ACT No. 2003- 364

1 HB157

2 51895-5

3 By Representative McMillan

4 RFD: Judiciary

5 First Read: 04-MAR-03

RECEIVED
JUN 12 2003
GOVERNOR'S
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### ENROLLED, An Act,

Relating to the custody of children; to require that notification be provided to a parent when the principal residence of a person entitled to custody of or visitation with a child or of a child is to be changed; to provide for procedures to object to the relocation of a child and/or to modify the custody of and visitation with a child when the principal residence of a child is changed; and to provide that the parent who is relocating has the initial burden of proof.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the "Alabama Parent-Child Relationship Protection Act" and promotes the general philosophy in this state that children need both parents, even after a divorce established in Section 30-3-150, Code of Alabama 1975.

Section 2. As used in this act, the following words and phrases shall have the following meanings, unless the context requires a different definition:

(1) CHANGE OF PRINCIPAL RESIDENCE. A change of the residence of a child whose custody has been determined by a prior court order, whether or not accompanied by a change of the residence of a person entitled to custody of the child, with the intent that such change shall be permanent in nature

L	and no	ot amou	nting	to a	temporary	absence	of	the	child	from	his
2	or her	princ	ipal r	esid	ence.						

- (2) CHILD. A minor child as defined by Section 30-3B-102(2), Code of Alabama 1975. As used in this act, the term may include the singular and the plural.
- (3) CHILD CUSTODY DETERMINATION. A judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.
- (4) COMMENCEMENT. The filing of the first pleading in a proceeding.
- (5) COURT. An entity authorized under the law of a state to establish, enforce, or modify a child custody determination.
- (6) MODIFICATION. A child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.
- (7) PERSON ENTITLED TO CUSTODY OR VISITATION. A person so entitled to physical custody of a child as defined by Sections 30-3-1 through 30-3-4.1, inclusive, Code of

1	Alabama 1975, or visitation with respect to a child by virtue
2	of a child custody determination as defined by Section
3	30-3B-102(3). Code of Alabama 1975.

(8) PRINCIPAL RESIDENCE OF A CHILD. Any of the following:

- a. The residence designated by a court to be the primary residence of the child.
- b. In the absence of a determination by a court, the residence at which the parents of a child whose change of principal residence is at issue have expressly agreed that the child will primarily reside.
- c. In the absence of a determination by a court or an express agreement between the parents of a child whose change of principal residence is at issue, the residence, if any, at which the child lived with the child's parents, a parent, or a person acting as a parent, for at least six consecutive months or, in the case of a child less than six months of age, the residence at which the child lived from birth with the child's parents, a parent, or a person acting as a parent. Periods of temporary absence from such residence are counted as part of the period of residence.
- (9) PERSON ACTING AS A PARENT. A person, other than a parent, who has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately

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- before the commencement of a child custody proceeding and has been awarded legal custody by a court or claims a right to legal custody under the law of this state.
  - (10) PHYSICAL CUSTODY. The physical care and supervision of a child.

(11) RELOCATE or RELOCATION. A change in the principal residence of a child for a period of 45 days or more. The term does not include a temporary absence from the primary residence, or an absence necessary to escape domestic violence.

Section 3. (a) Except as provided otherwise by this act, the provisions of this act apply to all orders determining custody of or visitation with a child whether such order issued before or after the effective date of this act. To the extent that a provision of this act conflicts with an existing order determining custody of or visitation with a child or other enforceable agreement, this act does not apply to alter or amend the terms of such order or agreement which address the rights of the parties or the child with regard to change in the primary residence of a child. Any person entitled to the legal or physical custody of or visitation with a child may commence an action for modification to incorporate the provisions of this act into an existing order determining the custody of or visitation with a child. Except as provided in subsection (c) of Section 6, the provisions of

this act shall not apply to a person who is on active military service in the Armed Forces of the United States of America and is being transferred or relocated pursuant to a non-voluntary order from the government.

(b) The provisions of Sections 11 to 17, inclusive, shall not apply to a change of principal residence of a child to a residence which is 60 miles or less from the residence of a non-relocating parent who is entitled to custody of or visitation with the child or if the change or proposed change results in the child residing nearer to the non-relocating parent than before the change or proposed change, unless such change in the principal residence of a child results in the child living in a different state.

