

HOUSE BILL No. 4855

(As passed the Senate, December 13, 2001)

May 30, 2001, Introduced by Reps. Richner, Lemmons, McConico, Meyer, Stewart, Adamini, Hager, Middaugh, Van Woerkom, DeVuyst and Pappageorge and referred to the Committee on Civil Law and the Judiciary.

A bill to adopt the uniform child-custody jurisdiction and enforcement act prescribing the powers and duties of the court in a child-custody proceeding involving this state and a proceeding or party outside of this state; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1
2
3
4
5
6
7
8
9

ARTICLE 1

GENERAL PROVISIONS

Sec. 101. This act shall be known and may be cited as the "uniform child-custody jurisdiction and enforcement act".

Sec. 102. As used in this act:

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

(b) "Child" means an individual who is younger than 18 years of age.

1 (c) "Child-custody determination" means a judgment, decree,
2 or other court order providing for legal custody, physical custo-
3 dy, or parenting time with respect to a child. Child-custody
4 determination includes a permanent, temporary, initial, and modi-
5 fication order. Child-custody determination does not include an
6 order relating to child support or other monetary obligation of
7 an individual.

8 (d) "Child-custody proceeding" means a proceeding in which
9 legal custody, physical custody, or parenting time with respect
10 to a child is an issue. Child-custody proceeding includes a pro-
11 ceeding for divorce, separate maintenance, separation, neglect,
12 abuse, dependency, guardianship, paternity, termination of paren-
13 tal rights, and protection from domestic violence, in which the
14 issue may appear. Child-custody proceeding does not include a
15 proceeding involving juvenile delinquency, contractual emancipa-
16 tion, or enforcement under article 3.

17 (e) "Commencement" means the filing of the first pleading in
18 a proceeding.

19 (f) "Court" means an entity authorized under the law of a
20 state to establish, enforce, or modify a child-custody
21 determination.

22 (g) "Home state" means the state in which a child lived with
23 a parent or a person acting as a parent for at least 6 consec-
24 tive months immediately before the commencement of a
25 child-custody proceeding. In the case of a child less than 6
26 months of age, the term means the state in which the child lived
27 from birth with a parent or person acting as a parent. A period

1 of temporary absence of a parent or person acting as a parent is
2 included as part of the period.

3 (h) "Initial determination" means the first child-custody
4 determination concerning a particular child.

5 (i) "Issuing court" means the court that makes a
6 child-custody determination for which enforcement is sought under
7 this act.

8 (j) "Issuing state" means the state in which a child-custody
9 determination is made.

10 (k) "Modification" means a child-custody determination that
11 changes, replaces, supersedes, or is otherwise made after a pre-
12 vious child-custody determination concerning the same child,
13 whether or not it is made by the court that made the previous
14 child-custody determination.

15 (l) "Person" means an individual, corporation, business
16 trust, estate, trust, partnership, limited liability company,
17 association, joint venture, or government; governmental subdivi-
18 sion, agency, or instrumentality; public corporation; or any
19 other legal or commercial entity.

20 (m) "Person acting as a parent" means a person, other than a
21 parent, who meets both of the following criteria:

22 (i) Has physical custody of the child or has had physical
23 custody for a period of 6 consecutive months, including a tempo-
24 rary absence, within 1 year immediately before the commencement
25 of a child-custody proceeding.

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

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

3 (o) "Register" means to comply with the procedures of sec-
4 tion 304 to make a child-custody determination enforceable in
5 this state.

6 (p) "State" means a state of the United States, the District
7 of Columbia, Puerto Rico, the United States Virgin Islands, or a
8 territory or insular possession subject to the jurisdiction of
9 the United States.

10 (q) "Tribe" means an Indian tribe or band, or Alaskan native
11 village, that is recognized by federal law or formally acknowl-
12 edged by a state.

13 (r) "Warrant" means a court order authorizing a law enforce-
14 ment officer to take physical custody of a child.

15 Sec. 103. This act does not govern an adoption proceeding
16 or a proceeding pertaining to the authorization of emergency med-
17 ical care for a child.

18 Sec. 104. (1) A child-custody proceeding that pertains to
19 an Indian child as defined in the Indian child welfare act of
20 1978, Public Law 95-608, 25 U.S.C. 1901 to 1903, 1911 to 1923,
21 1931 to 1934, 1951 to 1952, and 1961 to 1963, is not subject to
22 this act to the extent that the proceeding is governed by the
23 Indian child welfare act of 1978, Public Law 95-608, 25
24 U.S.C. 1901 to 1903, 1911 to 1923, 1931 to 1934, 1951 to 1952,
25 and 1961 to 1963.

26 (2) A court of this state shall treat a tribe as a state of
27 the United States for the purposes of articles 1 and 2.

1 (3) A child-custody determination made by a tribe under
2 factual circumstances in substantial conformity with the juris-
3 dictional standards of this act must be recognized and enforced
4 under article 3.

