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SENATE BILL NO. 462

Offered January 24, 2000

A *BILL to amend and reenact § 63.1-220.3 of the Code of Virginia; to amend the Code of Virginia by adding in Title 20 a chapter numbered 7.1, containing articles numbered 1 through 4, consisting of sections numbered 20-146.1 through 20-146.41; and to repeal Chapter 7 (§§ 20-125 through 20-146) of Title 20 of the Code of Virginia, relating to the Uniform Child Custody Jurisdiction and Enforcement Act.*

Patron—Mims (By Request)

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 63.1-220.3 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding in Title 20 a chapter numbered 7.1, containing articles numbered 1 through 4, consisting of sections numbered 20-146.1 through 20-146.41, as follows:

CHAPTER 7.1.**UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT.****Article 1.****General Provisions.****§ 20-146.1. Definitions.****In this Act:**

"Child" means an individual who has not attained eighteen years of age.

"Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

"Child custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Article 3 (§ 20-146.22 et seq.).

"Commencement" means the filing of the first pleading in a proceeding.

"Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.

"Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

"Initial determination" means the first child custody determination concerning a particular child.

"Issuing court" means the court that makes a child custody determination for which enforcement is sought under this Act.

"Issuing state" means the state in which a child custody determination is made.

"Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

"Person acting as a parent" means a person, other than a parent, who has (i) physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding and (ii) been awarded legal custody by a court or claims a right to legal custody under the laws of this Commonwealth.

"Physical custody" means the physical care and supervision of a child.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

"Tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal

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60 law or formally acknowledged by a state.

61 "Warrant" means an order issued by a court authorizing law-enforcement officers to take physical
62 custody of a child.

63 § 20-146.2. Proceedings governed by other law.

64 This Act does not govern an adoption proceeding or a proceeding pertaining to the authorization of
65 emergency medical care for a child.

66 § 20-146.3. Application to Indian tribes.

67 A. A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare
68 Act, 25 U.S.C. § 1901 et seq., is not subject to this Act to the extent that it is governed by the Indian
69 Child Welfare Act.

70 B. A court of this Commonwealth shall treat a tribe as if it were a state of the United States for the
71 purpose of applying this article and Article 2 (§ 20-146.12 et seq.).

72 C. A child custody determination made by a tribe under factual circumstances in substantial
73 conformity with the jurisdictional standards of this Act must be recognized and enforced under Article 3
74 (§ 20-146.22 et seq.).

75 § 20-146.4. International application.

76 A. A court of this Commonwealth shall treat a foreign country as if it were a state of the United
77 States for purposes of applying this article and Article 2 (§ 20-146.12 et seq.).

78 B. Except as otherwise provided in subsection C, a child custody determination made in a foreign
79 country under factual circumstances in substantial conformity with the jurisdictional standards of this
80 Act must be recognized and enforced under Article 3 (§ 20-146.22 et seq.).

81 C. A court of this Commonwealth need not apply this Act if the child custody law of a foreign
82 country violates fundamental principles of human rights.

83 § 20-146.5. Effect of child custody determination.

84 A child custody determination made by a court of this Commonwealth that had jurisdiction under
85 this Act binds all persons who have been served in accordance with the laws of this Commonwealth or
86 notified in accordance with § 20-146.7 or who have submitted to the jurisdiction of the court, and who
87 have been given an opportunity to be heard. As to those persons, the determination is conclusive as to
88 all decided issues of law and fact except to the extent the determination is modified by a court properly
89 having jurisdiction.

90 § 20-146.6. Priority.

91 If a question of existence or exercise of jurisdiction under this Act is raised in a child custody
92 proceeding, the question, upon request of a party, must be given priority on the calendar and handled
93 expeditiously.

94 § 20-146.7. Notice to persons outside state.

95 A. Notice required for the exercise of jurisdiction when a person is outside this Commonwealth may
96 be given in a manner prescribed by the law of this Commonwealth for service of process or by the law
97 of the state in which the service is made. Notice may also be by certified or registered mail, return
98 receipt requested, addressed to the person to be served. Notice must be given in a manner reasonably
99 calculated to give actual notice but may be by publication if other means are not effective.

100 B. Proof of service may be made in the manner prescribed by the law of this Commonwealth or by
101 the law of the state in which the service is made.

102 C. Notice is not required for the exercise of jurisdiction with respect to a person who submits to the
103 jurisdiction of the court.

104 § 20-146.8. Appearance and limited immunity.

