

1-1 By: Nixon, Wise (Senate Sponsor - Nelson) H.B. No. 1899
1-2 (In the Senate - Received from the House May 12, 2003;
1-3 May 13, 2003, read first time and referred to Committee on
1-4 Jurisprudence; May 20, 2003, reported favorably by the following
1-5 vote: Yeas 5, Nays 0; May 20, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the prevention of the international abduction of a
1-9 child by a parent of the child.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Chapter 153, Family Code, is amended by adding
1-12 Subchapter I to read as follows:

1-13 SUBCHAPTER I. PREVENTION OF INTERNATIONAL
1-14 PARENTAL CHILD ABDUCTION

1-15 Sec. 153.501. NECESSITY OF MEASURES TO PREVENT
1-16 INTERNATIONAL PARENTAL CHILD ABDUCTION. (a) In a suit, if credible
1-17 evidence is presented to the court indicating a potential risk of
1-18 the international abduction of a child by a parent of the child, the
1-19 court, on its own motion or at the request of a party to the suit,
1-20 shall determine under this section whether it is necessary for the
1-21 court to take one or more of the measures described by Section
1-22 153.503 to protect the child from the risk of abduction by the
1-23 parent.

1-24 (b) In determining whether to take any of the measures
1-25 described by Section 153.503, the court shall consider:

1-26 (1) the public policies of this state described by
1-27 Section 153.001(a) and the consideration of the best interest of
1-28 the child under Section 153.002;

1-29 (2) the risk of international abduction of the child
1-30 by a parent of the child based on the court's evaluation of the risk
1-31 factors described by Section 153.502;

1-32 (3) any obstacles to locating, recovering, and
1-33 returning the child if the child is abducted to a foreign country;
1-34 and

1-35 (4) the potential physical or psychological harm to
1-36 the child if the child is abducted to a foreign country.

1-37 Sec. 153.502. ABDUCTION RISK FACTORS. (a) To determine
1-38 whether there is a risk of the international abduction of a child by
1-39 a parent of the child, the court shall consider evidence that the
1-40 parent:

1-41 (1) has taken, enticed away, kept, withheld, or
1-42 concealed a child in violation of another person's right of
1-43 possession of or access to the child, unless the parent presents
1-44 evidence that the parent believed in good faith that the parent's
1-45 conduct was necessary to avoid imminent harm to the child;

1-46 (2) has previously threatened to take, entice away,
1-47 keep, withhold, or conceal a child in violation of another person's
1-48 right of possession of or access to the child;

1-49 (3) lacks financial reason to stay in the United
1-50 States, including evidence that the parent is financially
1-51 independent, is able to work outside of the United States, or is
1-52 unemployed;

1-53 (4) has recently engaged in planning activities that
1-54 could facilitate the removal of the child from the United States by
1-55 the parent, including:

1-56 (A) quitting a job;

1-57 (B) selling a primary residence;

1-58 (C) terminating a lease;

1-59 (D) closing bank accounts;

1-60 (E) liquidating other assets;

1-61 (F) hiding or destroying documents;

1-62 (G) applying for a passport or visa for the
1-63 parent or the child; or

1-64 (H) applying to obtain the child's birth
1-65 certificate or school or medical records;

2-1 (5) has a history of domestic violence that the court
 2-2 is required to consider under Section 153.004; or

2-3 (6) has a criminal history or a history of violating
 2-4 court orders.

2-5 (b) If the court finds that there is credible evidence of a
 2-6 risk of abduction of the child by a parent of the child based on the
 2-7 court's consideration of the factors in Subsection (a), the court
 2-8 shall also consider evidence regarding the following factors to
 2-9 evaluate the risk of international abduction of the child by a
 2-10 parent:

2-11 (1) whether the parent has strong familial, emotional,
 2-12 or cultural ties to another country, particularly a country that is
 2-13 not a signatory to or compliant with the Hague Convention on the
 2-14 Civil Aspects of International Child Abduction; and

2-15 (2) whether the parent lacks strong ties to the United
 2-16 States, regardless of whether the parent is a citizen or permanent
 2-17 resident of the United States.

2-18 (c) If the court finds that there is credible evidence of a
 2-19 risk of abduction of the child by a parent of the child based on the
 2-20 court's consideration of the factors in Subsection (a), the court
 2-21 may also consider evidence regarding the following factors to
 2-22 evaluate the risk of international abduction of the child by a
 2-23 parent:

2-24 (1) whether the parent is undergoing a change in
 2-25 status with the United States Immigration and Naturalization
 2-26 Service that would adversely affect that parent's ability to
 2-27 legally remain in the United States;

2-28 (2) whether the parent's application for United States
 2-29 citizenship has been denied by the United States Immigration and
 2-30 Naturalization Service;

2-31 (3) whether the parent has forged or presented
 2-32 misleading or false evidence to obtain a visa, a passport, a social
 2-33 security card, or any other identification card or has made any
 2-34 misrepresentation to the United States government; or