Section 4. Except as provided by Section 8, a person who has the right to establish the principal residence of the child shall provide notice to every other person entitled to custody of or visitation with a child of a proposed change of the child's principal residence as required by subsection (b) of Section 6.

Section 5. Except as provided by Section 8, a person entitled to custody of or visitation with a child shall provide notice to every other person entitled to custody of or visitation with a child of an intended change in his or her principal residence as required by subsection (b) of Section 6.

1	Section 6. (a) When a notice is required by either
2	Section 4 or Section 5, except as provided by Section 8, the
3	notice of a proposed change of principal residence of a child
4	or the notice of an intended or proposed change of the
5	principal residence of an adult as provided in this act must
6	be given by certified mail to the last known address of the
7	person or persons entitled to notification under this act not
8	later than the 45th day before the date of the intended change
9	of the principal residence of a child or the 10th day after
10	the date such information required to be furnished by
11	subsection (b) becomes known, if the person did not know and
12	could not reasonably have known the information in sufficient
13	time to comply with the 45-day notice, and it is not
14	reasonably possible to extend the time for change of principal
15	residence of the child.

- (b) Except as provided by Section 8, all of the following information, if available, must be included with the notice of intended change of principal residence of a child:
- (1) The intended new residence, including the specific street address, if known.
- (2) The mailing address, if not the same as the street address.
- (3) The telephone number or numbers at such residence, if known.

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1			(4)	If app	lica	able	e, the na	ame,	addı	cess,	and	telepho	ne
2	number	of	the	school	to	be	attended	d by	the	child	, if	known.	

- (5) The date of the intended change of principal residence of a child.
- (6) A statement of the specific reasons for the proposed change of principal residence of a child, if applicable.
- (7) A proposal for a revised schedule of custody of or visitation with a child, if any.
- (8) A warning to the non-relocating person that an objection to the relocation must be made within 30 days of receipt of the notice or the relocation will be permitted.
- (c) A person entitled to custody of a child who is on active military service in the Armed Forces of the United States of America and is being transferred or relocated pursuant to a non-voluntary order of the government shall provide notice of change of principal residence of a child to the persons entitled to custody of or visitation with a child with the information set forth in subsection (b) of Section 6 except that such notice need not contain a warning to the non-relocating person as provided in subdivision (8) of subsection (b) that an objection to the relocation must be made within 30 days or the relocation will be permitted.
- (d) A person required to give notice of a proposed change of principal residence of a child under this section

has a continuing duty to provide the information required by this section as that information becomes known. Such information should be provided by certified mail to the last known address to the person or persons entitled to such notice within 10 days of the date such information becomes known.

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Section 7. After the effective date of this act, every child custody determination shall include the following language:

"Alabama law requires each party in this action who has either custody of or the right of visitation with a child to notify other parties who have custody of or the right of visitation with the child of any change in his or her address or telephone number, or both, and of any change or proposed change of principal residence and telephone number or numbers of a child. This is a continuing duty and remains in effect as to each child subject to the custody or visitation provisions of this decree until such child reaches the age of majority or becomes emancipated and for so long as you are entitled to custody of or visitation with a child covered by this order. If there is to be a change of principal residence by you or by a child subject to the custody or visitation provisions of this order, you must provide the following information to each other person who has custody or visitation rights under this decree as follows:

1	"(1) The intended new residence, including the
2	specific street address, if known.
3	"(2) The mailing address, if not the same as the
4	street address.
5	"(3) The telephone number or numbers at such
6	residence, if known.
7	"(4) If applicable, the name, address, and telephone
8	number of the school to be attended by the child, if known.
9	"(5) The date of the intended change of principal
10	residence of a child.
11	"(6) A statement of the specific reasons for the
12	proposed change of principal residence of a child, if
13	applicable.
14	"(7) A proposal for a revised schedule of custody of
15	or visitation with a child, if any.
16	"(8) Unless you are a member of the Armed Forces of
17	the United States of America and are being transferred or
18	relocated pursuant to a non-voluntary order of the government,
19	a warning to the non-relocating person that an objection to
20	the relocation must be made within 30 days of receipt of the
21	notice or the relocation will be permitted.
22	"You must give notice by certified mail of the
23	proposed change of principal residence on or before the 45th
24	day before a proposed change of principal residence. If you do
25	not know and cannot reasonably become aware of such

information in sufficient time to provide a 45-day notice, you
must give such notice by certified mail not later than the

10th day after the date that you obtain such information.

