COMMITTEE REPORT

March 11, 2009

**S. 383**

Introduced by Senator Hayes

S. Printed 3/11/09--S. [SEC 3/12/09 2:11 PM]

Read the first time February 3, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 383) to amend the Code of Laws of South Carolina, 1976, by adding Article 5 to Chapter 15, Title 63 so as to enact the “Uniform Child Abduction Prevention Act”, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, page 1, by striking lines 35 through 36 in their entirety and inserting the following:

/ (2) ‘Child’ means an individual who is less than sixteen years old and not emancipated. /

Amend title to conform.

JOEL LOURIE for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

See Below

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Judicial Department indicates this bill will have an impact on the General Fund of the State associated with the additional filings of abduction prevention orders with the Family Court. Should the number of cases exceed what the current pool of family court judges can absorb, delays in the family court docket can be expected and additional judges would be needed. Costs associated with the addition of one Family Court Judge and staff is as follows: $282,216 in Personal Service/Employer Contributions (Family Court Judge, Secretary, Court Reporter) and $16,000 in Other Operating Expenses. Total impact per additional Family Court Judge and staff is $298,216. The addition of new judges would also require more courtroom space, an expense borne by county government.

**LOCAL GOVERNMENT IMPACT:**

Responses indicate there would be little or no impact on local expenditures.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 5 TO CHAPTER 15, TITLE 63 SO AS TO ENACT THE “UNIFORM CHILD ABDUCTION PREVENTION ACT”, TO PROVIDE A LEGAL MECHANISM TO PROTECT CHILDREN FROM CREDIBLE RISKS OF ABDUCTION RELATED TO LEGAL CUSTODY OR VISITATION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This article may be cited as the “Uniform Child Abduction Prevention Act”.

SECTION 2. Chapter 15, Title 63 of the 1976 Code is amended by adding:

“Article 5

Uniform Child Abduction Prevention Act

Section 63‑15‑500. As used in this article:

(1) ‘Abduction’ means the wrongful removal or wrongful retention of a child.

(2) ‘Child’ means an individual who is less than eight years old and not emancipated.

(3) ‘Child custody determination’ means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation concerning a child. The term includes a permanent, temporary, initial, and modification order.

(4) ‘Child custody proceeding’ means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, dissolution of marriage, separate support and maintenance, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, or protection from domestic violence.

(5) ‘Court’ means the family court of this State or, with respect to another state, an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.

(6) ‘Petition’ includes a motion or its equivalent.

(7) ‘Record’ means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(8) ‘State’ means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or a territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe or nation.

(9) ‘Travel document’ means records relating to a travel itinerary, including a travel ticket, pass, reservation for transportation*,* or accommodation. The term does not include a passport or visa.

(10) ‘Wrongful removal’ means the taking of a child that breaches a right of custody or visitation provided by the law of this State.

(11) ‘Wrongful retention’ means the keeping or concealing of a child that breaches a right of custody or visitation provided by the law of this State.

Section 63‑15‑510. Sections 63‑15‑318, 63‑15‑320, and 63‑15‑322 apply to this article.

Section 63‑15‑520. (A) A court may order an abduction prevention measure in a child custody proceeding on its own motion if the court finds that the evidence establishes a credible risk of abduction of the child.

(B) A party to a child custody determination or another individual or entity having a right under the law of this State or another state to seek a child custody determination for the child may file a petition to seek abduction prevention measures to protect the child under this article.

(C) A prosecutor may seek a warrant to take physical custody of a child under Section 63‑15‑570 or other appropriate prevention measures.

Section 63‑15‑530. (A) A petition under this article may be filed only in a court that has jurisdiction to make a child custody determination with respect to the child at issue under Article 3.

(B) A court of this State has temporary emergency jurisdiction under Section 63‑15‑336 if the court finds a credible risk of abduction.

Section 63‑15‑540. A petition under this article must be verified and include a copy of an existing child custody determination, if available. The petition must specify the risk factors for abduction, including the relevant factors described in Section 63‑15‑550. Subject to Section 63‑15‑346(E), if reasonably ascertainable, the petition must contain:

(1) the name, date of birth, and gender of the child;

(2) the customary address and current physical location of the child;

(3) the identity, customary address, and current physical location of the respondent;

(4) a statement of whether a prior action to prevent abduction or domestic violence has been filed by a party or other individual or entity having custody of the child, and the date, location, and disposition of the action;

(5) a statement of whether a party to the proceeding has been arrested for a crime related to domestic violence, stalking, or child abuse or neglect, and the date, location, and disposition of the case; and

(6) other information required to be submitted to the court for a child custody determination under Section 63‑15‑346.

