

SENATE BILL 609

D4

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By: **Senator Simonaire**

Introduced and read first time: February 1, 2008

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law - Child Custody and Visitation - Change of Child's Permanent**
3 **Residence**

4 FOR the purpose of repealing a certain provision of law authorizing a court to require
5 a certain notice of intent to relocate as a condition of a custody or visitation
6 order; establishing that a child who is the subject of a certain custody order has
7 a permanent residence with each party to the order for purposes of a certain
8 provision of law; prohibiting a party to a certain order from changing the
9 permanent residence of a child by a certain distance without the consent of the
10 other party or the court's approval; requiring certain notification prior to a
11 certain permanent residence change; requiring the court to consider certain
12 factors and the best interests of the child before approving a certain permanent
13 residence change; requiring the court in any custody or visitation proceeding to
14 include a certain provision in a certain order; providing exceptions to the
15 notification and approval requirement; and generally relating to child custody
16 and visitation.

17 BY repealing

18 Article - Family Law

19 Section 9-106

20 Annotated Code of Maryland

21 (2006 Replacement Volume and 2007 Supplement)

22 BY adding to

23 Article - Family Law

24 Section 9-106

25 Annotated Code of Maryland

26 (2006 Replacement Volume and 2007 Supplement)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
28 MARYLAND, That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Family Law**

2 [9–106.

3 (a) (1) Except as provided in subsection (b) of this section, in any custody
4 or visitation proceeding the court may include as a condition of a custody or visitation
5 order a requirement that either party provide advance written notice of at least 45
6 days to the court, the other party, or both, of the intent to relocate the permanent
7 residence of the party or the child either within or outside the State.

8 (2) The court may prescribe the form and content of the notice
9 requirement.

10 (3) If the court orders that notice be given to the other party, a mailing
11 of the notice by certified mail, return receipt requested, to the last known address of
12 the other party shall be deemed sufficient to comply with the notice requirement.

13 (b) On a showing that notice would expose the child or either party to abuse
14 as defined in § 4–501 of this article or for any other good cause the court shall waive
15 the notice required by this section.

16 (c) If either party is required to relocate in less than the 45–day period
17 specified in the notice requirement, the court may consider as a defense to any action
18 brought for a violation of such notice requirement that:

19 (1) relocation was necessary due to financial or other extenuating
20 circumstances; and

21 (2) the required notice was given within a reasonable time after
22 learning of the necessity to relocate.

23 (d) The court may consider any violation of the notice requirement as a factor
24 in determining the merits of any subsequent proceeding involving custody or
25 visitation.]

26 **9–106.**

27 (A) (1) **A CHILD WHO IS THE SUBJECT OF A CUSTODY ORDER**
28 **PROVIDING JOINT CUSTODY HAS, FOR THE PURPOSES OF THIS SECTION, A**
29 **PERMANENT RESIDENCE WITH EACH PARTY TO THE ORDER.**

30 (2) **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PARTY**
31 **TO A CUSTODY OR VISITATION ORDER MAY NOT CHANGE THE PERMANENT**
32 **RESIDENCE OF THE CHILD TO A LOCATION THAT IS MORE THAN 100 MILES**
33 **FROM THE CHILD’S PERMANENT RESIDENCE AT THE TIME THE ORDER IS ISSUED**

1 WITHOUT THE CONSENT OF THE OTHER PARTY OR THE COURT'S APPROVAL IN
2 ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION.

3 (B) A PARTY SHALL PROVIDE ADVANCE WRITTEN NOTICE OF AT LEAST
4 45 DAYS TO THE COURT AND THE OTHER PARTY OF THE INTENT TO CHANGE THE
5 LOCATION OF THE PERMANENT RESIDENCE OF THE CHILD BY MORE THAN 100
6 MILES.

7 (C) BEFORE APPROVING A PERMANENT RESIDENCE CHANGE
8 OTHERWISE PROHIBITED BY SUBSECTION (A) OF THIS SECTION, THE COURT
9 SHALL CONSIDER EACH OF THE FOLLOWING FACTORS AND THE BEST
10 INTERESTS OF THE CHILD:

11 (1) WHETHER THE PERMANENT RESIDENCE CHANGE HAS THE
12 CAPACITY TO IMPROVE THE QUALITY OF LIFE FOR BOTH THE CHILD AND THE
13 RELOCATING PARTY;

14 (2) THE DEGREE TO WHICH EACH PARTY HAS COMPLIED WITH
15 ANY COURT ORDER GOVERNING VISITATION WITH THE CHILD;

