

1 *House Bill NO. 758*  
 2 INTRODUCED BY *Southammy*  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AVOID JURISDICTIONAL  
 5 CONFLICT BETWEEN STATES IN CHILD CUSTODY PROCEEDINGS;  
 6 PROVIDING INTERSTATE JUDICIAL ASSISTANCE IN CUSTODY CASES TO  
 7 DISCOURAGE ILLEGAL SCHEMES TO GAIN POSSESSION OF A CHILD IN  
 8 CONTESTED CUSTODY PROCEEDINGS; AMENDING SECTIONS 48-317 AND  
 9 48-331, R.C.M. 1947."

10  
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 12 Section 1. Short title. This act may be cited as the  
 13 "Uniform Child Custody Jurisdiction Act".

14 Section 2. Purposes of act — construction of  
 15 provisions. (1) The general purposes of this act are to:

- 16 (a) avoid jurisdictional competition and conflict with
- 17 courts of other states in matters of child custody which
- 18 have in the past resulted in the shifting of children from
- 19 state to state with harmful effects on their well-being;
- 20 (b) promote cooperation with the courts of other
- 21 states to the end that a custody decree is rendered in that
- 22 state which can best decide the case in the interest of the
- 23 child;
- 24 (c) assure that litigation concerning the custody of a
- 25 child takes place ordinarily in the state with which the

1 child and his family have the closest connection and where  
 2 significant evidence concerning his care, protection,  
 3 training, and personal relationships is most readily  
 4 available and that courts of this state decline the exercise  
 5 of jurisdiction when the child and his family have a closer  
 6 connection with another state;

7 (d) discourage continuing controversies over child  
 8 custody in the interest of greater stability of home  
 9 environment and of secure family relationships for the  
 10 child;

11 (e) deter abductions and other unilateral removals of  
 12 children undertaken to obtain custody awards;

13 (f) avoid relitigation of custody decisions of other  
 14 states in this state insofar as feasible;

15 (g) facilitate the enforcement of custody decrees of  
 16 other states;

17 (h) promote and expand the exchange of information and  
 18 other forms of mutual assistance between the courts of this  
 19 state and those of other states concerned with the same  
 20 child; and

21 (i) make uniform the law of those states which enact  
 22 it.

23 (2) This act shall be construed to promote the general  
 24 purposes stated in this section.

25 Section 3. Definitions. As used in this act, the

1 following definitions apply:

2 (1) "Contestant" means a person, including a parent,  
3 who claims a right to custody or visitation rights with  
4 respect to a child.

5 (2) "Custody determination" means a court decision and  
6 court orders and instructions providing for the custody of a  
7 child, including visitation rights. It does not include a  
8 decision relating to child support or any other monetary  
9 obligation of any person.

10 (3) "Custody proceeding" includes proceedings in which  
11 a custody determination is one of several issues, such as an  
12 action for divorce or separation, and includes issues of  
13 custody in adoption proceedings. A "custody proceeding" is  
14 not a proceeding pursuant to Title 10, chapter 12, or Title  
15 10, chapter 13.

16 (4) "Decree" or "custody decree" means a custody  
17 determination contained in a judicial decree or order made  
18 in a custody proceeding and includes an initial decree and a  
19 modification decree.

20 (5) "Home state" means the state in which the child,  
21 immediately preceding the time involved, lived with his  
22 parents, a parent, or a person acting as parent, for at  
23 least 6 consecutive months and in the case of a child less  
24 than 6 months old the state in which the child lived from  
25 birth with any of the persons mentioned. Periods of

1 temporary absence of any of the named persons are counted as  
2 part of the 6-month or other period.

3 (6) "Initial decree" means the first custody decree  
4 concerning a particular child.

5 (7) "Modification decree" means a custody decree which  
6 modifies or replaces a prior decree, whether made by the  
7 court which rendered the prior decree or by another court.

8 (8) "Physical custody" means actual possession and  
9 control of a child.

10 (9) "Person acting as parent" means a person, other  
11 than a parent, who has physical custody of a child and who  
12 has either been awarded custody by a court or claims a right  
13 to custody.

14 (10) "State" means any state, territory, or possession  
15 of the United States, the Commonwealth of Puerto Rico, and  
16 the District of Columbia.

17 Section 4. Jurisdiction. The jurisdictional provisions  
18 of 48-331 apply to this act.

19 Section 5. Notice and opportunity to be heard. Before  
20 making a decree under this act, reasonable notice and  
21 opportunity to be heard shall be given to the contestants,  
22 any parent whose parental rights have not been previously  
23 terminated, and any person who has physical custody of the  
24 child. If any of these persons are outside this state,  
25 notice and opportunity to be heard shall be given pursuant

1 to [section 6].

2 Section 6. Notice to persons outside this state —  
3 submission to jurisdiction. (1) Notice required for the  
4 exercise of jurisdiction over a person outside this state  
5 shall be given in a manner reasonably calculated to give  
6 actual notice and may be:

7 (a) by personal delivery outside this state in the  
8 manner prescribed for service of process within this state;

9 (b) in the manner prescribed by the law of the place  
10 in which the service is made for service of process in that  
11 place in an action in any of its courts of general  
12 jurisdiction;

13 (c) by any form of mail addressed to the person to be  
14 served and requesting a receipt; or

15 (d) as directed by the court including publication, if  
16 other means of notification are ineffective.

17 (2) Notice under this section shall be served, mailed,  
18 or delivered or last published at least 10 days before any  
19 hearing in this state.

20 (3) Proof of service outside this state may be made by  
21 affidavit of the individual who made the service or in the  
22 manner prescribed by the law of this state, the order  
23 pursuant to which the service is made, or the law of the  
24 place in which the service is made. If service is made by  
25 mail, proof may be a receipt signed by the addressee or

1 other evidence of delivery to the addressee.

2 (4) Notice is not required if a person submits to the  
3 jurisdiction of the court.

4 Section 7. Simultaneous proceedings in other states.

5 (1) A court of this state may not exercise its jurisdiction  
6 under this act if at the time of filing the petition a  
7 proceeding concerning the custody of the child was pending  
8 in a court of another state exercising jurisdiction  
9 substantially in conformity with this act unless the  
10 proceeding is stayed by the court of the other state because  
11 this state is a more appropriate forum or for other reasons.

12 (2) Before hearing the petition in a custody  
13 proceeding, the court shall examine the pleadings and other  
14 information supplied by the parties under [section 10] and  
15 shall consult the child custody registry established under  
16 [section 17] concerning the pendency of proceedings with  
17 respect to the child in other states. If the court has  
18 reason to believe that proceedings may be pending in another  
19 state, it shall direct an inquiry to the state court  
20 administrator or other appropriate official of the other  
21 state.

22 (3) If the court is informed during the course of the  
23 proceeding that a proceeding concerning the custody of the  
24 child was pending in another state before the court assumed  
25 jurisdiction, it shall stay the proceeding and communicate

1 with the court in which the other proceeding is pending to  
 2 the end that the issue may be litigated in the more  
 3 appropriate forum and that information be exchanged in  
 4 accordance with [sections 20 through 23]. If a court of  
 5 this state has made a custody decree before being informed  
 6 of a pending proceeding in a court of another state, it  
 7 shall immediately inform that court of the fact. If the  
 8 court is informed that a proceeding was commenced in another  
 9 state after it assumed jurisdiction, it shall likewise  
 10 inform the other court to the end that the issues may be  
 11 litigated in the more appropriate forum.

