

1 SB455
2 118934-1
3 By Senator Little (Z)
4 RFD: Judiciary
5 First Read: 23-FEB-10

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8 SYNOPSIS: Existing law provides that in a custody
9 dispute there shall be a rebuttable presumption
10 that a change in the principal residence of a child
11 is not in the best interest of the child.

12 The Alabama Court of Civil Appeals has held
13 that the rebuttable presumption is not applicable
14 to an initial custody determination.

15 This bill would make the rebuttable
16 presumption that a change of principal residence of
17 a child is not in the best interest of the child
18 applicable to both custody cases where there exists
19 a prior court order and custody cases in which an
20 initial determination of custody is being made by
21 the court. This bill would further define change of
22 principal residence.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
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1 Relating to child custody; to amend Sections
2 30-3-161 and 30-3-169.7, Code of Alabama 1975, to further
3 define change of principal residence; and to provide that the
4 rebuttable presumption against change of principal residence
5 of a child applies to an initial determination of custody.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Sections 30-3-161 and 30-3-169.7, Code of
8 Alabama 1975, are amended to read as follows:

9 "§30-3-161.

10 "As used in this article, the following words and
11 phrases shall have the following meanings, unless the context
12 requires a different definition:

13 "(1) CHANGE OF PRINCIPAL RESIDENCE. A change of the
14 residence of a child whose custody ~~has~~ is either in dispute or
15 has already been determined by a prior court order, whether or
16 not accompanied by a change of the residence of a person
17 entitled to custody of the child, with the intent that such
18 change shall be permanent in nature and not amounting to a
19 temporary absence of the child from his or her principal
20 residence.

21 "(2) CHILD. A minor child as defined by subdivision
22 (2) of Section 30-3B-102. As used in this article, the term
23 may include the singular and the plural.

24 "(3) CHILD CUSTODY DETERMINATION. A judgment,
25 decree, or other order of a court providing for the legal
26 custody, physical custody, or visitation with respect to a
27 child. The term includes a permanent, temporary, initial, and

1 modification order. The term does not include an order
2 relating to child support or other monetary obligation of an
3 individual.

4 "(4) COMMENCEMENT. The filing of the first pleading
5 in a proceeding.

6 "(5) COURT. An entity authorized under the law of a
7 state to establish, enforce, or modify a child custody
8 determination.

9 "(6) MODIFICATION. A child custody determination
10 that changes, replaces, supersedes, or is otherwise made after
11 a previous determination concerning the same child, whether or
12 not it is made by the court that made the previous
13 determination.

14 "(7) PERSON ACTING AS A PARENT. A person, other than
15 a parent, who has physical custody of the child or has had
16 physical custody for a period of six consecutive months,
17 including any temporary absence, within one year immediately
18 before the commencement of a child custody proceeding and has
19 been awarded legal custody by a court or claims a right to
20 legal custody under the law of this state.

21 "(8) PERSON ENTITLED TO CUSTODY OR VISITATION. A
22 person so entitled to physical custody of a child as defined
23 by Sections 30-3-1 through 30-3-4.1, inclusive, or visitation
24 with respect to a child by virtue of a child custody
25 determination as defined by subdivision (3) of Section
26 30-3B-102.

1 "(9) PHYSICAL CUSTODY. The physical care and
2 supervision of a child.

3 "(10) PRINCIPAL RESIDENCE OF A CHILD. Any of the
4 following:

5 "a. The residence designated by a court to be the
6 primary residence of the child.

7 "b. In the absence of a determination by a court,
8 the residence at which the parents of a child whose change of
9 principal residence is at issue have expressly agreed that the
10 child will primarily reside.

11 "c. In the absence of a determination by a court or
12 an express agreement between the parents of a child whose
13 change of principal residence is at issue, the residence, if
14 any, at which the child lived with the child's parents, a
15 parent, or a person acting as a parent, for at least six
16 consecutive months or, in the case of a child less than six
17 months of age, the residence at which the child lived from
18 birth with the child's parents, a parent, or a person acting
19 as a parent. Periods of temporary absence from such residence
20 are counted as part of the period of residence.

21 "(11) RELOCATE or RELOCATION. A change in the
22 principal residence of a child for a period of 45 days or
23 more. The term does not include a temporary absence from the
24 primary residence, or an absence necessary to escape domestic
25 violence.

26 "§30-3-169.7.

1 "If the issue of change of principal residence of a
2 child is presented in a petition for divorce or dissolution of
3 a marriage or other petition to determine custody of or
4 visitation with a child, the court shall consider, among other
5 evidence, the factors set forth in Sections 30-3-169.2 ~~and,~~
6 30-3-169.3, and 30-3-169.4 in making its initial
7 determination."

8 Section 2. This act shall become effective on the
9 first day of the third month following its passage and
10 approval by the Governor, or its otherwise becoming law.