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REGULAR SESSION, 2000



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COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 129

(By Senator KESSLER, ET AL)



PASSED FEBRUARY 18, 2000
In Effect NINETY DAYS FROM Passage

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MARTINSBURG, W. VA.

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 129

(BY SENATORS KESSLER, DAWSON, MINARD, OLIVERIO, REDD,
ROSS, SNYDER, DEEM, MITCHELL, MCKENZIE AND EDGELL)

[PASSED February 18, 2000; in effect ninety days from passage.]

AN ACT to repeal article ten, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said code by adding thereto a new chapter, designated chapter forty-eight-c, relating to adopting the uniform child custody jurisdiction and enforcement act.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said code be amended by adding thereto a new chapter, designated chapter forty-eight-c, to read as follows:

**CHAPTER 48C. UNIFORM CHILD CUSTODY
JURISDICTION AND ENFORCEMENT ACT.**

ARTICLE 1. GENERAL PROVISIONS.

§48C-1-101. Short Title.

1 This chapter may be cited as the “Uniform Child Custody
2 Jurisdiction and Enforcement Act”.

§48C-1-102. Definitions.

1 (a) “Abandoned” means left without provision for
2 reasonable and necessary care or supervision.

3 (b) “Child” means an individual who has not attained
4 eighteen years of age.

5 (c) “Child custody determination” means a judgment,
6 decree or other order of a court providing for the legal
7 custody, physical custody or visitation with respect to a
8 child. The term includes a permanent, temporary, initial
9 and modification order. The term does not include an
10 order relating to child support or other monetary obligation
11 of an individual.

12 (d) “Child custody proceeding” means a proceeding in
13 which legal custody, physical custody or visitation with
14 respect to a child is an issue. The term includes a proceeding
15 for divorce, separation, neglect, abuse, dependency,
16 guardianship, paternity, termination of parental rights and
17 protection from domestic violence, in which the issue may
18 appear. The term does not include a proceeding involving
19 juvenile delinquency, contractual emancipation or enforcement
20 under article three of this chapter.

21 (e) “Commencement” means the filing of the first
22 pleading in a proceeding.

23 (f) “Court” means an entity authorized under the law of
24 a state to establish, enforce or modify a child custody
25 determination. Reference to a court of West Virginia
26 means a court of record.

27 (g) “Home state” means the state in which a child lived
28 with a parent or a person acting as a parent for at least six
29 consecutive months immediately before the commence-

30 ment of a child custody proceeding. In the case of a child
31 less than six months of age, the term means the state in
32 which the child lived from birth with any of the persons
33 mentioned. A period of temporary absence of any of the
34 mentioned persons is part of the period.

35 (h) "Initial determination" means the first child custody
36 determination concerning a particular child.

37 (i) "Issuing court" means the court that makes a child
38 custody determination for which enforcement is sought
39 under this chapter.

40 (j) "Issuing state" means the state in which a child
41 custody determination is made.

42 (k) "Modification" means a child custody determination
43 that changes, replaces, supersedes or is otherwise made
44 after a previous determination concerning the same child,
45 whether or not it is made by the court that made the
46 previous determination.

47 (l) "Person" means an individual; corporation; business
48 trust; estate; trust; partnership; limited liability company;
49 association; joint venture; government, governmental
50 subdivision, agency or instrumentality; public corporation;
51 or any other legal or commercial entity.

52 (m) "Person acting as a parent" means a person, other
53 than a parent, who:

54 (1) Has physical custody of the child or has had physical
55 custody for a period of six consecutive months, including
56 any temporary absence, within one year immediately
57 before the commencement of a child custody proceeding;
58 and

59 (2) Has been awarded legal custody by a court or claims
60 a right to legal custody under the law of this state.

61 (n) "Physical custody" means the physical care and
62 supervision of a child.

63 (o) "State" means a state of the United States, the
64 District of Columbia, Puerto Rico, the United States
65 Virgin Islands, or any territory or insular possession
66 subject to the jurisdiction of the United States.

67 (p) "Tribe" means an Indian tribe or band, or Alaskan
68 Native village, which is recognized by federal law or
69 formally acknowledged by a state.

70 (q) "Warrant" means an order issued by a court autho-
71 rizing law-enforcement officers to take physical custody of
72 a child.

§48C-1-103. Proceedings governed by other law.

1 This chapter does not govern an adoption proceeding or
2 a proceeding pertaining to the authorization of emergency
3 medical care for a child.

§48C-1-104. Application to Indian tribes.

1 (a) A child custody proceeding that pertains to an Indian
2 child as defined in the Indian Child Welfare Act, 25 U.S.C.
3 § 1901 et seq., is not subject to this chapter to the extent
4 that it is governed by the Indian Child Welfare Act.

5 (b) A court of this state shall treat a tribe as if it were a
6 state of the United States for purposes of applying articles
7 one and two of this chapter.

8 (c) A child custody determination made by a tribe under
9 factual circumstances in substantial conformity with the
10 jurisdictional standards of this chapter must be recognized
11 and enforced under article three of this chapter.

§48C-1-105. International application of chapter.

1 (a) A court of this state shall treat a foreign country as
2 if it were a state of the United States for purpose of
3 applying articles one and two of this chapter.

4 (b) Except as otherwise provided in subsection (c) of this
5 section, a child custody determination made in a foreign
6 country under factual circumstances in substantial
7 conformity with the jurisdictional standards of this

8 chapter must be recognized and enforced under article
9 three of this chapter.