12 Section 8. Inconvenient forum. (1) A court which has  
 13 jurisdiction under this act to make an initial or  
 14 modification decree may decline to exercise its jurisdiction  
 15 any time before making a decree if it finds that it is an  
 16 inconvenient forum to make a custody determination under the  
 17 circumstances of the case and that a court of another state  
 18 is a more appropriate forum.

19 (2) A finding of inconvenient forum may be made upon  
 20 the court's own motion or upon motion of a party or a  
 21 guardian ad litem or other representative of the child.

22 (3) In determining if it is an inconvenient forum, the  
 23 court shall consider if it is in the interest of the child  
 24 that another state assume jurisdiction. For this purpose it  
 25 may take into account the following factors, among others:

1 (a) if another state is or recently was the child's  
 2 home state;

3 (b) if another state has a closer connection with the  
 4 child and his family or with the child and one or more of  
 5 the contestants;

6 (c) if substantial evidence concerning the child's  
 7 present or future care, protection, training, and personal  
 8 relationships is more readily available in another state;

9 (d) if the parties have agreed on another forum which  
 10 is no less appropriate; and

11 (e) if the exercise of jurisdiction by a court of this  
 12 state would contravene any of the purposes stated in  
 13 [section 2].

14 (4) Before determining whether to decline or retain  
 15 jurisdiction, the court may communicate with a court of  
 16 another state and exchange information pertinent to the  
 17 assumption of jurisdiction by either court with a view to  
 18 assuring that jurisdiction will be exercised by the more  
 19 appropriate court and that a forum will be available to the  
 20 parties.

21 (5) If the court finds that it is an inconvenient  
 22 forum and that a court of another state is a more  
 23 appropriate forum, it may dismiss the proceedings or it may  
 24 stay the proceedings upon condition that a custody  
 25 proceeding be promptly commenced in another named state or

1 upon any other conditions which may be just and proper,  
 2 including the condition that a moving party stipulate his  
 3 consent and submission to the jurisdiction of the other  
 4 forum.

5 (6) The court may decline to exercise its jurisdiction  
 6 under this act if a custody determination is incidental to  
 7 an action for divorce or another proceeding while retaining  
 8 jurisdiction over the divorce or other proceeding.

9 (7) If it appears to the court that it is clearly an  
 10 inappropriate forum, it may require the party who commenced  
 11 the proceedings to pay, in addition to the costs of the  
 12 proceedings in this state, necessary travel and other  
 13 expenses, including attorneys' fees, incurred by other  
 14 parties or their witnesses. Payment is to be made to the  
 15 clerk of the court for remittance to the proper party.

16 (8) Upon dismissal or stay of proceedings under this  
 17 section the court shall inform the court found to be the  
 18 more appropriate forum of this fact or, if the court which  
 19 would have jurisdiction in the other state is not certainly  
 20 known, transmit the information to the court administrator  
 21 or other appropriate official for forwarding to the  
 22 appropriate court.

23 (9) Any communication received from another state  
 24 informing this state of a finding of inconvenient forum  
 25 because a court of this state is the more appropriate forum

1 shall be filed in the custody registry of the appropriate  
 2 court. Upon assuming jurisdiction, the court of this state  
 3 shall inform the original court of this fact.

4 Section 9. Jurisdiction declined by reason of conduct.  
 5 (1) If the petitioner for an initial decree has wrongfully  
 6 taken the child from another state or has engaged in similar  
 7 reprehensible conduct, the court may decline to exercise  
 8 jurisdiction if this is just and proper under the  
 9 circumstances.

10 (2) Unless required in the interest of the child, the  
 11 court may not exercise its jurisdiction to modify a custody  
 12 decree of another state if the petitioner, without consent  
 13 of the person entitled to custody, has improperly removed  
 14 the child from the physical custody of the person entitled  
 15 to custody or has improperly retained the child after a  
 16 visit or other temporary relinquishment of physical custody.  
 17 If the petitioner has violated any other provision of a  
 18 custody decree of another state, the court may decline to  
 19 exercise its jurisdiction if this is just and proper under  
 20 the circumstances.

21 (3) In appropriate cases a court dismissing a petition  
 22 under this section may charge the petitioner with necessary  
 23 travel and other expenses, including attorneys' fees,  
 24 incurred by other parties or their witnesses.

25 Section 10. Information under oath to be submitted to

1 the court. (1) Each party in a custody proceeding in his  
 2 first pleading or in an affidavit attached to that pleading  
 3 shall give information under oath as to the child's present  
 4 address, the places where the child has lived within the  
 5 last 5 years, and the names and present addresses of the  
 6 persons with whom the child has lived during that period.  
 7 In this pleading or affidavit each party shall further  
 8 declare under oath whether:

9 (a) he has participated (as a party, witness, or in  
 10 any other capacity) in any other litigation concerning the  
 11 custody of the same child in this or any other state;

12 (b) he has information of any custody proceeding  
 13 concerning the child pending in a court of this or any other  
 14 state; and

15 (c) he knows of any person not a party to the  
 16 proceedings who has physical custody of the child or claims  
 17 to have custody or visitation rights with respect to the  
 18 child.

19 (2) If the declaration as to any of the above items is  
 20 in the affirmative, the declarant shall give additional  
 21 information under oath as required by the court. The court  
 22 may examine the parties under oath as to details of the  
 23 information furnished and as to other matters pertinent to  
 24 the court's jurisdiction and the disposition of the case.

25 (3) Each party has a continuing duty to inform the

1 court of any custody proceeding concerning the child in this  
 2 or any other state of which he obtained information during  
 3 this proceeding.

4 Section 11. Additional parties. If the court learns  
 5 from information furnished by the parties pursuant to  
 6 [section 10] or from other sources that a person not a party  
 7 to the custody proceeding has physical custody of the child  
 8 or claims to have custody or visitation rights with respect  
 9 to the child, it shall order that person to be joined as a  
 10 party and to be duly notified of the pendency of the  
 11 proceeding and of his joinder as a party. If the person  
 12 joined as a party is outside this state, he shall be served  
 13 with process or otherwise notified in accordance with  
 14 [section 6].

15 Section 12. Appearance of parties and the child.  
 16 (1) The court may order any party to the proceeding who is  
 17 in this state to appear personally before the court. If  
 18 that party has physical custody of the child, the court may  
 19 order that he appear personally with the child.

20 (2) If a party to the proceeding whose presence is  
 21 desired by the court is outside this state with or without  
 22 the child, the court may order that the notice given under  
 23 [section 6] include a statement directing that party to  
 24 appear personally with or without the child and declaring  
 25 that failure to appear may result in a decision adverse to

1 that party.

2 (3) If a party to the proceeding who is outside this  
3 state is directed to appear under subsection (2) or desires  
4 to appear personally before the court with or without the  
5 child, the court may require another party to pay to the  
6 clerk of the court travel and other necessary expenses of  
7 the party so appearing and of the child, if this is just and  
8 proper under the circumstances.

