

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4164

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IN THE SENATE OF THE UNITED STATES

JULY 15, 1998

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

To amend title 28, United States Code, with respect to the enforcement of child custody and visitation orders.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. CHILD CUSTODY AND VISITATION DETERMINA-**  
2 **TIONS.**

3 Section 1738A of title 28, United States Code is  
4 amended as follows:

5 (1) Subsection (a) is amended by striking “sub-  
6 section (f) of this section, any child custody deter-  
7 mination” and inserting “subsections (f) and (g) of  
8 this section, any custody determination or visitation  
9 determination”.

10 (2) Subsection (b)(2) is amended by striking “a  
11 parent” and inserting “, but not limited to, a parent  
12 or grandparent or, in cases involving a contested  
13 adoption, a person acting as a parent”.

14 (3) Subsection (b)(3) is amended—

15 (A) by striking “or visitation”;

16 (B) by striking “and” before “initial or-  
17 ders”; and

18 (C) by inserting before the semicolon at  
19 the end the following: “, and includes decrees,  
20 judgments, orders of adoption, and orders dis-  
21 missing or denying petitions for adoption”.

22 (4) Subsection (b)(4) is amended to read as fol-  
23 lows:

24 “(4)(A) except as provided in subparagraph  
25 (B), ‘home State’ means—

1           “(i) the State in which, immediately pre-  
2           ceding the time involved, the child lived with his  
3           or her parents, a parent, or a person acting as  
4           a parent, with whom the child has been living  
5           for at least six consecutive months, a prospec-  
6           tive adoptive parent, or an agency with legal  
7           custody during a proceeding for adoption, and

8           “(ii) in the case of a child less than six  
9           months old, the State in which the child lived  
10          from birth, or from soon after birth,

11          and periods of temporary absence of any such per-  
12          sons are counted as part of such 6-month or other  
13          period; and

14          “(B) in cases involving a proceeding for adop-  
15          tion, ‘home State’ means the State in which—

16                 “(i) immediately preceding commencement  
17                 of the proceeding, not including periods of tem-  
18                 porary absence, the child is in the custody of  
19                 the prospective adoptive parent or parents;

20                 “(ii) the child and the prospective adoptive  
21                 parent or parents are physically present and the  
22                 prospective adoptive parent or parents have  
23                 lived for at least six months; and

24                 “(iii) there is substantial evidence available  
25                 concerning the child’s present or future care;”.

1           (5) Subsection (b)(5) is amended by inserting  
2           “or visitation determination” after “custody deter-  
3           mination” each place it appears.

4           (6) Subsection (b) is amended by striking  
5           “and” at the end of paragraph (7), by striking the  
6           period at the end of paragraph (8) and inserting “;  
7           and”, and by adding after paragraph (8) the follow-  
8           ing:

9           “(9) ‘visitation determination’ means a judg-  
10          ment, decree, or other order of a court providing for  
11          the visitation of a child and includes permanent and  
12          temporary orders and initial orders and modifica-  
13          tions.”.

14          (7) Subsection (c) is amended by striking “child  
15          custody determination” in the matter preceding  
16          paragraph (1) and inserting “custody determination  
17          or visitation determination”.

18          (8) Subsection (c)(2)(D) is amended by adding  
19          “or visitation” after “determine the custody”.

20          (9) Subsection (d) is amended by striking  
21          “child custody determination” and inserting “cus-  
22          tody determination or visitation determination”.

23          (10) Subsection (e) is amended—

1 (A) by striking “child custody determina-  
2 tion” and inserting “custody determination or  
3 visitation determination”; and

4 (B) by striking “a child” and inserting  
5 “the child concerned”.

6 (11) Subsection (f) is amended—

7 (A) by striking “determination of the cus-  
8 tody of the same child” and inserting “custody  
9 determination”;

10 (B) in paragraph (1) by striking “child”  
11 and by striking “and” after the semicolon;

12 (C) in paragraph (2) by striking the period  
13 and inserting “; and”; and

14 (D) by adding at the end the following:

15 “(3) in cases of contested adoption in which the  
16 child has resided with the prospective adoptive par-  
17 ent or parents for at least six consecutive months,  
18 the court finds by clear and convincing evidence that  
19 the court of the other State failed to consider—

20 “(A) the extent of the detriment to the  
21 child in being moved from the child’s custodial  
22 environment;

23 “(B) the nature of the relationship be-  
24 tween the biological parent or parents and the  
25 child;

1           “(C) the nature of the relationship between  
2           the prospective adoptive parent or parents and  
3           the child; and

4           “(D) the recommendation of the child’s  
5           legal representative or guardian ad litem.

6 This subsection shall apply only if the party seeking a new  
7 hearing has acted in good faith and has not abused or  
8 attempted to abuse the legal process.”.

9           (12) Subsection (g) is amended by inserting “or  
10          visitation determination” after “custody determina-  
11          tion” each place it appears.

12          (13) Section 1738A is amended by adding at  
13          the end the following:

14          “(h) A court of a State may not modify a visitation  
15          determination made by a court of another State unless the  
16          court of the other State has declined to exercise jurisdic-  
17          tion to modify such determination.

18          “(i) In all contested custody proceedings, including  
19          adoption proceedings, undertaken pursuant to this section,  
20          all proceedings and appeals shall be expedited.

21          “(j) In cases of conflicts between two or more States,  
22          the district courts shall have jurisdiction to determine  
23          which of conflicting custody determinations or visitation  
24          determinations is consistent with the provisions of this  
25          section or which State court is exercising jurisdiction con-

1 sistently with the provisions of this section for purposes  
2 of subsection (g).”.

3 (14) Subsection (c)(2) is amended—

4 (A) by inserting “or her” after “his” each  
5 place it appears; and

6 (B) by inserting “or she” after “he”.

Passed the House of Representatives July 14, 1998.

Attest:

ROBIN H. CARLE,

*Clerk.*