

LEGISLATIVE BILL 201

Approved by the Governor March 5, 2009

Introduced by McGill, 26; Christensen, 44; Coash, 27; Friend, 10; Fulton, 29; Howard, 9; Lautenbaugh, 18; Rogert, 16; Stuthman, 22.

FOR AN ACT relating to children; to amend section 43-1230, Reissue Revised Statutes of Nebraska; to change provisions relating to the international application of the Uniform Child Custody Jurisdiction and Enforcement Act; to repeal the original section; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 43-1230, Reissue Revised Statutes of Nebraska, is amended to read:

43-1230 (a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying sections 43-1226 to 43-1247.

(b) Except as otherwise provided in subsection (c) or (d) of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of the Uniform Child Custody Jurisdiction and Enforcement Act shall be recognized and enforced under sections 43-1248 to 43-1264.

(c) A court of this state need not apply the act if the child custody law of a foreign country violates fundamental principles of human rights.

(d) A court of this state need not recognize and enforce an otherwise valid child custody determination of a foreign court under the act if it determines (1) that the child is a habitual resident of Nebraska as defined under the provisions of the Hague Convention on the Civil Aspects of International Child Abduction, as implemented by the International Child Abduction Remedies Act, 42 U.S.C. 11601 et seq., and (2) that the child would be at significant and demonstrable risk of child abuse or neglect as defined in section 28-710 if the foreign child custody determination is recognized and enforced. Such a determination shall create a rebuttable presumption against recognition and enforcement of the foreign child custody determination and, thereafter, a court of this state may exercise child custody jurisdiction pursuant to subdivision (a)(1) and subsection (c) of section 43-1238.

(e) The changes made to this section by Laws 2007, LB 341, shall be deemed remedial and shall apply to all cases pending on or before February 2, 2007, and to all cases initiated subsequent thereto.

(f) A court of this state shall have initial and continuing jurisdiction to make any determinations and to grant any relief set forth in subsection (d) of this section upon the motion or complaint seeking such, filed by any parent or custodian of a child who is the subject of a foreign court's custody determination and a habitual resident of Nebraska. The absence or dismissal, either voluntary or involuntary, of an action for the recognition and enforcement of a foreign court's custody determination under subsection (b) of this section shall in no way deprive the court of jurisdiction set forth in this subsection. Subsection (c) of section 43-1238 shall apply to any proceeding under this subsection.

This subsection shall be deemed remedial and shall apply to all cases pending on or before the effective date of this act and to all cases initiated subsequent thereto.

Sec. 2. Original section 43-1230, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 3. Since an emergency exists, this act takes effect when passed and approved according to law.