9 Section 13. Binding force and res judicata effect of  
10 custody decree. A custody decree rendered by a court of this  
11 state which had jurisdiction under [section 4] binds all  
12 parties who have been served in this state or notified in  
13 accordance with [section 6] or who have submitted to the  
14 jurisdiction of the court and who have been given an  
15 opportunity to be heard. As to these parties the custody  
16 decree is conclusive as to all issues of law and fact  
17 decided and as to the custody determination made unless and  
18 until that determination is modified pursuant to law,  
19 including the provisions of this act.

20 Section 14. Recognition of out-of-state custody  
21 decrees. The courts of this state shall recognize and  
22 enforce an initial or modification decree of a court of  
23 another state which had assumed jurisdiction under statutory  
24 provisions substantially in accordance with this act or  
25 which was made under factual circumstances meeting the

1 jurisdictional standards of the act, so long as this decree  
2 has not been modified in accordance with jurisdictional  
3 standards substantially similar to those of this act.

4 Section 15. Modification of custody decree of another  
5 state. (1) If a court of another state has made a custody  
6 decree, a court of this state may not modify that decree  
7 unless it appears to the court of this state that the court  
8 which rendered the decree does not now have jurisdiction  
9 under jurisdictional prerequisites substantially in  
10 accordance with this act or has declined to assume  
11 jurisdiction to modify the decree and the court of this  
12 state has jurisdiction.

13 (2) If a court of this state is authorized under  
14 subsection (1) and [section 9] to modify a custody decree of  
15 another state, it shall give due consideration to the  
16 transcript of the record and other documents of all previous  
17 proceedings submitted to it in accordance with [section 23].

18 Section 16. Filing and enforcement of custody decree  
19 of another state. (1) A certified copy of a custody decree  
20 of another state may be filed in the office of the clerk of  
21 any district court of this state. The clerk shall treat the  
22 decree in the same manner as a custody decree of the  
23 district court of this state. A custody decree so filed has  
24 the same effect and shall be enforced in like manner as a  
25 custody decree rendered by a court of this state.

1 (2) A person violating a custody decree of another  
2 state which makes it necessary to enforce the decree in this  
3 state may be required to pay necessary travel and other  
4 expenses, including attorneys' fees, incurred by the party  
5 entitled to the custody or his witnesses.

6 Section 17. Registry of out-of-state custody decrees  
7 and proceedings. The clerk of each district court shall  
8 maintain a registry in which he shall enter the following:

9 (1) certified copies of custody decrees of other  
10 states received for filing;

11 (2) communications as to the pendency of custody  
12 proceedings in other states;

13 (3) communications concerning a finding of  
14 inconvenient forum by a court of another state; and

15 (4) other communications or documents concerning  
16 custody proceedings in another state which may affect the  
17 jurisdiction of a court of this state or the disposition to  
18 be made by it in a custody proceeding.

19 Section 18. Certified copies of custody decree. The  
20 clerk of the district court of this state, at the request of  
21 the court of another state or at the request of any person  
22 who is affected by or has a legitimate interest in a custody  
23 decree, shall certify and forward a copy of the decree to  
24 that court or person.

25 Section 19. Taking testimony in another state. In

1 addition to other procedural devices available to a party,  
2 any party to the proceeding or a guardian ad litem or other  
3 representative of the child may adduce testimony of  
4 witnesses, including parties and the child, by deposition or  
5 otherwise, in another state. The court on its own motion  
6 may direct that the testimony of a person be taken in  
7 another state and may prescribe the manner in which and the  
8 terms upon which the testimony shall be taken.

9 Section 20. Hearings and studies in another state --  
10 orders to appear. (1) A court of this state may request the  
11 appropriate court of another state to hold a hearing to  
12 adduce evidence, to order a party to produce or give  
13 evidence under other procedures of that state, or to have  
14 social studies made with respect to the custody of a child  
15 involved in proceedings pending in the court of this state;  
16 and to forward to the court of this state certified copies  
17 of the transcript of the record of the hearing, the evidence  
18 otherwise adduced, or any social studies prepared in  
19 compliance with the request. The cost of the services may  
20 be assessed against the parties or, if necessary, ordered  
21 paid by the state.

22 (2) A court of this state may request the appropriate  
23 court of another state to order a party to custody  
24 proceedings pending in the court of this state to appear in  
25 the proceedings and, if that party has physical custody of



1 the child, to appear with the child. The request may state  
 2 that travel and other necessary expenses of the party and of  
 3 the child whose appearance is desired will be assessed  
 4 against another party or will otherwise be paid.

5 Section 21. Assistance to courts of other states.

6 (1) Upon request of the court of another state the courts  
 7 of this state which are competent to hear custody matters  
 8 may order a person in this state to appear at a hearing to  
 9 adduce evidence or to produce or give evidence under other  
 10 procedures available in this state or may order social  
 11 studies to be made for use in a custody proceeding in  
 12 another state. A certified copy of the transcript of the  
 13 record of the hearing or the evidence otherwise adduced and  
 14 any social studies prepared shall be forwarded by the clerk  
 15 of the court to the requesting court.

16 (2) A person within this state may voluntarily give  
 17 his testimony or statement in this state for use in a  
 18 custody proceeding outside this state.

19 (3) Upon request of the court of another state a  
 20 competent court of this state may order a person in this  
 21 state to appear alone or with the child in a custody  
 22 proceeding in another state. The court may condition  
 23 compliance with the request upon assurance by the other  
 24 state that state travel and other necessary expenses will be  
 25 advanced or reimbursed.

1 Section 22. Preservation of documents for use in other  
 2 states. In any custody proceeding in this state the court  
 3 shall preserve the pleadings, orders and decrees, any record  
 4 that has been made of its hearings, social studies, and  
 5 other pertinent documents until the child reaches 18 years  
 6 of age. Upon appropriate request of the court of another  
 7 state, the court shall forward to the other court certified  
 8 copies of any or all of such documents.

9 Section 23. Request for court records of another  
 10 state. If a custody decree has been rendered in another  
 11 state concerning a child involved in a custody proceeding  
 12 pending in a court of this state, the court of this state  
 13 upon taking jurisdiction of the case shall request of the  
 14 court of the other state a certified copy of the transcript  
 15 of any court record and other documents mentioned in  
 16 [section 22].

17 Section 24. International application. The general  
 18 policies of this act extend to the international area. The  
 19 provisions of this act relating to the recognition and  
 20 enforcement of custody decrees of other states apply to  
 21 custody decrees and decrees involving legal institutions  
 22 similar in nature to custody institutions rendered by  
 23 appropriate authorities of other nations if reasonable  
 24 notice and opportunity to be heard have been given to all  
 25 affected persons.

1 Section 25. Priority. A custody proceeding which  
2 raises a question of existence or exercise of jurisdiction  
3 under this act shall be given calendar priority and handled  
4 expeditiously.

5 Section 26. Section 48-317, R.C.M. 1947, is amended to  
6 read as follows:

7 "48-317. Procedure — commencement — pleadings —  
8 abolition of existing defenses. (1) Except for proceedings  
9 coming under the Uniform Child Custody Jurisdiction Act, all  
10 all proceedings under this act are commenced and proceed in  
11 the manner provided by the Montana rules of civil procedure.

