

Senate Amendments to House Bill No. 873

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

16 SECTION 1. The provisions of this chapter may be cited as
17 the Uniform Child Custody Jurisdiction and Enforcement Act.

18 SECTION 2. In this chapter, the following words and phrases
19 shall have the meanings ascribed in this section unless the
20 context clearly indicates otherwise:

21 (a) "Abandoned" means left without provision for
22 reasonable and necessary care or supervision.

23 (b) "Child" means an individual who has not attained
24 eighteen (18) years of age.

25 (c) "Child custody determination" means a judgment,
26 decree, or other order of a court providing for the legal custody,
27 physical custody, or visitation with respect to a child. The term
28 includes a permanent, temporary, initial, and modification order.
29 The term does not include an order relating to child support or
30 other monetary obligation of an individual.

31 (d) "Child custody proceeding" means a proceeding in
32 which legal custody, physical custody, or visitation with respect
33 to a child is an issue. The term includes a proceeding for
34 divorce, separation, neglect, abuse, dependency, guardianship,
35 paternity, termination of parental rights, and protection from
36 domestic violence, in which the issue may appear. The term does
37 not include a proceeding involving juvenile delinquency,
38 contractual emancipation, or enforcement under Sections 23 through
39 38 of this act.

40 (e) "Commencement" means the filing of the first
41 pleading in a proceeding.

42 (f) "Court" means an entity authorized under the law of
43 a state to establish, enforce, or modify a child custody
44 determination.

45 (g) "Home state" means the state in which a child lived
46 with a parent or a person acting as a parent for at least six (6)
47 consecutive months immediately before the commencement of a child
48 custody proceeding. In the case of a child less than six (6)
49 months of age, the term means the state in which the child lived
50 from birth with any of the persons mentioned. A period of
51 temporary absence of any of the mentioned persons is part of the
52 period.

53 (h) "Initial determination" means the first child
54 custody determination concerning a particular child.

55 (i) "Issuing court" means the court that makes a child
56 custody determination for which enforcement is sought under this
57 chapter.

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

60 (k) "Modification" means a child custody determination
61 that changes, replaces, supersedes, or is otherwise made after a
62 previous determination concerning the same child, whether or not
63 it is made by the court that made the previous determination.

64 (l) "Person" means an individual, corporation, business
65 trust, estate, trust, partnership, limited liability company,
66 association, joint venture, government, governmental subdivision,
67 agency, or instrumentality, public corporation, or any other legal
68 or commercial entity.

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

71 (i) Has physical custody of the child or has had
72 physical custody for a period of six (6) consecutive months,
73 including any temporary absence, within one (1) year immediately
74 before the commencement of a child custody proceeding; and

75 (ii) Has been awarded legal custody by a court or
76 claims a right to legal custody under the law of this state.

77 (n) "Petitioner" means a person who seeks enforcement
78 of (i) an order for return of a child under the Hague Convention
79 on the Civil Aspects of International Child Abduction or (ii) a
80 child custody determination.

81 (o) "Physical custody" means the physical care and
82 supervision of a child.

83 (p) "Respondent" means a person against whom a
84 proceeding has been commenced for enforcement of (i) an order for
85 return of a child under the Hague Convention on the Civil Aspects
86 of International Child Abduction or (ii) a child custody
87 determination.

88 (q) "State" means a state of the United States, the
89 District of Columbia, Puerto Rico, the United States Virgin
90 Islands, or any territory or insular possession subject to the
91 jurisdiction of the United States.

92 (r) "Tribe" means an Indian tribe or band, or Alaskan
93 Native village, which is recognized by federal law or formally
94 acknowledged by a state.

95 (s) "Warrant" means an order issued by a court
96 authorizing law enforcement officers to take physical custody of a
97 child.

98 **SECTION 3.** This chapter does not govern an adoption
99 proceeding or a proceeding pertaining to the authorization of
100 emergency medical care for a child.

101 **SECTION 4.** (1) A child custody proceeding that pertains to
102 an Indian child as defined in the Indian Child Welfare Act, 25
103 USCS Section 1901 et seq., is not subject to this chapter to the
104 extent that it is governed by the Indian Child Welfare Act.

105 (2) A court of this state shall treat a tribe as if it were
106 a state of the United States for the purpose of applying Sections
107 2 through 22 of this act.

108 (3) A child custody determination made by a tribe under
109 factual circumstances in substantial conformity with the
110 jurisdictional standards of this chapter must be recognized and
111 enforced under Sections 23 through 38 of this act.

112 **SECTION 5.** (1) A court of this state shall treat a foreign
113 country as if it were a state of the United States for the purpose
114 of applying Sections 2 through 22 of this act.

115 (2) Except as otherwise provided in subsection (3), a child
116 custody determination made in a foreign country under factual
117 circumstances in substantial conformity with the jurisdictional
118 standards of this chapter must be recognized and enforced under
119 Sections 23 through 38 of this act.