10 (c) A court of this state need not apply this chapter if the
11 child custody law of a foreign country violates fundamen-
12 tal principles of human rights.

§48C-1-106. Effect of child custody determination.

1 A child custody determination made by a court of this
2 state that had jurisdiction under this chapter binds all
3 persons who have been served in accordance with the laws
4 of this state or notified in accordance with section one
5 hundred eight of this article or who have submitted to the
6 jurisdiction of the court, and who have been given an
7 opportunity to be heard. As to those persons the determi-
8 nation is conclusive as to all decided issues of law and fact
9 except to the extent the determination is modified.

§48C-1-107. Priority.

1 If a question of existence or exercise of jurisdiction
2 under this chapter is raised in a child custody proceeding,
3 the question, upon request of a party, must be given
4 priority on the calendar and handled expeditiously.

§48C-1-108. Notice to persons outside state.

1 (a) Notice required for the exercise of jurisdiction when
2 a person is outside this state may be given in a manner
3 prescribed by the law of this state for service of process or
4 by the law of the state in which the service is made.
5 Notice must be given in a manner reasonably calculated to
6 give actual notice but may be by publication if other
7 means are not effective.

8 (b) Proof of service may be made in the manner pre-
9 scribed by the law of this state or by the law of the state in
10 which the service is made.

11 (c) Notice is not required for the exercise of jurisdiction
12 with respect to a person who submits to the jurisdiction of
13 the court.

§48C-1-109. Appearance and limited immunity.

1 (a) A party to a child custody proceeding, including a
2 modification proceeding, or a petitioner or respondent in
3 a proceeding to enforce or register a child custody deter-
4 mination is not subject to personal jurisdiction in this state
5 for another proceeding or purpose solely by reason of
6 having participated, or having been physically present for
7 the purpose of participating, in the proceeding.

8 (b) A person who is subject to personal jurisdiction in
9 this state on a basis other than physical presence is not
10 immune from service of process in this state. A party
11 present in this state who is subject to the jurisdiction of
12 another state is not immune from service of process
13 allowable under the laws of that state.

14 (c) The immunity granted by subsection (a) of this section
15 does not extend to civil litigation based on acts unrelated
16 to the participation in a proceeding under this chapter
17 committed by an individual while present in this state.

§48C-1-110. Communication between courts.

1 (a) A court of this state may communicate with a court
2 in another state concerning a proceeding arising under this
3 chapter.

4 (b) The court may allow the parties to participate in the
5 communication. If the parties are not able to participate
6 in the communication, they must be given the opportunity
7 to present facts and legal arguments before a decision on
8 jurisdiction is made.

9 (c) Communication between courts on schedules, calen-
10 dars, court records and similar matters may occur without
11 informing the parties. A record need not be made of the
12 communication.

13 (d) Except as otherwise provided in subsection (c) of this
14 section, a record must be made of a communication under
15 this section. The parties must be informed promptly of the
16 communication and granted access to the record.

17 (e) For the purposes of this section, “record” means
18 information that is inscribed on a tangible medium or that
19 is stored in an electronic or other medium and is retriev-
20 able in perceivable form.

§48C-1-111. Taking testimony in another state.

1 (a) In addition to other procedures available to a party,
2 a party to a child custody proceeding may offer testimony
3 of witnesses who are located in another state, including
4 testimony of the parties and the child, by deposition or
5 other means allowable in this state for testimony taken in
6 another state. The court on its own motion may order that
7 the testimony of a person be taken in another state and
8 may prescribe the manner in which and the terms upon
9 which the testimony is taken.

10 (b) A court of this state may permit an individual
11 residing in another state to be deposed or to testify by
12 telephone, audiovisual means, or other electronic means
13 before a designated court or at another location in that
14 state. A court of this state shall cooperate with courts of
15 other states in designating an appropriate location for the
16 deposition or testimony.

17 (c) Documentary evidence transmitted from another
18 state to a court of this state by technological means that do
19 not produce an original writing may not be excluded from
20 evidence on an objection based on the means of transmis-
21 sion.

**§48C-1-112. Cooperation between courts; preservation of re-
cords.**

1 (a) A court of this state may request the appropriate
2 court of another state to:

3 (1) Hold an evidentiary hearing;

4 (2) Order a person to produce or give evidence pursuant
5 to procedures of that state;

6 (3) Order that an evaluation be made with respect to the
7 custody of a child involved in a pending proceeding;

8 (4) Forward to the court of this state a certified copy of
9 the transcript of the record of the hearing, the evidence
10 otherwise presented and any evaluation prepared in
11 compliance with the request; and

12 (5) Order a party to a child custody proceeding or any
13 person having physical custody of the child to appear in
14 the proceeding with or without the child.

15 (b) Upon request of a court of another state, a court of
16 this state may hold a hearing or enter an order described
17 in subsection (a) of this section.

18 (c) Travel and other necessary and reasonable expenses
19 incurred under subsections (a) and (b) of this section may
20 be assessed against the parties according to the law of this
21 state.

22 (d) A court of this state shall preserve the pleadings,
23 orders, decrees, records of hearings, evaluations and other
24 pertinent records with respect to a child custody proceed-
25 ing until the child attains eighteen years of age. Upon
26 appropriate request by a court or law-enforcement official
27 of another state, the court shall forward a certified copy of
28 those records.