Section 63‑15‑550. (A) When determining the existence of a credible risk of abduction of a child, the court shall consider evidence that the petitioner or respondent:

(1) has previously abducted or attempted to abduct the child;

(2) has threatened to abduct the child;

(3) has recently engaged in activities that may indicate a planned abduction, including:

(a) abandoning employment;

(b) selling a primary residence;

(c) terminating a lease;

(d) closing a bank account or another financial management account, liquidating an asset, hiding or destroying a financial document, or conducting an unusual financial activity;

(e) applying for a passport or visa or obtaining travel documents for the respondent, a family member, or the child; or

(f) seeking to obtain the child’s birth certificate, school, or medical records;

(4) has engaged in domestic violence, stalking, child abuse, or neglect;

(5) has refused to follow a child custody determination;

(6) lacks strong familial, financial, emotional, or cultural ties to this State or the United States;

(7) has strong familial, financial, emotional, or cultural ties to another state or country;

(8) is likely to take the child to a country that:

(a) is not a party to the Hague Convention on the Civil Aspects of International Child Abduction and does not provide for the extradition of an abducting parent or for the return of an abducted child;

(b) is a party to the Hague Convention on the Civil Aspects of International Child Abduction but:

(i) the Hague Convention on the Civil Aspects of International Child Abduction is not in force between the United States and that country;

(ii) is noncompliant according to the most recent compliance report issued by the United States Department of State; or

(iii) lacks legal mechanisms for immediately and effectively enforcing a return order under the Hague Convention on the Civil Aspects of International Child Abduction;

(c) poses a risk that the child’s physical or emotional health or safety may be endangered in the country because of specific circumstances relating to the child or because of human rights violations committed against children;

(d) has laws or practices that:

(i) enables the respondent, without due cause, to prevent the petitioner from contacting the child;

(ii) restricts the petitioner from freely traveling to or exiting from the country because of the petitioner’s gender, nationality, marital status, or religion; or

(iii) restricts the child’s ability legally to leave the country after the child reaches the age of majority because of a child’s gender, nationality, or religion;

(e) is included by the United States Department of State on a current list of state sponsors of terrorism;

(f) does not have an official United States diplomatic presence in the country; or

(g) is engaged in active military action or war, including a civil war, to which the child may be exposed;

(9) is undergoing a change in immigration or citizenship status that adversely affect the respondent’s ability to remain in the United States legally;

(10) has had an application for United States citizenship denied;

(11) has forged or presented misleading or false evidence on government forms or supporting documents to obtain, or attempt to obtain, a passport, visa, travel documents, Social Security card, driver’s license, or other government‑issued identification card or has made a misrepresentation to the United States government;

(12) has used multiple names to attempt to mislead or defraud; or

(13) has engaged in other conduct the court considers relevant to the risk of abduction.

(B) In the hearing on a petition under this article, the court shall consider evidence that the respondent believed in good faith that the respondent’s conduct was necessary to avoid imminent harm to the child or respondent and other evidence that may be relevant to whether the respondent may be permitted to remove or retain the child.

Section 63‑15‑560. (A) If a petition is filed under this article, the court may enter an order that includes:

(1) the basis for the court’s exercise of jurisdiction;

(2) the manner in which notice and opportunity to be heard were given to the persons entitled to notice of the proceeding;

(3) a detailed description of each party’s custody and visitation rights and residential arrangements for the child;

(4) a provision stating that a violation of the order may subject the party in violation to civil and criminal penalties; and

(5) identification of the child’s country of habitual residence at the time of the issuance of the order.

(B) The court shall enter an abduction prevention order if it conducts a hearing on a petition under this article or on its own motion, reviews evidence, and finds a credible risk of a child abduction. The order must include the provisions, measures, and conditions provided in this section that are reasonably calculated to prevent abduction of the child and give due consideration to the custody and visitation rights of a party. The court shall consider the age of the child, the potential harm to the child from an abduction, the legal and practical difficulties of returning the child to the jurisdiction if abducted, and the reasons for the potential abduction, including evidence of domestic violence, stalking, child abuse, or neglect.