120 (3) A court of this state need not apply this chapter if the
121 child custody law of a foreign country violates fundamental
122 principles of human rights.

123 **SECTION 6.** A child custody determination made by a court of
124 this state that had jurisdiction under this chapter binds all
125 persons who have been served in accordance with the laws of this
126 state or notified in accordance with Section 8 of this act or who
127 have submitted to the jurisdiction of the court, and who have been
128 given an opportunity to be heard.

129 As to those persons, the determination is conclusive as to
130 all decided issues of law and fact except to the extent the
131 determination is modified.

132 **SECTION 7.** If a question of existence or exercise of
133 jurisdiction under this chapter is raised in a child custody
134 proceeding, the question, upon request of a party, must be given
135 priority on the calendar and handled expeditiously.

136 **SECTION 8.** (1) Notice required for the exercise of
137 jurisdiction when a person is outside this state may be given in a
138 manner prescribed by the law of this state for service of process
139 or by the law of the state in which the service is made. Notice
140 must be given in a manner reasonably calculated to give actual
141 notice but may be by publication if other means are not effective.

142 (2) Proof of service may be made in the manner prescribed by
143 the law of this state or by the law of the state in which the
144 service is made.

145 (3) Notice is not required for the exercise of jurisdiction
146 with respect to a person who submits to the jurisdiction of the
147 court.

148 **SECTION 9.** (1) A party to a child custody proceeding,
149 including a modification proceeding, or a petitioner or respondent
150 in a proceeding to enforce or register a child custody
151 determination, is not subject to personal jurisdiction in this
152 state for another proceeding or purpose solely by reason of having
153 participated, or of having been physically present for the purpose
154 of participating, in the proceeding.

155 (2) A person who is subject to personal jurisdiction in this
156 state on a basis other than physical presence is not immune from
157 service of process in this state. A party present in this state
158 who is subject to the jurisdiction of another state is not immune
159 from service of process allowable under the laws of that state.

160 (3) The immunity granted by subsection (1) does not extend
161 to civil litigation based on acts unrelated to the participation
162 in a proceeding under this chapter committed by an individual
163 while present in this state.

164 **SECTION 10.** (1) A court of this state may communicate with
165 a court in another state concerning a proceeding arising under
166 this chapter.

167 (2) The court may allow the parties to participate in the
168 communication. If the parties are not able to participate in the
169 communication, they must be given the opportunity to present facts
170 and legal arguments before a decision on jurisdiction is made.

171 (3) Communication between courts on schedules, calendars,
172 court records, and similar matters may occur without informing the
173 parties. A record need not be made of the communication.

174 (4) Except as otherwise provided in subsection (3), a record
175 must be made of a communication under this section. The parties
176 must be informed promptly of the communication and granted access
177 to the record.

178 (5) For the purposes of this section, "record" means
179 information that is inscribed on a tangible medium or that is

180 stored in an electronic or other medium and is retrievable in
181 perceivable form.

182 SECTION 11. (1) In addition to other procedures available
183 to a party, a party to a child custody proceeding may offer
184 testimony of witnesses who are located in another state, including
185 testimony of the parties and the child, by deposition or other
186 means allowable in this state for testimony taken in another
187 state. The court on its own motion may order that the testimony
188 of a person be taken in another state and may prescribe the manner
189 in which and the terms upon which the testimony is taken.

190 (2) A court of this state may permit an individual residing
191 in another state to be deposed or to testify by telephone,
192 audiovisual means, or other electronic means before a designated
193 court or at another location in that state. A court of this state
194 shall cooperate with courts of other states in designating an
195 appropriate location for the deposition or testimony.

196 (3) Documentary evidence transmitted from another state to a
197 court of this state by technological means which do not produce an
198 original writing may not be excluded from evidence on an objection
199 based on the means of transmission.

200 SECTION 12. (1) A court of this state may request the
201 appropriate court of another state to:

202 (a) Hold an evidentiary hearing;

203 (b) Order a person to produce or give evidence pursuant
204 to procedures of that state;

205 (c) Order that an evaluation be made with respect to
206 the custody of a child involved in a pending proceeding;

207 (d) Forward to the court of this state a certified copy
208 of the transcript of the record of the hearing, the evidence
209 otherwise presented, and any evaluation prepared in compliance
210 with the request; and

211 (e) Order a party to a child custody proceeding or any
212 person having physical custody of the child to appear in the
213 proceeding with or without the child.

214 (2) Upon request of a court of another state, a court of
215 this state may hold a hearing or enter an order described in
216 subsection (1).

217 (3) Travel and other necessary and reasonable expenses
218 incurred under subsections (1) and (2) may be assessed against the
219 parties according to the law of this state.