ARTICLE 2. JURISDICTION.

§48C-2-201. Initial child custody jurisdiction.

1 (a) Except as otherwise provided in section two hundred
2 four of this article, a court of this state has jurisdiction to
3 make an initial child custody determination only if:

4 (1) This state is the home state of the child on the date of
5 the commencement of the proceeding, or was the home
6 state of the child within six months before the commence-
7 ment of the proceeding, and the child is absent from this
8 state but a parent or person acting as a parent continues to
9 live in this state;

10 (2) A court of another state does not have jurisdiction
11 under subdivision (1) of this subsection, or a court of the
12 home state of the child has declined to exercise jurisdic-
13 tion on the ground that this state is the more appropriate

14 forum under section two hundred seven or two hundred
15 eight, and:

16 (A) The child and the child's parents, or the child and at
17 least one parent or a person acting as a parent, have a
18 significant connection with this state other than mere
19 physical presence; and

20 (B) Substantial evidence is available in this state con-
21 cerning the child's care, protection, training and personal
22 relationships;

23 (3) All courts having jurisdiction under subdivision (1) or
24 (2) of this subdivision have declined to exercise jurisdic-
25 tion on the ground that a court of this state is the more
26 appropriate forum to determine the custody of the child
27 under section two hundred seven or two hundred eight; or

28 (4) No court of any other state would have jurisdiction
29 under the criteria specified in subdivision (1), (2) or (3) of
30 this subsection.

31 (b) Subsection (a) of this section is the exclusive jurisdic-
32 tional basis for making a child custody determination by
33 a court of this state.

34 (c) Physical presence of, or personal jurisdiction over, a
35 party or a child is not necessary or sufficient to make a
36 child custody determination.

§48C-2-202. Exclusive, continuing jurisdiction.

1 (a) Except as otherwise provided in section two hundred
2 four of this article, a court of this state which has made a
3 child custody determination consistent with section two
4 hundred one or two hundred three of this article has
5 exclusive, continuing jurisdiction over the determination
6 until:

7 (1) A court of this state determines that neither the child,
8 the child and one parent, nor the child and a person acting
9 as a parent have a significant connection with this state
10 and that substantial evidence is no longer available in this
11 state concerning the child's care, protection, training and
12 personal relationships; or

13 (2) A court of this state or a court of another state
14 determines that the child, the child's parents and any
15 person acting as a parent do not presently reside in this
16 state.

17 (b) A court of this state which has made a child custody
18 determination and does not have exclusive, continuing
19 jurisdiction under this section may modify that determina-
20 tion only if it has jurisdiction to make an initial determi-
21 nation under section two hundred one of this article.

§48C-2-203. Jurisdiction to modify determination.

1 Except as otherwise provided in section two hundred
2 four of this article, a court of this state may not modify a
3 child custody determination made by a court of another
4 state unless a court of this state has jurisdiction to make
5 an initial determination under subdivision (1) or (2),
6 subsection (a), section two hundred one of this article and:

7 (1) The court of the other state determines it no longer
8 has exclusive, continuing jurisdiction under section two
9 hundred two or that a court of this state would be a more
10 convenient forum under section two hundred seven; or

11 (2) A court of this state or a court of the other state
12 determines that the child, the child's parents and any
13 person acting as a parent do not presently reside in the
14 other state.

§48C-2-204. Temporary emergency jurisdiction.

1 (a) A court of this state has temporary emergency
2 jurisdiction if the child is present in this state and the
3 child has been abandoned or it is necessary in an emer-
4 gency to protect the child because the child, or a sibling or
5 parent of the child, is subjected to or threatened with
6 mistreatment or abuse.

7 (b) If there is no previous child custody determination
8 that is entitled to be enforced under this chapter and a
9 child custody proceeding has not been commenced in a
10 court of a state having jurisdiction under sections two
11 hundred one through two hundred three, inclusive, of this
12 article, a child custody determination made under this

13 section remains in effect until an order is obtained from a
14 court of a state having jurisdiction under sections two
15 hundred one through two hundred three, inclusive, of this
16 article. If a child custody proceeding has not been or is not
17 commenced in a court of a state having jurisdiction under
18 sections two hundred one through two hundred three,
19 inclusive, of this article, a child custody determination
20 made under this section becomes a final determination, if
21 it so provides and this state becomes the home state of the
22 child.

23 (c) If there is a previous child custody determination that
24 is entitled to be enforced under this chapter, or a child
25 custody proceeding has been commenced in a court of a
26 state having jurisdiction under sections two hundred one
27 through two hundred three, inclusive, of this article, any
28 order issued by a court of this state under this section must
29 specify in the order a period that the court considers
30 adequate to allow the person seeking an order to obtain an
31 order from the state having jurisdiction under sections two
32 hundred one through two hundred three, inclusive, of this
33 article. The order issued in this state remains in effect
34 until an order is obtained from the other state within the
35 period specified or the period expires.

