

By: Nixon, Wise

H.B. No. 1899

A BILL TO BE ENTITLED

AN ACT

relating to the prevention of the international abduction of a child by a parent of the child.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 153, Family Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. PREVENTION OF INTERNATIONAL

PARENTAL CHILD ABDUCTION

Sec. 153.501. NECESSITY OF MEASURES TO PREVENT INTERNATIONAL PARENTAL CHILD ABDUCTION. (a) In a suit, if credible evidence is presented to the court indicating a potential risk of the international abduction of a child by a parent of the child, the court, on its own motion or at the request of a party to the suit, shall determine under this section whether it is necessary for the court to take one or more of the measures described by Section 153.503 to protect the child from the risk of abduction by the parent.

(b) In determining whether to take any of the measures described by Section 153.503, the court shall consider:

(1) the public policies of this state described by Section 153.001(a) and the consideration of the best interest of the child under Section 153.002;

(2) the risk of international abduction of the child by a parent of the child based on the court's evaluation of the risk

1 factors described by Section 153.502;

2 (3) any obstacles to locating, recovering, and
3 returning the child if the child is abducted to a foreign country;
4 and

5 (4) the potential physical or psychological harm to
6 the child if the child is abducted to a foreign country.

7 Sec. 153.502. ABDUCTION RISK FACTORS. (a) To determine
8 whether there is a risk of the international abduction of a child by
9 a parent of the child, the court shall consider evidence that the
10 parent:

11 (1) has taken, enticed away, kept, withheld, or
12 concealed a child in violation of another person's right of
13 possession of or access to the child, unless the parent presents
14 evidence that the parent believed in good faith that the parent's
15 conduct was necessary to avoid imminent harm to the child;

16 (2) has previously threatened to take, entice away,
17 keep, withhold, or conceal a child in violation of another person's
18 right of possession of or access to the child;

19 (3) lacks financial reason to stay in the United
20 States, including evidence that the parent is financially
21 independent, is able to work outside of the United States, or is
22 unemployed;

23 (4) has recently engaged in planning activities that
24 could facilitate the removal of the child from the United States by
25 the parent, including:

26 (A) quitting a job;

27 (B) selling a primary residence;

1 (C) terminating a lease;

2 (D) closing bank accounts;

3 (E) liquidating other assets;

4 (F) hiding or destroying documents;

5 (G) applying for a passport or visa for the
6 parent or the child; or

7 (H) applying to obtain the child's birth
8 certificate or school or medical records;

9 (5) has a history of domestic violence that the court
10 is required to consider under Section 153.004; or

11 (6) has a criminal history or a history of violating
12 court orders.

13 (b) If the court finds that there is credible evidence of a
14 risk of abduction of the child by a parent of the child based on the
15 court's consideration of the factors in Subsection (a), the court
16 shall also consider evidence regarding the following factors to
17 evaluate the risk of international abduction of the child by a
18 parent:

19 (1) whether the parent has strong familial, emotional,
20 or cultural ties to another country, particularly a country that is
21 not a signatory to or compliant with the Hague Convention on the
22 Civil Aspects of International Child Abduction; and

23 (2) whether the parent lacks strong ties to the United
24 States, regardless of whether the parent is a citizen or permanent
25 resident of the United States.

26 (c) If the court finds that there is credible evidence of a
27 risk of abduction of the child by a parent of the child based on the

1 court's consideration of the factors in Subsection (a), the court
2 may also consider evidence regarding the following factors to
3 evaluate the risk of international abduction of the child by a
4 parent:

5 (1) whether the parent is undergoing a change in
6 status with the United States Immigration and Naturalization
7 Service that would adversely affect that parent's ability to
8 legally remain in the United States;

9 (2) whether the parent's application for United States
10 citizenship has been denied by the United States Immigration and
11 Naturalization Service;

12 (3) whether the parent has forged or presented
13 misleading or false evidence to obtain a visa, a passport, a social
14 security card, or any other identification card or has made any
15 misrepresentation to the United States government; or

16 (4) whether the foreign country to which the parent
17 has ties:

18 (A) presents obstacles to the recovery and return
19 of a child who is abducted to the country from the United States;