5 Sec. 105. (1) A court of this state shall treat a foreign
6 country as a state of the United States for the purposes of
7 applying articles 1 and 2.

8 (2) Except as otherwise provided in subsection (3), a
9 child-custody determination made in a foreign country under fac-
10 tual circumstances in substantial conformity with the jurisdic-
11 tional standards of this act must be recognized and enforced
12 under article 3.

13 (3) A court of this state need not apply this act if the
14 child-custody law of a foreign country violates fundamental prin-
15 ciples of human rights.

16 Sec. 106. A child-custody determination made by a court of
17 this state that had jurisdiction under this act binds all persons
18 who have been served in accordance with the laws of this state or
19 notified in accordance with section 108 or who have submitted to
20 the jurisdiction of the court, and who have been given an oppor-
21 tunity to be heard. As to those persons, the child-custody
22 determination is conclusive as to all decided issues of law and
23 fact except to the extent the child-custody determination is
24 modified.

25 Sec. 107. If a question of existence or exercise of juris-
26 diction under this act is raised in a child-custody proceeding,

1 upon request of a party, the question must be given priority on
2 the court calendar and handled expeditiously.

3 Sec. 108. (1) Notice required for the exercise of jurisdic-
4 tion when a person is outside this state may be given in a manner
5 prescribed by the law of this state for service of process or by
6 the law of the state in which the service is made. Notice must
7 be given in a manner reasonably calculated to give actual notice,
8 but may be by publication if other means are not effective.

9 (2) Proof of service may be made in the manner prescribed by
10 the law of this state or by the law of the state in which the
11 service is made.

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

15 Sec. 109. (1) A party to a child-custody proceeding who is
16 not subject to personal jurisdiction in this state and is a
17 responding party under article 2, a party in a proceeding to
18 modify a child-custody determination under article 2, or a peti-
19 tioner in a proceeding to enforce or register a child-custody
20 determination under article 3 may appear and participate in the
21 proceeding without submitting to personal jurisdiction over the
22 party for another proceeding or purpose.

23 (2) A party is not subject to personal jurisdiction in this
24 state solely by being physically present for the purpose of par-
25 ticipating in a proceeding under this act. If a party is subject
26 to personal jurisdiction in this state on a basis other than
27 physical presence, the party may be served with process in this

1 state. If a party present in this state is subject to the
2 jurisdiction of another state, service of process allowable under
3 the law of that state may be accomplished in this state.

4 (3) The immunity granted by subsection (1) does not extend
5 to civil litigation based on acts unrelated to the participation
6 in a proceeding under this act committed by an individual while
7 present in this state.

8 Sec. 110. (1) A court of this state may communicate with a
9 court in another state concerning a proceeding arising under this
10 act.

11 (2) The court may allow the parties to participate in the
12 communication. If the parties are not able to participate in the
13 communication, the parties shall be given the opportunity to
14 present facts and legal arguments before a decision on jurisdic-
15 tion is made.

16 (3) A communication between courts on schedules, calendars,
17 court records, and similar matters may occur without informing
18 the parties. A record need not be made of that communication.

19 (4) Except as provided in subsection (3), a record must be
20 made of a communication under this section. The parties must be
21 informed promptly of the communication and granted access to the
22 record.

23 (5) For the purposes of this section, "record" means infor-
24 mation that is inscribed on a tangible medium or that is stored
25 in an electronic or other medium and is retrievable in perceiv-
26 able form. Record includes each of the following:

1 (a) Notes or transcripts of a court reporter who listened to
2 a conference call between the courts.

3 (b) An electronic recording of a telephone call.

4 (c) A memorandum or electronic record of a communication
5 between the courts.

6 (d) A memorandum or electronic record of a communication
7 between the courts that a court makes after the communication.

8 Sec. 111. (1) In addition to other procedures available to
9 a party, a party to a child-custody proceeding may offer testi-
10 mony of witnesses who are located in another state, including
11 testimony of the parties and the child, by deposition or other
12 means allowable in this state for testimony taken in another
13 state. The court on its own motion may order that the testimony
14 of a person be taken in another state and may prescribe the
15 manner in which and the terms upon which the testimony is taken.

16 (2) A court of this state may permit an individual residing
17 in another state to be deposed or to testify by telephone, audio-
18 visual means, or other electronic means before a designated court
19 or at another location in that state. A court of this state
20 shall cooperate with courts of other states in designating an
21 appropriate location for a deposition or testimony.

22 (3) Documentary evidence transmitted from another state to a
23 court of this state by technological means that do not produce an
24 original writing may not be excluded from evidence on an objec-
25 tion based on the means of transmission.

26 Sec. 112. (1) A court of this state may request the
27 appropriate court of another state to do any of the following:

1 (a) Hold an evidentiary hearing.

2 (b) Order a person to produce or give evidence under proce-
3 dures of that state.