16 (3) WHETHER THE PARTY'S PLAN TO CHANGE THE PERMANENT
17 RESIDENCE OF THE CHILD IS INSPIRED BY THAT PARTY'S DESIRE TO DEFEAT,
18 INTERFERE WITH, OR FRUSTRATE ANY COURT ORDERED VISITATION SCHEDULE;

19 (4) THE DEGREE TO WHICH THE COURT IS SATISFIED THAT, IF
20 THE COURT APPROVES THE PERMANENT RESIDENCE CHANGE, IT IS POSSIBLE
21 TO ORDER A MODIFICATION OF THE VISITATION SCHEDULE AND OTHER
22 ARRANGEMENTS GOVERNING THE CHILD'S SCHEDULE IN A MANNER THAT CAN
23 PRESERVE AND FOSTER THE RELATIONSHIP BETWEEN THE CHILD AND EACH
24 PARTY, AND WHETHER EACH PARTY IS LIKELY TO COMPLY WITH THE
25 MODIFICATION;

26 (5) THE EXTENT TO WHICH THE PARTY OPPOSING THE
27 PERMANENT RESIDENCE CHANGE IS MOTIVATED BY A DESIRE TO SECURE A
28 FINANCIAL ADVANTAGE WITH RESPECT TO A SUPPORT OBLIGATION; AND

29 (6) DOMESTIC VIOLENCE, REGARDLESS OF WHETHER THE
30 VIOLENCE WAS DIRECTED AGAINST OR WITNESSED BY THE CHILD.

31 (D) (1) IN ANY CUSTODY OR VISITATION PROCEEDING, THE COURT
32 SHALL INCLUDE IN EACH ORDER DETERMINING OR MODIFYING CUSTODY OR
33 VISITATION OF A CHILD A PROVISION STATING EACH PARTY'S AGREEMENT AS
34 TO HOW A CHANGE IN EITHER OF THE CHILD'S PERMANENT RESIDENCES WILL
35 BE HANDLED.

1 **(2) IF THE PROVISION DESCRIBED IN PARAGRAPH (1) OF THIS**
2 **SUBSECTION IS INCLUDED IN THE ORDER AND A CHILD'S PERMANENT**
3 **RESIDENCE CHANGE IS ACCOMPLISHED IN COMPLIANCE WITH THAT PROVISION,**
4 **THIS SECTION DOES NOT APPLY.**

5 **(3) IF THE PARTIES DO NOT AGREE IN ACCORDANCE WITH**
6 **PARAGRAPH (1) OF THIS SUBSECTION, THE COURT SHALL INCLUDE IN THE**
7 **ORDER THE FOLLOWING PROVISION: "A PARTY WHOSE CUSTODY OR**
8 **VISITATION OF A CHILD IS GOVERNED BY THIS ORDER MAY NOT CHANGE THE**
9 **PERMANENT RESIDENCE OF THE CHILD EXCEPT IN COMPLIANCE WITH § 9-106**
10 **OF THE FAMILY LAW ARTICLE."**

11 **(E) (1) THIS SECTION DOES NOT APPLY IF, AT THE TIME THE**
12 **CUSTODY ORDER IS ISSUED, THE RESIDENCES OF THE PARTIES WERE MORE**
13 **THAN 100 MILES APART.**

14 **(2) THIS SECTION DOES NOT APPLY IF THE PERMANENT**
15 **RESIDENCE CHANGE RESULTS IN THE CHILD'S TWO RESIDENCES BEING CLOSER**
16 **TO EACH OTHER THAN BEFORE THE CHANGE.**

17 **(F) (1) IF THIS SECTION APPLIES TO A CHANGE OF A CHILD'S**
18 **PERMANENT RESIDENCE AND THE PARTY SEEKING TO CHANGE THAT**
19 **PERMANENT RESIDENCE NEEDS TO SEEK A SAFE LOCATION FROM THE THREAT**
20 **OF DOMESTIC VIOLENCE, THE PARTY MAY MOVE TO THAT SAFE LOCATION WITH**
21 **THE CHILD UNTIL THE COURT MAKES A DETERMINATION UNDER THIS SECTION.**

22 **(2) ON A SHOWING THAT NOTICE WOULD EXPOSE THE CHILD OR**
23 **EITHER PARTY TO ABUSE AS DEFINED IN § 4-501 OF THIS ARTICLE OR FOR ANY**
24 **OTHER GOOD CAUSE, THE COURT SHALL WAIVE THE NOTICE REQUIRED BY THIS**
25 **SECTION.**

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2008.