105 A. A party to a child custody proceeding, including a modification proceeding, or a petitioner or
106 respondent in a proceeding to enforce or register a child custody determination is not subject to
107 personal jurisdiction in this Commonwealth for another proceeding or purpose solely by reason of
108 having participated, or having been physically present for the purpose of participating, in the
109 proceeding.

110 B. A person who is subject to personal jurisdiction in this Commonwealth on a basis other than
111 physical presence is not immune from service of process in this Commonwealth. A party present in this
112 Commonwealth who is subject to the jurisdiction of another state is not immune from service of process
113 allowable under the laws of that state.

114 C. The immunity granted by subsection A does not extend to civil litigation based on acts unrelated
115 to the participation in a proceeding under this Act committed by an individual while present in this
116 Commonwealth.

117 § 20-146.9. Communication between courts.

118 A. Before finding and exercising jurisdiction, a court of this Commonwealth shall communicate with
119 the court appearing to have jurisdiction in any other state concerning a proceeding arising under this
120 Act.

121 B. The court may allow the parties to participate in the communication. If the parties are not able to

participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

C. Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

D. Except as otherwise provided in subsection C, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

E. For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§ 20-146.10. Taking testimony in another state.

A. In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this Commonwealth for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

B. A court of this Commonwealth may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this Commonwealth shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

C. Documentary evidence transmitted from another state to a court of this Commonwealth by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

§ 20-146.11. Cooperation between courts; preservation of records.

A. A court of this Commonwealth may request the appropriate court of another state to:

1. Hold an evidentiary hearing;
2. Order a person to produce or give evidence pursuant to procedures of that state;
3. Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

4. Forward to the court of this Commonwealth a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

5. Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

B. Upon request of a court of another state, a court of this Commonwealth may hold a hearing or enter an order described in subsection A.

C. Travel and other necessary and reasonable expenses incurred under subsections A and B may be assessed against the parties according to the law of this Commonwealth.

D. A court of this Commonwealth shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains eighteen years of age. Upon appropriate request by a court or law-enforcement official of another state, the court shall forward a certified copy of those records.

Article 2.

Jurisdiction.

§ 20-146.12. Initial child custody jurisdiction.

A. Except as otherwise provided in § 20-146.15, a court of this Commonwealth has jurisdiction to make an initial child custody determination only if:

1. This Commonwealth is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this Commonwealth but a parent or person acting as a parent continues to live in this Commonwealth;

2. A court of another state does not have jurisdiction under subdivision 1, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this Commonwealth is the more appropriate forum under § 20-146.18 or § 20-146.19, and (i) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this Commonwealth other than mere physical presence and (ii) substantial evidence is available in this Commonwealth concerning the child's care, protection, training, and personal relationships;

3. All courts having jurisdiction under subdivision 1 or 2 have declined to exercise jurisdiction on the ground that a court of this Commonwealth is the more appropriate forum to determine the custody of the child under § 20-146.18 or § 20-146.19; or

4. No court of any other state would have jurisdiction under the criteria specified in subdivision 1, 2, or 3.

183 *B. Subsection A is the exclusive jurisdictional basis for making a child custody determination by a*
184 *court of this Commonwealth.*

185 *C. Physical presence of, or personal jurisdiction over, a party or a child is not necessary or*
186 *sufficient to make a child custody determination.*

187 *§ 20-146.13. Exclusive, continuing jurisdiction.*

188 *A. Except as otherwise provided in § 20-146.15, a court of this Commonwealth that has made a child*
189 *custody determination consistent with § 20-146.12 or § 20-146.14 has exclusive, continuing jurisdiction*
190 *as long as the child, the child's parents, or any person acting as a parent continue to live in this*
191 *Commonwealth.*

192 *B. A court of this Commonwealth which has made a child custody determination and does not have*
193 *exclusive, continuing jurisdiction under this section may modify that determination only if it has*
194 *jurisdiction to make an initial determination under § 20-146.12.*

195 *§ 20-146.14. Jurisdiction to modify determination.*

196 *Except as otherwise provided in § 20-146.15, a court of this Commonwealth may not modify a child*
197 *custody determination made by a court of another state unless a court of this Commonwealth has*
198 *jurisdiction to make an initial determination under subdivision A1 or A2 of § 20-146.12 and:*

199 *1. The court of the other state determines it no longer has exclusive, continuing jurisdiction under*
200 *§ 20-146.13 or that a court of this Commonwealth would be a more convenient forum under*
201 *§ 20-146.18; or*

202 *2. A court of this Commonwealth or a court of the other state determines that the child, the child's*
203 *parents, and any person acting as a parent do not presently reside in the other state.*

