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UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

House Bill 4855

Sponsor: Rep. Andrew Richner

Committee: Civil Law and Judiciary

Complete to 10-26-01

A SUMMARY OF HOUSE BILL 4855 AS INTRODUCED 5-30-01

House Bill 4855 would repeal the Uniform Child Custody Jurisdiction Act, Chapter 6a of the Revised Judicature Act of 1961 (MCL 600.651-600.673), and would enact the Uniform Child-Custody Jurisdiction and Enforcement Act. The bill would limit child custody jurisdiction to one state and would provide enforcement provisions for child custody orders.

Article 1 – General Provisions

International and Indian Application. Any child-custody proceeding that pertains to an Indian child, as defined by the federal Indian Child Welfare Act of 1978, would not be subject to the provisions of the bill to the extent that it was subject to that federal act. For the purposes for Articles 1 and 2 of the bill, a court in Michigan would be required to treat an Indian tribe or foreign country as a state of the United States. In addition, a child-custody determination made by a tribe or foreign country under factual circumstances that substantially conform to other provisions of the bill would be recognized and enforced under Article 3. The provisions of the bill would not apply if the child custody law of another country violates fundamental principles of human rights.

Binding Force. A child-custody determination made by a Michigan court with proper jurisdiction as provided by the bill would be binding on all persons served according to state laws, notified according to the provisions of the bill, or who have submitted to the jurisdiction of the court and have been given the opportunity to be heard.

Priority. If the existence or exercise of jurisdiction in a child-custody proceeding under the provisions of the bill is questioned, upon the request of the party, the question would have to be given priority on the court calendar.

Notice to a Person in Another State. The bill states that notice required for the exercise of jurisdiction when a person was outside of Michigan could be given as provided under Michigan law or under the laws of the other state. Notice would have to be given in a manner reasonably calculated to give actual notice.

Appearance and Limited Immunity. The following parties involved in a child-custody proceeding could appear and participate in the proceeding without submitting to personal jurisdiction for another proceeding: a party to a child-custody proceeding who is not subject to personal jurisdiction in Michigan and is a responding party under Article 2; a party in a

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proceeding to modify a child-custody determination under Article 2; or a petitioner in a proceeding to enforce or register a child-custody determination under Article 3. The bill states that being in the state for the sole purpose of participating in a child-custody proceeding would not make a party subject to personal jurisdiction. If a party were subject to personal jurisdiction in this state for a reason other than physical presence, he or she could be served with process (delivered court papers) in this state. If a party present in this state were subject to the jurisdiction of another state, he or she could be served under that state's law. However, the immunity granted under this provision would not extend to civil litigation based on acts unrelated to the proceeding committed while the individual was in the state.

Communication Between Courts. A court in Michigan could communicate with a court from another state for purposes concerning a child-custody proceeding. The court could allow parties involved in the proceeding to take part in the communication. If the parties were not able to participate, they would be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made. Records of the communication would be kept. The parties would be informed of the record and would be given access to the record. However, records would not need to be kept regarding communication between courts regarding schedules, calendars, court records, and similar matters.

Testimony in Another State. A party in a child-custody proceeding could offer the testimony of a witness located in another state, by deposition or by other means allowable in this state for taking testimony in the other state. The court could order that the testimony of a person be taken in another state and prescribe the manner in which it would be done. An individual residing in another state could be allowed to testify by way of telephone, audiovisual means, or other electronic means before a designated court or location within that state. Documentary evidence transmitted from another state to a Michigan court by technological means that does not produce an original writing could not be excluded from evidence on an objection based in the means of transmission.

Cooperation Between Courts. A court in Michigan could request the appropriate court from another state to hold an evidentiary hearing; order a person to produce evidence under the laws of that state; order that an evaluation be made regarding the custody of the child; forward a copy of the transcript of the hearing, evidence presented, and the requested evaluation; or order a party to the proceeding or a person having physical custody of the child to appear in the proceeding with or without the child. Upon the request of a court of another state, a court in this state could hold a hearing or enter an order as described above. Reasonable expenses incurred in carrying out the above actions could be assessed against the parties in the proceeding. A court in this state would preserve all records and pertinent information regarding a child-custody proceeding until the child reaches 18 years of age. The court would forward a copy of these records, upon request, to a court or law enforcement official in another state.

