

SENATE BILL NO. 73

BY SENATOR BROOME

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To enact Part V of Chapter 6 of Title 13 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 13:1851 through 1862, relative to child abduction prevention; to
4 provide definitions; to provide relative to cooperation and communication among
5 courts; to provide relative to actions for abduction prevention; to provide relative to
6 jurisdiction in child abduction cases; to provide relative to factors to determine risk
7 of abduction and measures to prevent abductions; to provide relative to court actions
8 and orders; to provide relative to the duration of an abduction prevention order; to
9 provide for uniform application; to provide for an effective date; and to provide for
10 related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Part V of Chapter 6 of Title 13 of the Louisiana Revised Statutes of 1950,
13 comprised of R.S. 13:1851 through 1862, is hereby enacted to read as follows:

14 **PART V. UNIFORM INTERNATIONAL CHILD ABDUCTION**

15 **PREVENTION ACT**

16 **SUBPART A. GENERAL PROVISIONS**

17 **§1851. Short title**

18 **This Part may be cited as the Uniform International Child Abduction**
19 **Prevention Act.**

20 **§1852. Definitions**

21 **For purposes of this Part, the following terms shall have the following**
22 **meanings unless the context clearly indicates otherwise:**

23 **(1) “Abduction” means the wrongful removal or wrongful retention of**
24 **a child beyond the territorial limits of the United States.**

25 **(2) “Child” means an unemancipated individual who is less than eighteen**

1 years of age.

2 (3) “Child-custody determination” means a judgment, decree, or other
3 order of a court providing for the legal custody, physical custody, or visitation
4 with respect to a child. The term includes a permanent, temporary, initial, and
5 modification order.

6 (4) “Child-custody proceeding” means a proceeding in which legal
7 custody, physical custody, or visitation with respect to a child is at issue. The
8 term includes a proceeding for divorce, dissolution of marriage, separation,
9 neglect, abuse, dependency, guardianship, paternity, termination of parental
10 rights, or protection from domestic violence.

11 (5) “Court” means an entity authorized under the law of a state to
12 establish, enforce, or modify a child-custody determination.

13 (6) “Petition” includes a motion or its equivalent.

14 (7) “Record” means information that is inscribed on a tangible medium
15 or that is stored in an electronic or other medium and is retrievable in
16 perceivable form.

17 (8) “State” means a state of the United States, the District of Columbia,
18 Puerto Rico, the United States Virgin Islands, or any territory or insular
19 possession subject to the jurisdiction of the United States. The term includes a
20 federally recognized Indian tribe or nation.

21 (9) “Travel document” means records relating to a travel itinerary,
22 including travel tickets, passes, reservations for transportation, or
23 accommodations. The term does not include a passport or visa.

24 (10) “Wrongful removal” means the taking of a child that breaches
25 rights of custody or visitation given or recognized under the law of this state.

26 (11) “Wrongful retention” means the keeping or concealing of a child
27 that breaches rights of custody or visitation given or recognized under the law
28 of this state.

29 §1853. Cooperation and communication among courts

30 The provisions of R.S. 13:1810 through 1812 apply to cooperation and

1 communications among courts in proceedings under this Part.

2 §1854. Actions for abduction prevention measures

3 A. A court on its own motion may order abduction prevention measures
4 in a child-custody proceeding if the court finds that the evidence establishes a
5 credible risk of abduction of the child.

6 B. A party to a child-custody determination or another individual or
7 entity having a right under the law of this state or any other state to seek a
8 child-custody determination for the child may file a petition seeking abduction
9 prevention measures to protect the child under this Part.

10 C. A prosecutor or public authority designated under R.S. 13:1837 may
11 seek a warrant to take physical custody of a child under R.S. 13:1859 or other
12 appropriate prevention measures.

13 SUBPART B. JURISDICTION

14 §1855. Jurisdiction

15 A. A petition under this Part may be filed only in a court that has
16 jurisdiction to make a child-custody determination with respect to the child at
17 issue under the provisions of R.S. 13:1813 through 1816.

18 B. A court of this state has temporary emergency jurisdiction under the
19 provisions of R.S. 13:1816, if the court finds a credible risk of abduction.