36 (d) A court of this state which has been asked to make a
37 child custody determination under this section, upon being
38 informed that a child custody proceeding has been com-
39 menced in, or a child custody determination has been
40 made by, a court of a state having jurisdiction under
41 sections two hundred one through two hundred three,
42 inclusive, of this article, shall immediately communicate
43 with the other court. A court of this state which is exercis-
44 ing jurisdiction pursuant to sections two hundred one
45 through two hundred three, upon being informed that a
46 child custody proceeding has been commenced in, or a
47 child custody determination has been made by, a court of
48 another state under a statute similar to this section shall
49 immediately communicate with the court of that state to
50 resolve the emergency, protect the safety of the parties and

51 the child, and determine a period for the duration of the
52 temporary order.

§48C-2-205. Notice; opportunity to be heard; joinder.

1 (a) Before a child custody determination is made under
2 this chapter, notice and an opportunity to be heard in
3 accordance with the standards of section one hundred
4 eight, article one of this chapter must be given to all
5 persons entitled to notice under the law of this state as in
6 child custody proceedings between residents of this state,
7 any parent whose parental rights have not been previously
8 terminated and any person having physical custody of the
9 child.

10 (b) This chapter does not govern the enforceability of a
11 child custody determination made without notice or an
12 opportunity to be heard.

13 (c) The obligation to join a party and the right to inter-
14 vene as a party in a child custody proceeding under this
15 chapter are governed by the law of this state as in child
16 custody proceedings between residents of this state.

§48C-2-206. Simultaneous proceedings.

1 (a) Except as otherwise provided in section two hundred
2 four of this article, a court of this state may not exercise its
3 jurisdiction under this article if, at the time of the com-
4 mencement of the proceeding, a proceeding concerning the
5 custody of the child has been commenced in a court of
6 another state having jurisdiction substantially in confor-
7 mity with this chapter, unless the proceeding has been
8 terminated or is stayed by the court of the other state
9 because a court of this state is a more convenient forum
10 under section two hundred seven of this article.

11 (b) Except as otherwise provided in section two hundred
12 four of this article, a court of this state, before hearing a
13 child custody proceeding, shall examine the court docu-
14 ments and other information supplied by the parties
15 pursuant to section two hundred nine of this article. If the
16 court determines that a child custody proceeding has been
17 commenced in a court in another state having jurisdiction
18 substantially in accordance with this chapter, the court of

19 this state shall stay its proceeding and communicate with
20 the court of the other state. If the court of the state having
21 jurisdiction substantially in accordance with this chapter
22 does not determine that the court of this state is a more
23 appropriate forum, the court of this state shall dismiss the
24 proceeding.

25 (c) In a proceeding to modify a child custody determina-
26 tion, a court of this state shall determine whether a
27 proceeding to enforce the determination has been com-
28 menced in another state. If a proceeding to enforce a child
29 custody determination has been commenced in another
30 state, the court may:

31 (1) Stay the proceeding for modification pending the
32 entry of an order of a court of the other state enforcing,
33 staying, denying, or dismissing the proceeding for enforce-
34 ment;

35 (2) Enjoin the parties from continuing with the proceed-
36 ing for enforcement; or

37 (3) Proceed with the modification under conditions it
38 considers appropriate.

§48C-2-207. Inconvenient forum.

1 (a) A court of this state which has jurisdiction under this
2 chapter to make a child custody determination may
3 decline to exercise its jurisdiction at any time if it deter-
4 mines that it is an inconvenient forum under the circum-
5 stances and that a court of another state is a more appro-
6 priate forum. The issue of inconvenient forum may be
7 raised upon the motion of a party, the court's own motion
8 or request of another court.

9 (b) Before determining whether it is an inconvenient
10 forum, a court of this state shall consider whether it is
11 appropriate for a court of another state to exercise juris-
12 diction. For this purpose, the court shall allow the parties
13 to submit information and shall consider all relevant
14 factors, including:

15 (1) Whether domestic violence has occurred and is likely
16 to continue in the future and which state could best
17 protect the parties and the child;

18 (2) The length of time the child has resided outside this
19 state;

20 (3) The distance between the court in this state and the
21 court in the state that would assume jurisdiction;

22 (4) The relative financial circumstances of the parties;

23 (5) Any agreement of the parties as to which state should
24 assume jurisdiction;

25 (6) The nature and location of the evidence required to
26 resolve the pending litigation, including testimony of the
27 child;

28 (7) The ability of the court of each state to decide the
29 issue expeditiously and the procedures necessary to
30 present the evidence; and

31 (8) The familiarity of the court of each state with the
32 facts and issues in the pending litigation.

33 (c) If a court of this state determines that it is an incon-
34 venient forum and that a court of another state is a more
35 appropriate forum, it shall stay the proceedings upon
36 condition that a child custody proceeding be promptly
37 commenced in another designated state and may impose
38 any other condition the court considers just and proper.

39 (d) A court of this state may decline to exercise its
40 jurisdiction under this chapter if a child custody determi-
41 nation is incidental to an action for divorce or another
42 proceeding while still retaining jurisdiction over the
43 divorce or other proceeding.

§48C-2-208. Jurisdiction declined by reason of conduct.

1 (a) Except as otherwise provided in section two hundred
2 four of this article or by other law of this state, if a court
3 of this state has jurisdiction under this chapter because a
4 person seeking to invoke its jurisdiction has engaged in

5 unjustifiable conduct, the court shall decline to exercise its
6 jurisdiction unless:

7 (1) The parents and all persons acting as parents have
8 acquiesced in the exercise of jurisdiction;

9 (2) A court of the state otherwise having jurisdiction
10 under sections two hundred one through two hundred
11 three, inclusive, of this article determines that this state is
12 a more appropriate forum under section two hundred
13 seven of this article; or

14 (3) No court of any other state would have jurisdiction
15 under the criteria specified in sections two hundred one
16 through two hundred three, inclusive, of this article.