Article 2 - Jurisdiction

Initial Custody Jurisdiction. Except in instances of temporary emergency jurisdiction, a court in this state would have the authority to make an initial child-custody determination only if:

- Michigan is the home state of the child on the day of the proceeding, or was the home state of the child within 6 months before the start of the proceeding and the child is not in this state, but a parent (or person acting as the child's parent) lives in this state.

- A court of another state does not have jurisdiction or a court from the home state declines to exercise its authority citing that this state is a more appropriate forum, and finds that the child and his or her parents, or the child and at least one parent, have a significant connection with this state, beyond a mere physical presence; and there is substantial evidence in this state regarding the child's care, protection, training, and personal relationships.

- All courts that have jurisdiction under the above provisions have declined to exercise their authority citing that the state is a more appropriate forum to determine the custody of a child.

- No other state court would have jurisdiction under the above provisions.

The bill states that the above-listed factors constitute the exclusive jurisdictional basis for making a child-custody determination by a court of this state. Further, the physical presence of, or personal jurisdiction over, a party or a child is not necessary, nor is it sufficient, to make a child-custody determination.

Exclusive, Continuing Jurisdiction. Except in instances of temporary emergency jurisdiction, the court that has made an initial custody determination or has the authority to modify a determination would have the exclusive, continuing jurisdiction over the child custody determination until neither the child, nor the child and one parent (or person acting as a parent), have a significant connection with the state, and substantial evidence regarding the child's care, protection, training, and personal relationships is no longer available; or a court in this state or another state determine that neither the child, nor a parent (or person acting as a parent) of the child, reside in the state. A court of this state that has exclusive, continuing jurisdiction could decline to exercise its authority if it determines that it is an inconvenient forum for the case (see below). A court of this state that has made a child-custody determination and does not have exclusive, continuing jurisdiction could modify a child-custody determination only if it has jurisdiction to make an initial custody determination.

Jurisdiction to Modify Determination. Except in instances of temporary emergency jurisdiction, a court in this state would not modify a child-custody determination made by a court from another state unless a court of this state has initial jurisdiction to determine custody as provided in the bill and: a court of another state determines that it no longer has exclusive, continuing jurisdiction or a that a court in this state would be a more convenient forum; or a court of this state or of another state determine that neither the child, nor a parent (or a person acting as a parent) of the child, reside in the other state.

Temporary Emergency Jurisdiction. A court in this state could exercise temporary emergency jurisdiction if the child is present in this state and he or she has been abandoned, or it is necessary to protect the child because the child, a sibling, or parent is subjected to or threatened with abuse. If there were no previous child-custody determination in force and the court of a state having jurisdiction has not started a proceeding, a child-custody determination

made under a temporary emergency jurisdiction would remain in effect until a order were obtained from a court of the state with jurisdiction. If a child-custody proceeding was not begun by a court in another state having jurisdiction, then a determination made under the provisions for temporary emergency jurisdiction would become final if this state becomes the home state of the child and if the provisions of the child-custody determination allowed it to become the final determination.

If there were a previous child-custody determination in force, or if a child-custody proceeding had begun in another state, an order made under the temporary emergency jurisdiction provisions would specify a time period to allow a person to get an order from the state with proper authority. An order made under a temporary emergency jurisdiction would remain in effect until the person obtained another order from the proper state within the specified time, or until the time specified within the temporary order expired.

If a court was asked to make a child-custody determination under a temporary emergency jurisdiction even though there has been a child-custody proceeding or determination in the state with proper jurisdiction, the court would be required to immediately contact the court of the other state to resolve the emergency, protect the child and other parties, and to determine the length of the temporary order.

Notice and Opportunity To Be Heard. Before a child-custody determination is made, a notice and the opportunity to be heard would have to be provided to all parties entitled to the notice, including a parent whose parental rights have not been terminated, and a person having physical custody of the child. The bill specifies that it would not govern the enforceability of a child-custody determination made without notice.

Simultaneous Proceedings. Except in instances of temporary emergency jurisdiction, a court in this state could not exercise authority if a child-custody proceeding in a court of another state with jurisdiction has already been commenced. However, this would not apply if the court of the other state has terminated or stayed the proceeding, because this state is a more convenient forum. Also except in instances of temporary emergency jurisdiction, a court would first examine the court documents and other information provided by the parties before hearing a child-custody proceeding. If the court determines that, at the time of the commencement of the proceeding, a proceeding in another state has already been commenced, the proceeding in this state would be stayed and the court would contact the other state. If the court of the other state having jurisdiction determines that the court of this state is not a more appropriate forum, the court in this state would dismiss the child-custody proceeding.

