

105TH CONGRESS
2^D SESSION

H. R. 4164

IN THE SENATE OF THE UNITED STATES

JULY 15, 1998

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

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.