204 *§ 20-146.15. Temporary emergency jurisdiction.*

205 *A. A court of this Commonwealth has temporary emergency jurisdiction if the child is present in this*
206 *Commonwealth and the child has been abandoned or it is necessary in an emergency to protect the*
207 *child because the child, or a sibling or parent of the child, is subjected to or threatened with*
208 *mistreatment or abuse.*

209 *B. If there is no previous child custody determination that is entitled to be enforced under this Act*
210 *and a child custody proceeding has not been commenced in a court of a state having jurisdiction under*
211 *§§ 20-146.12, 20-146.13 or § 20-146.14, a child custody determination made under this section remains*
212 *in effect until an order is obtained from a court of a state having jurisdiction under §§ 20-146.12,*
213 *20-146.13 or § 20-146.14. If a child custody proceeding has not been or is not commenced in a court of*
214 *a state having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14, a child custody determination*
215 *made under this section becomes a final determination, if it so provides and this Commonwealth*
216 *becomes the home state of the child.*

217 *C. If there is a previous child custody determination that is entitled to be enforced under this Act, or*
218 *a child custody proceeding has been commenced in a court of a State having jurisdiction under*
219 *§§ 20-146.12, 20-146.13 or § 20-146.14, any order issued by a court of this Commonwealth under this*
220 *section must specify in the order a period that the court considers adequate to allow the person seeking*
221 *an order to obtain an order from the state having jurisdiction . The order issued in this Commonwealth*
222 *remains in effect until an order is obtained from the other state within the period specified or the period*
223 *expires.*

224 *D. A court of this Commonwealth which has been asked to make a child custody determination under*
225 *this section, upon being informed that a child custody proceeding has been commenced in, or a child*
226 *custody determination has been made by, a court of a state having jurisdiction under §§ 20-146.12,*
227 *20-146.13 or § 20-146.14, shall immediately communicate with the other court. A court of this*
228 *Commonwealth which is exercising jurisdiction pursuant to §§ 20-146.12, 20-146.13 or § 20-146.14,*
229 *upon being informed that a child custody proceeding has been commenced in, or a child custody*
230 *determination has been made by, a court of another state under a statute similar to this section shall*
231 *immediately communicate with the court of that state to resolve the emergency, protect the safety of the*
232 *parties and the child, and determine a period for the duration of the temporary order.*

233 *§ 20-146.16. Notice; opportunity to be heard; joinder.*

234 *A. Before a child's custody determination is made under this Act, notice and an opportunity to be*
235 *heard in accordance with the standards of § 20-146.7 must be given to all persons entitled to notice*
236 *under the laws of this Commonwealth as in child custody proceedings between residents of this*
237 *Commonwealth, any parent whose parental rights have not been previously terminated, and any person*
238 *having physical custody of the child.*

239 *B. This Act does not govern the enforceability of a child custody determination made without notice*
240 *or an opportunity to be heard.*

241 *C. The obligation to join a party and the right to intervene as a party in a child custody proceeding*
242 *under this Act are governed by the law of this Commonwealth as in child custody proceedings between*
243 *residents of this Commonwealth.*

244 *§ 20-146.17. Simultaneous proceedings.*

A. Except as otherwise provided in § 20-146.15, a court of this Commonwealth may not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this Act, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this Commonwealth is a more convenient forum under § 20-146.18.

B. Except as otherwise provided in § 20-146.15, a court of this Commonwealth, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to § 20-146.20. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this Act, the court of this Commonwealth shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this Act does not determine that the court of this Commonwealth is a more appropriate forum, the court of this Commonwealth shall dismiss the proceeding.

C. In a proceeding to modify a child custody determination, a court of this Commonwealth shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

1. Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

2. Enjoin the parties from continuing with the proceeding for enforcement; or

3. Proceed with the modification under conditions it considers appropriate.

§ 20-146.18. Inconvenient forum.

A. A court of this Commonwealth which has jurisdiction under this Act to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon the motion of a party, the court's own motion, or request of another court.

B. Before determining whether it is an inconvenient forum, a court of this Commonwealth shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to present evidence and shall consider all relevant factors, including:

1. Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

2. The length of time the child has resided outside this Commonwealth ;

3. The distance between the court in this Commonwealth and the court in the state that would assume jurisdiction;

4. The relative financial circumstances of the parties;

5. Any agreement of the parties as to which state should assume jurisdiction;

6. The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

7. The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

8. The familiarity of the court of each state with the facts and issues in the pending litigation.

C. If a court of this Commonwealth determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

D. A court of this Commonwealth may decline to exercise its jurisdiction under this Act if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

§ 20-146.19. Jurisdiction declined by reason of conduct.