20 SUBPART C. ENFORCEMENT

21 §1856. Contents of petition

22 A petition under this Part shall be verified and include a copy of any
23 existing child-custody determination, if available. The petition shall specify the
24 risk factors for abduction, including the relevant factors described in R.S.
25 13:1857. Subject to the provisions of R.S. 13:1821(E), if reasonably
26 ascertainable, the petition shall contain:

27 (1) The name, date of birth, and gender of the child.

28 (2) The customary address and current physical location of the child.

29 (3) The identity, customary address, and current physical location of the
30 respondent.

1 (4) A statement of whether a prior action to prevent abduction or
2 domestic violence has been filed by a party or other individual or entity having
3 custody of the child, and the date, location, and disposition of the action.

4 (5) A statement of whether a party to the proceeding has been arrested
5 for a crime related to domestic violence, stalking, or child abuse or neglect, and
6 the date, location, and disposition of the case.

7 (6) Any other information required to be submitted to the court for a
8 child-custody determination under R.S. 13:1821.

9 §1857. Factors to determine risk of abduction

10 A. In determining whether there is a credible risk of abduction of a
11 child, the court shall consider all of the following factors and any evidence that
12 the petitioner or respondent:

13 (1) Has previously abducted or attempted to abduct the child.

14 (2) Has threatened to abduct the child.

15 (3) Has recently engaged in activities that may indicate a planned
16 abduction, including any of the following:

17 (a) Abandoning employment.

18 (b) Selling a primary residence.

19 (c) Terminating a lease.

20 (d) Closing bank or other financial management accounts, liquidating
21 assets, hiding or destroying financial documents, or conducting any unusual
22 financial activities.

23 (e) Applying for a passport or visa or obtaining travel documents for the
24 respondent, a family member, or the child.

25 (f) Seeking to obtain the child's birth certificate or school or medical
26 records.

27 (4) Has engaged in domestic violence, stalking, or child abuse or neglect.

28 (5) Has refused to follow a child-custody determination.

29 (6) Lacks strong familial, financial, emotional, or cultural ties to the
30 United States.

1 (7) Has strong familial, financial, emotional, or cultural ties to another
2 country.

3 (8) Is likely to take the child to a country that either:

4 (a) Is not a party to the Hague Convention on the Civil Aspects of
5 International Child Abduction and does not provide for the extradition of an
6 abducting parent or for the return of an abducted child.

7 (b) Is a party to the Hague Convention on the Civil Aspects of
8 International Child Abduction but either:

9 (i) The Hague Convention on the Civil Aspects of International Child
10 Abduction is not in force between the United States and that country.

11 (ii) Is noncompliant according to the most recent compliance report
12 issued by the United States Department of State.

13 (iii) Lacks legal mechanisms for immediately and effectively enforcing
14 a return order under the Hague Convention on the Civil Aspects of
15 International Child Abduction.

16 (c) Poses a risk that the child's physical or emotional health or safety
17 would be endangered in the country because of specific circumstances relating
18 to the child or because of human rights violations committed against children.

19 (d) Has laws or practices that would either:

20 (i) Enable the respondent, without due cause, to prevent the petitioner
21 from contacting the child.

22 (ii) Restrict the petitioner from freely traveling to or exiting from the
23 country because of the petitioner's gender, nationality, marital status, or
24 religion.

25 (iii) Restrict the child's ability legally to leave the country after the child
26 reaches the age of majority because of a child's gender, nationality, or religion.

27 (e) Is included by the United States Department of State on a current list
28 of state sponsors of terrorism.

29 (f) Does not have an official United States diplomatic presence in the
30 country.

1 (g) Is engaged in active military action or war, including a civil war, to
2 which the child may be exposed.

3 (9) Is undergoing a change in immigration or citizenship status that
4 would adversely affect the respondent's ability to remain in the United States
5 legally.

6 (10) Has had an application for United States citizenship denied.

7 (11) Has forged or presented misleading or false evidence on government
8 forms or supporting documents to obtain or attempt to obtain a passport, a visa,
9 travel documents, a Social Security card, a driver's license, or other
10 government-issued identification card or has made a misrepresentation to the
11 United States government.