2-35 (4) whether the foreign country to which the parent
 2-36 has ties:

2-37 (A) presents obstacles to the recovery and return
 2-38 of a child who is abducted to the country from the United States;

2-39 (B) has any legal mechanisms for immediately and
 2-40 effectively enforcing an order regarding the possession of or
 2-41 access to the child issued by this state;

2-42 (C) has local laws or practices that would:
 2-43 (i) enable the parent to prevent the child's
 2-44 other parent from contacting the child without due cause;

2-45 (ii) restrict the child's other parent from
 2-46 freely traveling to or exiting from the country because of that
 2-47 parent's gender, nationality, or religion; or

2-48 (iii) restrict the child's ability to
 2-49 legally leave the country after the child reaches the age of
 2-50 majority because of the child's gender, nationality, or religion;

2-51 (D) is included by the United States Department
 2-52 of State on a list of state sponsors of terrorism;

2-53 (E) is a country for which the United States
 2-54 Department of State has issued a travel warning to United States
 2-55 citizens regarding travel to the country;

2-56 (F) has an embassy of the United States in the
 2-57 country;

2-58 (G) is engaged in any active military action or
 2-59 war, including a civil war;

2-60 (H) is a party to and compliant with the Hague
 2-61 Convention on the Civil Aspects of International Child Abduction
 2-62 according to the most recent report on compliance issued by the
 2-63 United States Department of State;

2-64 (I) provides for the extradition of a parental
 2-65 abductor and the return of the child to the United States; or

2-66 (J) poses a risk that the child's physical health
 2-67 or safety would be endangered in the country because of specific
 2-68 circumstances relating to the child or because of human rights
 2-69 violations committed against children, including arranged

3-1 marriages, lack of freedom of religion, child labor, lack of child
3-2 abuse laws, female genital mutilation, and any form of slavery.

3-3 Sec. 153.503. ABDUCTION PREVENTION MEASURES. If the court
3-4 finds that it is necessary under Section 153.501 to take measures to
3-5 protect a child from international abduction by a parent of the
3-6 child, the court may take any of the following actions:

3-7 (1) appoint a person other than the parent of the child
3-8 who presents a risk of abducting the child as the sole managing
3-9 conservator of the child;

3-10 (2) require supervised visitation of the parent by a
3-11 visitation center or independent organization until the court finds
3-12 under Section 153.501 that supervised visitation is no longer
3-13 necessary;

3-14 (3) enjoin the parent or any person acting on the
3-15 parent's behalf from:

3-16 (A) disrupting or removing the child from the
3-17 school or child-care facility in which the child is enrolled; or

3-18 (B) approaching the child at any location other
3-19 than a site designated for supervised visitation;

3-20 (4) order passport and travel controls, including
3-21 controls that:

3-22 (A) prohibit the parent and any person acting on
3-23 the parent's behalf from removing the child from this state or the
3-24 United States;

3-25 (B) require the parent to surrender any passport
3-26 issued in the child's name, including any passport issued in the
3-27 name of both the parent and the child; and

3-28 (C) prohibit the parent from applying on behalf
3-29 of the child for a new or replacement passport or international
3-30 travel visa;

3-31 (5) require the parent to provide:
3-32 (A) to the United States Department of State's
3-33 Office of Children's Issues and the relevant foreign consulate or
3-34 embassy:

3-35 (i) written notice of the court-ordered
3-36 passport and travel restrictions for the child; and

3-37 (ii) a properly authenticated copy of the
3-38 court order detailing the restrictions and documentation of the
3-39 parent's agreement to the restrictions; and

3-40 (B) to the court proof of receipt of the written
3-41 notice required by Paragraph (A)(i) by the United States Department
3-42 of State's Office of Children's Issues and the relevant foreign
3-43 consulate or embassy;

3-44 (6) order the parent to execute a bond or deposit
3-45 security in an amount sufficient to offset the cost of recovering
3-46 the child if the child is abducted by the parent to a foreign
3-47 country;

3-48 (7) authorize the appropriate law enforcement
3-49 agencies to take measures to prevent the abduction of the child by
3-50 the parent; or

3-51 (8) include in the court's order provisions:
3-52 (A) identifying the United States as the country
3-53 of habitual residence of the child;

3-54 (B) defining the basis for the court's exercise
3-55 of jurisdiction; and

3-56 (C) stating that a party's violation of the order
3-57 may subject the party to a civil penalty or criminal penalty or to
3-58 both civil and criminal penalties.

3-59 SECTION 2. The changes in law made by this Act apply to a
3-60 suit affecting the parent-child relationship pending in a trial
3-61 court on the effective date of this Act or filed on or after the
3-62 effective date of this Act.

3-63 SECTION 3. This Act takes effect immediately if it receives
3-64 a vote of two-thirds of all the members elected to each house, as
3-65 provided by Section 39, Article III, Texas Constitution. If this
3-66 Act does not receive the vote necessary for immediate effect, this
3-67 Act takes effect September 1, 2003.

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