4 (c) Order that an evaluation be made with respect to the
5 custody of a child involved in a pending proceeding.

6 (d) Forward to the court of this state a certified copy of
7 the transcript of the record of the hearing, the evidence other-
8 wise presented, and an evaluation prepared in compliance with the
9 request.

10 (e) Order a party to a child-custody proceeding or a person
11 having physical custody of the child to appear in the proceeding
12 with or without the child.

13 (2) Upon request of a court of another state, a court of
14 this state may hold a hearing or enter an order described in sub-
15 section (1).

16 (3) Travel and other necessary and reasonable expenses
17 incurred under subsection (1) or (2) may be assessed against the
18 parties according to the law of this state.

19 (4) A court of this state shall preserve the pleadings,
20 orders, decrees, records of hearings, evaluations, and other per-
21 tinent records with respect to a child-custody proceeding until
22 the child attains 18 years of age. Upon appropriate request by a
23 court or law enforcement official of another state, the court
24 shall forward a certified copy of these records.

25 ARTICLE 2

26 JURISDICTION

1 Sec. 201. (1) Except as otherwise provided in section 204,
2 a court of this state has jurisdiction to make an initial
3 child-custody determination only in the following situations:

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

9 (b) A court of another state does not have jurisdiction
10 under subdivision (a), or a court of the home state of the child
11 has declined to exercise jurisdiction on the ground that this
12 state is the more appropriate forum under section 207 or 208, and
13 the court finds both of the following:

14 (i) The child and the child's parents, or the child and at
15 least 1 parent or a person acting as a parent, have a significant
16 connection with this state other than mere physical presence.

17 (ii) Substantial evidence is available in this state con-
18 cerning the child's care, protection, training, and personal
19 relationships.

20 (c) All courts having jurisdiction under subdivision (a) or
21 (b) have declined to exercise jurisdiction on the grounds that a
22 court of this state is the more appropriate forum to determine
23 the custody of the child under section 207 or 208.

24 (d) No court of another state would have jurisdiction under
25 subdivision (a), (b), or (c).

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

1 (3) Physical presence of, or personal jurisdiction over, a
2 party or a child is neither necessary nor sufficient to make a
3 child-custody determination.

4 Sec. 202. (1) Except as otherwise provided in section 204,
5 a court of this state that has made a child-custody determination
6 consistent with section 201 or 203 has exclusive, continuing
7 jurisdiction over the child-custody determination until either of
8 the following occurs:

9 (a) A court of this state determines that neither the child,
10 nor the child and 1 parent, nor the child and a person acting as
11 a parent have a significant connection with this state and that
12 substantial evidence is no longer available in this state con-
13 cerning the child's care, protection, training, and personal
14 relationships.

15 (b) A court of this state or a court of another state deter-
16 mines that neither the child, nor a parent of the child, nor a
17 person acting as the child's parent presently resides in this
18 state.

19 (2) A court of this state that has exclusive, continuing
20 jurisdiction under this section may decline to exercise its
21 jurisdiction if the court determines that it is an inconvenient
22 forum under section 207.

23 (3) A court of this state that has made a child-custody
24 determination and that does not have exclusive, continuing juris-
25 diction under this section may modify that child-custody determi-
26 nation only if it has jurisdiction to make an initial
27 child-custody determination under section 201.

1 Sec. 203. Except as otherwise provided in section 204, a
2 court of this state shall not modify a child-custody determina-
3 tion made by a court of another state unless a court of this
4 state has jurisdiction to make an initial child-custody determi-
5 nation under section 201(1)(a) or (b) and either of the following
6 applies:

7 (a) The court of the other state determines it no longer has
8 exclusive, continuing jurisdiction under section 202 or that a
9 court of this state would be a more convenient forum under sec-
10 tion 207.

11 (b) A court of this state or a court of the other state
12 determines that neither the child, nor a parent of the child, nor
13 a person acting as a parent presently resides in the other
14 state.

15 Sec. 204. (1) A court of this state has temporary emergency
16 jurisdiction if the child is present in this state and the child
17 has been abandoned or it is necessary in an emergency to protect
18 the child because the child, or a sibling or parent of the child,
19 is subjected to or threatened with mistreatment or abuse.

20 (2) If there is no previous child-custody determination that
21 is entitled to be enforced under this act and if a child-custody
22 proceeding has not been commenced in a court of a state having
23 jurisdiction under sections 201 to 203, a child-custody determi-
24 nation made under this section remains in effect until an order
25 is obtained from a court of a state having jurisdiction under
26 sections 201 to 203. If a child-custody proceeding has not been
27 or is not commenced in a court of a state having jurisdiction

1 under sections 201 to 203, a child-custody determination made
2 under this section becomes a final child-custody determination,
3 if that is what the determination provides and this state becomes
4 the home state of the child.