"Your failure to notify other parties entitled to notice of your intent to change the principal residence of a child may be taken into account in a modification of the custody of or visitation with the child.

"If you, as the non-relocating party, do not commence an action seeking a temporary or permanent order to prevent the change of principal residence of a child within 30 days after receipt of notice of the intent to change the principal residence of the child, the change of principal residence is authorized."

Section 8. (a) In order to protect the identifying information of persons at risk from the effects of domestic violence or abuse, on a finding by the court that the health, safety, or liberty of a person or a child would be unreasonably put at risk by the disclosure of the identifying information required by Section 4 or Section 5 in conjunction with a proposed change of principal residence of a child or change of principal residence of a person having custody of or rights of visitation with a child, the court may order any or all of the following:

(1) The specific residence address and telephone number of a child or the person having custody of or rights of

visitation with a child and other identifying information
shall not be disclosed in the pleadings, other documents filed
in the proceeding, or in any order issued by the court, except
for in camera disclosures.

- (2) The notice requirements provided by this act may be waived to the extent necessary to protect confidentiality and the health, safety, or liberty of a person or a child.
- (3) Any other remedial action that the court considers necessary to facilitate the legitimate needs of the parties and the interests of the child.
- parte hearing under subsection (a) of this section. Issuance of a final order of protection under Sections 30-5-1 to 30-5-11, inclusive, Code of Alabama 1975; a conviction for domestic violence pursuant to Sections 13A-6-130 to 13A-6-135, inclusive, Code of Alabama 1975; or an award of custody of the child pursuant to Sections 30-3-131 to 30-3-135, inclusive, Code of Alabama 1975, shall be considered prima facie evidence that the health, safety, or liberty of a person or a child would be unreasonably put at risk by the disclosure of identifying information or by compliance with the notice requirements of this act.

Section 9. (a) Except as provided in Section 8, if a person required to give notice as required by Section 4 or Section 5 shall fail to provide the notice or the information

required by subsection (b) of Section 6, the court shall consider the failure to provide such notice or information as a factor in making its determination regarding the change of principal residence of a child; a factor in determining whether custody or visitation should be modified; a factor for ordering the return of the child to the former residence of the child if the change of principal residence of a child has taken place without notice; a factor meriting a deviation from the child support guidelines; a factor in awarding increased transportation and communication expenses with the child; and a factor in considering whether the person seeking to change the principal residence of a child may be ordered to pay reasonable costs and attorney's fees incurred by the person objecting to the change.

(b) Additionally, the court may make a finding of contempt of court if a party willfully and intentionally violates the notice requirement of an order issued by any court pursuant to Section 7 and may impose the sanctions authorized by law or rule of court for disobedience of a court order.

Section 10. The person entitled to determine the principal residence of a child may change the principal residence of a child after providing notice as provided herein unless a person entitled to notice files a proceeding seeking a temporary or permanent order to prevent the change of

L	principal	residence	of	а	child	within	30	days	after	receipt	of
2	such notic	e.									

Section 11. (a) A person entitled to custody of or visitation with a child may commence a proceeding objecting to a proposed change of the principal residence of a child and seek a temporary or permanent order to prevent the relocation.

- (b) A non-parent entitled to visitation with a child may commence a proceeding to obtain a revised schedule of visitation, but may not object to the proposed change of principal residence of a child or seek a temporary or permanent order to prevent the change.
- (c) A proceeding filed under this section must be filed within 30 days of receipt of notice of a proposed change of principal residence of a child, except that the court may extend or waive the time for commencing such action upon a showing of good cause, excusable neglect, or that the notice required by subsection (b) of Section 6 is defective or insufficient upon which to base an action under this act.
- (d) Except as otherwise specifically provided in this act, the Alabama Rules of Civil Procedure shall apply to all proceedings under this act.

Section 12. (a) Where the ends of justice dictate, the court may grant a temporary order restraining the change of principal residence of a child or ordering return of a child to the former residence of the child if a change of

L	principal residence has previously taken place without
2	compliance with this act, and may consider among other
3	factors, any of the following:

- (1) The notice required by this act was not provided in a timely manner.
  - (2) The notice required by this act was not accurate or did not contain sufficient information upon which a person receiving the notice could base an objection.
  - (3) The child already has been relocated without notice, agreement of the parties, or prior court approval.
  - (4) The likelihood that on final hearing the court will not approve the change of the principal residence of the child.
  - (e) The court may grant a temporary order permitting the change of principal residence of a child and providing for a revised schedule for temporary visitation with a child pending a final hearing if the court finds that the required notice of a proposed change of principal residence of a child as provided in this act was provided in a timely manner, contained sufficient and accurate information and if the court finds from an examination of the evidence presented at a hearing for temporary relief that there is a likelihood that on final hearing the court will approve the change of the principal residence of the child.