220 (4) A court of this state shall preserve the pleadings,
221 orders, decrees, records of hearings, evaluations, and other
222 pertinent records with respect to a child custody proceeding until
223 the child attains eighteen (18) years of age. Upon appropriate
224 request by a court or law enforcement official of another state,
225 the court shall forward a certified copy of those records.

226 **SECTION 13.** (1) Except as otherwise provided in Section 16
227 of this act, a court of this state has jurisdiction to make an
228 initial child custody determination only if:

229 (a) This state is the home state of the child on the
230 date of the commencement of the proceeding, or was the home state
231 of the child within six (6) months before the commencement of the
232 proceeding and the child is absent from this state but a parent or
233 person acting as a parent continues to live in this state;

234 (b) A court of another state does not have jurisdiction
235 under paragraph (a), or a court of the home state of the child has
236 declined to exercise jurisdiction on the ground that this state is
237 the more appropriate forum under Section 19 or 20 of this act;
238 and:

239 (i) The child and the child's parents, or the
240 child and at least one (1) parent or a person acting as a parent,
241 have a significant connection with this state other than mere
242 physical presence; and

243 (ii) Substantial evidence is available in this
244 state concerning the child's care, protection, training, and
245 personal relationships;

246 (c) All courts having jurisdiction under paragraph (a)
247 or (b) of this subsection have declined to exercise jurisdiction
248 on the ground that a court of this state is the more appropriate

249 forum to determine the custody of the child under Section 19 or 20
250 of this act; or

251 (d) No court of any other state would have jurisdiction
252 under the criteria specified in paragraph (a), (b), or (c) of this
253 section.

254 (2) Subsection (1) is the exclusive jurisdictional basis for
255 making a child custody determination by a court of this state.

256 (3) Physical presence of, or personal jurisdiction over, a
257 party or a child is not necessary or sufficient to make a child
258 custody determination.

259 **SECTION 14.** (1) Except as otherwise provided in Section 16
260 of this act, a court of this state which has made a child custody
261 determination consistent with Section 13 or 15 of this act has
262 exclusive, continuing jurisdiction over the determination until:

263 (a) A court of this state determines that neither the
264 child, nor the child and one parent, nor the child and a person
265 acting as a parent have a significant connection with this state
266 and that substantial evidence is no longer available in this state
267 concerning the child's care, protection, training, and personal
268 relationships; or

269 (b) A court of this state or a court of another state
270 determines that the child, the child's parents, and any person
271 acting as a parent currently do not reside in this state.

272 (2) A court of this state which has made a child custody
273 determination and does not have exclusive, continuing jurisdiction
274 under this section may modify that determination only if it has
275 jurisdiction to make an initial determination under Section 13 of
276 this act.

277 **SECTION 15.** Except as otherwise provided in Section 16 of
278 this act, a court of this state may not modify a child custody
279 determination made by a court of another state unless a court of
280 this state has jurisdiction to make an initial determination under
281 Section 13(1)(a) or (b) of this act; and:

282 (a) The court of the other state determines it no
283 longer has exclusive, continuing jurisdiction under Section 14 of

284 this act or that a court of this state would be a more convenient
285 forum under Section 19 of this act; or

286 (b) A court of this state or a court of the other state
287 determines that neither the child, the child's parents, nor any
288 person acting as a parent presently does not reside in the other
289 state.

290 **SECTION 16.** (1) A court of this state has temporary
291 emergency jurisdiction if the child is present in this state and
292 the child has been abandoned or it is necessary in an emergency to
293 protect the child because the child, or a sibling or parent of the
294 child, is subjected to or threatened with mistreatment or abuse.

295 (2) If there is no previous child custody determination that
296 is entitled to be enforced under this chapter and a child custody
297 proceeding has not been commenced in a court of a state having
298 jurisdiction under Sections 13 through 15 of this act, a child
299 custody determination made under this section remains in effect
300 until an order is obtained from a court of a state having
301 jurisdiction under Sections 13 through 15 of this act. If a child
302 custody proceeding has not been or is not commenced in a court of
303 a state having jurisdiction under Sections 13 through 15 of this
304 act, a child custody determination made under this section becomes
305 a final determination, if it so provides and this state becomes
306 the home state of the child.

307 (3) If there is a previous child custody determination that
308 is entitled to be enforced under this chapter, or a child custody
309 proceeding has been commenced in a court of a state having
310 jurisdiction under Sections 13 through 15 of this act, any order
311 issued by a court of this state under this section must specify in
312 the order a period that the court considers adequate to allow the
313 person seeking an order to obtain an order from the state having
314 jurisdiction under Sections 13 through 15 of this act. The order
315 issued in this state remains in effect until an order is obtained
316 from the other state within the period specified or the period
317 expires.

