

SENATE BILL REPORT

SHB 2197

As of February 27, 2014

Title: An act relating to objection to relocation in child custody cases.

Brief Description: Concerning objecting to relocation in child custody cases.

Sponsors: House Committee on Judiciary (originally sponsored by Representative Jinkins).

Brief History: Passed House: 2/17/14, 97-0.

Committee Activity: Law & Justice: 2/26/14.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Kelly Walsh (786-7755)

Background: In dissolution or legal separation cases in which there are minor children, the court must establish a parenting plan that provides for the care of the minor children. The parenting plan must include an allocation of decision-making authority to one or both parents and set forth the child's residential time with each parent. Generally, a court may modify the residential provisions of a parenting plan only upon a showing of a substantial change of circumstances with respect to the child or the nonmoving party, and that the modification is in the best interests of the child. A person petitioning for a modification of a custody order or parenting plan must file an affidavit with supporting facts. The court will deny the motion for a modification unless the court finds that adequate cause for the modification is presented in the affidavit.

Under the Relocation Act (Act), when a parent with whom a child resides the majority of the time intends to relocate, the parent must notify every other person who has residential time or visitation with the child of the intent to relocate. Relocate means a change in the principal residence either permanently or for a protracted period of time. The Act establishes procedures for the other persons with residential time or visitation to object to the relocation. There is a rebuttal presumption that relocation will be permitted unless the objecting party demonstrates that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating parent. The court must base this determination on a list of 11 factors set out in statute. A person objecting to the relocation of the child may do so through a petition for modification of the parenting plan. The petitioner does not need to show adequate cause and a hearing to determine adequate cause is not required as long as the request for relocation is being pursued.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill: Modification of the residential terms of an existing parenting plan based on an objection to relocation of the child cannot go forward unless there is a finding of adequate cause based on specified factors. A party objecting to a notice of relocation must submit an affidavit setting forth facts supporting the objection and provide notice and a copy of the affidavit to the other parties. The court must deny the objection unless the court finds that adequate cause for hearing the objection is established by the affidavits. A hearing to determine adequate cause for modification is not required if a finding of adequate cause based on the specified factors has previously been made with relation to an objection to relocation.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Currently when someone objects to relocation there is an automatic trial. Many times there is no adequate basis for the objection, especially in high conflict dissolution and parentage proceedings. Currently if parents are parenting long distance and the residential parent wants to move to a new home a few blocks from their old home, there has to be a trial if there is an objection. This bill does not change substantive aspects of the relocation statutes. The courts should have a gatekeeper function if there is not a legitimate basis for objection to go forward. The concerns of the Washington State Bar Association (WSBA) Family Law Section have been addressed and they are in support of this version.

CON: There is no basis for this bill. There are no problems or crises at the court house that need to be fixed. The current law has been in place for 14 years and there have not been any crises. Moving the child's home is a big deal and the other parent should have a free right to oppose that. This bill re-imposes winning and losing among parents. This is monumental and very consequential. The current law is the result of a compromise, which would be removed and produce a balance shift under this bill. Research does not support that easy move-aways are appropriate. The law should still have a presumption in favor of moving, but the reason that works is that the objecting parent can freely get a trial on the issue.

Persons Testifying: PRO: Representative Jinkins, prime sponsor; Kathryn Leathers, Family Law Section, WSBA; Steve Warning, Superior Court Judges Assn.

CON: Bill Harrington, former commissioner, U.S. Commission on Child and Family Welfare; Lisa Scott, family law attorney, Taking Action Against Bias in the System.