A. Except as otherwise provided in § 20-146.15 or by other law of this Commonwealth, if a court of this Commonwealth has jurisdiction under this Act because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

1. The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

2. A court of the state otherwise having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14 determines that this Commonwealth is a more appropriate forum under § 20-146.18; or

3. No court of any other state would have jurisdiction under the criteria specified in B. If a court of this Commonwealth declines to exercise its jurisdiction pursuant to subsection A, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court

having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14.

C. If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection A, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this Commonwealth unless authorized by law other than this Act.

§ 20-146.20. Information to be submitted to court.

A. Subject to any other law providing for the confidentiality of procedures, addresses, and other identifying information, in a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the past five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

1. Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;

2. Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions, and, if so, identify the court, the case number, and the nature of the proceeding; and

3. Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

B. If the information required by subsection A is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

C. If the declaration as to any of the items described in subdivisions A 1, A 2 and A 3 is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

D. Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

E. If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information shall be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice. Such hearing and determination of the issue of disclosure shall be held by the court within fifteen days of the filing of a pleading.

§ 20-146.21. Appearance of parties and child.

A. In a child custody proceeding in this Commonwealth, the court may order a party to the proceeding who is in this Commonwealth to appear before the court in person with or without the child. The court may order any person who is in this Commonwealth and who has physical custody or control of the child to appear in person with the child.

B. If a party to a child custody proceeding whose presence is desired by the court is outside this Commonwealth, the court may direct the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

C. The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

D. If a party to a child custody proceeding who is outside this Commonwealth is directed to appear under subsection B or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

Article 3. Enforcement.

§ 20-146.22. Definitions.

In this article:

"Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

"Respondent" means a person against whom a proceeding has been commenced for enforcement of

an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

§ 20-146.23. Enforcement under Hague Convention.

Under this article a court of this Commonwealth may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction.

§ 20-146.24. Duty to enforce.

A. A court of this Commonwealth shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this Act or the determination was made under factual circumstances meeting the jurisdictional standards of this Act and the determination has not been modified in accordance with this Act.

B. A court of this Commonwealth may utilize any remedy available under other law of this Commonwealth to enforce a child custody determination made by a court of another state. The remedies provided in this article are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

§ 20-146.25. Temporary visitation.

A. A court of this Commonwealth which does not have jurisdiction to modify a child- custody determination, may issue a temporary order enforcing:

1. A visitation schedule made by a court of another state; or
2. The visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

B. If a court of this Commonwealth makes an order under subdivision A 2, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Article 2 (§ 20-146.12 et seq.). The order remains in effect until an order is obtained from the other court or the period expires.

§ 20-146.26. Registration of child custody determination.

A. A child custody determination issued by a court of another state may be registered in this Commonwealth, with or without a simultaneous request for enforcement, by sending to the appropriate juvenile and domestic relations district court in this Commonwealth :

1. A letter or other document requesting registration;
2. Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and
3. Except as otherwise provided in § 20-146.20, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

B. On receipt of the documents required by subsection A, the registering court shall:

1. Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and
2. Serve notice upon the persons named pursuant to subdivision A 3 and provide them with an opportunity to contest the registration in accordance with this section.

§ 20-146.27. Enforcement of registered determination.

A. A court of this Commonwealth may grant any relief normally available under the law of this Commonwealth to enforce a registered child custody determination made by a court of another state.

B. A court of this Commonwealth shall recognize and enforce, but may not modify, except in accordance with Article 2 (§ 20-146.12 et seq.), a registered child custody determination of a court of another state.

§ 20-146.28. Simultaneous proceedings.

If a proceeding for enforcement under this article is commenced in a court of this Commonwealth and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Article 2 (§ 20-146.12 et seq.), the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

§ 20-146.29. Expedited enforcement of child custody; determination.

A. A petition under this article must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

B. A petition for enforcement of a child custody determination must state:

1. Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;
2. Whether the determination for which enforcement is sought has been vacated, stayed, or modified

429 by a court whose decision must be enforced under this Act and, if so, identify the court, the case
430 number, and the nature of the proceeding;

431 3. Whether any proceeding has been commenced that could affect the current proceeding, including
432 proceedings relating to domestic violence, protective orders, termination of parental rights, and
433 adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

434 4. The present physical address of the child and the respondent, if known;

435 5. Whether relief in addition to the immediate physical custody of the child and attorney's fees is
436 sought, including a request for assistance from law-enforcement officials and, if so, the relief sought;
437 and

438 6. If the child custody determination has been registered and confirmed under § 20-146.26, the date
439 and place of registration.

