



SPONSOR: Rep. Lynn & Sen. Paradee
Reps. Baumbach, Brady

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL NO. 181

AN ACT TO AMEND TITLE 13 OF THE DELAWARE CODE REGARDING ADOPTION OF THE MODEL
RELOCATION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 13 of the Delaware Code by adding a new Chapter 7B thereto to read as follows:

Article 1. General Provisions

Chapter 7B – The Model Relocation Act

§ 701B Title.

This chapter shall be known as and may be cited as the "Model Relocation Act."

§ 702B Purpose.

The purpose of this chapter is to provide the Family Court with a guide in determining the issue of the relocation of a minor child in custody or visitation proceedings.

§ 703B Definitions.

(a) "Change of residence address" means a change in the primary residence of an adult individual.

(b) "Child" means as defined under § 901 of Title 10.

(c) "Individual entitled to custody of or visitation with a child" means an individual so entitled by virtue of a court order or by an express agreement that is subject to court enforcement.

(d) "Principal residence of a child" means 1 or more of the following:

(1) The location designated by a court to be the primary residence of the child.

(2) In the absence of a court order, the location at which the parties have expressly agreed the child will primarily reside.

(3) In the absence of a court order or an express agreement, the location, if any, at which the child, preceding the time involved, lived with the child's parents, a parent, or an individual acting as parent for at least 6 consecutive months and, in the case of a child less than 6 months old, the location at which the child lived from birth with any of the individuals mentioned. Periods of temporary absence of any of the named individuals are counted as part of the 6-month or other period.

(e) "Relocation" means a change in the principal residence of a child for a period of 60 days or more, but does not include a temporary absence from the principal residence.

§ 704B Applicability.

(a) The provisions of this chapter apply to an order regarding the custody or visitation with a child issued in either of the following circumstances:

(1) After the effective date of this chapter.

(2) Before the effective date of this chapter, if the existing custody order or enforceable agreement does not expressly govern the relocation of the child or there is a change in the primary residence address of an adult individual affected by the order.

(b) To the extent that a provision of this chapter conflicts with an existing custody order or enforceable agreement, this chapter does not apply to the terms of that order or agreement that govern relocation of the child or a change in the primary residence address of an adult individual.

Article 2. Notice of Relocation or Change of Residence Address

§ 705B Notice of Proposed Relocation of a Child.

Except as provided under § 709B of this chapter, an individual who has the right to establish the principal residence of a child shall notify every other individual entitled to custody or visitation with the child of a proposed relocation of the child's principal residence as required under § 707B of this chapter.

§ 706B Notice of Intended Change of Residence Address of Relocating Individual.

Except as provided under § 709B of this chapter, an adult individual entitled to custody or visitation with a child shall notify every other individual entitled to custody of or visitation with the child of an intended change in the primary residence address of the adult individual as required under § 707B of this chapter.

§ 707B Mailing Notice of Proposed Relocation or Intended Change of Residence Address.

(a) Except as provided under § 709B of this chapter, notice of a proposed relocation of the principal residence of a child or notice of an intended change of the primary residence address of an adult individual as provided in this chapter must be given by all of the following:

(1) First class mail to the last known address of the individual to be notified.

(2) No later than 1 of the following:

a. The 60th day before the date of the intended move or proposed relocation.

b. The 10th day after the date that the adult individual knows the information required to be furnished by subsection (b) of this section, if the adult individual did not know and could not reasonably have known the

53 information in sufficient time to comply with 60 day notice, and it is not reasonably possible to extend the time for
54 relocation of the child.

55 (b) Except as provided by § 709B of this chapter, all of the following information, if available, must be included
56 with the notice of intended relocation of the child or change of primary residence of an adult individual:

57 (1) The intended new residence, including the specific address, if known.

58 (2) The mailing address, if not the same.

59 (3) The home telephone number, if known.

60 (4) The date of the intended move or proposed relocation.