In a proceeding to modify a child-custody determination, the court of this state would determine if there is a proceeding in another state to enforce a child-custody determination. If a proceeding in another state has already commenced, the court of this state could halt the modification proceeding pending the outcome of the proceeding in the other state, enjoin the parties from continuing with the proceeding for enforcement, or proceed with the modification under any conditions it deems appropriate.

Inconvenient Forum. A court in this state that has jurisdiction to make a child-custody determination could decline to exercise its authority if it determines that it is an inconvenient forum and that a court from another state would be a more appropriate forum. A party in the proceeding, the court itself, or another court would be allowed to raise the issue of inconvenient forum. Before a court decides that it is an inconvenient forum, the court would decide whether a court from another state is an appropriate forum. In doing this, the court would consider whether domestic violence has occurred and is likely to continue in the future, and which state could best protect the parties and the child; the length of time the child has resided outside this state; the distance between the court in this state and the court in the state that would assume jurisdiction; the parties' relative financial circumstances; an agreement by the parties as to which state should assume jurisdiction; the nature and location of the evidence involved in resolving the pending litigation, including the child's testimony; the ability of the court of each state to decide the issue in a timely manner and the procedures required to present evidence; and the familiarity of the court of each state with the facts and issues of the case.

If the court determines that it is an inconvenient forum and that a court of another state would be more convenient, it would stay the child-custody proceedings on the condition that a proceeding in the other state would commence promptly. A court could decline to exercise its jurisdiction over a child-custody determination if it finds that the determination is merely incidental to a divorce or other proceeding, while still maintaining authority over the divorce or other proceeding.

Jurisdiction Declined By Reason of Conduct. With the exception of instances of temporary emergency jurisdiction or according to other state laws, if a court of this state has jurisdiction under the bill because a person invoking the court's jurisdiction has engaged in unjustifiable conduct, the court would decline to exercise its jurisdiction unless the parents (and all persons acting as parents) have complied in the exercise of jurisdiction; or a court of another state having jurisdiction determines that this state is a more appropriate forum; or no court of another state would have jurisdiction. A court that declines to exercise its jurisdiction could formulate a remedy that ensures the safety of the child and prevents the unjustifiable conduct from recurring. The remedy could include staying the proceeding until another proceeding takes place in a court having authority. If the court dismisses the petition or stays a proceeding, it would charge the party invoking the jurisdiction with necessary and reasonable expenses, unless the party from whom expenses are sought establishes that the charges would be inappropriate. The court could not assess expenses and other fees against the state, unless it has the authority to do so in another state law.

Information Submitted to Court. In a manner consistent with existing state laws regarding the confidentiality of procedures, addresses, and other identifying information, in child-custody proceedings each party (under oath) would be required to provide the court with the child's current address and addresses for the last five years, and the names and present addresses of persons with whom the child has lived with during that period. In addition, the sworn statement would include whether the party has participated, in any capacity, in another child-custody proceeding with the child. If so, the party would identify the court, case number of the proceeding and the date of the child-custody determination (if any). The sworn statement would also include whether the party knows of any proceeding that could affect the current

proceeding, including any proceedings for enforcement, or proceedings concerning domestic abuse, a protective order, termination of parental rights, or adoption. The party would be required identify the court, case number, and nature of the proceeding. Finally, the sworn statement would include the name and address of each person that the party knows who is not a party of to the proceeding and who has physical custody of the child or claims rights of legal custody or physical custody of, or parenting time with, the child.

The court could stay the proceeding, at either the motion of a party or itself, until the information is furnished. Each party would have a continuing obligation to inform the court of any proceeding, either in this state or another, that could affect the current proceeding.

The court would seal and not disclose any information that either party alleges (in a sworn statement under oath) would place a party's or child's health, safety, or personal liberty at risk. The court would not disclose any information unless it orders that the disclosure of such information would be in the interest of justice. This disclosure would only take place after a hearing in which the court considers a party's or child's health, safety, or liberty.

The court could order a party to a proceeding or a person who has physical custody of the child who is in this state to appear before the court with or without the child. If a party to a proceeding is outside of the state, the court could order the person to personally appear with or without the child before the court. The court could also declare that a failure to appear could result in an adverse action toward the party. The court could require that another party pay the (reasonable) travel and other expenses of the party directed or desiring to appear before the court, as well as the expenses of the child.

