

HOUSE BILL NO. 283

INTRODUCED BY DARKO, J. BROWN

BY REQUEST OF THE CHILD SUPPORT ADVISORY COUNCIL

IN THE HOUSE

JANUARY 19, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 5, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 6, 1987 PRINTING REPORT.

FEBRUARY 7, 1987 SECOND READING, DO PASS AS AMENDED.

FEBRUARY 9, 1987 ENGROSSING REPORT.

FEBRUARY 11, 1987 THIRD READING, PASSED.
AYES, 95; NOES, 1.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 12, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

MARCH 23, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 28, 1987 SECOND READING, CONCURRED IN.

MARCH 30, 1987 THIRD READING, CONCURRED IN.
AYES, 50; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 7, 1987 RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 8, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 283
 2 INTRODUCED BY Alaska J. Brown
 3 BY REQUEST OF THE CHILD SUPPORT ADVISORY COUNCIL
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE A WRITTEN
 6 AGREEMENT OR COURT ORDER FOR A CUSTODIAL PARENT TO MOVE A
 7 CHILD'S RESIDENCE OUTSIDE THE STATE; TO MAKE A CUSTODIAL
 8 PARENT'S ATTEMPTS TO PREVENT CONTACT OR VISITATION BETWEEN
 9 THE CHILD AND THE NONCUSTODIAL PARENT A BASIS FOR
 10 MODIFICATION OF THE CUSTODY DECREE; AND AMENDING SECTIONS
 11 40-4-217 AND 40-4-219, MCA."
 12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 40-4-217, MCA, is amended to read:
 15 "40-4-217. Visitation. (1) A parent not granted
 16 custody of the child is entitled to reasonable visitation
 17 rights unless the court finds, after a hearing, that
 18 visitation would endanger seriously the child's physical,
 19 mental, moral, or emotional health.

20 (2) In a proceeding for dissolution of marriage or
 21 legal separation, the court may, upon the petition of a
 22 grandparent, grant reasonable visitation rights to the
 23 grandparent of the child if the court finds, after a
 24 hearing, that the visitation would be in the best interest
 25 of the child.

1 (3) The court may modify an order granting or denying
 2 visitation rights whenever modification would serve the best
 3 interest of the child; but the court shall not restrict a
 4 parent's visitation rights unless it finds that the
 5 visitation would endanger seriously the child's physical,
 6 mental, moral, or emotional health.

7 (4) So long as a noncustodial parent who has been
 8 granted visitation rights by the court or by a custody
 9 agreement remains a resident of this state, a custodial
 10 parent may not change the child's residence to another state
 11 before the noncustodial parent has given written consent or
 12 has been given notice and an opportunity for hearing. The
 13 purpose of the hearing is to allow the noncustodial parent
 14 to seek a modification of his visitation schedule. The court
 15 may modify the prior decree to provide a new visitation
 16 schedule and to apportion transportation costs between the
 17 parents."

18 Section 2. Section 40-4-219, MCA, is amended to read:
 19 "40-4-219. Modification. (1) The court may in its
 20 discretion modify a prior custody decree if it finds, upon
 21 the basis of facts that have arisen since the prior decree
 22 or that were unknown to the court at the time of entry of
 23 the prior decree, that a change has occurred in the
 24 circumstances of the child or his custodian and that the
 25 modification is necessary to serve the best interest of the

1 child and if it further finds that:

2 (a) the custodian agrees to the modification;

3 (b) the child has been integrated into the family of

4 the petitioner with consent of the custodian;

5 (c) the child's present environment endangers

6 seriously his physical, mental, moral, or emotional health

7 and the harm likely to be caused by a change of environment

8 is outweighed by its advantages to him; or

9 (d) the child is 14 years of age or older and desires

10 the modification; or

11 (e) the custodian willfully and consistently:

12 (i) refuses to allow the child to have any contact

13 with the noncustodial parent;

14 (ii) attempts to alienate the child from the

15 noncustodial parent; or

16 (iii) attempts to frustrate or deny the noncustodial

17 parent's exercise of visitation rights.

18 (2) The court shall presume the custodian is not

19 acting in the child's best interest if the custodian does

20 any of the acts specified in subsection (1)(e).

21 ~~(2)(3)~~ Attorney fees and costs shall be assessed

22 against a party seeking modification if the court finds that

23 the modification action is vexatious and constitutes

24 harassment.

25 ~~(3)(4)~~ A custody decree may be modified upon the death

1 of the custodial parent pursuant to 40-4-221."