17 (b) If a court of this state declines to exercise its jurisdic-
18 tion pursuant to subsection (a) of this section, it may
19 fashion an appropriate remedy to ensure the safety of the
20 child and prevent a repetition of the unjustifiable conduct,
21 including staying the proceeding until a child custody
22 proceeding is commenced in a court having jurisdiction
23 under sections two hundred one through two hundred
24 three, inclusive, of this article.

25 (c) If a court dismisses a petition or stays a proceeding
26 because it declines to exercise its jurisdiction pursuant to
27 subsection (a) of this section, it shall assess against the
28 party seeking to invoke its jurisdiction necessary and
29 reasonable expenses including costs, communication
30 expenses, attorney's fees, investigative fees, expenses for
31 witnesses, travel expenses and child care during the course
32 of the proceedings, unless the party from whom fees are
33 sought establishes that the assessment would be clearly
34 inappropriate. The court may not assess fees, costs or
35 expenses against this state unless authorized by law other
36 than this chapter.

§48C-2-209. Information to be submitted to court.

1 (a) Subject to local law providing for the confidentiality
2 of procedures, addresses and other identifying information
3 in a child custody proceeding, each party, in its first
4 pleading or in an attached affidavit, shall give informa-
5 tion, if reasonably ascertainable, under oath as to the

6 child's present address or whereabouts, the places where
7 the child has lived during the last five years and the names
8 and present addresses of the persons with whom the child
9 has lived during that period. The pleading or affidavit
10 must state whether the party:

11 (1) Has participated, as a party or witness or in any other
12 capacity, in any other proceeding concerning the custody
13 of or visitation with the child and, if so, identify the court,
14 the case number and the date of the child custody determi-
15 nation, if any;

16 (2) Knows of any proceeding that could affect the current
17 proceeding, including proceedings for enforcement and
18 proceedings relating to domestic violence, protective
19 orders, termination of parental rights and adoptions, and,
20 if so, identify the court, the case number and the nature of
21 the proceeding; and

22 (3) Knows the names and addresses of any person not a
23 party to the proceeding who has physical custody of the
24 child or claims rights of legal custody or physical custody
25 of, or visitation with, the child and, if so, the names and
26 addresses of those persons.

27 (b) If the information required by subsection (a) of this
28 section is not furnished, the court, upon motion of a party
29 or its own motion, may stay the proceeding until the
30 information is furnished.

31 (c) If the declaration as to any of the items described in
32 subdivision (1) through (3), inclusive, subsection (a) of this
33 section is in the affirmative, the declarant shall give
34 additional information under oath as required by the
35 court. The court may examine the parties under oath as to
36 details of the information furnished and other matters
37 pertinent to the court's jurisdiction and the disposition of
38 the case.

39 (d) Each party has a continuing duty to inform the court
40 of any proceeding in this or any other state that could
41 affect the current proceeding.

42 (e) If a party alleges in an affidavit or a pleading under
43 oath that the health, safety or liberty of a party or child

44 would be jeopardized by disclosure of identifying informa-
45 tion, the information must be sealed and may not be
46 disclosed to the other party or the public unless the court
47 orders the disclosure to be made after a hearing in which
48 the court takes into consideration the health, safety or
49 liberty of the party or child and determines that the
50 disclosure is in the interest of justice.

§48C-2-210. Appearance of parties and child.

1 (a) In a child custody proceeding in this state, the court
2 may order a party to the proceeding who is in this state to
3 appear before the court in person with or without the
4 child. The court may order any person who is in this state
5 and who has physical custody or control of the child to
6 appear in person with the child.

7 (b) If a party to a child custody proceeding whose
8 presence is desired by the court is outside this state, the
9 court may order that a notice given pursuant to section one
10 hundred eight, article one of this chapter include a state-
11 ment directing the party to appear in person with or
12 without the child and informing the party that failure to
13 appear may result in a decision adverse to the party.

14 (c) The court may enter any orders necessary to ensure
15 the safety of the child and of any person ordered to appear
16 under this section.

17 (d) If a party to a child custody proceeding who is
18 outside this state is directed to appear under subsection (b)
19 of this section or desires to appear personally before the
20 court with or without the child, the court may require
21 another party to pay reasonable and necessary travel and
22 other expenses of the party so appearing and of the child.

ARTICLE 3. ENFORCEMENT.

§48C-3-301. Definitions.

1 (a) "Petitioner" means a person who seeks enforcement
2 of an order for return of a child under the Hague Conven-
3 tion on the Civil Aspects of International Child Abduction
4 or enforcement of a child custody determination.

5 (b) "Respondent" means a person against whom a
6 proceeding has been commenced for enforcement of an
7 order for return of a child under the Hague Convention on
8 the Civil Aspects of International Child Abduction or
9 enforcement of a child custody determination.

§48C-3-302. Enforcement under Hague convention.

1 Under this article a court of this state may enforce an
2 order for the return of the child made under the Hague
3 Convention on the Civil Aspects of International Child
4 Abduction as if it were a child custody determination.

§48C-3-303. Duty to enforce.

