, except that Code Sections 19-9-14 and 19-9-15 shall not apply to a court
20 order awarding custody entered before July 1, 2003, if the court order contained an express
21 provision governing relocation of the child.

22 19-9-11.

23 Except as provided by Code Section 19-9-13, a person who is entitled to custody of or
24 visitation with a child and who intends to make a change of residence address or proposes
25 relocation of a child shall notify every other person entitled to custody of or visitation with
26 that child of the intended change as required by Code Section 19-9-12.

27 19-9-12.

28 (a) Except as provided by Code Section 19-9-13, notice of an intended change of residence
29 address of a person or a proposed relocation of a child as provided in this article must be:

30 (1) Given by certified mail, return receipt requested, or statutory overnight delivery to
31 the last known address of each one of the persons entitled to custody of or visitation with
32 a child; and

33 (2) Mailed or delivered no later than:

34 (A) The sixtieth day before the date of the proposed relocation; or

1 (B) The tenth day after the date that the relocating person knows the information
 2 required to be furnished by subsection (b) of this Code section, provided that the
 3 relocating person did not know and could not reasonably have known the information
 4 required by subsection (b) of this Code section in sufficient time to comply with
 5 subparagraph (A) of this paragraph and it was not reasonably possible to extend the
 6 time frame to make a change of residence address or proposed relocation of the child.

7 (b) Except as provided by Code Section 19-9-13, the following information, if available,
 8 shall be included with the notice of intended change of residence address or proposed
 9 relocation of the child:

10 (1) The location of the intended new residence, including the specific address;

11 (2) The mailing address, if different;

12 (3) The home telephone number;

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

14 (5) The reason for the proposed relocation of the child, if applicable;

15 (6) A proposal for a revised schedule of visitation with the child, if any; and

16 (7) In any case in which visitation rights have been provided to a person and the court
 17 orders that the person provide notice of a change in address of the place for pickup or
 18 delivery of the child for visitation, the person shall notify the affected person, in writing,
 19 of any change in address. The written notification shall provide a street address or other
 20 description of the new location for pickup or delivery so that the person may exercise his
 21 or her visitation rights.

22 (c) A person required to give notice of a change of residence address or proposed
 23 relocation of a child pursuant to this Code section has a continuing duty to provide
 24 information as it becomes known and to continue to update changes in information that has
 25 already been provided.

26 (d) The person entitled to custody of a child may change his or her residence address or
 27 relocate the primary residence of a child on or after the date specified in paragraph (4) of
 28 subsection (b) of this Code section unless a court orders otherwise.

29 19-9-13.

30 (a) The notice requirements specified by this article shall be waived to the extent necessary
 31 to protect confidentiality and the health, safety, or welfare of any person.

32 (b) Upon a finding by the court that the health, safety, or welfare of a person would be put
 33 at risk by the disclosure of the information required in connection with a change of
 34 residence address or proposed relocation of a child, the court shall order that the residence
 35 address, telephone number, and any other identifying information of the child or the person
 36 shall not be required to be disclosed.

1 (c) Any other remedial action shall be taken that the court considers necessary to serve the
2 best interest of the child.

3 (d) If appropriate, the court may conduct an ex parte hearing pursuant to this Code section.

4 19-9-14.

5 (a) Except as provided in subsection (b) or (c) of this Code section, where two persons
6 who are entitled to joint custody of a child live within 150 miles of each other, the
7 relocation of the primary residence of a child either outside this state or at least 150 miles
8 from the primary residence of the nonrelocating person may be a material change in
9 condition sufficient to constitute grounds for the nonrelocating person to bring a
10 modification action if:

11 (1) One of the parties to the action is a parent of the child; and

12 (2) The modification action is filed within 33 days after the notice of relocation required
13 by Code Section 19-9-12 is mailed or delivered or, if no notice of relocation is provided,
14 within 90 days after the relocation occurs.

15 (b) Where a court order provides that one person is entitled to sole custody of a child and
16 that person lives within 150 miles of a person who has visitation privileges with the child,
17 the relocation of the residence of a child either outside this state or at least 150 miles from
18 the residence of the nonrelocating person may be a material change in condition sufficient
19 to constitute grounds for the nonrelocating person to bring a modification action if:

20 (1) One of the parties to the action is a parent of the child; and

21 (2) The modification action is filed within 33 days after the notice of relocation required
22 by Code Section 19-9-12 is mailed or delivered or, if no notice of relocation is provided,
23 within 90 days after the relocation occurs.

