

ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT
LB201

Hearing Date: Friday January 23, 2009
Committee On: Judiciary
Introducer: McGill
One Liner: Change the Uniform Child Custody Jurisdiction and Enforcement Act relating to international application

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Ashford, Christensen, Coash, Council, Lathrop, Lautenbaugh, McGill, Rogert
Nay:
Absent:
Present Not Voting:

Proponents:

Sen. Amanda McGill
Susan Lien
Richard Ducote
Sheri Wortman

Representing:

Introducer
self
Attorney
Attorney

Opponents:

Representing:

Neutral:

Larry Ruth

Representing:

Uniform Law Commission

Summary of purpose and/or changes:

In 2007, the Legislature passed a law amending the Uniform Child Custody Jurisdiction and Enforcement Act (Act) which controls international jurisdictional disputes in custody cases in Nebraska (N.R.S. Sec. 43-1201 - 25).

Under current law, Nebraska courts may refuse to recognize and enforce a foreign custody determination if a case satisfies two criteria. First, the child must be a habitual resident of Nebraska, as defined in the Hague Convention on Civil Aspects of International Child Abduction. Second, if the foreign custody determination were recognized and enforced, the child would be at a significant and demonstrable risk of abuse or neglect. If these two criteria are satisfied, there is a rebuttable presumption against enforcing the foreign custody determination. The Nebraska court then has the authority to exercise jurisdiction over the custody of the child under Sec. 43-1238(a)(1).

Legislative Bill 201 is a follow-up provision in response to a Nebraska State District Court's finding that interpreted the 2007 law as providing a shield, not a sword. In other words, the court held that the law cannot be used affirmatively to attack a custody determination issued by the court of a foreign country. The law can only be used to defend against attempts to have the custody determination enforced. If there is no action before the Nebraska court for the recognition and enforcement of a foreign court's custody determination, the Nebraska court does not have child custody jurisdiction.

LB 201 adds a new subsection (f) to the Act, thus granting a Nebraska court initial and ongoing custody jurisdiction in

cases that satisfy the two criteria set forth in Sec. 43-1230(d) upon a motion or complaint filed by a parent or custodian. The Nebraska court will have custody jurisdiction in these cases regardless of whether there is an action for recognition and enforcement of a foreign court's custody determination.

If enacted, the bill would apply to any case pending in the state.

Explanation of amendments:

The intent of LB 201 is to fill a procedural gap in the Act to give Nebraska courts original and continuing child custody jurisdiction in cases where the child that is subject to the custody determination is a habitual resident of Nebraska and there is a significant and demonstrable risk of abuse or neglect if a foreign custody determination is recognized and enforced. Committee Amendment 83 clarifies the intent of LB 201 by adding two references to Sec. 43-1238(c) in the Act. The change specifically provides that a Nebraska court does not need personal jurisdiction over a party to a custody action in order to make a child custody determination if the case satisfies the two criteria set forth in Sec. 43-1230(d).

AM 83 includes an emergency clause. Therefore, the provisions will be effective as soon as the bill is passed into law.

Brad Ashford, Chairperson