

BILL ANALYSIS

Senate Research Center

H.B. 797
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Jurisprudence
4/9/1999
Engrossed

DIGEST

Approximately 30 years ago, the United States Congress passed the Uniform Child Custody Jurisdiction Act (UCCJA), which all 50 states, the District of Columbia, and the Virgin Islands in turn adopted. Because some provisions of the UCCJA proved unclear or produced inconsistent results through litigation, Congress approved the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) in 1997. H.B. 797 presents the UCCJEA to the 76th Texas Legislature for adoption. The UCCJEA combines child custody jurisdiction and enforcement and incorporates some standards from the federal Parental Kidnaping Prevention Act (PKPA).

Regarding the jurisdictional provisions of the UCCJEA, this Act revises the child custody jurisdiction law to prioritize home state jurisdiction, as does the PKPA, clarifies emergency jurisdiction, and addresses a state's exclusive continuing jurisdiction in a child custody case. From the enforcement aspect, the UCCJEA implements a procedure for registering a child custody determination in another state, remedies habeas corpus issues, provides a warrant to take physical possession of the child if a court believes that a custodial parent may flee or harm the child, and establishes a role for public authorities in the enforcement process.

PURPOSE

As proposed, H.B. 797 sets forth the requirements and provisions of the Uniform Child Custody Jurisdiction and Enforcement Act.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 152, Family Code, as follows:

CHAPTER 152. New heading: UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

SUBCHAPTER A. APPLICATION AND CONSTRUCTION

Sec. 152.001. APPLICATION AND CONSTRUCTION. Requires this chapter to be applied and construed to promote the uniformity of the law among the states that enact it.

Sec. 152.002. CONFLICTS BETWEEN PROVISIONS. Provides that this chapter prevails if a provision of this chapter conflicts with another statute or rule of this state and the conflict cannot be reconciled.

SUBCHAPTER B. GENERAL PROVISIONS

Sec. 152.101. SHORT TITLE: Uniform Child Custody Jurisdiction and Enforcement Act.

Sec. 152.102. DEFINITIONS. Defines "abandoned," "child," "child custody determination," "child custody proceeding," "commencement," "court," "home state," "initial determination," "issuing court," "issuing state," "legal custody," "modification," "person acting as a parent," "physical custody," "tribe," "visitation," and "warrant."

Sec. 152.103. PROCEEDINGS GOVERNED BY OTHER LAW. Establishes that this chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

Sec. 152.104. APPLICATION TO INDIAN TRIBES. Provides that a child custody proceeding that pertains to an Indian child as defined by 25 U.S. Section 1901 et seq. (Indian Child Welfare Act) is not subject to this chapter to the extent that it is governed by that Act. Requires a court of this state to treat a tribe as if it were a state of the United States for the purposes of applying this subchapter and Subchapter C. Requires a child custody determination made by a tribe and that is in substantial conformity with the jurisdictional standards of this chapter to be recognized and enforced under Subchapter D.

Sec. 152.105. INTERNATIONAL APPLICATION OF CHAPTER. Requires a court of this state to treat a foreign country as if it were a state of the United States for purposes of applying this subchapter and Subchapter C. Requires a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter to be recognized and enforced under Subchapter D, unless the child custody law of a foreign country violates fundamental principles of human rights.

Sec. 152.106. EFFECT OF CHILD CUSTODY DETERMINATION. Binds certain persons to the order of the court. Provides that the determination is conclusive regarding all decided issues of law and fact except to the extent that the determination is modified.

Sec. 152.107. PRIORITY. Requires a question of existence or exercise of jurisdiction under this chapter raised in a child custody proceeding to be given priority on the calendar and handled expeditiously upon request of a party.

Sec. 152.108. NOTICE TO PERSONS OUTSIDE STATE. Authorizes certain notices to be given in a manner prescribed by the law for the service of process in this state or the other state. Requires the notice to be given in a manner reasonably calculated to give actual notice, but may be given by publication if other means are not effective. Authorizes proof of service to be made in the manner prescribed by either the law of this state or the law of the state where the service is made. Provides that notice is not required for the exercise of jurisdiction of a person who submits to the jurisdiction of the court.