318 (4) A court of this state which has been asked to make a
319 child custody determination under this section, upon being
320 informed that a child custody proceeding has been commenced in, or
321 a child custody determination has been made by, a court of a state
322 having jurisdiction under Sections 13 through 15 of this act,
323 shall immediately communicate with the other court. A court of
324 this state which is exercising jurisdiction pursuant to Sections
325 13 through 15 of this act, upon being informed that a child
326 custody proceeding has been commenced in, or a child custody
327 determination has been made by, a court of another state under a
328 statute similar to this section shall immediately communicate with
329 the court of that state to resolve the emergency, protect the
330 safety of the parties and the child, and determine a period for
331 the duration of the temporary order.

332 **SECTION 17.** (1) Before a child custody determination is
333 made under this chapter, notice and an opportunity to be heard in
334 accordance with the standards of Section 8 of this act must be
335 given to all persons entitled to notice under the law of this
336 state as in child custody proceedings between residents of this
337 state, any parent whose parental rights have not been previously
338 terminated, and any person having physical custody of the child.

339 (2) This chapter does not govern the enforceability of a
340 child custody determination made without notice or an opportunity
341 to be heard.

342 (3) The obligation to join a party and the right to
343 intervene as a party in a child custody proceeding under this
344 chapter are governed by the law of this state as in child custody
345 proceedings between residents of this state.

346 **SECTION 18.** (1) Except as otherwise provided in Section 16
347 of this act, a court of this state may not exercise its
348 jurisdiction under this act if, at the time of the commencement of
349 the proceeding, a proceeding concerning the custody of the child
350 has been commenced in a court of another state having jurisdiction
351 substantially in conformity with this chapter, unless the
352 proceeding has been terminated or is stayed by the court of the

353 other state because a court of this State is a more convenient
354 forum under Section 19 of this act.

355 (2) Except as otherwise provided in Section 16 of this act,
356 a court of this state, before hearing a child custody proceeding,
357 shall examine the court documents and other information supplied
358 by the parties pursuant to Section 21 of this act. If the court
359 determines that a child custody proceeding has been commenced in a
360 court in another state having jurisdiction substantially in
361 accordance with this chapter, the court of this state shall stay
362 its proceeding and communicate with the court of the other state.
363 If the court of the state having jurisdiction substantially in
364 accordance with this chapter does not determine that the court of
365 this state is a more appropriate forum, the court of this state
366 shall dismiss the proceeding.

367 (3) In a proceeding to modify a child custody determination,
368 a court of this state shall determine whether a proceeding to
369 enforce the determination has been commenced in another state. If
370 a proceeding to enforce a child custody determination has been
371 commenced in another state, the court may:

372 (a) Stay the proceeding for modification pending the
373 entry of an order of a court of the other state enforcing,
374 staying, denying, or dismissing the proceeding for enforcement;

375 (b) Enjoin the parties from continuing with the
376 proceeding for enforcement; or

377 (c) Proceed with the modification under conditions it
378 considers appropriate.

379 **SECTION 19.** (1) A court of this state which has
380 jurisdiction under this chapter to make a child custody
381 determination may decline to exercise its jurisdiction at any time
382 if it determines that it is an inconvenient forum under the
383 circumstances and that a court of another state is a more
384 appropriate forum. The issue of inconvenient forum may be raised
385 upon motion of a party, the court's own motion, or request of
386 another court.

387 (2) Before determining whether it is an inconvenient forum,
388 a court of this state shall consider whether it is appropriate for
389 a court of another state to exercise jurisdiction. For this
390 purpose, the court shall allow the parties to submit information
391 and shall consider all relevant factors, including:

392 (a) Whether domestic violence has occurred and is
393 likely to continue in the future and which state could best
394 protect the parties and the child;

395 (b) The length of time the child has resided outside
396 this state;

397 (c) The distance between the court in this state and
398 the court in the state that would assume jurisdiction;

399 (d) The relative financial circumstances of the
400 parties;

401 (e) Any agreement of the parties as to which state
402 should assume jurisdiction;

403 (f) The nature and location of the evidence required to
404 resolve the pending litigation, including testimony of the child;

405 (g) The ability of the court of each state to decide
406 the issue expeditiously and the procedures necessary to present
407 the evidence; and

408 (h) The familiarity of the court of each state with the
409 facts and issues in the pending litigation.

410 (3) If a court of this state determines that it is an
411 inconvenient forum and that a court of another state is a more
412 appropriate forum, it shall stay the proceedings upon condition
413 that a child custody proceeding be promptly commenced in another
414 designated state and may impose any other condition the
415 court considers just and proper.

416 (4) A court of this state may decline to exercise its
417 jurisdiction under this chapter if a child custody determination
418 is incidental to an action for divorce or another proceeding while
419 still retaining jurisdiction over the divorce or other proceeding.

