

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

760J0540

## SENATE BILL NO. 181

Introduced by: Senators Kooistra and Schoenbeck and Representatives Gillespie, Cutler, and Deadrick (Thomas)

1 FOR AN ACT ENTITLED, An Act to require notice before relocating a child not living with  
2 both legal parents.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. If an existing custody order or other enforceable agreement does not expressly  
5 govern the relocation of the principal residence of a child, a parent who intends to change his  
6 or her principal residence shall, provide reasonable written notice to the other legal parent of the  
7 child. This notice is not required if the parent can prove a credible threat to the child's or parent's  
8 safety would ensue if notice is given. Forty-five days is presumed to be reasonable notice unless  
9 the court of record finds good cause for a shorter notice. Proof of the notice shall be filed with  
10 the court of record.

11 This section does not apply if the relocation results in the child moving closer to the  
12 noncustodial parent or to any location within the child's current school district.

13 Section 2. The notice required in section 1 of this Act shall contain the following:

14 (1) The address and telephone number, if known, of the new residence;

15 (2) The purpose for relocating;



1       (3)   Why the relocation is in the best interest of the child; and

2       (4)   The relocating party's proposed visitation plan for the nonrelocating parent upon  
3           relocation.

4       Section 3. If a parent's change in residence will significantly affect the child's contact with  
5       the other parent, notice must be served personally or given by certified mail.

6       Section 4. At the request of the nonrelocating parent, made within thirty days of the notice  
7       of relocation, the court shall hold a hearing on the relocation. If no request for hearing is made  
8       within thirty days of notice, the relocation is presumed to be consented to by the nonrelocating  
9       parent.

10      Section 5. At the hearing, the relocating party bears the initial burden to demonstrate, by a  
11      preponderance of evidence, that:

12      (1)   The relocation is for a legitimate purpose;

13      (2)   The proposed relocation is reasonable in light of the purpose; and

14      (3)   The relocation is in the best interest of the child.

15      If the burden of proof established in this section is met, the burden shifts to the  
16      nonrelocating parent to prove, by a preponderance of the evidence, that the proposed relocation  
17      is not in the best interest of the child.