24 (c) Where a court order provides that two persons equally share joint physical custody, the
25 relocation of the residence of a child either outside this state or at least 150 miles from the
26 residence of the nonrelocating person may be a material change in condition sufficient to
27 constitute grounds for the nonrelocating person to bring a modification action if:

28 (1) One of the parties to the action is a parent of the child; and

29 (2) The modification action is filed within 33 days after the notice of relocation required
30 by Code Section 19-9-12 is mailed or delivered or, if no notice of relocation is provided,
31 within 90 days after the relocation occurs.

32 (d) The court shall expeditiously schedule a hearing seeking modification of custody
33 pursuant to this Code section when it is necessary to serve the best interest of the child.

34 (e) When a person files a notice of intention to relocate a child, a person who is not a
35 parent but who is entitled by court order to visitation with the child may file a proceeding

1 to obtain a revised schedule of visitation but shall not be entitled to object to the proposed
2 relocation, except as provided in subsection (b) of this Code section.

3 19-9-15.

4 (a) Where a modification action has been timely filed in accordance with subsection (a)
5 or (b) of Code Section 19-9-14, the court shall presume that the prior custody order vests
6 the person who has primary physical custody of a child with a prima facie right to custody,
7 and the court shall favor the person with primary physical custody rights with respect to
8 the nonrelocating person's petition to modify custody.

9 (b) The court shall first determine whether the nonrelocating person has established by a
10 preponderance of the evidence that the change of residence address or the proposed
11 relocation of the child constitutes a material change of condition so as to warrant
12 consideration of the petition for modification of custody.

13 (c) If the court finds by a preponderance of the evidence that the relocation constitutes a
14 material change in condition, in reaching a decision on modification, the court shall
15 presume that the prior custody order remains in the best interest of the child. The
16 nonrelocating person shall bear the burden of proof to establish by a preponderance of
17 evidence that modification of custody is warranted to serve the best interest of the child.

18 (d) In addition to any other factors required by law, the court may consider the following:

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

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

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

29 (4) The child's preference, to the extent permitted by paragraphs (4) and (4.1) of
30 subsection (a) of Code Section 19-9-3;

31 (5) How the relocation will affect the person seeking to change his or her residence
32 address;

33 (6) How the relocation will affect the child; and

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

35 (e) Where a modification action has been timely filed in accordance with subsection (c)
36 of Code Section 19-9-14, the court shall first make a determination as set forth in

1 subsection (b) of this Code section. If the court finds that the relocation constitutes a
 2 material change in condition, the court's decision to change custody must be based on
 3 evidence of a positive or adverse change in the circumstances of either parent, or any
 4 change in the circumstances substantially affecting the welfare and best interest of the
 5 child, taking into consideration the factors identified in subsection (d) of this Code section.

6 (f) Until the time that the court pronounces its judgment upon the issue of modification of
 7 custody, the relocating person shall be allowed to modify his or her plans for change of
 8 residence address or proposed relocation of a child in order to avoid a possible change in
 9 custody.

10 (g) In a proceeding for modification of custody pursuant to this Code section, the court
 11 may award attorneys' fees and expenses of litigation, including but not limited to, travel
 12 expenses, as the interests of justice may require."

13 SECTION 2.

14 Said chapter is further amended by striking in its entirety subsection (c) of Code Section
 15 19-9-1, relating to determining child custody, and inserting in lieu thereof the following:

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

19 ~~(2) In any case in which visitation rights have been provided to the noncustodial parent~~
 20 ~~and the court orders that the custodial parent provide notice of a change in address of the~~
 21 ~~place for pickup and delivery of the child for visitation, the custodial parent shall notify~~
 22 ~~the noncustodial parent, in writing, of any change in such address. Such written~~
 23 ~~notification shall provide a street address or other description of the new location for~~
 24 ~~pickup and delivery so that the noncustodial parent may exercise such parent's visitation~~
 25 ~~rights.~~

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

32 SECTION 3.

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