420 **SECTION 20.** (1) Except as otherwise provided in Section 16
421 of this act or by other law of this state, if a court of this

422 state has jurisdiction under this chapter because a person seeking
423 to invoke its jurisdiction has engaged in unjustifiable conduct,
424 the court shall decline to exercise its jurisdiction unless:

425 (a) The parents and all persons acting as parents have
426 acquiesced in the exercise of jurisdiction;

427 (b) A court of the state otherwise having jurisdiction
428 under Sections 13 through 15 of this act determines that this
429 state is a more appropriate forum under Section 19 of this act; or

430 (c) No court of any other state would have jurisdiction
431 under the criteria specified in Sections 13 through 15 of this
432 act.

433 (2) If a court of this state declines to exercise its
434 jurisdiction pursuant to subsection (1), it may fashion an
435 appropriate remedy to ensure the safety of the child and prevent a
436 repetition of the unjustifiable conduct, including staying the
437 proceeding until a child custody proceeding is commenced in a
438 court having jurisdiction under Sections 13 through 15 of this
439 act.

440 (3) If a court dismisses a petition or stays a proceeding
441 because it declines to exercise its jurisdiction under subsection
442 (1), it shall assess against the party seeking to invoke its
443 jurisdiction necessary and reasonable expenses including court
444 costs, communication expenses, attorney's fees, investigative
445 fees, expenses for witnesses, travel expenses, and expenses for
446 child care during the course of the proceedings, unless the party
447 from whom fees are sought establishes that the assessment would be
448 clearly inappropriate. The court may not assess fees, costs, or
449 expenses against this state unless authorized by law other than
450 this chapter.

451 **SECTION 21.** (1) Subject to any law providing for the
452 confidentiality of procedures, addresses, and other identifying
453 information, in a child custody proceeding, each party, in its
454 first pleading or in an attached affidavit, shall give
455 information, if reasonably ascertainable, under oath as to the
456 child's present address or whereabouts, the places where the child

457 has lived during the last five (5) years, and the names and
458 present addresses of the persons with whom the child has lived
459 during that period. The pleading or affidavit must state whether
460 the party:

461 (a) Has participated, as a party or witness or in any
462 other capacity, in any other proceeding concerning the custody of
463 or visitation with the child and, if so, identify the court, the
464 case number, and the date of the child custody determination, if
465 any;

466 (b) Knows of any proceeding that could affect the
467 current proceeding, including proceedings for enforcement and
468 proceedings relating to domestic violence, protective orders,
469 termination of parental rights, and adoptions and, if so, identify
470 the court, the case number, and the nature of the proceeding; and

471 (c) Knows the names and addresses of any person not a
472 party to the proceeding who has physical custody of the child or
473 claims rights of legal custody or physical custody of, or
474 visitation with, the child and, if so, the names and addresses of
475 those persons.

476 (2) If the information required by subsection (1) is not
477 furnished, the court, upon motion of a party or its own motion,
478 may stay the proceeding until the information is furnished.

479 (3) If the declaration as to any of the items described in
480 subsection (1)(a) through (c) is in the affirmative, the declarant
481 shall give additional information under oath as required by the
482 court. The court may examine the parties under oath as to details
483 of the information furnished and other matters pertinent to the
484 court's jurisdiction and the disposition of the case.

485 (4) Each party has a continuing duty to inform the court of
486 any proceeding in this or any other state that could affect the
487 current proceeding.

488 (5) If a party alleges in an affidavit or a pleading under
489 oath that the health, safety, or liberty of a party or child would
490 be jeopardized by disclosure of identifying information, the
491 information must be sealed and may not be disclosed to the other

492 party or the public, unless the court orders the disclosure to be
493 made after a hearing in which the court takes into consideration
494 the health, safety, or liberty of the party or child and
495 determines that the disclosure is in the interest of justice.

496 **SECTION 22.** (1) In a child custody proceeding in this
497 state, the court may order a party to the proceeding who is in
498 this state to appear before the court in person with or without
499 the child. The court may order any person who is in this state
500 and who has physical custody or control of the child to appear in
501 person with the child.

502 (2) If a party to a child custody proceeding whose presence
503 is desired by the court is outside this state, the court may order
504 that a notice given under Section 8 of this act include a
505 statement directing the party to appear in person with or without
506 the child and informing the party that failure to appear may
507 result in a decision adverse to the party.

508 (3) The court may enter any orders necessary to ensure the
509 safety of the child and of any person ordered to appear under this
510 section.

511 (4) If a party to a child custody proceeding who is outside
512 this state is directed to appear under subsection (2) or desires
513 to appear personally before the court with or without the child,
514 the court may require another party to pay reasonable and
515 necessary travel and other expenses of the party so appearing and
516 of the child.

517 **SECTION 23.** Under Sections 23 through 38 of this act, a
518 court of this state may enforce an order for the return of the
519 child made under the Hague Convention on the Civil Aspects of
520 International Child Abduction as if it were a child custody
521 determination.