440 C. Upon the filing of a petition, the court shall issue an order directing the respondent to appear in
441 person with or without the child at a hearing and may enter any order necessary to ensure the safety of
442 the parties and the child. The hearing must be held on the judicial day after service of the order unless
443 that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible.
444 The court may extend the date of hearing at the request of the petitioner.

445 D. An order issued under subsection C must state the time and place of the hearing and advise the
446 respondent that at the hearing the court will order that the petitioner may take immediate physical
447 custody of the child and the payment of fees, costs, and expenses under § 20-146.33, and may schedule
448 a hearing to determine whether further relief is appropriate, unless the respondent appears and
449 establishes that:

450 1. The child custody determination has not been registered under § 20-146.26, and that:

451 a. The issuing court did not have jurisdiction under Article 2 (§ 20-146.12 et seq.);

452 b. The child custody determination for which enforcement is sought has been vacated, stayed, or
453 modified by a court having jurisdiction to do so under Article 2 (§ 20-146.12 et seq.);

454 c. The respondent was entitled to notice, but notice was not given in accordance with the standards
455 of § 20-146.7, in the proceedings before the court that issued the order for which enforcement is sought;
456 or

457 2. The child custody determination for which enforcement is sought was registered under
458 § 20-146.26, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so
459 under Article 2 (§ 20-146.12 et seq.).

460 § 20-146.30. Service of petition and order.

461 Except as otherwise provided in § 20-146.32, the petition and order shall be served, by any method
462 authorized by the law of this Commonwealth, upon the respondent and any person who has physical
463 custody of the child.

464 § 20-146.31. Hearing and order.

465 A. Unless the court issues a temporary emergency order pursuant to § 20-146.15, upon a finding that
466 a petitioner is entitled to immediate physical custody of the child, the court shall order that the
467 petitioner may take immediate physical custody of the child unless the respondent establishes that:

468 1. The child custody determination has not been registered under § 20-146.26 and that:

469 a. The issuing court did not have jurisdiction under Article 2 (§ 20-146.12 et seq.);

470 b. The child custody determination for which enforcement is sought has been vacated, stayed, or
471 modified by a court of a state having jurisdiction to do so under Article 2 (§ 20-146.12 et seq.); or

472 c. The respondent was entitled to notice, but notice was not given in accordance with the standards
473 of § 20-146.7, in the proceedings before the court that issued the order for which enforcement is sought;
474 or

475 2. The child custody determination for which enforcement is sought was registered under
476 § 20-146.26, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so
477 under Article 2 (§ 20-146.12 et seq.).

478 B. The court shall award the fees, costs, and expenses authorized under § 20-146.33 and may grant
479 additional relief, including a request for the assistance of law-enforcement officials, and set a further
480 hearing to determine whether additional relief is appropriate.

481 C. If a party called to testify refuses to answer on the ground that the testimony may be
482 self-incriminating, the court may draw an adverse inference from the refusal.

483 D. A privilege against disclosure of communications between spouses and a defense of immunity
484 based on the relationship of husband and wife or parent and child may not be invoked in a proceeding
485 under this article.

486 § 20-146.32. Warrant to take physical custody of child.

487 A. Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner
488 may file a verified application for the issuance of a warrant to take physical custody of the child if the
489 child is imminently likely to suffer serious physical harm or be removed from this Commonwealth.

490 B. If the court, upon the testimony of the petitioner or other witness, finds that the child is

imminently likely to suffer serious physical harm or be removed from this Commonwealth, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant shall include the statements required by subsection B of § 20-146.29.

C. A warrant to take physical custody of a child shall:

1. Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

2. Direct law-enforcement officers to take physical custody of the child immediately; and

3. Provide for the placement of the child pending final relief.

D. The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

E. A warrant to take physical custody of a child is enforceable throughout this Commonwealth. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law-enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law-enforcement officers to make a forcible entry at any hour.

F. The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

§ 20-146.33. Costs, fees, and expenses.

A. The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

B. The court may not assess fees, costs, or expenses against a state unless authorized by law other than this Act.

§ 20-146.34. Recognition and enforcement.

A court of this Commonwealth shall accord full faith and credit to an order issued by another state and consistent with this Act that enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court have jurisdiction to do so under Article 2 (§ 20-146.12 et seq.).

§ 20-146.35. Appeals.

An appeal may be taken from a final order in a proceeding under this article in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under § 20-146.15, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

§ 20-146.36. Role of attorney for the Commonwealth.