61 (5) A brief statement of the specific reasons for the proposed relocation of the child, if applicable.

62 (6) A proposal for a revised schedule of visitation with the child, if any.

63 (7) A warning to the non-relocating parent that an objection to the relocation must be made within 30 days or
64 the relocation will be permitted.

65 (c) An individual required to give notice of a proposed relocation or change of residence address under this section
66 has a continuing duty to provide a change in or addition to the information required by this section as that information
67 becomes known.

68 § 708B. Standard Court Order Requiring Notice.

69 After the effective date of this chapter, an order issued by a court directed to an individual entitled to custody of or
70 visitation with a child shall include the following terms:

71 "You, as a party in this action, are ordered to notify every other party to this action of a proposed [relocation of the
72 child] [change of your primary residence address], and the following information:

73 (1) The intended new residence, including the specific address, if known.

74 (2) The mailing address, if not the same.

75 (3) The home telephone number, if known.

76 (4) The date of the intended move or proposed relocation.

77 (5) A brief statement of the specific reasons for the proposed relocation of the child, if applicable.

78 (6) A proposal for a revised schedule of visitation with the child, if any."

79 "You are further ordered to give notice of the proposed relocation or change of residence address on or before the
80 60th day before a proposed change. If you do not know and could not have reasonably known of the change in sufficient
81 time to provide 60 day notice, you are ordered to give notice of the change on or before the 10th day after the date that you
82 know of the change."

83 "Your obligation to furnish this information to every other party continues as long as you, or any other person, by
84 virtue of this order, are entitled to custody of or visitation with a child covered by this order."

85 "Your failure to obey the order of this court to provide every other party with notice of information regarding the
86 proposed relocation or change of residence address may result in further litigation to enforce the order, including contempt
87 of court and any other appropriate sanctions ordered by the court."

88 "In addition, your failure to notify of a relocation of the child may be taken into account in a modification of
89 custody or visitation with the child. Reasonable costs and attorney's fees also may be assessed against you if you fail to
90 give the required notice."

91 ["If you, as the non-relocating party, do not object to the relocation within 30 days after receipt of notice of the
92 intent of the other party to relocate the residence of the child, relocation is authorized."]

93 § 709B. Nondisclosure of Relocation Information in Exceptional Circumstances.

94 (a) On a finding by the court that the health, safety, or liberty of an individual or a child would be unreasonably
95 put at risk by the disclosure of the required identifying information in conjunction with a proposed relocation of the child or
96 change of residence of an adult individual, the court may order any of the following:

97 (1) The specific residence address and telephone number of the child or of the adult individual and other
98 identifying information shall not be disclosed in the pleadings, other documents filed in the proceeding, or the final
99 order, except for an in camera disclosure.

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

102 (3) Any other remedial action that the Court considers necessary to facilitate the legitimate needs of the
103 parties and the best interest of the child.

104 (b) If appropriate, the Court may conduct an *ex parte* hearing under this section.

105 § 710B. Failure to Give Notice of Relocation or Change of Residence Address Required by Statute.

106 The Court may consider a failure to provide notice of a proposed relocation of a child as provided under § 704B
107 through § 708B of this chapter as any of the following:

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

109 (2) A factor in determining whether custody or visitation should be modified.

110 (3) A basis for ordering the return of the child if the relocation has taken place without notice.

111 (4) Sufficient cause to order the individual seeking to relocate the child to pay reasonable expenses and
112 attorney's fees incurred by the individual objecting to the relocation.

§ 711B. Failure to Obey Court Order to Give Notice of Relocation.

In addition to the sanctions provided under § 710B of this chapter, the Court may make a finding of contempt if a party violates the notice requirement provided under § 708B of this chapter and may impose the sanctions authorized for disobedience of a court order.

Article 3. Objection to Relocation

§ 712B. Failure to Object to Notice of Proposed Relocation.

