

105TH CONGRESS
2D SESSION

H. R. 4164

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 1998

Mr. COBLE introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

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,*

3 **SECTION 1. CHILD CUSTODY AND VISITATION DETERMINA-**
4 **TIONS.**

5 Section 1738A of title 28, United States Code is
6 amended as follows:

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

1 this section, any custody determination or visitation
2 determination”.

3 (2) Subsection (b)(2) is amended by striking “a
4 parent” and inserting “, but not limited to, a parent
5 or grandparent or, in cases involving a contested
6 adoption, a person acting as a parent”.

7 (3) Subsection (b)(3) is amended—

8 (A) by striking “or visitation”;

9 (B) by striking “and” before “initial or-
10 ders”; and

11 (C) by inserting before the semicolon at
12 the end the following: “, and includes decrees,
13 judgments, orders of adoption, and orders dis-
14 missing or denying petitions for adoption”.

15 (4) Subsection (b)(4) is amended to read as fol-
16 lows:

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

19 “(i) the State in which, immediately pre-
20 ceeding the time involved, the child lived with his
21 or her parents, a parent, or a person acting as
22 a parent, with whom the child has been living
23 for at least six consecutive months, a prospec-
24 tive adoptive parent, or an agency with legal
25 custody during a proceeding for adoption, and

1 “(ii) in the case of a child less than six
2 months old, the State in which the child lived
3 from birth, or from soon after birth,
4 and periods of temporary absence of any such per-
5 sons are counted as part of such 6-month or other
6 period; and

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

9 “(i) immediately preceding commencement
10 of the proceeding, not including periods of tem-
11 porary absence, the child is in the custody of
12 the prospective adoptive parent or parents;

13 “(ii) the child and the prospective adoptive
14 parent or parents are physically present and the
15 prospective adoptive parent or parents have
16 lived for at least six months; and

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

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

22 (6) Subsection (b) is amended by striking
23 “and” at the end of paragraph (7), by striking the
24 period at the end of paragraph (8) and inserting “;

1 and”, and by adding after paragraph (8) the follow-
2 ing:

3 “(9) ‘visitation determination’ means a judg-
4 ment, decree, or other order of a court providing for
5 the visitation of a child and includes permanent and
6 temporary orders and initial orders and modifica-
7 tions.”.

8 (7) Subsection (c) is amended by striking “child
9 custody determination” in the matter preceding
10 paragraph (1) and inserting “custody determination
11 or visitation determination”.

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

14 (9) Subsection (d) is amended by striking
15 “child custody determination” and inserting “cus-
16 tody determination or visitation determination”.

17 (10) Subsection (e) is amended—

18 (A) by striking “child custody determina-
19 tion” and inserting “custody determination or
20 visitation determination”; and

21 (B) by striking “a child” and inserting
22 “the child concerned”.

23 (11) Subsection (f) is amended—

1 (A) by striking “determination of the cus-
2 tody of the same child” and inserting “custody
3 determination”;

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

6 (C) in paragraph (2) by striking the period
7 and inserting “; and”; and

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

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

14 “(A) the extent of the detriment to the
15 child in being moved from the child’s custodial
16 environment;

17 “(B) the nature of the relationship be-
18 tween the biological parent or parents and the
19 child;

20 “(C) the nature of the relationship between
21 the prospective adoptive parent or parents and
22 the child; and

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

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

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

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

9 “(h) A court of a State may not modify a visitation
10 determination made by a court of another State unless the
11 court of the other State has declined to exercise jurisdic-
12 tion to modify such determination.

13 “(i) In all contested custody proceedings, including
14 adoption proceedings, undertaken pursuant to this section,
15 all proceedings and appeals shall be expedited.

16 “(j) In cases of conflicts between 2 or more States,
17 the district courts shall have jurisdiction to determine
18 which of conflicting custody determinations or visitation
19 determinations is consistent with the provisions of this
20 section or which State court is exercising jurisdiction con-
21 sistently with the provisions of this section for purposes
22 of subsection (g).”.

23 (14) Subsection (c)(2) is amended—

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

1

(B) by inserting “or she” after “he”.

○