5 (3) If there is a previous child-custody determination that
6 is entitled to be enforced under this act or if a child-custody
7 proceeding has been commenced in a court of a state having juris-
8 diction under sections 201 to 203, an order issued by a court of
9 this state under this section must specify in the order a period
10 of time that the court considers adequate to allow the person
11 seeking an order to obtain an order from the state having juris-
12 diction under sections 201 to 203. The order issued in this
13 state remains in effect until an order is obtained from the other
14 state within the period specified or the period expires.

15 (4) If a court of this state that has been asked to make a
16 child-custody determination under this section is informed that a
17 child-custody proceeding has been commenced in, or that a
18 child-custody determination has been made by, a court of a state
19 having jurisdiction under sections 201 to 203, the court of this
20 state shall immediately communicate with the other court. If a
21 court of this state that is exercising jurisdiction under sec-
22 tions 201 to 203 is informed that a child-custody proceeding has
23 been commenced in, or a child-custody determination has been made
24 by, a court of another state under a statute similar to this sec-
25 tion, the court of this state shall immediately communicate with
26 the court of the other state. The purpose of a communication
27 under this subsection is to resolve the emergency, protect the

1 safety of the parties and the child, and determine a period for
2 the duration of the temporary order.

3 Sec. 205. (1) Before a child-custody determination is made
4 under this act, notice and an opportunity to be heard in accord-
5 ance with the standards of section 108 must be given to each
6 person entitled to notice under the law of this state as in
7 child-custody proceedings between residents of this state, a
8 parent whose parental rights have not been previously terminated,
9 and a person having physical custody of the child.

10 (2) This act does not govern the enforceability of a
11 child-custody determination made without notice and an opportu-
12 nity to be heard.

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

17 Sec. 206. (1) Except as otherwise provided in section 204,
18 a court of this state may not exercise its jurisdiction under
19 this article if, at the time of the commencement of the proceed-
20 ing, a child-custody proceeding has been commenced in a court of
21 another state having jurisdiction substantially in conformity
22 with this act, unless the proceeding has been terminated or is
23 stayed by the court of the other state because a court of this
24 state is a more convenient forum under section 207.

25 (2) Except as otherwise provided in section 204, before
26 hearing a child-custody proceeding, a court of this state shall
27 examine the court documents and other information supplied by the

1 parties as required by section 209. If the court determines
2 that, at the time of the commencement of the proceeding, a
3 child-custody proceeding has been commenced in a court in another
4 state having jurisdiction substantially in accordance with this
5 act, the court of this state shall stay its proceeding and commu-
6 nicate with the court of the other state. If the court of the
7 state having jurisdiction substantially in accordance with this
8 act does not determine that the court of this state is a more
9 appropriate forum, the court of this state shall dismiss the
10 child-custody proceeding.

11 (3) In a proceeding to modify a child-custody determination,
12 a court of this state shall determine whether a proceeding to
13 enforce the child-custody determination has been commenced in
14 another state. If a proceeding to enforce a child-custody deter-
15 mination has been commenced in another state, the court may do
16 any of the following:

17 (a) Stay the proceeding for modification pending the entry
18 of an order of a court of the other state enforcing, staying,
19 denying, or dismissing the proceeding for enforcement.

20 (b) Enjoin the parties from continuing with the proceeding
21 for enforcement.

22 (c) Proceed with the modification under conditions it con-
23 siders appropriate.

24 Sec. 207. (1) A court of this state that has jurisdiction
25 under this act to make a child-custody determination may decline
26 to exercise its jurisdiction at any time if it determines that it
27 is an inconvenient forum under the circumstances and that a court

1 of another state is a more appropriate forum. The issue of
2 inconvenient forum may be raised upon the motion of a party, the
3 court's own motion, or the request of another court.

4 (2) Before determining whether it is an inconvenient forum,
5 a court of this state shall consider whether it is appropriate
6 for a court of another state to exercise jurisdiction. For this
7 purpose, the court shall allow the parties to submit information
8 and shall consider all relevant factors, including all of the
9 following:

10 (a) Whether domestic violence has occurred and is likely to
11 continue in the future and which state could best protect the
12 parties and the child.

13 (b) The length of time the child has resided outside this
14 state.

15 (c) The distance between the court in this state and the
16 court in the state that would assume jurisdiction.

17 (d) The parties' relative financial circumstances.

18 (e) An agreement by the parties as to which state should
19 assume jurisdiction.

20 (f) The nature and location of the evidence required to
21 resolve the pending litigation, including the child's testimony.

22 (g) The ability of the court of each state to decide the
23 issue expeditiously and the procedures necessary to present the
24 evidence.

25 (h) The familiarity of the court of each state with the
26 facts and issues of the pending litigation.

1 (3) If a court of this state determines that it is an
2 inconvenient forum and that a court of another state is a more
3 appropriate forum, it shall stay the proceedings upon condition
4 that a child-custody proceeding be promptly commenced in another
5 designated state and may impose any other condition the court
6 considers just and proper.