(C) An abduction prevention order may include one or more of the following:

(1) an imposition of travel restrictions that require that a party traveling with the child outside a designated geographical area provide the other party with the following:

(a) the travel itinerary of the child;

(b) a list of physical addresses and telephone numbers that the child may be reached at specified times; and

(c) a copy of all travel documents;

(2) a prohibition of the respondent directly or indirectly:

(a) removing the child from this State, the United States, or another geographic area without permission of the court or the petitioner’s written consent;

(b) removing or retaining the child in violation of a child custody determination;

(c) removing the child from school or a childcare or similar facility; or

(d) approaching the child at a location other than a site designated for supervised visitation;

(3) a requirement that a party register the order in another state as a prerequisite to allowing the child to travel to that state;

(4) with regard to the child’s passport:

(a) a direction that the petitioner place the child’s name in the United States Department of State’s Child Passport Issuance Alert Program;

(b) a requirement that the respondent surrender to the court or the petitioner’s attorney a United States or foreign passport issued in the child’s name, including a passport issued in the name of both the parent and the child; and

(c) a prohibition upon the respondent from applying on behalf of the child for a new or replacement passport or visa;

(5) as a prerequisite to exercising custody or visitation, a requirement that the respondent provide:

(a) to the United States Department of State Office of Children’s Issues and the relevant foreign consulate or embassy, an authenticated copy of the order detailing passport and travel restrictions for the child;

(b) to the court:

(i) proof that the respondent has provided the information in subitem (a); and

(ii) an acknowledgment in a record from the relevant foreign consulate or embassy that no passport application has been made, or passport issued, on behalf of the child;

(c) to the petitioner, proof of registration with the United States Embassy or other United States diplomatic presence in the destination country and with the Central Authority for the Hague Convention on the Civil Aspects of International Child Abduction, if that Convention is in effect between the United States and the destination country, unless one of the parties objects; and

(d) a written waiver under the Privacy Act, 5 U.S.C. Section 552a, as amended, with respect to a document, application, or other information pertaining to the child authorizing its disclosure to the court and the petitioner; and

(6) upon the petitioner’s request, a requirement that the respondent obtain an order from the relevant foreign country containing terms identical to the child custody determination issued in the United States.

(D) An abduction prevention order may impose a condition on the exercise of custody or visitation that:

(1) limits visitation or requires that visitation with the child by the respondent be supervised until the court finds that supervision is no longer necessary and order the respondent to pay the costs of supervision;

(2) requires the respondent to post a bond or provide other security in an amount sufficient to serve as a financial deterrent to abduction, the proceeds of which may be used to pay for the reasonable expenses of recovery of the child, including a reasonable attorney’s fee and costs if there is an abduction; and

(3) requires the respondent to obtain education on the potentially harmful effects to the child from abduction.

(E) A court may seek to prevent an imminent abduction of a child by:

(1) issuing a warrant to take physical custody of the child under Section 63‑15‑570 or another provision of law;

(2) directing the use of law enforcement to take an action reasonably necessary to locate the child, obtain return of the child, or enforce a custody determination under this article or another provision of law; or

(3) granting other relief allowed under another provision of law.

(F) The remedies provided in this article are cumulative and do not affect the availability of other remedies to prevent abduction.

Section 63‑15‑570. (A) The court may issue an ex parte warrant to take physical custody of the child when a petition under this article contains allegations that a child is imminently likely to be wrongfully removed and the court finds a credible risk exists that the child is imminently likely to be wrongfully removed.

(B) The respondent on a petition under subsection (A) must be afforded an opportunity to be heard at the earliest possible time after the ex parte warrant is executed, but not later than the next judicial day unless a hearing on that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible.

(C) An ex parte warrant under subsection (A) to take physical custody of a child must:

(1) recite the facts upon which a determination of a credible risk of imminent wrongful removal of the child is based;

(2) direct law enforcement officers to take physical custody of the child immediately;

(3) state the date and time for the hearing on the petition; and

(4) provide for the safe interim placement of the child pending further order of the court.

(D) If feasible, before issuing a warrant and before determining the placement of the child after the warrant is executed, the court may order a search of the relevant databases of the National Crime Information Center system and similar state databases to determine if either the petitioner or respondent has a history of domestic violence, stalking, child abuse, or neglect.

(E) The petition and warrant must be served on the respondent when or immediately after the child is taken into physical custody.

(F) A warrant to take physical custody of a child, issued by this State or another state, is enforceable throughout this State. If the court finds that a less intrusive remedy may not be effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances, the court may authorize law enforcement officers to make a forcible entry.

(G) The court may award the respondent a reasonable attorney’s fee, costs, and expenses, if the court finds, after a hearing, that a petitioner sought an ex parte warrant under subsection (A) for the purpose of harassment or in bad faith.

(H) This article does not affect the availability of relief available under another provision of law.

Section 63‑15‑580. An abduction prevention order remains in effect until the earliest of the:

(1) time stated in the order;

(2) child’s emancipation;

(3) child’s attaining eighteen years of age; or

(4) time the order is modified, revoked, vacated, or superseded by a court with jurisdiction under another provision of law.

Section 63‑15‑590. When applying and construing this article, a court shall consider the need to promote uniformity of the law with respect to its subject matter among states that enact the Uniform Child Abduction Prevention Act.”

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 5. This act takes effect upon approval by the Governor.

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