20 (B) has any legal mechanisms for immediately and
21 effectively enforcing an order regarding the possession of or
22 access to the child issued by this state;

23 (C) has local laws or practices that would:

24 (i) enable the parent to prevent the child's
25 other parent from contacting the child without due cause;

26 (ii) restrict the child's other parent from
27 freely traveling to or exiting from the country because of that

1 parent's gender, nationality, or religion; or

2 (iii) restrict the child's ability to
3 legally leave the country after the child reaches the age of
4 majority because of the child's gender, nationality, or religion;

5 (D) is included by the United States Department
6 of State on a list of state sponsors of terrorism;

7 (E) is a country for which the United States
8 Department of State has issued a travel warning to United States
9 citizens regarding travel to the country;

10 (F) has an embassy of the United States in the
11 country;

12 (G) is engaged in any active military action or
13 war, including a civil war;

14 (H) is a party to and compliant with the Hague
15 Convention on the Civil Aspects of International Child Abduction
16 according to the most recent report on compliance issued by the
17 United States Department of State;

18 (I) provides for the extradition of a parental
19 abductor and the return of the child to the United States; or

20 (J) poses a risk that the child's physical health
21 or safety would be endangered in the country because of specific
22 circumstances relating to the child or because of human rights
23 violations committed against children, including arranged
24 marriages, lack of freedom of religion, child labor, lack of child
25 abuse laws, female genital mutilation, and any form of slavery.

26 Sec. 153.503. ABDUCTION PREVENTION MEASURES. If the court
27 finds that it is necessary under Section 153.501 to take measures to

1 protect a child from international abduction by a parent of the
2 child, the court may take any of the following actions:

3 (1) appoint a person other than the parent of the child
4 who presents a risk of abducting the child as the sole managing
5 conservator of the child;

6 (2) require supervised visitation of the parent by a
7 visitation center or independent organization until the court finds
8 under Section 153.501 that supervised visitation is no longer
9 necessary;

10 (3) enjoin the parent or any person acting on the
11 parent's behalf from:

12 (A) disrupting or removing the child from the
13 school or child-care facility in which the child is enrolled; or

14 (B) approaching the child at any location other
15 than a site designated for supervised visitation;

16 (4) order passport and travel controls, including
17 controls that:

18 (A) prohibit the parent and any person acting on
19 the parent's behalf from removing the child from this state or the
20 United States;

21 (B) require the parent to surrender any passport
22 issued in the child's name, including any passport issued in the
23 name of both the parent and the child; and

24 (C) prohibit the parent from applying on behalf
25 of the child for a new or replacement passport or international
26 travel visa;

27 (5) require the parent to provide:

1 (A) to the United States Department of State's
2 Office of Children's Issues and the relevant foreign consulate or
3 embassy:

4 (i) written notice of the court-ordered
5 passport and travel restrictions for the child; and

6 (ii) a properly authenticated copy of the
7 court order detailing the restrictions and documentation of the
8 parent's agreement to the restrictions; and

9 (B) to the court proof of receipt of the written
10 notice required by Paragraph (A)(i) by the United States Department
11 of State's Office of Children's Issues and the relevant foreign
12 consulate or embassy;

13 (6) order the parent to execute a bond or deposit
14 security in an amount sufficient to offset the cost of recovering
15 the child if the child is abducted by the parent to a foreign
16 country;

17 (7) authorize the appropriate law enforcement
18 agencies to take measures to prevent the abduction of the child by
19 the parent; or

20 (8) include in the court's order provisions:

21 (A) identifying the United States as the country
22 of habitual residence of the child;

23 (B) defining the basis for the court's exercise
24 of jurisdiction; and

25 (C) stating that a party's violation of the order
26 may subject the party to a civil penalty or criminal penalty or to
27 both civil and criminal penalties.

1 SECTION 2. The changes in law made by this Act apply to a
2 suit affecting the parent-child relationship pending in a trial
3 court on the effective date of this Act or filed on or after the
4 effective date of this Act.

5 SECTION 3. This Act takes effect immediately if it receives
6 a vote of two-thirds of all the members elected to each house, as
7 provided by Section 39, Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2003.