12 (2) The verified petition in a proceeding for  
13 dissolution of marriage or legal separation shall allege  
14 that the marriage is irretrievably broken and shall set  
15 forth:

16 (a) the age, occupation, and residence of each party  
17 and his length of residence in this state;

18 (b) the date of the marriage and the place at which it  
19 was registered;

20 (c) that the jurisdictional requirements of section  
21 48-316 exist and that the marriage is irretrievably broken  
22 in that either

23 (i) the parties have lived separate and apart for a  
24 period of more than one hundred eighty (180) days next  
25 preceding the commencement of this proceeding, or

1 (ii) that there is serious marital discord which  
2 adversely affects the attitude of one or both of the parties  
3 towards the marriage, and that there is no reasonable  
4 prospect of reconciliation;

5 (d) the names, ages, and addresses of all living  
6 children of the marriage, and whether the wife is pregnant;

7 (e) any arrangements as to support, custody, and  
8 visitation of the children and maintenance of a spouse; and

9 (f) the relief sought.

10 (3) Either or both parties to the marriage may  
11 initiate the proceeding.

12 (4) If a proceeding is commenced by one of the  
13 parties, the other party must be served in the manner  
14 provided by the Montana rules of civil procedure and may  
15 within twenty (20) days after the date of service file a  
16 verified response. No decree may be entered until twenty  
17 (20) days after the date of service.

18 (5) Previously existing defenses to divorce and legal  
19 separation, including but not limited to condonation,  
20 connivance, collusion, recrimination, insanity, and lapse of  
21 time, are abolished.

22 (6) The court may join additional parties proper for  
23 the exercise of its authority to implement this act."

24 Section 27. Section 48-331, R.C.M. 1947, is amended to  
25 read as follows:

1 \*48-331. Jurisdiction -- commencement of proceedings.

2 (1) A court of this state competent to decide child custody  
3 matters has jurisdiction to make a child custody  
4 determination by initial or modification decree if:

5 (a) this state

6 (i) is the home state of the child at the time of  
7 commencement of the proceedings, or

8 (ii) had been the child's home state within six (6)  
9 months before commencement of the proceeding and the child  
10 is absent from this state because of his removal or  
11 retention by a person claiming his custody or for other  
12 reason, and a parent or person acting as parent continues to  
13 live in this state; or

14 (b) it is in the best interest of the child that a  
15 court of this state assume jurisdiction because

16 (i) the child and his parents, or the child and at  
17 least one contestant, have a significant connection with  
18 this state, and

19 (ii) there is available in this state substantial  
20 evidence concerning the child's present or future care,  
21 protection, training, and personal relationships; or

22 (c) the child is physically present in this state and

23 (i) has been abandoned or

24 (ii) it is necessary in an emergency to protect him  
25 because he has been subjected to or threatened with

1 mistreatment or abuse or is neglected or dependent; or

2 (d) (1) no other state has jurisdiction under  
3 prerequisites substantially in accordance with paragraphs  
4 (a), (b), or (c), or another state has declined to exercise  
5 jurisdiction on the ground that this state is the more  
6 appropriate forum to determine custody of the child, and

7 (ii) it is in his best interest that the court assume  
8 jurisdiction.

9 (2) Except under paragraphs (c) and (d) of subsection  
10 (1), physical presence in this state of the child, or of the  
11 child and one of the contestants, is not alone sufficient to  
12 confer jurisdiction on a court of this state to make a child  
13 custody determination.

14 (3) Physical presence of the child, while desirable,  
15 is not a prerequisite for jurisdiction to determine his  
16 custody.

17 (4) A child custody proceeding is commenced in the  
18 district court:

19 (a) by a parent, by filing a petition

20 (i) for dissolution or legal separation; or

21 (ii) for custody of the child in the county in which he  
22 is permanently resident or found; or

23 (b) by a person other than a parent, by filing a  
24 petition for custody of the child in the county in which he  
25 is permanently resident or found, but only if he is not in

1 the physical custody of one of his parents.

2 (5) Notice of a child custody proceeding shall be  
3 given to the child's parent, guardian, ~~and~~ custodian, those  
4 persons having physical custody of the child, and all other  
5 contestants, who may appear, be heard, and file a responsive  
6 pleading. The court, upon a showing of good cause, may  
7 permit intervention of other interested parties."

8 Section 28. Severability. If a part of this act is  
9 invalid, all valid parts that are severable from the invalid  
10 part remain in effect. If a part of this act is invalid in  
11 one or more of its applications, the part remains in effect  
12 in all valid applications that are severable from the  
13 invalid applications.

-End-

Approved by Committee  
on Judiciary

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22 state which can best decide the case in the interest of the  
23 child;

24 (c) assure that litigation concerning the custody of a  
25 child takes place ordinarily in the state with which the

There are no changes in HB 758 & will not be re-run.

Please refer to white copy for complete text.

READING

1 child and his family have the closest connection and where  
2 significant evidence concerning his care, protection,  
3 training, and personal relationships is most readily  
4 available and that courts of this state decline the exercise  
5 of jurisdiction when the child and his family have a closer  
6 connection with another state;

7 (d) discourage continuing controversies over child  
8 custody in the interest of greater stability of home  
9 environment and of secure family relationships for the  
10 child;

11 (e) deter abductions and other unilateral removals of  
12 children undertaken to obtain custody awards;

13 (f) avoid relitigation of custody decisions of other  
14 states in this state insofar as feasible;

15 (g) facilitate the enforcement of custody decrees of  
16 other states;

17 (h) promote and expand the exchange of information and  
18 other forms of mutual assistance between the courts of this  
19 state and those of other states concerned with the same  
20 child; and

21 (i) make uniform the law of those states which enact  
22 it.

23 (2) This act shall be construed to promote the general  
24 purposes stated in this section.

25 Section 3. Definitions. As used in this act, the

HB 758

1 following definitions apply:

2 (1) "Contestant" means a person, including a parent,  
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4 respect to a child.

5 (2) "Custody determination" means a court decision and  
6 court orders and instructions providing for the custody of a  
7 child, including visitation rights. It does not include a  
8 decision relating to child support or any other monetary  
9 obligation of any person.

10 (3) "Custody proceeding" includes proceedings in which  
11 a custody determination is one of several issues, such as an  
12 action for divorce or separation, and includes issues of  
13 custody in adoption proceedings. A "custody proceeding" is  
14 not a proceeding pursuant to Title 10, chapter 12, or Title  
15 10, chapter 13.

16 (4) "Decree" or "custody decree" means a custody  
17 determination contained in a judicial decree or order made  
18 in a custody proceeding and includes an initial decree and a  
19 modification decree.

20 (5) "Home state" means the state in which the child,  
21 immediately preceding the time involved, lived with his  
22 parents, a parent, or a person acting as parent, for at  
23 least 6 consecutive months and in the case of a child less  
24 than 6 months old the state in which the child lived from  
25 birth with any of the persons mentioned. Periods of

1 temporary absence of any of the named persons are counted as  
2 part of the 6-month or other period.

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4 concerning a particular child.

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6 modifies or replaces a prior decree, whether made by the  
7 court which rendered the prior decree or by another court.

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9 control of a child.

10 (9) "Person acting as parent" means a person, other  
11 than a parent, who has physical custody of a child and who  
12 has either been awarded custody by a court or claims a right  
13 to custody.

14 (10) "State" means any state, territory, or possession  
15 of the United States, the Commonwealth of Puerto Rico, and  
16 the District of Columbia.