12 (12) Has used multiple names to attempt to mislead or defraud.

13 (13) Has engaged in any other conduct the court considers relevant to the
14 risk of abduction.

15 B. In the hearing on a petition under this Part, the court shall consider
16 any evidence that the respondent believed in good faith that his conduct was
17 necessary to avoid imminent harm to the child or himself and any other
18 evidence that may be relevant to whether he may be permitted to remove or
19 retain the child.

20 §1858. Provisions and measures to prevent abduction

21 A. If a petition is filed under this Part, the court may enter an order that
22 shall include:

23 (1) The basis for the court's exercise of jurisdiction.

24 (2) The manner in which notice and opportunity to be heard were given
25 to the persons entitled to notice of the proceeding.

26 (3) A detailed description of each party's custody and visitation rights
27 and residential arrangements for the child.

28 (4) A provision stating that a violation of the order may subject the party
29 in violation to civil and criminal penalties.

30 (5) Identification of the child's country of habitual residence at the time

1 of the issuance of the order.

2 B. If, at a hearing on a petition under this Part or on the court's own
3 motion, the court after reviewing the evidence finds a credible risk of abduction
4 of the child, the court shall enter an abduction prevention order. The order
5 shall include the provisions required by Subsection A of this Section and
6 measures and conditions, including those in Subsections C, D, and E of this
7 Section, that are reasonably calculated to prevent abduction of the child, giving
8 due consideration to the custody and visitation rights of the parties. The court
9 shall consider the age of the child, the potential harm to the child from an
10 abduction, the legal and practical difficulties of returning the child to the
11 jurisdiction if abducted, and the reasons for the potential abduction, including
12 evidence of domestic violence, stalking, or child abuse or neglect.

13 C. An abduction prevention order may include one or more of the
14 following:

15 (1) An imposition of travel restrictions that require that a party traveling
16 with the child outside the territorial limits of the United States provide the other
17 party with the following:

18 (a) The travel itinerary of the child.

19 (b) A list of physical addresses and telephone numbers at which the child
20 can be reached at specified times.

21 (c) Copies of all travel documents.

22 (2) A prohibition of the respondent directly or indirectly, either:

23 (a) Removing the child from the United States without permission of the
24 court or the petitioner's written consent.

25 (b) Removing or retaining the child in violation of a child-custody
26 determination.

27 (c) Removing the child from school or a child-care or similar facility.

28 (d) Approaching the child at any location other than a site designated for
29 supervised visitation.

30 (3) With regard to the child's passport, all of the following:

1 (a) A direction that the petitioner is to place the child's name in the
2 United States Department of State Children's Passport Issuance Alert Program.

3 (b) A requirement that the respondent surrender to the court or the
4 petitioner's attorney any United States or foreign passport issued in the child's
5 name, including a passport issued in the name of both the parent and the child.

6 (c) A prohibition upon the respondent from applying on behalf of the
7 child for a new or replacement passport or visa.

8 (4) As a prerequisite to exercising custody or visitation, a requirement
9 that the respondent provide all of the following:

10 (a) To the United States Department of State Office of Children's Issues
11 and the relevant foreign consulate or embassy, an authenticated copy of the
12 order detailing passport and travel restrictions for the child.

13 (b) To the court:

14 (i) Proof that the respondent has provided the information in
15 Subparagraph (a) of this Paragraph.

16 (ii) An acknowledgment in a record from the relevant foreign consulate
17 or embassy that no passport application has been made, or passport issued, on
18 behalf of the child.

19 (c) To the petitioner, proof of registration with the United States
20 Embassy or other United States diplomatic presence in the destination country
21 and with the Central Authority for the Hague Convention on the Civil Aspects
22 of International Child Abduction, if that convention is in effect between the
23 United States and the destination country, unless one of the parties objects.

24 (d) A written waiver under the Privacy Act, 5 U.S.C. Section 552a, with
25 respect to any document, application, or other information pertaining to the
26 child authorizing its disclosure to the court and the petitioner.

27 (5) Upon the petitioner's request, a requirement that the respondent
28 obtain an order from the relevant foreign country containing terms identical to
29 the child-custody determination issued in the United States.