1 (a) A court of this state shall recognize and enforce a
2 child custody determination of a court of another state if
3 the latter court exercised jurisdiction in substantial
4 conformity with this chapter or the determination was
5 made under factual circumstances meeting the jurisdic-
6 tional standards of this chapter and the determination has
7 not been modified in accordance with this chapter.

8 (b) A court of this state may utilize any remedy available
9 under other law of this state to enforce a child custody
10 determination made by a court of another state. The
11 remedies provided in this article are cumulative and do not
12 affect the availability of other remedies to enforce a child
13 custody determination.

§48C-3-304. Temporary visitation.

1 (a) A court of this state which does not have jurisdiction
2 to modify a child custody determination may issue a
3 temporary order enforcing:

4 (1) A visitation schedule made by a court of another
5 state; or

6 (2) The visitation provisions of a child custody determi-
7 nation of another state that does not provide for a specific
8 visitation schedule.

9 (b) If a court of this state makes an order under subdivi-
10 sion (2), subsection (a) of this section, it shall specify in the
11 order a period that it considers adequate to allow the

12 petitioner to obtain an order from a court having jurisdic-
13 tion under the criteria specified in article two of this
14 chapter. The order remains in effect until an order is
15 obtained from the other court or the period expires.

§48C-3-305. Registration of child custody determination.

1 (a) A child custody determination issued by a court of
2 another state may be registered in this state, with or
3 without a simultaneous request for enforcement, by
4 sending to the appropriate court in this state:

5 (1) A letter or other document requesting registration;

6 (2) Two copies, including one certified copy, of the
7 determination sought to be registered, and a statement
8 under penalty of perjury that to the best of the knowledge
9 and belief of the person seeking registration the order has
10 not been modified; and

11 (3) Except as otherwise provided in section two hundred
12 nine, article two of this chapter, the name and address of
13 the person seeking registration and any parent or person
14 acting as a parent who has been awarded custody or
15 visitation in the child custody determination sought to be
16 registered.

17 (b) On receipt of the documents required by subsection
18 (a) of this section, the registering court shall:

19 (1) Cause the determination to be filed as a foreign
20 judgment, together with one copy of any accompanying
21 documents and information, regardless of their form; and

22 (2) Serve notice upon the persons named pursuant to
23 subdivision (3), subsection (a) of this section and provide
24 them with an opportunity to contest the registration in
25 accordance with this section.

26 (c) The notice required by subdivision two, subsection (b)
27 of this section must state that:

28 (1) A registered determination is enforceable as of the
29 date of the registration in the same manner as a determi-
30 nation issued by a court of this state;

31 (2) A hearing to contest the validity of the registered
32 determination must be requested in writing to the court
33 within twenty days after service of notice; and

34 (3) Failure to contest the registration will result in
35 confirmation of the child custody determination and
36 preclude further contest of that determination with respect
37 to any matter that could have been asserted.

38 (d) A person seeking to contest the validity of a regis-
39 tered order must request a hearing within twenty days
40 after service of the notice. At that hearing, the court shall
41 confirm the registered order unless the person contesting
42 registration establishes that:

43 (1) The issuing court did not have jurisdiction under
44 article two of this chapter;

45 (2) The child custody determination sought to be regis-
46 tered has been vacated, stayed, or modified by a court
47 having jurisdiction to do so under article two of this
48 chapter; or

49 (3) The person contesting registration was entitled to
50 notice, but notice was not given in accordance with the
51 standards of section one hundred eight, article one of this
52 chapter in the proceedings before the court that issued the
53 order for which registration is sought.

54 (e) If a timely request for a hearing to contest the validity
55 of the registration is not made, the registration is con-
56 firmed as a matter of law and the person requesting
57 registration and all persons served must be notified of the
58 confirmation.

59 (f) Confirmation of a registered order, whether by
60 operation of law or after notice and hearing, precludes
61 further contest of the order with respect to any matter that
62 could have been asserted at the time of registration.

§48C-3-306. Enforcement of registered determination.

1 (a) A court of this state may grant any relief normally
2 available under the law of this state to enforce a registered
3 child custody determination made by a court of another
4 state.

5 (b) A court of this state shall recognize and enforce, but
6 may not modify, except in accordance with article two of
7 this chapter, a registered child custody determination of a
8 court of another state.

§48C-3-307. Simultaneous proceedings.

1 If a proceeding for enforcement under this article is
2 commenced in a court of this state and the court deter-
3 mines that a proceeding to modify the determination is
4 pending in a court of another state having jurisdiction to
5 modify the determination under article two of this chapter,
6 the enforcing court shall immediately communicate with
7 the modifying court. The proceeding for enforcement
8 continues unless the enforcing court, after consultation
9 with the modifying court, stays or dismisses the proceed-
10 ing.

**§48C-3-308. Expedited enforcement of child custody determi-
nation.**

1 (a) A petition under this article must be verified. Certi-
2 fied copies of all orders sought to be enforced and of any
3 order confirming registration must be attached to the
4 petition. A copy of a certified copy of an order may be
5 attached instead of the original.