17 Section 4. Jurisdiction. The jurisdictional provisions  
18 of 48-331 apply to this act.

19 Section 5. Notice and opportunity to be heard. Before  
20 making a decree under this act, reasonable notice and  
21 opportunity to be heard shall be given to the contestants,  
22 any parent whose parental rights have not been previously  
23 terminated, and any person who has physical custody of the  
24 child. If any of these persons are outside this state,  
25 notice and opportunity to be heard shall be given pursuant

1 *House* BILL NO. *758*  
 2 INTRODUCED BY *South Ramsey*  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AVOID JURISDICTIONAL  
 5 CONFLICT BETWEEN STATES IN CHILD CUSTODY PROCEEDINGS;  
 6 PROVIDING INTERSTATE JUDICIAL ASSISTANCE IN CUSTODY CASES TO  
 7 DISCOURAGE ILLEGAL SCHEMES TO GAIN POSSESSION OF A CHILD IN  
 8 CONTESTED CUSTODY PROCEEDINGS; AMENDING SECTIONS 48-317 AND  
 9 48-331, R.C.M. 1947."

10  
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Short title. This act may be cited as the  
 13 "Uniform Child Custody Jurisdiction Act".

14 Section 2. Purposes of act — construction of  
 15 provisions. (1) The general purposes of this act are to:

16 (a) avoid jurisdictional competition and conflict with  
 17 courts of other states in matters of child custody which  
 18 have in the past resulted in the shifting of children from  
 19 state to state with harmful effects on their well-being;

20 (b) promote cooperation with the courts of other  
 21 states to the end that a custody decree is rendered in that  
 22 state which can best decide the case in the interest of the  
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24 (c) assure that litigation concerning the custody of a  
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 2 significant evidence concerning his care, protection,  
 3 training, and personal relationships is most readily  
 4 available and that courts of this state decline the exercise  
 5 of jurisdiction when the child and his family have a closer  
 6 connection with another state;

7 (d) discourage continuing controversies over child  
 8 custody in the interest of greater stability of home  
 9 environment and of secure family relationships for the  
 10 child;

11 (e) deter abductions and other unilateral removals of  
 12 children undertaken to obtain custody awards;

13 (f) avoid relitigation of custody decisions of other  
 14 states in this state insofar as feasible;

15 (g) facilitate the enforcement of custody decrees of  
 16 other states;

17 (h) promote and expand the exchange of information and  
 18 other forms of mutual assistance between the courts of this  
 19 state and those of other states concerned with the same  
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*HB 758*

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11 a custody determination is one of several issues, such as an  
12 action for divorce or separation, and includes issues of  
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March 26, 1977

SENATE COMMITTEE OF THE WHOLE

That House Bill No. 758, third reading, be amended as follows:

1. Amend title, line 8.

Following: "SECTIONS"

Strike: "48-317"

Insert: "48-315"

2. Amend page 19, section 25, line 5 through line 23 on page 20.

Following: "Section 26."

Strike: lines 5 through line 23 on page 20

Insert: "Section 48-315, R.C.M. 1947, is amended to read as follows:

48-315. Application of the Montana rules of civil procedure to proceedings under this act.

(1) Except for proceedings coming under the uniform child custody jurisdiction act, the Montana rules of civil procedure apply to all proceedings under this act, except as otherwise provided in this act.

(2) A proceedings for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled "In re the Marriage of \_\_\_\_\_ and \_\_\_\_\_." A custody or support proceedings shall be entitled "in re the (Custody) (Support) of \_\_\_\_\_."

(3) The initial pleading in all proceedings under this act shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this act, shall be denominated as provided in the Montana rules of civil procedure.

(4) In this act, "decree" includes "judgment."

(5) A decree of dissolution or of legal separation, if made, shall not be awarded to one of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed."

## HOUSE BILL NO. 758

INTRODUCED BY SOUTH, RAMIREZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO AVOID JURISDICTIONAL CONFLICT BETWEEN STATES IN CHILD CUSTODY PROCEEDINGS; PROVIDING INTERSTATE JUDICIAL ASSISTANCE IN CUSTODY CASES TO DISCOURAGE ILLEGAL SCHEMES TO GAIN POSSESSION OF A CHILD IN CONTESTED CUSTODY PROCEEDINGS; AMENDING SECTIONS 48-317 AND 48-331, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act may be cited as the "Uniform Child Custody Jurisdiction Act".

Section 2. Purposes of act -- construction of provisions. (1) The general purposes of this act are to:

(a) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(b) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(c) assure that litigation concerning the custody of a child takes place ordinarily in the state with which the

child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(d) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(e) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(f) avoid relitigation of custody decisions of other states in this state insofar as feasible;

(g) facilitate the enforcement of custody decrees of other states;

(h) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(i) make uniform the law of those states which enact it.

(2) This act shall be construed to promote the general purposes stated in this section.

Section 3. Definitions. As used in this act, the

1 following definitions apply:

2 (1) "Contestant" means a person, including a parent,  
3 who claims a right to custody or visitation rights with  
4 respect to a child.

5 (2) "Custody determination" means a court decision and  
6 court orders and instructions providing for the custody of a  
7 child, including visitation rights. It does not include a  
8 decision relating to child support or any other monetary  
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10 (3) "Custody proceeding" includes proceedings in which  
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14 (10) "State" means any state, territory, or possession  
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16 the District of Columbia.

17 Section 4. Jurisdiction. The jurisdictional provisions  
18 of 48-331 apply to this act.

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20 making a decree under this act, reasonable notice and  
21 opportunity to be heard shall be given to the contestants,  
22 any parent whose parental rights have not been previously  
23 terminated, and any person who has physical custody of the  
24 child. If any of these persons are outside this state,  
25 notice and opportunity to be heard shall be given pursuant

1 to [section 6].

2 Section 6. Notice to persons outside this state --  
 3 submission to jurisdiction. (1) Notice required for the  
 4 exercise of jurisdiction over a person outside this state  
 5 shall be given in a manner reasonably calculated to give  
 6 actual notice and may be:

7 (a) by personal delivery outside this state in the  
 8 manner prescribed for service of process within this state;

9 (b) in the manner prescribed by the law of the place  
 10 in which the service is made for service of process in that  
 11 place in an action in any of its courts of general  
 12 jurisdiction;

13 (c) by any form of mail addressed to the person to be  
 14 served and requesting a receipt; or

15 (d) as directed by the court including publication, if  
 16 other means of notification are ineffective.

17 (2) Notice under this section shall be served, mailed,  
 18 or delivered or last published at least 10 days before any  
 19 hearing in this state.

20 (3) Proof of service outside this state may be made by  
 21 affidavit of the individual who made the service or in the  
 22 manner prescribed by the law of this state, the order  
 23 pursuant to which the service is made, or the law of the  
 24 place in which the service is made. If service is made by  
 25 mail, proof may be a receipt signed by the addressee or

1 other evidence of delivery to the addressee.

2 (4) Notice is not required if a person submits to the  
 3 jurisdiction of the court.

4 Section 7. Simultaneous proceedings in other states.

5 (1) A court of this state may not exercise its jurisdiction  
 6 under this act if at the time of filing the petition a  
 7 proceeding concerning the custody of the child was pending  
 8 in a court of another state exercising jurisdiction  
 9 substantially in conformity with this act unless the  
 10 proceeding is stayed by the court of the other state because  
 11 this state is a more appropriate forum or for other reasons.