522 **SECTION 24.** (1) A court of this state shall recognize and
523 enforce a child custody determination of a court of another state
524 if the latter court exercised jurisdiction in substantial
525 conformity with this chapter or the determination was made under
526 factual circumstances meeting the jurisdictional standards of this

527 chapter and the determination has not been modified in accordance
528 with this chapter.

529 (2) A court of this state may utilize any remedy available
530 under other law of this state to enforce a child custody
531 determination made by a court of another state. The remedies
532 provided in Sections 23 through 38 of this act are cumulative and
533 do not affect the availability of other remedies to enforce a
534 child custody determination.

535 **SECTION 25.** (1) A court of this state which does not have
536 jurisdiction to modify a child custody determination, may issue a
537 temporary order enforcing:

538 (a) A visitation schedule made by a court of another
539 state; or

540 (b) The visitation provisions of a child custody
541 determination of another state that does not provide for a
542 specific visitation schedule.

543 (2) If a court of this state makes an order under subsection
544 (1)(a), it shall specify in the order a period that it considers
545 adequate to allow the petitioner to obtain an order from a court
546 having jurisdiction under the criteria specified in Sections 13
547 through 22 of this act. The order remains in effect until an
548 order is obtained from the other court or the period expires.

549 **SECTION 26.** (1) A child custody determination issued by a
550 court of another state may be registered in this state, with or
551 without a simultaneous request for enforcement, by sending to the
552 chancery clerk's office of any county in this state:

553 (a) A letter or other document requesting registration;

554 (b) Two (2) copies, including one (1) certified copy,
555 of the determination sought to be registered, and a statement
556 under penalty of perjury that to the best of the knowledge and
557 belief of the person seeking registration the order has not been
558 modified; and

559 (c) Except as otherwise provided in Section 21 of this
560 act, the name and address of the person seeking registration and
561 any parent or person acting as a parent who has been awarded

562 custody or visitation in the child custody determination sought to
563 be registered.

564 (2) On receipt of the documents required by subsection (1),
565 the registering court shall:

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

569 (b) Serve notice upon the persons named under
570 subsection (1)(c) and provide them with an opportunity to contest
571 the registration in accordance with this section.

572 (3) The notice required by subsection (2)(b) must state
573 that:

574 (a) A registered determination is enforceable as of the
575 date of the registration in the same manner as a determination
576 issued by a court of this state;

577 (b) A hearing to contest the validity of the registered
578 determination must be requested within twenty (20) days after
579 service of notice; and

580 (c) Failure to contest the registration will result in
581 confirmation of the child custody determination and preclude
582 further contest of that determination with respect to any matter
583 that could have been asserted.

584 (4) A person seeking to contest the validity of a registered
585 order must request a hearing within twenty (20) days after service
586 of the notice. At that hearing, the court shall confirm the
587 registered order unless the person contesting registration
588 establishes that:

589 (a) The issuing court did not have jurisdiction under
590 Sections 13 through 23 of this act;

591 (b) The child custody determination sought to be
592 registered has been vacated, stayed, or modified by a court having
593 jurisdiction to do so under Sections 13 through 23 of this act; or

594 (c) The person contesting registration was entitled to
595 notice, but notice was not given in accordance with the standards

596 of Section 8 of this act, in the proceedings before the court that
597 issued the order for which registration is sought.

598 (5) If a timely request for a hearing to contest the
599 validity of the registration is not made, the registration is
600 confirmed as a matter of law and the person requesting
601 registration and all persons served must be notified of the
602 confirmation.

603 (6) Confirmation of a registered order, whether by operation
604 of law or after notice and hearing, precludes further contest of
605 the order with respect to any matter that could have been asserted
606 at the time of registration.

607 **SECTION 27.** (1) A court of this state may grant any relief
608 normally available under the law of this state to enforce a
609 registered child custody determination made by a court of another
610 state.

611 (2) A court of this state shall recognize and enforce, but
612 may not modify, except in accordance with Sections 13 through 22
613 of this act, a registered child custody determination of a court
614 of another state.

615 **SECTION 28.** If a proceeding for enforcement under Sections
616 23 through 38 of this act is commenced in a court of this state
617 and the court determines that a proceeding to modify the
618 determination is pending in a court of another state having
619 jurisdiction to modify the determination under Sections 13 through
620 22 of this act, the enforcing court shall immediately communicate
621 with the modifying court. The proceeding for enforcement
622 continues unless the enforcing court, after consultation with the
623 modifying court, stays or dismisses the proceeding.

624 **SECTION 29.** (1) A petition under Sections 23 through 38 of
625 this act must be verified. Certified copies of all orders sought
626 to be enforced and of any order confirming registration must be
627 attached to the petition. A copy of a certified copy of an order
628 may be attached instead of the original.