The individual entitled to custody or visitation with a child may relocate the principal residence of a child after providing notice as provided by Article 2 of this chapter unless an individual entitled to notice objects to the relocation within 30 days after receipt of the notice.

Article 4. Order Permitting or Restricting Relocation

§ 713B. Temporary Orders.

(a) The Court may grant a temporary order restraining the relocation of a child, or ordering return of the child if a relocation has previously taken place, if the Court finds any of the following:

(1) The required notice of a proposed relocation of a child as provided by Article 2 of this chapter was not provided in a timely manner and the parties have not presented an agreed-upon revised schedule for visitation with the child for the Court's approval.

(2) The child already has been relocated without notice, agreement of the parties, or court approval.

(3) From an examination of the evidence presented at the temporary hearing there is a likelihood that on final hearing the Court will not approve the relocation of the primary residence of the child.

(b) The Court may grant a temporary order permitting the relocation of the child pending final hearing if the Court finds all of the following:

(1) Finds that the required notice of a proposed relocation of a child as provided by Article 2 of this chapter was provided in a timely manner and issues an order for a revised schedule for temporary visitation with the child.

(2) Finds from an examination of the evidence presented at the temporary hearing there is a likelihood that on final hearing that the Court will approve the relocation of the primary residence of the child.

§ 714B. Priority for Hearing.

A hearing on a pleading filed pursuant to this chapter shall be accorded appropriate priority on the Court's calendar.

§ 715B. Evidentiary Hearing.

On the request of a party, the Court shall hold a full evidentiary hearing on the relocation issue.

143 § 716B. Proposed Relocation as a Factor for Modification.

144 A proposed relocation of a child may be a factor in considering a change of custody or visitation with a child.

145 § 717B. Factors to Determine Contested Relocation.

146 In reaching its decision regarding a proposed relocation, the Court must consider the following factors:

147 (1) The nature, quality, extent of involvement, and duration of the child's relationship with the individual
148 proposing to relocate and with the non-relocating individual, siblings, and other significant individuals in the child's
149 life.

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

152 (3) The feasibility of preserving the relationship between the non-relocating individual and the child through
153 suitable visitation arrangements, considering the logistics and financial circumstances of the parties.

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

155 (5) Whether there is an established pattern of conduct of the individual seeking the relocation, either to
156 promote or thwart the relationship of the child and the non-relocating individual;

157 (6) Whether the relocation of the child will enhance the general quality of life for both the custodial party
158 seeking the relocation and the child, including but not limited to, financial or emotional benefit or educational
159 opportunity.

160 (7) The reasons of each individual for seeking or opposing the relocation.

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

162 § 718B. Factors Not To Be Considered.

163 (a) If the Court has issued a temporary order authorizing a party seeking to relocate a child to move before final
164 judgment is issued, the Court may not give undue weight to the temporary relocation as a factor in reaching its final
165 decision.

166 (b) The Court may not consider whether the individual seeking relocation of the child has declared that he or she
167 will not relocate if relocation of the child is denied.

168 § 719B. Burden of Proof.

169 The relocating individual has the burden of proof that the proposed relocation is made in good faith and in the best
170 interest of the child.

171 § 720B. Posting Security.

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

175 § 721B. Application of Factors at Initial Hearing.

176 If the issue of relocation is presented at the initial hearing to determine custody of or visitation with a child, the
177 Court shall apply the factors set forth in this article in making its initial determination.

SYNOPSIS

This bill adopts the majority of the Model Relocation Act proposed by the American Academy of Matrimonial Lawyers relating to the relocation of the principal residence of a child. When deciding a custody case in which an individual is seeking to relocate a child outside of the State, many judges in Family Court refer to the Model Relocation Act when reaching their decisions. However, the Model Relocation Act is only persuasive in these decisions and is not required to be considered by the Court. Therefore, this bill codifies the Model Relocation Act to require its consideration in a Court's analysis during these types of proceedings and provides a more structure guideline for the Court when deciding such decisions.