12 (2) Before hearing the petition in a custody  
 13 proceeding, the court shall examine the pleadings and other  
 14 information supplied by the parties under [section 10] and  
 15 shall consult the child custody registry established under  
 16 [section 17] concerning the pendency of proceedings with  
 17 respect to the child in other states. If the court has  
 18 reason to believe that proceedings may be pending in another  
 19 state, it shall direct an inquiry to the state court  
 20 administrator or other appropriate official of the other  
 21 state.

22 (3) If the court is informed during the course of the  
 23 proceeding that a proceeding concerning the custody of the  
 24 child was pending in another state before the court assumed  
 25 jurisdiction, it shall stay the proceeding and communicate

1 with the court in which the other proceeding is pending to  
 2 the end that the issue may be litigated in the more  
 3 appropriate forum and that information be exchanged in  
 4 accordance with [sections 20 through 23]. If a court of  
 5 this state has made a custody decree before being informed  
 6 of a pending proceeding in a court of another state, it  
 7 shall immediately inform that court of the fact. If the  
 8 court is informed that a proceeding was commenced in another  
 9 state after it assumed jurisdiction, it shall likewise  
 10 inform the other court to the end that the issues may be  
 11 litigated in the more appropriate forum.

12 Section 8. Inconvenient forum. (1) A court which has  
 13 jurisdiction under this act to make an initial or  
 14 modification decree may decline to exercise its jurisdiction  
 15 any time before making a decree if it finds that it is an  
 16 inconvenient forum to make a custody determination under the  
 17 circumstances of the case and that a court of another state  
 18 is a more appropriate forum.

19 (2) A finding of inconvenient forum may be made upon  
 20 the court's own motion or upon motion of a party or a  
 21 guardian ad litem or other representative of the child.

22 (3) In determining if it is an inconvenient forum, the  
 23 court shall consider if it is in the interest of the child  
 24 that another state assume jurisdiction. For this purpose it  
 25 may take into account the following factors, among others:

1 (a) if another state is or recently was the child's  
 2 home state;

3 (b) if another state has a closer connection with the  
 4 child and his family or with the child and one or more of  
 5 the contestants;

6 (c) if substantial evidence concerning the child's  
 7 present or future care, protection, training, and personal  
 8 relationships is more readily available in another state;

9 (d) if the parties have agreed on another forum which  
 10 is no less appropriate; and

11 (e) if the exercise of jurisdiction by a court of this  
 12 state would contravene any of the purposes stated in  
 13 [section 2].

14 (4) Before determining whether to decline or retain  
 15 jurisdiction, the court may communicate with a court of  
 16 another state and exchange information pertinent to the  
 17 assumption of jurisdiction by either court with a view to  
 18 assuring that jurisdiction will be exercised by the more  
 19 appropriate court and that a forum will be available to the  
 20 parties.

21 (5) If the court finds that it is an inconvenient  
 22 forum and that a court of another state is a more  
 23 appropriate forum, it may dismiss the proceedings or it may  
 24 stay the proceedings upon condition that a custody  
 25 proceeding be promptly commenced in another named state or

1 upon any other conditions which may be just and proper,  
 2 including the condition that a moving party stipulate his  
 3 consent and submission to the jurisdiction of the other  
 4 forum.

5 (6) The court may decline to exercise its jurisdiction  
 6 under this act if a custody determination is incidental to  
 7 an action for divorce or another proceeding while retaining  
 8 jurisdiction over the divorce or other proceeding.

9 (7) If it appears to the court that it is clearly an  
 10 inappropriate forum, it may require the party who commenced  
 11 the proceedings to pay, in addition to the costs of the  
 12 proceedings in this state, necessary travel and other  
 13 expenses, including attorneys' fees, incurred by other  
 14 parties or their witnesses. Payment is to be made to the  
 15 clerk of the court for remittance to the proper party.

16 (8) Upon dismissal or stay of proceedings under this  
 17 section the court shall inform the court found to be the  
 18 more appropriate forum of this fact or, if the court which  
 19 would have jurisdiction in the other state is not certainly  
 20 known, transmit the information to the court administrator  
 21 or other appropriate official for forwarding to the  
 22 appropriate court.

23 (9) Any communication received from another state  
 24 informing this state of a finding of inconvenient forum  
 25 because a court of this state is the more appropriate forum

1 shall be filed in the custody registry of the appropriate  
 2 court. Upon assuming jurisdiction, the court of this state  
 3 shall inform the original court of this fact.

4 Section 9. Jurisdiction declined by reason of conduct.  
 5 (1) If the petitioner for an initial decree has wrongfully  
 6 taken the child from another state or has engaged in similar  
 7 reprehensible conduct, the court may decline to exercise  
 8 jurisdiction if this is just and proper under the  
 9 circumstances.

10 (2) Unless required in the interest of the child, the  
 11 court may not exercise its jurisdiction to modify a custody  
 12 decree of another state if the petitioner, without consent  
 13 of the person entitled to custody, has improperly removed  
 14 the child from the physical custody of the person entitled  
 15 to custody or has improperly retained the child after a  
 16 visit or other temporary relinquishment of physical custody.  
 17 If the petitioner has violated any other provision of a  
 18 custody decree of another state, the court may decline to  
 19 exercise its jurisdiction if this is just and proper under  
 20 the circumstances.

21 (3) In appropriate cases a court dismissing a petition  
 22 under this section may charge the petitioner with necessary  
 23 travel and other expenses, including attorneys' fees,  
 24 incurred by other parties or their witnesses.

25 Section 10. Information under oath to be submitted to

1 the court. (1) Each party in a custody proceeding in his  
 2 first pleading or in an affidavit attached to that pleading  
 3 shall give information under oath as to the child's present  
 4 address, the places where the child has lived within the  
 5 last 5 years, and the names and present addresses of the  
 6 persons with whom the child has lived during that period.  
 7 In this pleading or affidavit each party shall further  
 8 declare under oath whether:

9 (a) he has participated (as a party, witness, or in  
 10 any other capacity) in any other litigation concerning the  
 11 custody of the same child in this or any other state;

12 (b) he has information of any custody proceeding  
 13 concerning the child pending in a court of this or any other  
 14 state; and

15 (c) he knows of any person not a party to the  
 16 proceedings who has physical custody of the child or claims  
 17 to have custody or visitation rights with respect to the  
 18 child.

19 (2) If the declaration as to any of the above items is  
 20 in the affirmative, the declarant shall give additional  
 21 information under oath as required by the court. The court  
 22 may examine the parties under oath as to details of the  
 23 information furnished and as to other matters pertinent to  
 24 the court's jurisdiction and the disposition of the case.

25 (3) Each party has a continuing duty to inform the

1 court of any custody proceeding concerning the child in this  
 2 or any other state of which he obtained information during  
 3 this proceeding.

4 Section 11. Additional parties. If the court learns  
 5 from information furnished by the parties pursuant to  
 6 [section 10] or from other sources that a person not a party  
 7 to the custody proceeding has physical custody of the child  
 8 or claims to have custody or visitation rights with respect  
 9 to the child, it shall order that person to be joined as a  
 10 party and to be duly notified of the pendency of the  
 11 proceeding and of his joinder as a party. If the person  
 12 joined as a party is outside this state, he shall be served  
 13 with process or otherwise notified in accordance with  
 14 [section 6].