7 (4) A court of this state may decline to exercise jurisdic-
8 tion under this act if a child-custody determination is inciden-
9 tal to an action for divorce or another proceeding while still
10 retaining jurisdiction over the divorce or other proceeding.

11 Sec. 208. (1) Except as otherwise provided in section 204
12 or by other law of this state, if a court of this state has
13 jurisdiction under this act because a person invoking the court's
14 jurisdiction has engaged in unjustifiable conduct, the court
15 shall decline to exercise its jurisdiction unless the court finds
16 1 or more of the following:

17 (a) The parents and all persons acting as parents have
18 acquiesced in the exercise of jurisdiction.

19 (b) A court of the state otherwise having jurisdiction under
20 sections 201 to 203 determines that this state is a more appro-
21 priate forum under section 207.

22 (c) No court of another state would have jurisdiction under
23 sections 201 to 203.

24 (2) If a court of this state declines to exercise its juris-
25 diction under subsection (1), the court may fashion an appropri-
26 ate remedy to ensure the safety of the child and prevent a
27 repetition of the unjustifiable conduct, including staying the

1 proceeding until a child-custody proceeding is commenced in a
2 court having jurisdiction under sections 201 to 203.

3 (3) If a court dismisses a petition or stays a proceeding
4 because it declines to exercise jurisdiction under subsection
5 (1), it shall charge the party invoking the jurisdiction of the
6 court with necessary and reasonable expenses including costs,
7 communication expenses, attorney fees, investigative fees, wit-
8 ness expenses, travel expenses, and child care expenses during
9 the course of the proceedings, unless the party from whom
10 expenses and fees are sought establishes that the award would be
11 clearly inappropriate. The court may not assess fees, costs, or
12 expenses against this state unless authorized by law other than
13 this act.

14 Sec. 209. (1) Subject to the law of this state providing
15 for confidentiality of procedures, addresses, and other identify-
16 ing information, in a child-custody proceeding, each party, in
17 its first pleading or in an attached sworn statement, shall give
18 information, if reasonably ascertainable, under oath as to the
19 child's present address, the places where the child has lived
20 during the last 5 years, and the names and present addresses of
21 the persons with whom the child has lived during that period.
22 The pleading or sworn statement must state all of the following:

23 (a) Whether the party has participated, as a party or wit-
24 ness or in another capacity, in another child-custody proceeding
25 with the child and, if so, identify the court, the case number of
26 the child-custody proceeding, and the date of the child-custody
27 determination, if any.

1 (b) Whether the party knows of a proceeding that could
2 affect the current child-custody proceeding, including a proceed-
3 ing for enforcement or a proceeding relating to domestic vio-
4 lence, a protective order, termination of parental rights, or
5 adoption, and, if so, identify the court, the case number, and
6 the nature of the proceeding.

7 (c) The name and address of each person that the party knows
8 who is not a party to the child-custody proceeding and who has
9 physical custody of the child or claims rights of legal custody
10 or physical custody of, or parenting time with, the child.

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

14 (3) If the declaration as to an item described in subsection
15 (1) is in the affirmative, the declarant shall give additional
16 information under oath as required by the court. The court may
17 examine the parties under oath as to details of the information
18 furnished and other matters pertinent to the court's jurisdiction
19 and the disposition of the case.

20 (4) Each party has a continuing duty to inform the court of
21 a proceeding in this or another state that could affect the cur-
22 rent child-custody proceeding.

23 (5) If a party alleges in a sworn statement or a pleading
24 under oath that a party's or child's health, safety, or liberty
25 would be put at risk by the disclosure of identifying informa-
26 tion, the court shall seal and not disclose that information to
27 the other party or the public unless the court orders the

1 disclosure after a hearing in which the court considers the
2 party's or child's health, safety, and liberty and determines
3 that the disclosure is in the interest of justice.

4 Sec. 210. (1) A court of this state may order a party to a
5 child-custody proceeding who is in this state to appear before
6 the court personally with or without the child. The court may
7 order a person who is in this state and who has physical custody
8 or control of the child to appear physically with the child.

9 (2) If a party to a child-custody proceeding whose presence
10 is desired by the court is outside this state, the court may
11 order that a notice given in accordance with section 108 include
12 a statement directing the party to appear personally with or
13 without the child and declaring that failure to appear may result
14 in a decision adverse to the party.

15 (3) The court may enter any orders necessary to ensure the
16 safety of the child or of a person ordered to appear under this
17 section.

18 (4) If a party to a child-custody proceeding who is outside
19 this state is directed to appear under subsection (2) or desires
20 to appear personally before the court with or without the child,
21 the court may require another party to pay reasonable and neces-
22 sary travel and other expenses of the party directed or desiring
23 to appear and of the child.

24 ARTICLE 3

25 ENFORCEMENT

26 Sec. 301. As used in this article:

1 (a) "Petitioner" means a person who seeks enforcement of a
2 child-custody determination or enforcement of an order for return
3 of a child under the Hague convention on the civil aspects of
4 international child abduction.