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 283

INTRODUCED BY DARKO, J. BROWN

BY REQUEST OF THE CHILD SUPPORT ADVISORY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE A WRITTEN AGREEMENT OR COURT ORDER FOR A CUSTODIAL PARENT TO MOVE A CHILD'S RESIDENCE OUTSIDE THE STATE; TO MAKE A CUSTODIAL PARENT'S ATTEMPTS TO PREVENT CONTACT OR VISITATION BETWEEN THE CHILD AND THE NONCUSTODIAL PARENT A BASIS FOR MODIFICATION OF THE CUSTODY DECREE; AND AMENDING SECTIONS 40-4-217 AND 40-4-219, MCA."

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

Section 1. Section 40-4-217, MCA, is amended to read:

"40-4-217. Visitation. (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after a hearing, that the visitation would be in the best interest of the child.

(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(4) So long as a noncustodial parent who has been granted visitation rights by the court or by a custody agreement remains a resident of this state, a RESIDENT custodial parent may SHALL not change the child's residence to another state before UNLESS the noncustodial parent has given written consent or has--been--given--notice--and--an opportunity--for UPON ORDER OF THE COURT AFTER NOTICE TO THE NONCUSTODIAL PARENT AND A hearing. The purpose of the hearing is to allow the noncustodial parent to seek a modification of his visitation schedule. The court may modify the prior decree to provide a new visitation schedule and to apportion transportation costs between the parents."

Section 2. Section 40-4-219, MCA, is amended to read:

"40-4-219. Modification. (1) The court may in its discretion modify a prior custody decree if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the

1 modification is necessary to serve the best interest of the
2 child and if it further finds that:

3 (a) the custodian agrees to the modification;

4 (b) the child has been integrated into the family of
5 the petitioner with consent of the custodian;

6 (c) the child's present environment endangers
7 seriously his physical, mental, moral, or emotional health
8 and the harm likely to be caused by a change of environment
9 is outweighed by its advantages to him; or

10 (d) the child is 14 years of age or older and desires
11 the modification; or

12 (e) the custodian willfully and consistently:

13 (i) refuses to allow the child to have any contact
14 with the noncustodial parent; OR

15 ~~(ii) attempts to alienate the child from the~~
16 ~~noncustodial parent; or~~

17 ~~(iii)(II) attempts to frustrate or deny the~~
18 ~~noncustodial parent's exercise of visitation rights.~~

19 (2) The court shall presume the custodian is not
20 acting in the child's best interest if the custodian does
21 any of the acts specified in subsection (1)(e).

22 ~~(3)~~ Attorney fees and costs shall be assessed
23 against a party seeking modification if the court finds that
24 the modification action is vexatious and constitutes
25 harassment.

1 ~~(3)~~(4) A custody decree may be modified upon the death
2 of the custodial parent pursuant to 40-4-221."

-End-

HOUSE BILL NO. 283

INTRODUCED BY DARKO, J. BROWN

BY REQUEST OF THE CHILD SUPPORT ADVISORY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE A WRITTEN AGREEMENT OR COURT ORDER FOR A CUSTODIAL PARENT TO MOVE A CHILD'S RESIDENCE OUTSIDE THE STATE; TO MAKE A CUSTODIAL PARENT'S ATTEMPTS TO PREVENT CONTACT OR VISITATION BETWEEN THE CHILD AND THE NONCUSTODIAL PARENT A BASIS FOR MODIFICATION OF THE CUSTODY DECREE; AND AMENDING SECTIONS 40-4-217 AND 40-4-219, MCA."

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

Section 1. Section 40-4-217, MCA, is amended to read:

"40-4-217. Visitation. (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after a hearing, that the visitation would be in the best interest of the child.

(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(4) So long as a noncustodial parent who has been granted visitation rights by the court or by a custody agreement remains a resident of this state, a RESIDENT custodial parent may SHALL not change the child's residence to another state before UNLESS the noncustodial parent has given written consent or has--been--given--notice--and--an opportunity--for UPON THE CHANGE IS ALLOWED BY AN ORDER OF THE COURT AFTER NOTICE TO THE NONCUSTODIAL PARENT AND A hearing. The purpose of the hearing is to allow the noncustodial parent to seek a modification of his visitation schedule. The court may modify the prior decree to provide a new visitation schedule and to apportion transportation costs between the parents."