(f) If the court has issued a temporary order authorizing a party to change the principal residence of a child before final judgment is issued, the court may not give weight to the temporary change of principal residence as a factor in reaching its final decision.

Section 13. (a) Upon the entry of a temporary order or upon final judgment permitting the change of principal residence of a child, a court may consider a proposed change of principal residence of a child as a factor to support a change of custody of the child. In determining whether a proposed or actual change of principal residence of a minor child should cause a change in custody of that child, a court shall take into account all factors affecting the child, including, but not limited to, the following:

- (1) The nature, quality, extent of involvement, and duration of the child's relationship with the person proposing to relocate with the child and with the non-relocating person, siblings, and other significant persons or institutions in the child's life.
- (2) The age, developmental stage, needs of the child, and the likely impact the change of principal residence of a child will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child.

(3) The increase in travel time for the child
created by the change in principal residence of the child or a
person entitled to custody of or visitation with the child.

- (4) The availability and cost of alternate means of communication between the child and the non-relocating party.
- (5) The feasibility of preserving the relationship between the non-relocating person and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties.
- (6) The preference of the child, taking into consideration the age and maturity of the child.
- (7) The degree to which a change or proposed change of the principal residence of the child will result in uprooting the child as compared to the degree to which a modification of the custody of the child will result in uprooting the child.
- (8) The extent to which custody and visitation rights have been allowed and exercised.
- (9) Whether there is an established pattern of conduct of the person seeking to change the principal residence of a child, either to promote or thwart the relationship of the child and the non-relocating person.
- (10) Whether the person seeking to change the principal residence of a child, once out of the jurisdiction, is likely to comply with any new visitation arrangement and

1	the disposition of that person to foster a joint parenting
2	arrangement with the non-relocating party.
3	(11) Whether the relocation of the child will
4	enhance the general quality of life for both the custodial
5	party seeking the change of principal residence of the child
6	and the child, including, but not limited to, financial or
7	emotional benefit or educational opportunities.
8	(12) Whether or not a support system is available in
9	the area of the proposed new residence of the child,
10	especially in the event of an emergency or disability to the
11	person having custody of the child.
12	(13) Whether or not the proposed new residence of a
13	child is to a foreign country whose public policy does not
14	normally enforce the visitation rights of non-custodial
15	parents, which does not have an adequately functioning legal
16	system or which otherwise presents a substantial risk of
17	specific and serious harm to the child.
18	(14) The stability of the family unit of the persons
19	entitled to custody of and visitation with a child.
20	(15) The reasons of each person for seeking or
21	opposing a change of principal residence of a child.
22	(16) Evidence relating to a history of domestic

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violence or child abuse.

(16) (17) Any other factor that in the opinion of the court is material to the general issue or otherwise provided by law.

- (b) The court making a determination of such issue shall enter an order granting the objection to the change or proposed change of principal residence of a child, denying the objection to the change or proposed change of principal residence of a child, or any other appropriate relief based upon the facts of the case.
- (c) The court, in approving a change of principal residence of a child, shall order contact between the child and the non-relocating party and telephone access sufficient to assure that the child has frequent, continuing, and meaningful contact with the non-relocating party and shall equitably apportion transportation costs of the child for visitation based upon the facts of the case.
- (d) The court, in approving a change of principal residence of a child, may consider the costs of transporting the child for visitation and determine whether a deviation from the child support guidelines should be considered in light of all factors including, but not limited to, additional costs incurred for transporting the child for visitation.
- (e) The court, in approving a change of principal residence of a child, may retain jurisdiction of the parties and of the child in order to supervise the transition caused

by the change of principal residence of the child; to insure compliance with the orders of the court regarding continued access to the child by the non-relocating party; to insure the cooperation of the relocating party in fostering the parent-child relationship between the child and the non-relocating party; and to protect the relocating party and the child from risk of harm in those cases described in subsection (c) of Section 8.