5 (b) "Respondent" means a person against whom a proceeding
6 has been commenced for enforcement of a child-custody determina-
7 tion or enforcement of an order for the return of a child under
8 the Hague convention on the civil aspects of international child
9 abduction.

10 Sec. 302. (1) This article may be invoked to enforce 1 or
11 both of the following:

12 (a) A child-custody determination.

13 (b) An order for the return of a child made under the Hague
14 convention on the civil aspects of international child
15 abduction.

16 (2) A court of this state that does not have jurisdiction to
17 modify a child-custody determination may issue a temporary order
18 enforcing either of the following:

19 (a) A parenting time schedule made by a court of another
20 state.

21 (b) The parenting time provisions of a child-custody deter-
22 mination of another state that does not provide for a specific
23 parenting time schedule.

24 (3) If a court of this state makes an order under subsection
25 (2)(b), it shall specify in the order a period that it considers
26 adequate to allow the petitioner to obtain an order from a court
27 having jurisdiction under the criteria specified in article 2.

1 The order remains in effect until an order is obtained from the
2 other court or the period expires.

3 Sec. 303. (1) A court of this state shall recognize and
4 enforce a child-custody determination of a court of another state
5 if the latter court exercised jurisdiction that was in substan-
6 tial conformity with this act or the child-custody determination
7 was made under factual circumstances meeting the jurisdictional
8 standards of this act and the child-custody determination has not
9 been modified in accordance with this act.

10 (2) A court of this state may utilize a remedy available
11 under another law of this state to enforce a child-custody deter-
12 mination made by a court of another state. The procedure pro-
13 vided by this article does not affect the availability of other
14 remedies to enforce a child-custody determination.

15 Sec. 304. (1) A child-custody determination issued by a
16 court of another state may be registered in this state, with or
17 without a simultaneous request for enforcement, by sending all of
18 the following to the circuit court in this state:

19 (a) A letter or other document requesting registration.

20 (b) Two copies, including 1 certified copy, of the
21 child-custody determination sought to be registered, and a state-
22 ment under penalty of perjury that, to the best of the knowledge
23 and belief of the person seeking registration, the child-custody
24 determination has not been modified.

25 (c) Except as otherwise provided in section 209, the name
26 and address of the person seeking registration and of each parent
27 or person acting as a parent who has been awarded custody or

1 parenting time in the child-custody determination sought to be
2 registered.

3 (2) On receipt of the documents required by subsection (1),
4 the registering court shall do both of the following:

5 (a) Cause the child-custody determination to be filed as a
6 foreign judgment, together with 1 copy of any accompanying docu-
7 ments and information, regardless of form.

8 (b) Serve notice upon the persons named under subsection
9 (1)(c) and provide them with an opportunity to contest the regis-
10 tration in accordance with this section.

11 (3) The notice required by subsection (2)(b) must state all
12 of the following:

13 (a) A registered child-custody determination is enforceable
14 as of the date of the registration in the same manner as a
15 child-custody determination issued by a court of this state.

16 (b) A hearing to contest the validity of the registered
17 child-custody determination must be requested within 21 days
18 after service of notice.

19 (c) Failure to contest the registration will result in con-
20 firmation of the child-custody determination and preclude further
21 contest of that child-custody determination with respect to a
22 matter that could have been asserted.

23 (4) A person seeking to contest the validity of a registered
24 child-custody determination must request a hearing within 21 days
25 after service of the notice under subsection (2). At that hear-
26 ing, the court shall confirm the registered child-custody

1 determination unless the person contesting registration

2 establishes 1 of the following:

3 (a) The issuing court did not have jurisdiction under
4 article 2.

5 (b) The child-custody determination sought to be registered
6 has been vacated, stayed, or modified by a court of a state
7 having jurisdiction to do so under article 2.

8 (c) The person contesting registration was entitled to
9 notice in the proceedings before the court that issued the
10 child-custody determination for which registration is sought, but
11 notice of those proceedings was not given in accordance with the
12 standards of section 108.

13 (5) If a timely request for a hearing to contest the valid-
14 ity of the registration is not made, the registration is con-
15 firmed as a matter of law, and the person requesting registration
16 and each person served must be notified of the confirmation.

17 (6) Confirmation of a registered child-custody determina-
18 tion, whether by operation of law or after notice and hearing,
19 precludes further contest of the child-custody determination with
20 respect to a matter that could have been asserted at the time of
21 registration.

22 Sec. 305. (1) A court of this state may grant any relief
23 normally available under the law of this state to enforce a reg-
24 istered child-custody determination made by a court of another
25 state.

1 (2) A court of this state shall recognize and enforce, but
2 shall not modify except in accordance with article 2, a
3 registered child-custody determination of another state.