Sec. 152.109. APPEARANCE AND LIMITED IMMUNITY. Provides that being physically present in a child custody proceeding, including a modification proceeding, or being a petitioner respondent in a proceeding to enforce or register a child custody determination does not establish personal jurisdiction in this state. Establishes that a party subject to personal jurisdiction is not immune from service of process allowed under the laws of another state if the person is subject to the jurisdiction of that state. Provides that the immunity granted by Subsection (a) does not extend to civil litigation based on acts committed by an individual while present in this state.

Sec. 152.110. COMMUNICATION BETWEEN COURTS. Defines “record.” Authorizes a court of this state to communicate with a court of another state concerning a proceeding arising under this chapter. Authorizes the court to allow the parties to participate in the communication or, if the parties are unable to participate, to be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made. Authorizes the courts to communicate regarding certain logistics without giving the parties notice of the communication. Requires a record to be made of communication under this section. Requires parties to be informed promptly and granted access to the record.

Sec. 152.111. TAKING TESTIMONY IN ANOTHER STATE. Authorizes a party to a child custody proceeding to offer certain testimony from out-of-state witnesses. Authorizes the court to order that the testimony be taken in another state and to prescribe the methods for taking the out-of-state testimony. Authorizes a state court to permit an out-of-state person to be deposed or to testify by telephone or other means. Requires a court of this state to cooperate with courts of other states in designating locations for the deposition or testimony. Prohibits documentary evidence transmitted technologically from a court of another state to a court of this state from being excluded from evidence on an objection based on the means of transmission.

Sec. 152.112. COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS. Authorizes a state court to request another state's court to conduct certain legal matters. Authorizes the state court to hold a hearing or enter certain orders, upon request of a court of another state. Authorizes travel and other expenses to be assessed against the parties. Requires the state court to preserve certain records regarding the child custody proceeding, until the child becomes 18 years old. Requires the court to forward a copy of the records, upon requests by a court or other law enforcement officials.

SUBCHAPTER C. JURISDICTION.

Sec. 152.201. INITIAL CHILD CUSTODY JURISDICTION. Establishes that a court of this state has jurisdiction to make an initial child custody determination under certain circumstances. Provides that Subsection (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this state. Provides that physical presence is not necessary or sufficient to make a child custody determination.

Sec. 152.202. EXCLUSIVE CONTINUING JURISDICTION. Establishes that a state court that has made a child custody determination has exclusive continuing jurisdiction over the determination of certain matters in the hearing and the custody. Authorizes certain state courts that do not have continuing jurisdiction to modify the determination only if it has jurisdiction to make an initial determination under Section 152.201.

Sec. 152.203. JURISDICTION TO MODIFY DETERMINATION. Prohibits a state court from modifying a determination made by an out-of-state court, except under certain circumstances when the state court has jurisdiction.

Sec. 152.204. TEMPORARY EMERGENCY JURISDICTION. Provides that a state court does have temporary jurisdiction if a child is present in the state and the child has been abandoned or is in need of emergency protection from a threatening family member. Provides that a child custody determination made under this section remains in effect, until a court order with relevant jurisdiction determines otherwise and if the proceeding has not commenced. Provides that the child custody order becomes final, if the proceeding has not commenced, that the jurisdiction is in this state, and that this state is the child's home state. Requires any order under this section to specify a period adequate to allow a person to seek another order. Provides that the original order remains in effect until another order is obtained or the original expires. Requires a court asked to make the order to communicate with the court issuing the original order. Requires a court that administered the temporary emergency order to communicate with the court with jurisdiction to resolve the emergency, to protect the safety of the parties, and to determine a period for the duration of the temporary order.

Sec. 152.205. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER. Requires a notice and an opportunity to be heard to be given to all persons entitled to the notice before a determination is made. Provides that this chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard. Makes the obligation to join a party and the right to intervene as a party in a child custody proceeding governable by the relevant law of this state.

Sec. 152.206. SIMULTANEOUS PROCEEDINGS. Prohibits a state court from exercising its jurisdiction if, at the commencement of custody proceedings, a relevant court of another state has substantially commenced proceedings, except, under certain circumstances the state court may proceed. Requires the state court to examine the court documents and other information supplied by the parties, before hearing a child custody proceeding. Requires the state court to stay its proceedings and to communicate with the out-of-state court to determine if the other out-of-state court has commenced a proceeding. Sets forth options the state court may undertake if the out-of-state court has commenced its proceedings.