6 (b) A petition for enforcement of a child custody deter-
7 mination must state:

8 (1) Whether the court that issued the determination
9 identified the jurisdictional basis it relied upon in exercis-
10 ing jurisdiction and, if so, what the basis was;

11 (2) Whether the determination for which enforcement is
12 sought has been vacated, stayed or modified by a court
13 whose decision must be enforced under this chapter and,
14 if so, identify the court, the case number and the nature of
15 the proceeding;

16 (3) Whether any proceeding has been commenced that
17 could affect the current proceeding, including proceedings
18 relating to domestic violence, protective orders, termina-
19 tion of parental rights and adoptions and, if so, identify

20 the court, the case number and the nature of the proceeding;

21 (4) The present physical address of the child and the
22 respondent, if known;

23 (5) Whether relief in addition to the immediate physical
24 custody of the child and attorney's fees is sought, includ-
25 ing a request for assistance from law-enforcement officials
26 and, if so, the relief sought; and

27 (6) If the child custody determination has been registered
28 and confirmed under section three hundred five of this
29 article, the date and place of registration.

30 (c) Upon the filing of a petition, the court shall issue an
31 order directing the respondent to appear in person with or
32 without the child at a hearing and may enter any order
33 necessary to ensure the safety of the parties and the child.
34 The hearing must be held on the judicial day after service
35 of the order unless that date is impossible. In that event,
36 the court shall hold the hearing on the first judicial day
37 possible. The court may extend the date of hearing at the
38 request of the petitioner.

39 (d) An order issued under subsection (c) of this section
40 must state the time and place of the hearing and advise the
41 respondent that at the hearing the court will order that the
42 petitioner may take immediate physical custody of the
43 child and the payment of fees, costs and expenses under
44 section three hundred twelve of this article, and may
45 schedule a hearing to determine whether further relief is
46 appropriate, unless the respondent appears and establishes
47 that:

48 (1) The child custody determination has not been regis-
49 tered and confirmed under section three hundred five of
50 this article, and that:

51 (A) The issuing court did not have jurisdiction under
52 article two of this chapter;

53 (B) The child custody determination for which enforce-
54 ment is sought has been vacated, stayed or modified by a
55 court having jurisdiction to do so under article two of this
56 chapter;

57 (C)The respondent was entitled to notice, but notice was
58 not given in accordance with the standards of section one
59 hundred eight, article one of this chapter, in the proceed-
60 ings before the court that issued the order for which
61 enforcement is sought; or

62 (2) The child custody determination for which enforce-
63 ment is sought was registered and confirmed under section
64 three hundred four of this article, but has been vacated,
65 stayed or modified by a court of a state having jurisdiction
66 to do so under article two of this chapter; or

67 (3) There is credible evidence of abuse or neglect of the
68 child or children who are the subject of the petition and
69 the credible evidence has been reported to a child welfare
70 agency, a law-enforcement officer, a licensed physician, a
71 licensed social worker, or a licensed mental health profes-
72 sional and an investigation or other proceeding has not
73 been concluded: *Provided*, That the court may continue
74 the hearing to a day certain to monitor the investigation or
75 proceedings or take any further action as the circum-
76 stances and the best interest of the child may warrant.

§48C-3-309. Service of petition and order.

1 Except as otherwise provided in section three hundred
2 eleven of this article, the petition and order must be
3 served, by any method authorized by the law of this state,
4 upon respondent and any person who has physical custody
5 of the child.

§48C-3-310. Hearing and order.

1 (a) Unless the court issues a temporary emergency order
2 pursuant to section two hundred four, article two of this
3 chapter, upon a finding that a petitioner is entitled to
4 immediate physical custody of the child, the court shall
5 order that the petitioner may take immediate physical
6 custody of the child unless the respondent establishes that:

7 (1) The child custody determination has not been regis-
8 tered and confirmed under section three hundred five of
9 this article and that:

10 (A) The issuing court did not have jurisdiction under
11 article two of this chapter;

12 (B) The child custody determination for which enforce-
13 ment is sought has been vacated, stayed or modified by a
14 court of a state having jurisdiction to do so under article
15 two of this chapter; or

16 (C) The respondent was entitled to notice, but notice was
17 not given in accordance with the standards of section one
18 hundred eight, article one of this chapter, in the proceed-
19 ings before the court that issued the order for which
20 enforcement is sought; or

21 (2) The child custody determination for which enforce-
22 ment is sought was registered and confirmed under section
23 three hundred five of this article, but has been vacated,
24 stayed or modified by a court of a state having jurisdiction
25 to do so under article two of this chapter; or

26 (3) There is credible evidence of abuse or neglect of the
27 child or children who are the subject of the petition and
28 the credible evidence has been reported to a child welfare
29 agency, a law-enforcement officer, a licensed physician, a
30 licensed social worker, or a licensed mental health profes-
31 sional and an investigation or other proceeding has not
32 been concluded: *Provided*, That the court may continue
33 the hearing to a day certain to monitor the investigation or
34 proceedings or take any further action as the circum-
35 stances and the best interest of the child may warrant.

36 (b) The court shall award the fees, costs and expenses
37 authorized under section three hundred twelve of this
38 article and may grant additional relief, including a request
39 for the assistance of law-enforcement officials, and set a
40 further hearing to determine whether additional relief is
41 appropriate.

42 (c) If a party called to testify refuses to answer on the
43 ground that the testimony may be self-incriminating, the
44 court may draw an adverse inference from the refusal.

45 (d) A privilege against disclosure of communications
46 between spouses and a defense of immunity based on the

47 relationship of husband and wife or parent and child may
48 not be invoked in a proceeding under this article.

§48C-3-311. Warrant to take physical custody of child.