4 Sec. 306. If a proceeding for enforcement under this arti-
5 cle is commenced in this state and a court of this state deter-
6 mines that a proceeding to modify the child-custody determination
7 has been commenced in another state having jurisdiction to modify
8 the child-custody determination under article 2, the enforcing
9 court shall immediately communicate with the modifying court.
10 The proceeding for enforcement continues unless the enforcing
11 court, after consultation with the modifying court, stays or dis-
12 misses the proceeding.

13 Sec. 307. (1) A petition under this article must be
14 verified. A certified copy of a child-custody determination
15 sought to be enforced and of the order confirming registration,
16 if any, must be attached to the petition. A copy of a certified
17 copy of an order may be attached instead of the original.

18 (2) A petition for enforcement of a child-custody determina-
19 tion must state all of the following:

20 (a) Whether the court that issued the child-custody determi-
21 nation identified the jurisdictional basis it relied upon in
22 exercising jurisdiction and, if so, what the basis was.

23 (b) Whether the child-custody determination for which
24 enforcement is sought has been vacated, stayed, or modified by a
25 court whose decision must be enforced under this act or federal
26 law and, if so, identify the court, the case number of the
27 proceeding, and the action taken.

1 (c) Whether a proceeding has been commenced that could
2 affect the current proceeding, including a proceeding relating to
3 domestic violence, a protective order, termination of parental
4 rights, or adoption and, if so, identify the court and the case
5 number and nature of the proceeding.

6 (d) The present physical address of the child and the
7 respondent, if known.

8 (e) Whether relief in addition to the immediate physical
9 custody of the child and attorney fees is sought, including a
10 request for assistance from law enforcement officials and, if so,
11 the relief sought.

12 (f) If the child-custody determination has been registered
13 and confirmed under section 304, the date and place of
14 registration.

15 (3) Upon the filing of a petition under this article, the
16 court shall issue an order directing the respondent to appear
17 with or without the child at a hearing and may enter any order
18 necessary to ensure the safety of the parties and the child. The
19 court shall hold the hearing on the next judicial day after serv-
20 ice of the order unless that date is impossible. In that event,
21 the court shall hold the hearing on the first judicial day
22 possible. The court may extend the date of hearing at the
23 request of the petitioner.

24 (4) An order issued under subsection (3) must state the time
25 and place of the hearing and must advise the respondent that at
26 the hearing the court will order the delivery of the child and
27 the payment of fees, costs, and expenses under section 311, and

1 may schedule an additional hearing to determine whether further
2 relief is appropriate, unless the respondent appears and estab-
3 lishes either of the following:

4 (a) The child-custody determination has not been registered
5 and confirmed under section 304 and 1 or more of the following:

6 (i) The issuing court did not have jurisdiction under
7 article 2.

8 (ii) The child-custody determination for which enforcement
9 is sought has been vacated, stayed, or modified by a court of a
10 state having jurisdiction to do so under article 2 or federal
11 law.

12 (iii) The respondent was entitled to notice, but notice was
13 not given in accordance with the standards of section 108 in the
14 proceedings before the court that issued the order for which
15 enforcement is sought.

16 (b) The child-custody determination for which enforcement is
17 sought was registered and confirmed under section 304, but has
18 been vacated, stayed, or modified by a court of a state having
19 jurisdiction to do so under article 2 or federal law.

20 Sec. 308. Except as otherwise provided in section 310, the
21 petition and order must be served, by a method authorized by the
22 law of this state, upon respondent and any person who has physi-
23 cal custody of the child.

24 Sec. 309. (1) Unless the court issues a temporary emergency
25 order as provided in section 204, upon a finding that a peti-
26 tioner is immediately entitled to the physical custody of the
27 child, the court shall order the child delivered to the

1 petitioner unless the respondent establishes either of the
2 following:

3 (a) The child-custody determination has not been registered
4 and confirmed under section 304 and 1 or more of the following:

5 (i) The issuing court did not have jurisdiction under
6 article 2.

7 (ii) The child-custody determination for which enforcement
8 is sought has been vacated, stayed, or modified by a court of a
9 state having jurisdiction to do so under article 2 or federal
10 law.

11 (iii) The respondent was entitled to notice, but notice was
12 not given in accordance with the standards of section 108 in the
13 proceedings before the court that issued the order for which
14 enforcement is sought.

15 (b) The child-custody determination for which enforcement is
16 sought was registered and confirmed under section 304, but has
17 been vacated, stayed, or modified by a court of a state having
18 jurisdiction to do so under article 2 or federal law.

19 (2) The court shall award the fees, costs, and expenses
20 authorized under section 311 and may grant additional relief,
21 including a request for the assistance of law enforcement offi-
22 cials, and schedule a further hearing to determine whether addi-
23 tional relief is appropriate.

24 (3) If a party called to testify refuses to answer on the
25 grounds that the testimony may be self-incriminating, the court
26 may draw an adverse inference from the refusal.