Sec. 152.207. INCONVENIENT FORUM. Authorizes a relevant state court to dismiss its jurisdiction to make a determination and to decline to exercise its jurisdiction, if the court determines that it is an inconvenient forum and another state's court would be more appropriate. Authorizes the issue of an inconvenient forum to be raised by motion of a party. Requires the state court to determine whether it is appropriate for the out-of-state court to exercise jurisdiction and

to consider certain criteria in making that determination. Requires the state court to stay its proceedings, except under certain conditions. Authorizes the state court to decline to exercise its jurisdiction if the determination is incidental to a divorce or other proceeding while still retaining jurisdiction over the divorce or other proceeding.

Sec. 152.208. JURISDICTION DECLINED BY REASON OF CONDUCT. Requires the court to decline jurisdiction if a person seeking to invoke its jurisdiction has engage in unjustifiable conduct, except under certain circumstances. Authorizes the state court that declines to exercise jurisdiction to fashion an appropriate remedy to ensure the safety of the child and to prevent a repetition of the unjustifiable acts. Requires the court that declines its jurisdiction to assess certain costs and fees against the party that made the motion. Prohibits the court from exercising that assessment against the state.

Sec. 152.209. INFORMATION TO BE SUBMITTED TO COURT. Requires each party to a child custody proceeding to give certain information in an attached affidavit regarding the child and the party. Authorizes the court to stay the proceeding if the affidavit is not produced. Requires the declarant to give additional information, if certain information in the affidavit is in the affirmative. Authorizes the court to examine the parties under oath and other matters pertinent to the court's jurisdiction and the disposition of the case. Provides that each party has a continuing duty to inform the courts of any proceedings that may affect the current proceeding. Requires information that may injure the party to be sealed and may not be disclosed until the court determines disclosure is in the interest of justice.

Sec. 152.210. APPEARANCE OF PARTIES AND CHILD. Authorizes a state court in the proceeding to order a party and person who has physical custody of the child to appear before the court. Authorizes the court to order that notice has been given and to include a statement directing the party in another state to appear in person and that failure to appear may result in a decision adverse to the party. Authorizes the court to enter any order necessary to ensure the safety of the child and of any person ordered to appear. Authorizes the court to require another party to pay reasonable and necessary travel and other expenses of a party and of the child in another state, if the party wishes those persons to appear.

SUBCHAPTER D. ENFORCEMENT

Sec. 152.301. DEFINITIONS. Defines "petitioner" and "respondent."

Sec. 152.302. ENFORCEMENT UNDER HAGUE CONVENTION. Authorizes a state court to recognize and enforce an order for the return of a child made under the Hague Convention on the Civil Aspects of the International Child Abduction as if it were a child custody determination.

Sec. 152.303. DUTY TO ENFORCE. Requires a state court to recognize and enforce a child custody determination of an out-of-state court if the other court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances and the determination has not been modified. Authorizes the state court to use any remedy available under other state law to enforce the determination. Establishes that the remedies provided in this subchapter are cumulative and do not affect the availability of other remedies to enforce the determination.

Sec. 152.304. TEMPORARY VISITATION. Authorizes a state court that does not have jurisdiction to modify the determination to issue a temporary order enforcing a visitation schedule made by an out-of-state court or the visitation provisions of a child custody determination that does not provide for a specific visitation schedule. Requires the state court to specify an adequate time period that will allow the petitioner to obtain an order from a court with jurisdiction under Subchapter C. Provides that the order remains in effect until another order is obtained from the relevant court or before the temporary order expires.

Sec. 152.305. REGISTRATION OF CHILD CUSTODY DETERMINATION. Authorizes a child custody determination issued by an out-of-state court to be registered in this state through the specified format and method, regardless of a simultaneous request for enforcement. Sets forth requirements for the registering court and criteria for the notice. Requires a person who contests

the validity of the order to request a hearing within 20 days after service of the notice. Requires the court to confirm the registered order unless the person contesting the registration establishes certain points of law regarding the custody of the child. Provides that the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation, if a timely request for a hearing is not made. Establishes that confirmation of a registered order precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

Sec. 152.306. **ENFORCEMENT OF REGISTERED DETERMINATION.** Authorizes a state court to grant any relief normally available under law to enforce the out-of-state determination. Requires the court to recognize and enforce the determination. Prohibits the court from modifying the determination except in accordance with Subchapter C.