Article 3 - Enforcement

The provisions of enforcement under this article would be used to enforce a child-custody determination and/or an order for the return of a child made under the Hague convention regarding the civil aspects of international child abduction.

Temporary Parenting Time Order. A court in this state that does not have the authority to modify a child-custody determination could issue a temporary order to enforce a parenting time schedule made by a court of another state. The court could also issue a temporary order enforcing the parenting time provisions of a child-custody determination of another state that does not provide a specific schedule. If the court issues a temporary order for parenting time provisions made by a court of another state that did not set a specific schedule, the court would specify in its temporary order an adequate period of time to allow a petitioner (a person who seeks enforcement) to obtain an order from the court having jurisdiction. This temporary order would remain in effect until an order from the other court is obtained or the period expires.

Enforcement Duty. A court of this state would recognize and enforce a child-custody determination of a court of another state if the other court exercised jurisdiction that substantially conformed to the bill or if the determination was made under factual circumstances meeting the standards of the bill and if the determination was not modified in accordance with the bill. A

court of this state could use any remedy available under state law to enforce a child-custody determination made by a court of another state.

Registration of a Child-Custody Determination. A determination made by a court of another state could be registered in this state, with or without a simultaneous request for enforcement, by sending a letter requesting registration; two copies (including one certified copy) of the child-custody determination to be registered, and a statement that the determination has not been modified; and, with the exception of confidential information, the name and address of the person seeking registration and of each parent (or person acting as a parent) who has been awarded custody or parenting time. Once these documents had been received, the court would cause the child-custody determination to be filed as a foreign judgment and serve notice to persons entitled to be notified and allow them an opportunity to contest the registration of the determination. The notice would state that the determination would be enforceable as of the date of the registration in the same manner as a determination issued by a court of this state, a hearing to contest the validity of the registered determination would take place within 21 days of the notification, and a failure to contest the registration would result in the confirmation of the determination and would prohibit any future contest of the determination regarding any matter that could have been asserted.

At a hearing to contest the validity of a registered determination, the court would confirm the registered determination unless the person contesting the registration establishes that the issuing court did not have jurisdiction; the determination to be registered has been vacated, stayed, or modified by a court of a state having jurisdiction; or the person contesting the registration was entitled to notification of the proceedings, but was not notified.

If a timely request for a hearing to contest the registration were not made, the registration would then be confirmed as a matter of law, and the person requesting the registration and each person served would be notified of the confirmation. Once the determination has been confirmed, it would not be subject to any future contest with regard to any matter that could have been asserted at the time of the registration.

Enforcement of a Registered Determination. A court in this state could grant any relief normally available under state law to enforce a registered child-custody determination made by a court of another state. A court would recognize and enforce a registered determination, but could not modify a determination except as provided in the bill.

Simultaneous Proceedings. If a proceeding for enforcement were commenced in this state and a court of this state determined that a proceeding to modify a determination had commenced in another state, the court of this state would immediately contact the court of the other state. The enforcement proceeding would continue unless the enforcing court, after consulting the other court, stayed or dismissed the proceeding.

Expedited Enforcement. A petition for enforcement of a child-custody determination would be required to be certified. A certified copy of the determination and of the order confirming registration, if any, would be attached to the petition. A petition for enforcement would state whether the court that issued the determination identified the jurisdictional basis

used to exercise authority and, if so, what it was; whether the determination to be enforced has been vacated, stayed, or modified by a court whose decision must be enforced according to this bill or federal law and, if so, identify the court, case number, and action taken; whether a proceeding has commenced in another state that could affect the current proceeding and, if so, identify the court, case number, and nature of the proceeding (this could include domestic violence, a protective order, termination of parental rights, or adoption); the present address of the child and the respondent (the person against whom a proceeding for enforcement has commenced); whether relief in addition to the immediate physical custody of the child and attorney fees is sought (including a request for assistance from law enforcement), and, if so, the relief sought; and, if the determination has been registered and confirmed, and the date and place of the registration.