15 Section 12. Appearance of parties and the child.  
 16 (1) The court may order any party to the proceeding who is  
 17 in this state to appear personally before the court. If  
 18 that party has physical custody of the child, the court may  
 19 order that he appear personally with the child.

20 (2) If a party to the proceeding whose presence is  
 21 desired by the court is outside this state with or without  
 22 the child, the court may order that the notice given under  
 23 [section 6] include a statement directing that party to  
 24 appear personally with or without the child and declaring  
 25 that failure to appear may result in a decision adverse to

1 that party.

2 (3) If a party to the proceeding who is outside this  
3 state is directed to appear under subsection (2) or desires  
4 to appear personally before the court with or without the  
5 child, the court may require another party to pay to the  
6 clerk of the court travel and other necessary expenses of  
7 the party so appearing and of the child, if this is just and  
8 proper under the circumstances.

9 Section 13. Binding force and res judicata effect of  
10 custody decree. A custody decree rendered by a court of this  
11 state which had jurisdiction under [section 4] binds all  
12 parties who have been served in this state or notified in  
13 accordance with [section 6] or who have submitted to the  
14 jurisdiction of the court and who have been given an  
15 opportunity to be heard. As to these parties the custody  
16 decree is conclusive as to all issues of law and fact  
17 decided and as to the custody determination made unless and  
18 until that determination is modified pursuant to law,  
19 including the provisions of this act.

20 Section 14. Recognition of out-of-state custody  
21 decrees. The courts of this state shall recognize and  
22 enforce an initial or modification decree of a court of  
23 another state which had assumed jurisdiction under statutory  
24 provisions substantially in accordance with this act or  
25 which was made under factual circumstances meeting the

1 jurisdictional standards of the act, so long as this decree  
2 has not been modified in accordance with jurisdictional  
3 standards substantially similar to those of this act.

4 Section 15. Modification of custody decree of another  
5 state. (1) If a court of another state has made a custody  
6 decree, a court of this state may not modify that decree  
7 unless it appears to the court of this state that the court  
8 which rendered the decree does not now have jurisdiction  
9 under jurisdictional prerequisites substantially in  
10 accordance with this act or has declined to assume  
11 jurisdiction to modify the decree and the court of this  
12 state has jurisdiction.

13 (2) If a court of this state is authorized under  
14 subsection (1) and [section 9] to modify a custody decree of  
15 another state, it shall give due consideration to the  
16 transcript of the record and other documents of all previous  
17 proceedings submitted to it in accordance with [section 23].

18 Section 16. Filing and enforcement of custody decree  
19 of another state. (1) A certified copy of a custody decree  
20 of another state may be filed in the office of the clerk of  
21 any district court of this state. The clerk shall treat the  
22 decree in the same manner as a custody decree of the  
23 district court of this state. A custody decree so filed has  
24 the same effect and shall be enforced in like manner as a  
25 custody decree rendered by a court of this state.



1 (2) A person violating a custody decree of another  
 2 state which makes it necessary to enforce the decree in this  
 3 state may be required to pay necessary travel and other  
 4 expenses, including attorneys' fees, incurred by the party  
 5 entitled to the custody or his witnesses.

6 Section 17. Registry of out-of-state custody decrees  
 7 and proceedings. The clerk of each district court shall  
 8 maintain a registry in which he shall enter the following:

9 (1) certified copies of custody decrees of other  
 10 states received for filing;

11 (2) communications as to the pendency of custody  
 12 proceedings in other states;

13 (3) communications concerning a finding of  
 14 inconvenient forum by a court of another state; and

15 (4) other communications or documents concerning  
 16 custody proceedings in another state which may affect the  
 17 jurisdiction of a court of this state or the disposition to  
 18 be made by it in a custody proceeding.

19 Section 18. Certified copies of custody decree. The  
 20 clerk of the district court of this state, at the request of  
 21 the court of another state or at the request of any person  
 22 who is affected by or has a legitimate interest in a custody  
 23 decree, shall certify and forward a copy of the decree to  
 24 that court or person.

25 Section 19. Taking testimony in another state. In

1 addition to other procedural devices available to a party,  
 2 any party to the proceeding or a guardian ad litem or other  
 3 representative of the child may adduce testimony of  
 4 witnesses, including parties and the child, by deposition or  
 5 otherwise, in another state. The court on its own motion  
 6 may direct that the testimony of a person be taken in  
 7 another state and may prescribe the manner in which and the  
 8 terms upon which the testimony shall be taken.

9 Section 20. Hearings and studies in another state --  
 10 orders to appear. (1) A court of this state may request the  
 11 appropriate court of another state to hold a hearing to  
 12 adduce evidence, to order a party to produce or give  
 13 evidence under other procedures of that state, or to have  
 14 social studies made with respect to the custody of a child  
 15 involved in proceedings pending in the court of this state;  
 16 and to forward to the court of this state certified copies  
 17 of the transcript of the record of the hearing, the evidence  
 18 otherwise adduced, or any social studies prepared in  
 19 compliance with the request. The cost of the services may  
 20 be assessed against the parties or, if necessary, ordered  
 21 paid by the state.

22 (2) A court of this state may request the appropriate  
 23 court of another state to order a party to custody  
 24 proceedings pending in the court of this state to appear in  
 25 the proceedings and, if that party has physical custody of

1 the child, to appear with the child. The request may state  
 2 that travel and other necessary expenses of the party and of  
 3 the child whose appearance is desired will be assessed  
 4 against another party or will otherwise be paid.

5 Section 21. Assistance to courts of other states.

6 (1) Upon request of the court of another state the courts  
 7 of this state which are competent to hear custody matters  
 8 may order a person in this state to appear at a hearing to  
 9 adduce evidence or to produce or give evidence under other  
 10 procedures available in this state or may order social  
 11 studies to be made for use in a custody proceeding in  
 12 another state. A certified copy of the transcript of the  
 13 record of the hearing or the evidence otherwise adduced and  
 14 any social studies prepared shall be forwarded by the clerk  
 15 of the court to the requesting court.

16 (2) A person within this state may voluntarily give  
 17 his testimony or statement in this state for use in a  
 18 custody proceeding outside this state.

19 (3) Upon request of the court of another state a  
 20 competent court of this state may order a person in this  
 21 state to appear alone or with the child in a custody  
 22 proceeding in another state. The court may condition  
 23 compliance with the request upon assurance by the other  
 24 state that state travel and other necessary expenses will be  
 25 advanced or reimbursed.

1 Section 22. Preservation of documents for use in other  
 2 states. In any custody proceeding in this state the court  
 3 shall preserve the pleadings, orders and decrees, any record  
 4 that has been made of its hearings, social studies, and  
 5 other pertinent documents until the child reaches 18 years  
 6 of age. Upon appropriate request of the court of another  
 7 state, the court shall forward to the other court certified  
 8 copies of any or all of such documents.

9 Section 23. Request for court records of another  
 10 state. If a custody decree has been rendered in another  
 11 state concerning a child involved in a custody proceeding  
 12 pending in a court of this state, the court of this state  
 13 upon taking jurisdiction of the case shall request of the  
 14 court of the other state a certified copy of the transcript  
 15 of any court record and other documents mentioned in  
 16 [section 22].