1 (4) A privilege against disclosure of communications between
2 spouses and a defense of immunity based on the relationship of
3 husband and wife or parent and child cannot be invoked in a pro-
4 ceeding under this article.

5 Sec. 310. (1) Upon the filing of a petition seeking
6 enforcement of a child-custody determination, the petitioner may
7 file a verified application for the issuance of a warrant to take
8 physical custody of the child if the child is likely to suffer
9 serious imminent physical harm or be removed from this state.

10 (2) If the court, upon the testimony of the petitioner or
11 other witness, finds that the child is likely to suffer serious
12 imminent physical harm or be imminently removed from this state,
13 the court may issue a warrant to take physical custody of the
14 child. The court shall hold a hearing on the petition on the
15 next judicial day after the warrant is executed. A warrant
16 issued under this section must include the statements required in
17 an enforcement petition by section 307.

18 (3) A warrant to take physical custody of a child must
19 include at least the following:

20 (a) A recitation of the facts upon which a conclusion of
21 serious imminent physical harm or imminent removal from the
22 jurisdiction is based.

23 (b) An order directing law enforcement officers to take
24 physical custody of the child immediately.

25 (c) Provisions for the placement of the child pending final
26 relief.

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

4 (5) A warrant to take physical custody of a child is
5 enforceable throughout this state. If the court finds on the
6 basis of the testimony of the petitioner or another witness that
7 a less intrusive remedy is not effective, the court may authorize
8 law enforcement officers to enter private property to take physi-
9 cal custody of the child. If required by exigent circumstances,
10 the court may authorize law enforcement officers to make a forc-
11 ible entry at any hour.

12 (6) The court may impose conditions upon placement of a
13 child to ensure the appearance of the child and the child's
14 custodian.

15 Sec. 311. (1) The court shall award the prevailing party,
16 including a state, necessary and reasonable expenses incurred by
17 or on behalf of the party, including costs, communication
18 expenses, attorney fees, investigative fees, witness expenses,
19 travel expenses, and child care expenses during the course of the
20 proceedings, unless the party from whom fees or expenses are
21 sought establishes that the award would be clearly
22 inappropriate.

23 (2) The court shall not assess fees, costs, or expenses
24 against a state except as otherwise provided by law other than
25 this act.

26 Sec. 312. A court of this state shall accord full faith and
27 credit to an order issued by another state and consistent with

1 this act that enforces a child-custody determination by a court
2 of another state unless the order has been vacated, stayed, or
3 modified by a court having jurisdiction to do so under
4 article 2.

5 Sec. 313. An appeal may be taken from a final order in a
6 proceeding under this article in accordance with expedited appel-
7 late procedures in other civil cases. Unless the court enters a
8 temporary emergency order under section 204, the enforcing court
9 may not stay an order enforcing a child-custody determination
10 pending appeal.

11 Sec. 314. (1) In a case arising under this act or involving
12 the Hague convention on the civil aspects of international child
13 abduction, a prosecutor or the attorney general may take any
14 lawful action, including resort to a proceeding under this arti-
15 cle or another available civil proceeding, to locate a child,
16 obtain the return of a child, or enforce a child-custody determi-
17 nation if there is 1 or more of the following:

18 (a) An existing child-custody determination.

19 (b) A request from a court in a pending child-custody
20 proceeding.

21 (c) A reasonable belief that a criminal statute has been
22 violated.

23 (d) A reasonable belief that the child has been wrongfully
24 removed or retained in violation of the Hague convention on the
25 civil aspects of international child abduction.

HB 4855, As Passed Senate, December 13, 2001

House Bill No. 4855 as amended November 1, 2001

32

1 (2) A prosecutor or the attorney general acting under this
2 section acts on behalf of the court and shall not represent a
3 party to a child-custody determination.

4 Sec. 315. At the request of a prosecutor or the attorney
5 general acting under section 314, a law enforcement officer may
6 take any lawful action reasonably necessary to locate a child or
7 a party and to assist the prosecutor or attorney general with
8 responsibilities under section 314.

9 Sec. 316. If the respondent is not the prevailing party,
10 the court may assess against the respondent all direct expenses
11 and costs incurred by the prosecutor or attorney general and law
12 enforcement officers under section 314 or 315.

13 ARTICLE 4

14 MISCELLANEOUS

15 Sec. 401. In applying and construing this uniform act, the
16 court shall give consideration to the need to promote uniformity
17 of the law with respect to its subject matter among states that
18 enact it.

19 Sec. 405. A motion or other request for relief made in a
20 child-custody or enforcement proceeding that was commenced before
21 the effective date of this act is governed by the law in effect
22 at the time the motion or other request was made.

23 Sec. 406. (1) [Sections 651 to 673] of the revised judicature
act of
24 1961, 1961 PA 236, MCL 600.651 to 600.673, [are] repealed.

25 (2) This act takes effect [April] 1, 2002.