Once the petition is filed, the court would issue an order directing the respondent to appear, with or without the child, at a hearing and could enter any order necessary to ensure the safety of the parties and the child. The court would hold the hearing on the next judicial day after issuing the order, unless that date is impossible. The court could extend the date of the hearing at the request of the petitioner. The order would state the time and place of the hearing, and would advise the respondent that at the hearing the court would order the delivery of the child and payment of any fees, costs, and expenses. The court would also advise the respondent that it could schedule an additional hearing to determine whether further relief is appropriate, unless the respondent establishes that the determination has not been registered and confirmed, and the issuing court did not have jurisdiction and/or the determination to be enforced has been vacated, stayed, or modified by a court of another state having jurisdiction, or, the respondent was entitled to notification but was not notified.

Service of Petition and Order. Except in cases in where a warrant is issued to take custody of a child, the petition and order would be served upon the respondent and any person who has physical custody of the child.

Hearing and Order. Unless the court issues a temporary emergency order, once the court finds that a petitioner is immediately entitled to the physical custody of a child, the court would order the child be delivered to the petitioner. However, this would not apply if the respondent establishes that the determination has not been registered and confirmed and the issuing court did not have the authority, or the determination has been vacated, stayed, or modified, or the respondent was entitled to notification, but was not notified. The respondent could also establish that the determination was registered and confirmed, but was vacated, stayed, or modified by a court having jurisdiction.

The court would award fees, costs, and other expenses and could grant additional relief including a request for law enforcement assistance, and could schedule an additional hearing to determine whether additional relief is appropriate. In addition, if a party is called to testify, but refuses to testify on the grounds that the testimony could be self-incriminating, the court could draw an adverse conclusion based on the refusal to testify. A party could not use the privilege against disclosure of communication between spouses, and the defense of immunity based on the relationship between a husband and wife or parent and child.

Warrant to Take Physical Custody. Once a petition for enforcement has been filed, the petitioner could file a verified application for the issuance of a warrant to take physical custody of the child, if the child is likely to suffer serious imminent physical harm or be removed from this state. Based on testimony, if the court finds that the child is likely to suffer harm or be removed from the state, the court could issue a warrant to take physical custody of the child. The court would hold a hearing on the petition on the next judicial day after the warrant is executed. A warrant issued to take physical custody of a child would have to include the statements required in an enforcement provision according to the provisions of the bill.

A warrant would include at least a recitation of the facts which led to the conclusion that the child would be subject to harm or could be removed from the state; an order directing law enforcement officials to take physical custody of the child immediately; and provisions for the placement of the child pending final relief. The respondent would be served with the petition, warrant, and order immediately after the child is taken into custody.

A warrant to take physical custody would be enforceable throughout the state. If the court finds that a less intrusive remedy is not effective, the court could authorize law enforcement to enter private property and take physical custody of the child. If required by exigent circumstances, the court could authorize law enforcement to make a forcible entry at any hour.

Costs, Fees, and Expenses. The court would award the prevailing party, including a state, the necessary and expenses incurred by or on behalf the party, including costs, communication expenses, attorney fees, investigative fees, witness expenses, travel expenses, and child care expenses, unless the party from whom fees are sought establishes that the award would be clearly inappropriate. The court would not assess these fees against a state except by any other state law.

Recognition and Enforcement. A court would give full faith and credit to an order issued by another state that is consistent with the bill unless the order has been vacated, stayed, or modified by a court having jurisdiction.

Appeals. A final order could be appealed in the same manner as expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order, the enforcing court could not stay an order enforcing a determination pending appeal.

International Child Abduction Cases. In cases arising under the bill or involving the Hague convention on international child abduction, a prosecutor or the attorney general could take lawful action to locate a child, obtain the return of a child, or enforce a child-custody determination if there were an existing child-custody determination, a request from a court in a pending child-custody proceeding, a reasonable belief that a criminal statute has been violated, or a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague convention. A prosecutor or the attorney general acting under this provision would act on behalf of the court and would not represent a party to a determination.

At the request of a prosecutor or the attorney general, a law enforcement official could take any lawful action reasonably necessary to locate a child or a party and to assist the prosecutor or the attorney general.

Further if the respondent were not the prevailing party, the court could assess against the respondent all direct expenses and costs incurred by the prosecutor or attorney general and law enforcement officials.

Article 4 – Miscellaneous

Application and Construction. In applying and construing this uniform act, a court would have to give consideration to the need to promote uniformity among the states that enact it.

Transitional Provision. A motion or other request for relief made in a child-custody determination or enforcement proceeding that was commenced before the effective date of the bill would be governed by the law in effect at the time the motion or other request was made.

Effective Date. The bill would take effect on January 1, 2002.

Analyst: M. Wolf

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.