30 D. In an abduction prevention order, the court may impose conditions

1 on the exercise of custody or visitation that:

2 (1) Limit visitation or require that visitation with the child by the
3 respondent be supervised until the court finds that supervision is no longer
4 necessary and order the respondent to pay the costs of supervision.

5 (2) Require the respondent to post a bond or provide other security in an
6 amount sufficient to serve as a financial deterrent to abduction, the proceeds of
7 which may be used to pay for the reasonable expenses of recovery of the child,
8 including reasonable attorney fees and costs if there is an abduction.

9 (3) Require the respondent to obtain education on the potentially
10 harmful effects to the child from abduction.

11 E. To prevent imminent abduction of a child, a court may either:

12 (1) Issue a warrant to take physical custody of the child under R.S. 13:
13 1859 or the law of this state other than this Part.

14 (2) Direct the use of law enforcement to take any action reasonably
15 necessary to locate the child, obtain return of the child, or enforce a custody
16 determination under this Part or the law of this state other than this Part.

17 (3) Grant any other relief allowed under any law of this state other than
18 this Part.

19 F. The remedies provided in this Part are cumulative and do not affect
20 the availability of other remedies to prevent abduction.

21 §1859. Warrant to take physical custody of child

22 A. If a petition under this Part contains allegations, and the court finds
23 that there is a credible risk that the child is imminently likely to be wrongfully
24 removed, the court may issue an ex parte warrant to take physical custody of
25 the child.

26 B. The respondent on a petition under Subsection A of this Section shall
27 be afforded an opportunity to be heard at the earliest possible time after the ex
28 parte warrant is executed, but not later than the next judicial day unless a
29 hearing on that date is impossible. In that event, the court shall hold the
30 hearing on the first judicial day possible.

1 C. An ex parte warrant under Subsection A of this Section to take
2 physical custody of a child shall:

3 (1) Recite the facts upon which a determination of a credible risk of
4 imminent wrongful removal of the child is based.

5 (2) Direct law enforcement officers to take physical custody of the child
6 immediately.

7 (3) State the date and time for the hearing on the petition.

8 (4) Provide for the safe interim placement of the child pending further
9 order of the court.

10 D. If feasible, before issuing a warrant and before determining the
11 placement of the child after the warrant is executed, the court may order a
12 search of the relevant databases of the National Crime Information Center
13 system and similar state databases to determine if either the petitioner or
14 respondent has a history of domestic violence, stalking, child abuse or neglect.

15 E. The petition and warrant shall be served on the respondent when or
16 immediately after the child is taken into physical custody.

17 F. A warrant to take physical custody of a child, issued by this state or
18 another state, is enforceable throughout this state. If the court finds that a less
19 intrusive remedy will not be effective, it may authorize law enforcement officers
20 to enter private property to take physical custody of the child. If required by
21 exigent circumstances, the court may authorize law enforcement officers to
22 make a forcible entry at any hour.

23 G. If the court finds, after a hearing, that a petitioner sought an ex parte
24 warrant under Subsection A of this Section for the purpose of harassment or in
25 bad faith, the court may award the respondent reasonable attorney fees, costs,
26 and expenses.

27 H. This Part does not affect the availability of relief allowed under the
28 laws of this state other than this Part.

29 §1860. Duration of abduction prevention order

30 An abduction prevention order remains in effect until the earliest of:

(1) The time stated in the order.

(2) The emancipation of the child.

(3) The child's attaining eighteen years of age.

(4) The time the order is modified, revoked, vacated, or superseded by a court with jurisdiction under the provisions of R.S. 13:1813 through 1815 and other applicable law of this state.

SUBPART D. APPLICATION

§1861. Uniformity of application and construction

In applying and construing this Part, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SUBPART E. MISCELLANEOUS PROVISION

§1862. Relation to electronic signatures in Global and National Commerce Act and the Louisiana Uniform Electronic Transactions Act

This Part modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., and the Louisiana Uniform Electronic Transactions Act, R.S. 9:2601 et seq., but does not modify, limit, or supersede Section 101(c) of the Act, 15 U.S.C. Section 7001(c), of that Act or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. Section 7003(b) or R.S. 9:2603(B)(4).

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____