Section 14. In proceedings under this act unless there has been a determination that the party objecting to the change of the principal residence of the child has been found to have committed domestic violence or child abuse, there shall be a rebuttable presumption that a change of principal residence of a child is not in the best interest of the child. The party seeking a change of principal residence of a child shall have the initial burden of proof on the issue. If that burden of proof is met, the burden of proof shifts to the non-relocating party.

Section 15. If on final hearing the change of principal residence of a child is permitted, the court may require the person seeking to change the principal residence of a child to provide reasonable security guaranteeing that the custody of and visitation with the child will not be interrupted or obstructed by the relocating party.

1,	Section 16. (a) Where a party commences an action
2	without good cause or for the purpose of harassing or causing
3	unnecessary financial or emotional hardships to the other
4	party, after notice and a reasonable opportunity to respond,
5	the court may impose sanctions on a person proposing a change
6	of principal residence of the child or objecting to a proposed
7	change of principal residence of a child if it determines that
8	the proposal was made or the objection was filed based upon
9	any of the following:

- (1) To harass a person or to cause unnecessary delay or needless increase in the cost of litigation.
- (2) Without being warranted by existing law or based on frivolous argument.
- (3) Based on allegations and other factual contentions, which had no evidentiary support nor, if specifically so identified, could not have been reasonably believed to be likely to have evidentiary support after further investigation.
- (4) Designed to elicit or discover or lead to the discovery of information protected by Section 8.
- (b) Sanctions imposed under this section shall be limited to those that are sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. The sanction may include directives of a non-monetary nature, an order to pay a penalty into court, or,

if imposed on motion and warranted for effective deterrence, an order directing payment to the other party of some or all of the reasonable costs, attorney's fees, and expenses incurred as a direct result of the violation.

Section 17. If the issue of change of principal residence of a child is presented in a petition for divorce or dissolution of a marriage or other petition to determine custody of or visitation with a child, the court shall consider, among other evidence, the factors set forth in Sections 12 and 13 in making its initial determination.

Section 18. The court may award any party necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings.

Section 19. (a) In those instances where the change of principal residence of a child results in the relocation of a child to a residence outside this state, the provisions of Sections 30-3B-101 to 30-3B-314, inclusive, Code of Alabama 1975, shall apply to actions commenced under this act.

(b) Where the parties have been awarded joint custody, joint legal custody or joint physical custody of a child as defined in Section 30-3-151, Code of Alabama 1975, and at least one parent having joint custody, joint legal custody, or joint physical custody of a child continues to

maintain a principal residence in this state, the child shall have a significant connection with this state and a court in fashioning its judgments, orders, or decrees may retain continuing jurisdiction under Sections 30-3B-202 to 30-3B-204, inclusive, Code of Alabama 1975, even though the child's principal residence after the relocation is outside this state.

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(c) In a proceeding commenced to modify, interpret, or enforce a final decree under this act, where jurisdiction exists under this section or otherwise as provided by law and where only one person having joint custody, joint legal custody, or joint physical custody of a child continues to maintain a principal residence in this state, notwithstanding any law to the contrary, venue of all proceedings under this act is changed so that venue will lie either in the original circuit court rendering the final decree or in the circuit court of the county where that person having joint custody, joint legal custody, or joint physical custody has resided for a period of at least three consecutive years immediately preceding the commencement of an action under this act. The person having joint custody, joint legal custody, or joint physical custody who continues to maintain a principal residence in this state shall be able to choose the particular venue as herein provided, regardless of which party files the petition or other action.

Section 20. An appeal may be taken from a final order in a proceeding under this act in accordance with Alabama law. Unless the court enters a temporary order under Section 12, the court may not stay an order enjoining a change in principal residence of a child pending appeal.

Section 21. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 22. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.

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4		Speaker of the House of Representa	atives
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6		President and Presiding Officer of	the Senate
7 8 9	I l and was passe	House of Representatives nereby certify that the within Act and by the House 29-APR-03, as amend	originated in ed.
10 11 12 13	-	Greg Pappas Clerk	
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16	Senate	11-JUN-03	Passed
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APPROVED 6-23-03
TIME 103° AM
B.L. TR.L.
GOVERNOR

Alabama Secretary Of State

Act Num...: 2003-364 Bill Num...: H-157 Recv'd 06/23/03 ii:26wmHH