Section 2. Section 40-4-219, MCA, is amended to read:

"40-4-219. Modification. (1) The court may in its discretion modify a prior custody decree if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the



1 circumstances of the child or his custodian and that the
 2 modification is necessary to serve the best interest of the
 3 child and if it further finds that:

- 4 (a) the custodian agrees to the modification;
- 5 (b) the child has been integrated into the family of
 6 the petitioner with consent of the custodian;
- 7 (c) the child's present environment endangers
 8 seriously his physical, mental, moral, or emotional health
 9 and the harm likely to be caused by a change of environment
 10 is outweighed by its advantages to him; or

11 (d) the child is 14 years of age or older and desires
 12 the modification; or

13 (e) the custodian willfully and consistently:
 14 (i) refuses to allow the child to have any contact
 15 with the noncustodial parent; OR

16 ~~iii)-attempts--to---alienate---the---child---from---the~~
 17 ~~noncustodial-parent,-or~~

18 ~~iii)(II) attempts to frustrate or deny the~~
 19 ~~noncustodial parent's exercise of visitation rights.~~

20 (2) The court shall presume the custodian is not
 21 acting in the child's best interest if the custodian does
 22 any of the acts specified in subsection (1)(e).

23 (2)(3) Attorney fees and costs shall be assessed
 24 against a party seeking modification if the court finds that
 25 the modification action is vexatious and constitutes

1 harassment.

2 (3)(4) A custody decree may be modified upon the death
 3 of the custodial parent pursuant to 40-4-221."

-End-

1 HOUSE BILL NO. 283

2 INTRODUCED BY DARKO, J. BROWN

3 BY REQUEST OF THE CHILD SUPPORT ADVISORY COUNCIL

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE A WRITTEN
6 ~~AGREEMENT--OR-COURT-ORDER-FOR~~ NOTICE IN CERTAIN CASES WHEN A
7 CUSTODIAL PARENT ~~TO-MOVE~~ MOVES A CHILD'S RESIDENCE ~~OUTSIDE~~
8 FROM THE STATE; TO MAKE CHANGE OF A CHILD'S RESIDENCE TO
9 ANOTHER STATE AND A CUSTODIAL PARENT'S ATTEMPTS TO PREVENT
10 CONTACT OR VISITATION BETWEEN THE CHILD AND THE NONCUSTODIAL
11 PARENT A BASIS FOR MODIFICATION OF THE CUSTODY DECREE; AND
12 AMENDING SECTIONS 40-4-217 AND 40-4-219, MCA."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 40-4-217, MCA, is amended to read:

16 "40-4-217. Visitation. (1) A parent not granted
17 custody of the child is entitled to reasonable visitation
18 rights unless the court finds, after a hearing, that
19 visitation would endanger seriously the child's physical,
20 mental, moral, or emotional health.

21 (2) In a proceeding for dissolution of marriage or
22 legal separation, the court may, upon the petition of a
23 grandparent, grant reasonable visitation rights to the
24 grandparent of the child if the court finds, after a
25 hearing, that the visitation would be in the best interest

1 of the child.

2 (3) The court may modify an order granting or denying
3 visitation rights whenever modification would serve the best
4 interest of the child; but the court shall not restrict a
5 parent's visitation rights unless it finds that the
6 visitation would endanger seriously the child's physical,
7 mental, moral, or emotional health.

8 (4) So long as a noncustodial parent who has been
9 granted visitation rights by-the-court UNDER A DECREE or by
10 a custody agreement remains a resident of this state, a
11 RESIDENT custodial parent may SHALL not--change, BEFORE
12 CHANGING the child's residence to another state AND before
13 UNLESS the noncustodial parent has given written consent or,
14 has-been-given-notice-and-an-opportunity-for UPON THE-CHANGE
15 IS--ALLOWED--BY--AN--ORDER--OF--THE-COURT-AFTER GIVE WRITTEN
16 NOTICE TO THE NONCUSTODIAL PARENT AND--A hearing-, AS
17 PROVIDED IN SUBSECTION (5).

18 (5) THE WRITTEN NOTICE REQUIRED BY SUBSECTION (4) MUST
19 BE SERVED PERSONALLY OR GIVEN BY CERTIFIED MAIL NOT LESS
20 THAN 30 DAYS BEFORE THE PROPOSED CHANGE IN RESIDENCE. PROOF
21 OF SERVICE MUST BE FILED WITH THE COURT THAT ISSUED THE
22 CUSTODY ORDER. The purpose of the hearing NOTICE is to allow
23 the noncustodial parent to seek a modification of his
24 visitation schedule. The-court-may-modify-the-prior-decree
25 to-provide--a--new--visitation--schedule--and--to--apportion

1 transportation-costs-between-the-parents."