Sec. 152.307. **SIMULTANEOUS PROCEEDINGS.** Requires a state court conducting a proceeding for enforcement under this subchapter to immediately communicate with the out-of-state court in which a proceeding for modifying the determination under Subchapter C is pending. Provides that the proceeding for enforcement continues unless the enforcing court stays or dismisses the proceeding after consulting with the modifying court.

Sec. 152.308. **EXPEDITED ENFORCEMENT OF CHILD CUSTODY DETERMINATION.** Requires a petition under this subchapter to be verified. Requires certified copies of all orders sought to be enforced and of any order confirming registration to be attached to the petition. Authorizes a copy of a certified copy of an order to be attached instead of the original. Requires a petition for enforcement of a child custody determination to contain certain information regarding the child and the court proceeding. Requires the court to issue an order directing the respondent to appear in person and to enter any order necessary to ensure the safety of the parties and the child, upon the filing of a petition. Requires the hearing to be held on the next judicial day after service of the order unless that date is impossible, after which the court must hold the hearing on the first judicial day possible. Requires the order to state the time and place of the hearing and advise the respondent that at the hearing the court will award the petitioner immediate physical custody of the child and order the payment of fees and other costs, and to schedule a hearing to determine whether further relief is appropriate, unless the respondent establishes certain conditions.

Sec. 152.309. **SERVICE OF PETITION AND ORDER.** Requires the petition or order to be served upon the respondent and any person who has physical custody of the child.

Sec. 152.310. **HEARING AND ORDER.** Requires the court to find that the petitioner may take immediate physical control of the child unless the respondent establishes certain conditions, upon finding that a petitioner is entitled to immediate physical custody. Requires the court to award certain fees, costs, expenses, and additional relief. Requires the court to set a hearing to determine whether additional relief is appropriate. Authorizes the court to draw an adverse inference from a party's refusal to answer a call to testify on the ground that the testimony may be self-incriminating. Prohibits a privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child from being invoked under this subchapter.

Sec. 152.311. **WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.** Authorizes a petitioner to file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or to be removed from this state, upon the filing of a petition seeking enforcement of the determination. Authorizes the court to issue a warrant to take physical custody of the child, if the court finds that the child is in the way of imminent harm. Requires the court to hold a hearing to hear the petition on the first judicial day possible. Requires the application for the warrant to include the statements required by Section 152.308(b). Requires the requirements to contain certain facts and other information. Requires the respondent to be served immediately with the petition, warrant, and order. Establishes that the warrant is enforceable throughout the state. Permits the court to authorize law enforcement officers to enter private property to take physical control of a child, if a less intrusive remedy is not effective. Permits the court to authorize officers to make a forcible entry, if required by exigent circumstances. Authorizes the court to impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

Sec. 152.312. COSTS, FEES, AND EXPENSES. Requires the court to award the prevailing party, including a state, certain expenses incurred by or on behalf of the party, unless the receiving party believes the award to be clearly inappropriate. Prohibits the court from assessing fees, costs, or expenses against a state unless authorized by law other than this chapter.

Sec. 152.313. RECOGNITION AND ENFORCEMENT. Requires a state court to accord full faith and credit to an out-of-state court's order that is consistent with this chapter, unless the order has been vacated, stayed, or modified by a court without jurisdiction.

Sec. 152.314. APPEALS. Authorizes an appeal to be in accordance with expedited appellate procedures in other civil cases. Prohibits the enforcing court from staying an order enforcing a child custody determination pending appeal, unless the court enters a temporary emergency order.

Sec. 152.315. ROLE OF PROSECUTOR OR PUBLIC OFFICIAL. Authorizes the prosecutor or other appropriate public official to take lawful action regarding the child if certain conditions are met regarding this chapter. Prohibits a prosecutor or other official who acts under this section from representing any party.

Sec. 152.316. ROLE OF LAW ENFORCEMENT. Authorizes a law enforcement officer to take any reasonable lawful action to locate a child or a party and assist a prosecutor or appropriate public official with responsibilities under Section 152.315, at the request of the prosecutor or other designated official.

Sec. 152.317. COSTS AND EXPENSES. Authorizes the court to assess certain costs against the non-prevailing party, regarding expenses under Section 152.315 or 152.316. Deletes existing Sections 152.001-152.025.

SECTION 2. Effective date: September 1, 1999.
Makes application of this Act prospective.

SECTION 3. Emergency clause.