A. In a case arising under this Act or involving the Hague Convention on the Civil Aspects of International Child Abduction, the attorney for the Commonwealth may take any lawful action, including resort to a proceeding under this article or any other available civil proceeding, to locate a child, obtain the return of a child, or enforce a child custody determination if there is:

1. An existing child custody determination;

2. A request to do so from a court in a pending child custody proceeding;

3. A reasonable belief that a criminal statute has been violated; or

4. A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

B. An attorney for the Commonwealth acting under this section acts on behalf of the court and may not represent any party.

§ 20-146.37. Role of law enforcement.

At the request of an attorney for the Commonwealth acting under § 20-146.36, a law-enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist an attorney for the commonwealth with responsibilities under § 20-146.36.

§ 20-146.38. Costs and expenses.

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the attorney for the Commonwealth and law-enforcement officers under §§ 20-146.36 and 20-146.37.

Article 4.

Miscellaneous Provisions.

§ 20-146.39. Application and construction.

In applying and construing this act, consideration shall be given to the need to promote uniformity

552 of the law with respect to its subject matter among states that enact it.

553 § 20-146.40. Transitional provision.

554 A motion or other request for relief made in a child custody proceeding or to enforce a child
555 custody determination that was commenced before July 1, 2001, is governed by the law in effect at the
556 time the motion or other request was made.

557 § 20-146.41. Construction of Provisions.

558 (a) The general purposes of this Act are to:

559 (1) Avoid jurisdictional competition and conflict with courts of other states in matters of child
560 custody that have in the past resulted in the shifting of children from state to state with harmful effects
561 on their well-being;

562 (2) Promote cooperation with the courts of other states to the end that a custody decree is rendered
563 in that state that can best decide the case in the interest of the child;

564 (3) Ensure that litigation concerning the custody of a child take place ordinarily in the state with
565 which the child and his family have the closest connection and where significant evidence concerning
566 his care, protection, training, and personal relationships is most readily available, and that courts of
567 this state decline the exercise of jurisdiction when the child and his family have a closer connection with
568 another state;

569 (4) Discourage continuing controversies over child custody in the interest of greater stability of home
570 environment and of secure family relationships for the child;

571 (5) Deter abductions and other unilateral removals of children undertaken to obtain custody awards;

572 (6) Avoid re-litigation of custody decisions of other states in this state insofar as feasible;

573 (7) Facilitate the enforcement of custody decrees of other states;

574 (8) Promote and expand the exchange of information and other forms of mutual assistance between
575 the courts of this state and those of other states concerned with the same child; and

576 (9) Make uniform the law of those states that enact it.

577 (b) This Act shall be construed to promote the general purposes stated in this section.

578 § 63.1-220.3. Placement of children for adoption by parent or guardian.

579 A. The birth parent or legal guardian of a child may place his child for adoption directly with the
580 adoptive parents of his choice. Consent to the proposed adoption shall be executed upon compliance
581 with the provisions of this section before a juvenile and domestic relations district court of competent
582 jurisdiction or, if the birth parent or legal guardian does not reside in Virginia, before a court having
583 jurisdiction over child custody matters in the jurisdiction where the birth parent or legal guardian resides
584 when requested by a court of this Commonwealth, pursuant to § 20-14220-146.11. Proceedings under
585 this section shall be advanced on the docket so as to be heard by the court within ten days of filing of
586 the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

587 B. The court shall not accept consent until it determines that:

588 1. The birth parent(s) are aware of alternatives to adoption, adoption procedures, and opportunities
589 for placement with other adoptive families, and that the birth parents' consent is informed and
590 uncoerced.

591 2. A licensed or duly authorized child-placing agency has counseled the prospective adoptive parents
592 with regard to alternatives to adoption, adoption procedures, including the need to address the parental
593 rights of birth parents, the procedures for terminating such rights, and opportunities for adoption of other
594 children; that the prospective adoptive parents' decision is informed and uncoerced; and that they intend
595 to file an adoption petition and proceed toward a final order of adoption.

596 3. The birth parent(s) and adoptive parents have exchanged identifying information including but not
597 limited to full names, addresses, physical, mental, social and psychological information and any other
598 information necessary to promote the welfare of the child.

599 4. Any financial agreement or exchange of property among the parties and any fees charged or paid
600 for services related to the placement or adoption of the child have been disclosed to the court and that
601 all parties understand that no binding contract regarding placement or adoption of the child exists.

602 5. There has been no violation of the provisions of § 63.1-220.4 in connection with the placement;
603 however, if it appears there has been such violation, the court shall not reject consent of the birth parent
604 to the adoption for that reason alone but shall report the alleged violation as required by subsection G of
605 this section.