1 (a) Upon the filing of a petition seeking enforcement of
2 a child custody determination, the petitioner may file a
3 verified application for the issuance of a warrant to take
4 physical custody of the child if the child is imminently
5 likely to suffer serious physical harm or be removed from
6 this state.

7 (b) If the court, upon the testimony of the petitioner or
8 other witness, finds that the child is imminently likely to
9 suffer serious physical harm or be removed from this state,
10 it may issue a warrant to take physical custody of the
11 child. The petition must be heard on the next judicial day
12 after the warrant is executed unless that date is impossi-
13 ble. In that event, the court shall hold the hearing on the
14 first judicial day possible. The application for the warrant
15 must include the statements required by section subsection
16 (b), section three hundred eight of this article.

17 (c) A warrant to take physical custody of a child must:

18 (1) Recite the facts upon which a conclusion of imminent
19 serious physical harm or removal from the jurisdiction is
20 based;

21 (2) Direct law-enforcement officers to take physical
22 custody of the child immediately; and

23 (3) Provide for the placement of the child pending final
24 relief.

25 (d) The respondent must be served with the petition,
26 warrant and order immediately after the child is taken
27 into physical custody.

28 (e) A warrant to take physical custody of a child is
29 enforceable throughout this state. If the court finds on the
30 basis of the testimony of the petitioner or other witness
31 that a less intrusive remedy is not effective, it may autho-
32 rize law-enforcement officers to enter private property to

33 take physical custody of the child. If required by exigent
34 circumstances of the case, the court may authorize law-
35 enforcement officers to make a forcible entry at any hour.

36 (f) The court may impose conditions upon placement of
37 a child to ensure the appearance of the child and the
38 child's custodian.

§48C-3-312. Costs, fees and expenses.

1 (a) The court shall award the prevailing party, including
2 a state, necessary and reasonable expenses incurred by or
3 on behalf of the party, including costs, communication
4 expenses, attorney's fees, investigative fees, expenses for
5 witnesses, travel expenses and child care during the course
6 of the proceedings, unless the party from whom fees or
7 expenses are sought establishes that the award would be
8 clearly inappropriate.

9 (b) The court may not assess fees, costs or expenses
10 against a state unless authorized by law other than this
11 chapter.

§48C-3-313. Recognition and enforcement.

1 A court of this state shall accord full faith and credit to
2 an order issued by another state and consistent with this
3 chapter which enforces a child custody determination by
4 a court of another state unless the order has been vacated,
5 stayed or modified by a court have jurisdiction to do so
6 under article two of this chapter.

§48C-3-314. Appeals.

1 An appeal may be taken from a final order in a proceed-
2 ing under this article in accordance with expedited
3 appellate procedures in other civil cases. Unless the court
4 enters a temporary emergency order under section two
5 hundred four, article two of this chapter, the enforcing
6 court may not stay an order enforcing a child custody
7 determination pending appeal.

§48C-3-315. Role of prosecutor or public official.

1 (a) In a case arising under this chapter or involving the
2 Hague Convention on the Civil Aspects of International
3 Child Abduction, the prosecutor or other appropriate
4 public official may take any lawful action, including resort
5 to a proceeding under this article or any other available
6 civil proceeding, to locate a child, obtain the return of a
7 child or enforce a child custody determination if there is:

8 (1) An existing child custody determination;

9 (2) A request to do so from a court in a pending child
10 custody proceeding;

11 (3) A reasonable belief that a criminal statute has been
12 violated; or

13 (4) A reasonable belief that the child has been wrongfully
14 removed or retained in violation of the Hague Convention
15 on the Civil Aspects of International Child Abduction.

16 (b) A prosecutor or appropriate public official acting
17 under this section acts on behalf of the court and may not
18 represent any party.

§48C-3-316. Role of law enforcement.

1 At the request of a prosecutor or other appropriate
2 public official acting under section three hundred fifteen
3 of this article, a law-enforcement officer may take any
4 lawful action reasonably necessary to locate a child or a
5 party and assist a prosecutor or appropriate public official
6 with responsibilities under said section.

§48C-3-317. Costs and expenses.

1 If the respondent is not the prevailing party, the court
2 may assess against the respondent all direct expenses and
3 costs incurred by the prosecutor or other appropriate
4 public official and law-enforcement officers under section
5 three hundred fifteen or three hundred sixteen of this
6 article.

ARTICLE 4. MISCELLANEOUS PROVISIONS.

§48C-4-401. Application and construction.

1 In applying and construing this uniform act, consider-
2 ation must be given to the need to promote uniformity of
3 the law with respect to its subject matter among states
4 that enact it.

§48C-4-402. Severability clause.

1 If any provision of this chapter or its application to any
2 person or circumstance is held invalid, the invalidity does
3 not affect other provisions or applications of this chapter
4 which can be given effect without the invalid provision or
5 application, and to this end the provisions of this chapter
6 are severable.

§48C-4-403. Effective date.

1 This chapter takes effect on the first day of July, two
2 thousand.

§48C-4-404. Transitional provision.

1 A motion or other request for relief made in a child
2 custody proceeding or to enforce a child custody determi-
3 nation which was commenced before the effective date of
4 this chapter is governed by the law in effect at the time the
5 motion or other request was made.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within..... *approved* this the *29th*
Day of..... *January* , 2000.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date

2/24/00

Time

2:41 pm