629 (2) A petition for enforcement of a child custody
630 determination must state:

631 (a) Whether the court that issued the determination
632 identified the jurisdictional basis it relied upon in exercising
633 jurisdiction and, if so, what the basis was;

634 (b) Whether the determination for which enforcement is
635 sought has been vacated, stayed, or modified by a court whose
636 decision must be enforced under this chapter and, if so, identify
637 the court, the case number, and the nature of the proceeding;

638 (c) Whether any proceeding has been commenced that
639 could affect the current proceeding, including proceedings
640 relating to domestic violence, protective orders, termination of
641 parental rights, and adoptions and, if so, identify the court, the
642 case number, and the nature of the proceeding;

643 (d) The present physical address of the child and the
644 respondent, if known;

645 (e) Whether relief in addition to the immediate
646 physical custody of the child and attorney's fees is sought,
647 including a request for assistance from law enforcement officials
648 and, if so, the relief sought; and

649 (f) If the child custody determination has been
650 registered and confirmed under Section 26 of this act, the date
651 and place of registration.

652 (3) Upon the filing of a petition, the court shall issue an
653 order directing the respondent to appear in person with or without
654 the child at a hearing and may enter any order necessary to ensure
655 the safety of the parties and the child. The hearing must be held
656 on the next judicial day after service of the order unless that
657 date is impossible. In that event, the court shall hold the
658 hearing on the first judicial day possible. The court may extend
659 the date of hearing at the request of the petitioner.

660 (4) An order issued under subsection (3) must state the time
661 and place of the hearing and advise the respondent that at the
662 hearing the court will order that the petitioner may take
663 immediate physical custody of the child and the payment of fees,
664 costs, and expenses under Section 33 of this act, and may schedule

665 a hearing to determine whether further relief is appropriate,
666 unless the respondent appears and establishes that:

667 (a) The child custody determination has not been
668 registered and confirmed under Section 26 of this act and that:

669 (i) The issuing court did not have jurisdiction
670 under this act;

671 (ii) The child custody determination for which
672 enforcement is sought has been vacated, stayed, or modified by a
673 court having jurisdiction to do so under Sections 13 through 22 of
674 this act;

675 (iii) The respondent was entitled to notice, but
676 notice was not given in accordance with the standards of Section 8
677 of this act, in the proceedings before the court that issued the
678 order for which enforcement is sought; or

679 (b) The child custody determination for which
680 enforcement is sought was registered and confirmed under Section
681 25 of this act, but has been vacated, stayed, or modified by a
682 court of a state having jurisdiction to do so under this act.

683 **SECTION 30.** Except as otherwise provided in Section 32 of
684 this act, the petition and order must be served, by any method
685 authorized by the law of this state, upon respondent and any
686 person who has physical custody of the child.

687 **SECTION 31.** (1) Unless the court issues a temporary
688 emergency order under Section 16 of this act, upon a finding that
689 a petitioner is entitled to immediate physical custody of the
690 child, the court shall order that the petitioner may take
691 immediate physical custody of the child unless the respondent
692 establishes that:

693 (a) The child custody determination has not been
694 registered and confirmed under Section 26 of this act and that:

695 (i) The issuing court did not have jurisdiction
696 under Sections 13 through 22 of this act;

697 (ii) The child custody determination for which
698 enforcement is sought has been vacated, stayed, or modified by a

699 court of a state having jurisdiction to do so under Section 13
700 through 22 of this act; or

701 (iii) The respondent was entitled to notice, but
702 notice was not given in accordance with the standards of Section 8
703 of this act, in the proceedings before the court that issued the
704 order for which enforcement is sought; or

705 (b) The child custody determination for which
706 enforcement is sought was registered and confirmed under Section
707 26 of this act but has been vacated, stayed, or modified by a
708 court of a state having jurisdiction to do so under Sections 13
709 through 22 of this act.

710 (2) The court shall award the fees, costs, and expenses
711 authorized under Section 33 of this act and may grant additional
712 relief, including a request for the assistance of law enforcement
713 officials, and set a further hearing to determine whether
714 additional relief is appropriate.

715 (3) If a party called to testify refuses to answer on the
716 ground that the testimony may be self-incriminating, the court may
717 draw an adverse inference from the refusal.

718 (4) A privilege against disclosure of communications between
719 spouses and a defense of immunity based on the relationship of
720 husband and wife or parent and child may not be invoked in a
721 proceeding under Sections 23 through 38 of this act.

722 **SECTION 32.** (1) Upon the filing of a petition seeking
723 enforcement of a child custody determination, the petitioner may
724 file a verified application for the issuance of a warrant to take
725 physical custody of the child if the child is immediately likely
726 to suffer serious physical harm or be removed from this state.

727 (2) If the court, upon the testimony of the petitioner or
728 other witness, finds that the child is imminently likely to suffer
729 serious physical harm or be removed from this state, it may issue
730 a warrant to take physical custody of the child. The petition
731 must be heard on the next judicial day after the warrant is
732 executed unless that date is impossible. In that event, the court
733 shall hold the hearing on the first judicial day possible. The

734 application for the warrant must include the statements required
735 by Section 29(2) of this act.