606 6. A licensed or duly authorized child-placing agency has conducted a home study of the prospective
607 adoptive home in accordance with regulations established by the State Board of Social Services and has
608 provided to the court a report of such home study, which shall contain the agency's recommendation
609 regarding the suitability of the placement. A married couple or an unmarried individual shall be eligible
610 to receive placement of a child for adoption. The home study shall make inquiry as to (i) whether the
611 prospective adoptive parents are financially able, morally suitable, and in satisfactory physical and
612 mental health to enable them to care for the child; (ii) the physical and mental condition of the child, if
613 known; (iii) the circumstances under which the child came to live, or will be living, in the home of the

prospective adoptive family, as applicable; (iv) what fees have been paid by the prospective adoptive family or in their behalf in the placement and adoption of the child; (v) whether the requirements of subdivisions 1, 2, 3 and 5 of this subsection have been met; and (vi) any other matters specified by the court. In the course of the home study, the agency social worker shall meet at least once with the birth parent(s) and prospective adoptive parents simultaneously. When the child has been placed with prospective adoptive parents who are related to the child as specified in subdivision 6 of subsection C of this section, this meeting is not required.

7. The birth parent(s) have been informed of their opportunity to be represented by legal counsel.

C. When the court is satisfied that all requirements of subsection B of this section have been met with respect to at least one birth parent and the adoptive child is at least ten days old, that birth parent or both birth parents, as the case may be, shall execute consent to the proposed adoption in compliance with the provisions of § 63.1-225 while before the court in person and in the presence of the prospective adoptive parents. The court shall accept the consent of the birth parent(s) and transfer custody of the child to the prospective adoptive parents, pending notification to any nonconsenting birth parent, as described hereinafter.

1. a. The execution of consent before the court as set forth in subsection A shall not be required of a birth father who is not married to the mother of the child at the time of the child's conception or birth if (i) the birth father consents under oath and in writing to the adoption; (ii) the birth mother swears under oath and in writing that the identity of the birth father is not reasonably ascertainable; (iii) the identity of the birth father is ascertainable and his whereabouts are known, he is given notice of the proceedings by registered or certified mail to his last known address and he fails to object to the proceeding within twenty-one days of the mailing of such notice; or (iv) the putative birth father named by the birth mother denies under oath and in writing paternity of the child. An affidavit of the birth mother that the identity of the birth father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the birth father is reasonably ascertainable. For purposes of determining whether the identity of the birth father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the birth mother and the birth father.

b. The court may accept the written consent of the birth father who is not married to the birth mother of the child at the time of the child's conception or birth, provided that the identifying information required in subdivision B 3 is filed in writing with the court of jurisdiction. Such consent shall be executed after the birth of the child, shall advise the birth father of his opportunity for legal representation, and shall be presented to the court for acceptance. The consent may waive further notice of the adoption proceedings and shall contain the name, address and telephone number of the birth father's legal counsel or an acknowledgment that he was informed of his opportunity to be represented by legal counsel and declined such representation.

c. In the event that the birth mother's consent is not executed in court in accordance with subsection A, the consent of the birth father who is not married to the birth mother of the child shall be executed in court.

d. A child born to a married birth mother shall be presumed to be the child of her husband and his consent under subsection A shall be required. This presumption may be rebutted by sufficient evidence, satisfactory to the court, which would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child, in which case the husband's consent shall not be required.

2. A birth parent whose consent is required as set forth in § 63.1-225, whose identity is known and who neither consents before the court as described above, nor executes a written consent to the adoption or a denial of paternity out of court as provided above, shall be given notice of the proceedings pending before the court and be given the opportunity to appear before the court. Such hearing may occur subsequent to the proceeding wherein the consenting birth parent appeared but may not be held until twenty-one days after personal service of notice on the nonconsenting birth parent, or if personal service is unobtainable, ten days after the completion of the execution of an order of publication against such birth parent. The court may appoint counsel for the birth parent(s). If the court finds that consent is withheld contrary to the best interests of the child, as set forth in § 63.1-225.1, or is unobtainable, it may grant the petition without such consent and enter an order waiving the requirement of consent of the nonconsenting birth parent and transferring custody of the child to the prospective adoptive parents, which order shall become effective fifteen days thereafter. If the court denies the petition, the court shall order that any consent given for the purpose of such placement shall be void and, if necessary, the court shall determine custody of the child as between the birth parents.

3. Except as provided in subdivision 4 of this subsection, if consent cannot be obtained from at least

one birth parent, the court shall deny the petition and determine custody of the child pursuant to § 16.1-278.2.