2 Section 2. Section 40-4-219, MCA, is amended to read:

3 "40-4-219. Modification. (1) The court may in its
4 discretion modify a prior custody decree if it finds, upon
5 the basis of facts that have arisen since the prior decree
6 or that were unknown to the court at the time of entry of
7 the prior decree, that a change has occurred in the
8 circumstances of the child or his custodian and that the
9 modification is necessary to serve the best interest of the
10 child and if it further finds that:

- 11 (a) the custodian agrees to the modification;
- 12 (b) the child has been integrated into the family of
13 the petitioner with consent of the custodian;
- 14 (c) the child's present environment endangers
15 seriously his physical, mental, moral, or emotional health
16 and the harm likely to be caused by a change of environment
17 is outweighed by its advantages to him; or
- 18 (d) the child is 14 years of age or older and desires
19 the modification; or

- 20 (e) the custodian willfully and consistently:
- 21 (i) refuses to allow the child to have any contact
22 with the noncustodial parent; OR
- 23 (ii) attempts to alienate the child from the
24 noncustodial parent; or
- 25 (iii) attempts to frustrate or deny the

1 noncustodial parent's exercise of visitation rights; OR

2 (F) THE CUSTODIAL PARENT HAS CHANGED OR INTENDS TO
3 CHANGE THE CHILD'S RESIDENCE TO ANOTHER STATE.

4 (2) The court shall presume the custodian is not
5 acting in the child's best interest if the custodian does
6 any of the acts specified in subsection (1)(e).

7 (3) THE COURT MAY MODIFY THE PRIOR DECREE BASED ON
8 SUBSECTION (1)(F) TO PROVIDE A NEW VISITATION SCHEDULE AND
9 TO APPORTION TRANSPORTATION COSTS BETWEEN THE PARENTS.

10 (2)(3)(4) Attorney fees and costs shall be assessed
11 against a party seeking modification if the court finds that
12 the modification action is vexatious and constitutes
13 harassment.

14 (3)(4)(5) A custody decree may be modified upon the
15 death of the custodial parent pursuant to 40-4-221."

-End-

STANDING COMMITTEE REPORT

March 23 19 87

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 283

Third reading copy (blue color)

Visitation change custodian moves; obstruct visitation basis custody change. Darko (Mazurek)

Respectfully report as follows: That HOUSE BILL No. 283

1. Title, line 5. Following: "REQUIRE" Strike: "A"

2. Title, line 6. Following: line 5 Strike: "AGREEMENT OR COURT ORDER FOR" Insert: "NOTICE IN CERTAIN CASES WHEN" Following: "PARENT" Strike: "TO MOVE" Insert: "MOVES"

3. Title, line 7. Following: "RESIDENCE" Strike: "OUTSIDE" Insert: "FROM" Following: "MAKE" Insert: "CHANGE OF A CHILD'S RESIDENCE TO ANOTHER STATE AND"

4. Title, line 9. Following: "PARENT" Strike: "A"

XXXXXXXX

XXXXXXXX

CONTINUED

Senator Mazurek

Chairman

Handwritten notes: 3-23 1987

SENATE JUDICIARY HB 283 Page 2

March 23 1987

5. Page 2, line 7. Strike: "been"

6. Page 2, line 8. Following: line 7 Strike: "granted" Following: "rights" Strike: "by the court" Insert: "under a decree" Following: "or" Strike: "by"

7. Page 2, line 10. Following: "SHALL" Strike: "not change" Insert: ", before changing"

8. Page 2, line 11. Following: "state" Insert: "and"

9. Page 2, line 12. Following: "consent" Strike: "or" Insert: ", "

10. Page 2, lines 13 and 14. Following: "UPON" on line 13 Strike: remainder of line 13 through "AFTER" on line 14 Insert: "give written"

11. Page 2, lines 14 and 15. Following: "PARENT" on line 14 Strike: remainder of line 14 through "hearing." on line 15 Insert: ", as provided in subsection (5). (5) The written notice required by subsection (4) must be served personally or given by certified mail not less than 30 days before the proposed change in residence. Proof of service must be filed with the court that issued the custody order."

12. Page 2, line 15. Following: "of the" Strike: "hearing" Insert: "notice"

CONTINUED

Senator Mazurek

March 23 19 87

13. Page 2, lines 17 through 19.
Following: "schedule." on line 17
Strike: remainder of line 17 through line 19

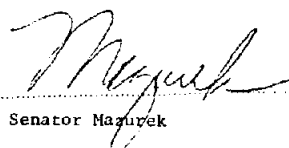
14. Page 3, line 12.
Strike: "or"

15. Page 3, line 19.
Following: "rights"
Insert: "; or
(f) the custodial parent has changed or intends to
change the child's residence to another state"

16. Page 3, line 23.
Following: line 22
Insert: "(3) The court may modify the prior decree based on
subsection (1)(f) to provide a new visitation schedule and to
apportion transportation costs between the parents."
Renumber: subsequent subsections

7080j/C:JEANNE\WP:jj
Amendments, HB 283

KMK
AND AS AMENDED
BE CONCURRED IN


Senator Mazurek

3 23 87
10:35