736 (3) A warrant to take physical custody of a child must:

737 (a) Recite the facts upon which a conclusion of
738 imminent serious physical harm or removal from the jurisdiction is
739 based;

740 (b) Direct law enforcement officers to take physical
741 custody of the child immediately; and

742 (c) Provide for the placement of the child pending
743 final relief.

744 (4) The respondent must be served with the petition,
745 warrant, and order immediately after the child is taken into
746 physical custody.

747 (5) A warrant to take physical custody of a child is
748 enforceable throughout this state. If the court finds on the
749 basis of the testimony of the petitioner or other witness that a
750 less intrusive remedy is not effective, it may authorize law
751 enforcement officers to enter private property to take physical
752 custody of the child. If required by exigent circumstances of the
753 case, the court may authorize law enforcement officers to make a
754 forcible entry at any hour.

755 (6) The court may impose conditions upon placement of a
756 child to ensure the appearance of the child and the child's
757 custodian.

758 **SECTION 33.** (1) The court shall award the prevailing party,
759 including a state, necessary and reasonable expenses incurred by
760 or on behalf of the party, including costs, communication
761 expenses, attorney's fees, investigative fees, expenses for
762 witnesses, travel expenses, and child care during the course of
763 the proceedings, unless the party from whom fees or expenses are
764 sought establishes that the award would be clearly inappropriate.

765 (2) The court may not assess fees, costs, or expenses against
766 a state unless authorized by law other than this chapter.

767 **SECTION 34.** A court of this state shall accord full faith
768 and credit to an order issued by another state and consistent with

769 this chapter which enforces a child custody determination by a
770 court of another state unless the order has been vacated, stayed,
771 or modified by a court having jurisdiction to do so under Sections
772 13 through 22 of this act.

773 **SECTION 35.** An appeal may be taken from a final order in a
774 proceeding under Sections 23 through 38 of this act in accordance
775 with expedited appellate procedures in other civil cases. Unless
776 the court enters a temporary emergency order under Section 16 of
777 this act, the enforcing court may not stay an order enforcing a
778 child custody determination pending appeal.

779 **SECTION 36.** (1) In a case arising under this chapter or
780 involving the Hague Convention on the Civil Aspects of
781 International Child Abduction, the prosecutor or other appropriate
782 public official may take any lawful action, including resort to a
783 proceeding under Sections 23 through 38 of this act or any other
784 available civil proceeding to locate a child, obtain the return of
785 a child, or enforce a child custody determination if there is:

786 (a) An existing child custody determination;

787 (b) A request to do so from a court in a pending child
788 custody proceeding;

789 (c) A reasonable belief that a criminal statute has
790 been violated; or

791 (d) A reasonable belief that the child has been
792 wrongfully removed or retained in violation of the Hague
793 Convention on the Civil Aspects of International Child Abduction.

794 (2) A prosecutor or appropriate public official acting under
795 this section acts on behalf of the court and may not represent any
796 party.

797 **SECTION 37.** At the request of a prosecutor or other
798 appropriate public official acting under Section 36 of this act, a
799 law enforcement officer may take any lawful action reasonably
800 necessary to locate a child or a party and assist a prosecutor or
801 appropriate public official with responsibilities under Section 36
802 of this act.

803 **SECTION 38.** If the respondent is not the prevailing party,
804 the court may assess against the respondent all direct expenses
805 and costs incurred by the prosecutor or other appropriate public
806 official and law enforcement officers under Section 36 or 37 of
807 this act.

808 **SECTION 39.** Sections 93-23-1, 93-23-3, 93-23-5, 93-23-7,
809 93-23-9, 93-23-11, 93-23-13, 93-23-15, 93-23-17, 93-23-19,
810 93-23-21, 93-23-23, 93-23-25, 93-23-27, 93-23-29, 93-23-31,
811 93-23-33, 93-23-35, 93-23-37, 93-23-39, 93-23-41, 93-23-43,
812 93-23-45 and 93-23-47, Mississippi Code of 1972, which constitute
813 the Uniform Child Custody Jurisdiction Act adopted in 1982, are
814 hereby repealed.

815 **SECTION 40.** In applying and construing this uniform act,
816 consideration must be given to the need to promote uniformity of
817 the law with respect to its subject matter among states that enact
818 it.

819 **SECTION 41.** A motion or other request for relief made in a
820 child custody proceeding or to enforce a child custody
821 determination which was commenced before the effective date of
822 this chapter is governed by the law in effect at the time the
823 motion or other request was made.

824 **SECTION 42.** The provisions of Sections 1 through 41 of this
825 act shall be codified as a separate chapter in Title 93,
826 Mississippi Code of 1972.

827 **SECTION 43.** This act shall take effect and be in force from
828 and after July 1, 2004.

SS26\HB873A.J

John O. Gilbert
Secretary of the Senate