4. If the child was placed by the birth parent(s) with the prospective adoptive parents and if both birth parents have failed, without good cause, to appear at a hearing to execute consent under this section for which they were given proper notice pursuant to § 16.1-264, the court may grant the petition without the consent of either birth parent and enter an order waiving consent and transferring custody of the child to the prospective adoptive parents, which order shall become effective fifteen days thereafter. Prior to the entry of such an order, the court may appoint legal counsel for the birth parents and shall find by clear and convincing evidence (i) that the birth parents were given proper notice of the hearing(s) to execute consent and of the hearing to proceed without their consent, (ii) that the birth parents failed to show good cause for their failure to appear at such hearing(s) and (iii) that pursuant to § 63.1-225.1 the consent of the birth parents is withheld contrary to the best interests of the child or is unobtainable.

5. If both birth parents are deceased, the court, after hearing evidence to that effect, may grant the petition without the filing of any consent.

6. When a child has been placed by the birth parent(s) with prospective adoptive parents who are the child's grandparents, adult brother or sister, adult uncle or aunt or adult great uncle or great aunt, consent does not have to be executed in court in the presence of the prospective adoptive parents. The court may accept written consent that has been signed and acknowledged before an officer authorized by law to take acknowledgments. No hearing shall be required for the court's acceptance of such consent.

When such child has resided in the home of the prospective adoptive parent(s) continuously for three or more years, this section shall not apply, and consent shall be executed in accordance with subsection E of § 63.1-225.

7. No consent shall be required from the birth father of a child placed pursuant to this section when such father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63 or subsection B of § 18.2-366, and the child was conceived as a result of such violation, nor shall the birth father be entitled to notice of any of the proceedings under this section.

8. Upon a finding by the court that all of the requirements of this section have been met, and upon entry of such orders as may be appropriate, including the transfer of custody of the child to the prospective adoptive parents, the prospective adoptive parent(s) may file a petition for adoption of the child pursuant to § 63.1-221. The court shall review each order entered under this section at least annually until such time as the final order of adoption is entered.

D. Consent shall be revocable as follows:

1. By either consenting birth parent for any reason for up to fifteen days from its execution.

a. Such revocation shall be in writing, signed by the revoking party or counsel of record for the revoking party and shall be filed with the clerk of the court in which the petition was filed during the business day of the court, within the time period specified in this section. If the revocation period expires on a Saturday, Sunday, legal holiday or any day on which the clerk's office is closed as authorized by statute, the revocation period shall be extended to the next day that is not a Saturday, Sunday, legal holiday or other day on which the clerk's office is closed as authorized by statute.

b. Upon the filing of a valid revocation within the time period set out in this section, the court shall order that any consent given for the purpose of such placement is void and, if necessary, the court shall determine custody of the child as between the birth parents.

2. By any party prior to the final order of adoption (i) upon proof of fraud or duress or (ii) after placement of the child in an adoptive home, upon written, mutual consent of the birth parents and prospective adoptive parents.

E. The court shall not accept the consent if the requirements of subsection B of this section have not been met. In such cases, it shall refer the birth parent to a licensed or duly authorized child-placing agency for investigation and recommendation in accordance with subsection B above. If the court determines that any of the parties is financially unable to obtain the required services, it shall refer the matter to the local director of social services or superintendent of public welfare.

F. If the court determines from the information provided to it that placement in the prospective adoptive home will be contrary to the best interests of the child, it shall so inform the birth parents. If the birth parents choose not to retain custody of the child nor to designate other prospective adoptive parents, or if the birth parents' whereabouts are not reasonably ascertainable, the court shall determine custody of the child.

G. If the court or any participating licensed or duly authorized child-placing agency suspects that there has been a violation of § 63.1-220.4 in connection with the placement, it shall report such findings to the Commissioner of Social Services for investigation and appropriate action. If the Commissioner suspects that a person has violated § 63.1-220.4, he shall report his findings to the appropriate attorney for the Commonwealth. If the Commissioner believes that such violation has occurred in the course of the practice of a profession or occupation licensed or regulated pursuant to Title 54.1, he shall also

737 report such findings to the appropriate regulatory authority for investigation and appropriate disciplinary
738 action.

739 H. The Department of Social Services shall develop and disseminate information to the public
740 regarding the provisions of this law, including the desirability of initiating the procedures required by
741 subsection B of this section as early in the placement and adoption process as possible to ensure that
742 birth parents are aware of the provisions of this law and begin required procedures in a timely manner.

743 **2. That Chapter 7 (§§ 20-125 through 20-146) of Title 20 of the Code of Virginia is repealed.**

INTRODUCED

SB462