17 Section 24. International application. The general  
 18 policies of this act extend to the international area. The  
 19 provisions of this act relating to the recognition and  
 20 enforcement of custody decrees of other states apply to  
 21 custody decrees and decrees involving legal institutions  
 22 similar in nature to custody institutions rendered by  
 23 appropriate authorities of other nations if reasonable  
 24 notice and opportunity to be heard have been given to all  
 25 affected persons.

1 Section 25. Priority. A custody proceeding which  
 2 raises a question of existence or exercise of jurisdiction  
 3 under this act shall be given calendar priority and handled  
 4 expeditiously.

5 Section 26. Section 48-317, R.C.M. 1947, is amended to  
 6 read as follows:

7 \*48-317. Procedure -- commencement -- pleadings --  
 8 abolition of existing defenses. (1) Except for proceedings  
 9 coming under the Uniform Child Custody Jurisdiction Act, \*\*  
 10 all proceedings under this act are commenced and proceed in  
 11 the manner provided by the Montana rules of civil procedure.

12 (2) The verified petition in a proceeding for  
 13 dissolution of marriage or legal separation shall allege  
 14 that the marriage is irretrievably broken and shall set  
 15 forth:

16 (a) the age, occupation, and residence of each party  
 17 and his length of residence in this state;

18 (b) the date of the marriage and the place at which it  
 19 was registered;

20 (c) that the jurisdictional requirements of section  
 21 48-316 exist and that the marriage is irretrievably broken  
 22 in that either

23 (i) the parties have lived separate and apart for a  
 24 period of more than one hundred eighty (180) days next  
 25 preceding the commencement of this proceeding, or

1 (ii) that there is serious marital discord which  
 2 adversely affects the attitude of one or both of the parties  
 3 towards the marriage, and that there is no reasonable  
 4 prospect of reconciliation;

5 (d) the names, ages, and addresses of all living  
 6 children of the marriage, and whether the wife is pregnant;

7 (e) any arrangements as to support, custody, and  
 8 visitation of the children and maintenance of a spouse; and

9 (f) the relief sought.

10 (3) Either or both parties to the marriage may  
 11 initiate the proceeding.

12 (4) If a proceeding is commenced by one of the  
 13 parties, the other party must be served in the manner  
 14 provided by the Montana rules of civil procedure and may  
 15 within twenty (20) days after the date of service file a  
 16 verified response. No decree may be entered until twenty  
 17 (20) days after the date of service.

18 (5) Previously existing defenses to divorce and legal  
 19 separation, including but not limited to condonation,  
 20 connivance, collusion, recrimination, insanity, and lapse of  
 21 time, are abolished.

22 (6) The court may join additional parties proper for  
 23 the exercise of its authority to implement this act."

24 Section 27. Section 48-331, R.C.M. 1947, is amended to  
 25 read as follows:

1 "48-331. Jurisdiction -- commencement of proceedings.

2 (1) A court of this state competent to decide child custody  
3 matters has jurisdiction to make a child custody  
4 determination by initial or modification decree if:

5 (a) this state

6 (i) is the home state of the child at the time of  
7 commencement of the proceedings, or

8 (ii) had been the child's home state within six (6)  
9 months before commencement of the proceeding and the child  
10 is absent from this state because of his removal or  
11 retention by a person claiming his custody or for other  
12 reason, and a parent or person acting as parent continues to  
13 live in this state; or

14 (b) it is in the best interest of the child that a  
15 court of this state assume jurisdiction because

16 (i) the child and his parents, or the child and at  
17 least one contestant, have a significant connection with  
18 this state, and

19 (ii) there is available in this state substantial  
20 evidence concerning the child's present or future care,  
21 protection, training, and personal relationships; or

22 (c) the child is physically present in this state and

23 (i) has been abandoned or

24 (ii) it is necessary in an emergency to protect him  
25 because he has been subjected to or threatened with

1 mistreatment or abuse or is neglected or dependent; or

2 (d) (i) no other state has jurisdiction under  
3 prerequisites substantially in accordance with paragraphs  
4 (a), (b), or (c), or another state has declined to exercise  
5 jurisdiction on the ground that this state is the more  
6 appropriate forum to determine custody of the child, and

7 (ii) it is in his best interest that the court assume  
8 jurisdiction.

9 (2) Except under paragraphs (c) and (d) of subsection  
10 (1), physical presence in this state of the child, or of the  
11 child and one of the contestants, is not alone sufficient to  
12 confer jurisdiction on a court of this state to make a child  
13 custody determination.

14 (3) Physical presence of the child, while desirable,  
15 is not a prerequisite for jurisdiction to determine his  
16 custody.

17 (4) A child custody proceeding is commenced in the  
18 district court:

19 (a) by a parent, by filing a petition

20 (i) for dissolution or legal separation; or

21 (ii) for custody of the child in the county in which he  
22 is permanently resident or found; or

23 (b) by a person other than a parent, by filing a  
24 petition for custody of the child in the county in which he  
25 is permanently resident or found, but only if he is not in

1 the physical custody of one of his parents.

2 (5) Notice of a child custody proceeding shall be  
3 given to the child's parent, guardian, and custodian, ~~those~~  
4 ~~persons having physical custody of the child, and all other~~  
5 ~~contestants,~~ who may appear, be heard, and file a responsive  
6 pleading. The court, upon a showing of good cause, may  
7 permit intervention of other interested parties."

8 Section 28. Severability. If a part of this act is  
9 invalid, all valid parts that are severable from the invalid  
10 part remain in effect. If a part of this act is invalid in  
11 one or more of its applications, the part remains in effect  
12 in all valid applications that are severable from the  
13 invalid applications.

-End-

1 HOUSE BILL NO. 758  
 2 INTRODUCED BY SOUTH, RAMIREZ  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AVOID JURISDICTIONAL  
 5 CONFLICT BETWEEN STATES IN CHILD CUSTODY PROCEEDINGS;  
 6 PROVIDING INTERSTATE JUDICIAL ASSISTANCE IN CUSTODY CASES TO  
 7 DISCOURAGE ILLEGAL SCHEMES TO GAIN POSSESSION OF A CHILD IN  
 8 CONTESTED CUSTODY PROCEEDINGS; AMENDING SECTIONS ~~48-317~~  
 9 ~~48-312~~ AND 48-331, R.C.M. 1947."  
 10  
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 12 Section 1. Short title. This act may be cited as the  
 13 "Uniform Child Custody Jurisdiction Act".  
 14 Section 2. Purposes of act -- construction of  
 15 provisions. (1) The general purposes of this act are to:  
 16 (a) avoid jurisdictional competition and conflict with  
 17 courts of other states in matters of child custody which  
 18 have in the past resulted in the shifting of children from  
 19 state to state with harmful effects on their well-being;  
 20 (b) promote cooperation with the courts of other  
 21 states to the end that a custody decree is rendered in that  
 22 state which can best decide the case in the interest of the  
 23 child;  
 24 (c) assure that litigation concerning the custody of a  
 25 child takes place ordinarily in the state with which the

1 child and his family have the closest connection and where  
 2 significant evidence concerning his care, protection,  
 3 training, and personal relationships is most readily  
 4 available and that courts of this state decline the exercise  
 5 of jurisdiction when the child and his family have a closer  
 6 connection with another state;  
 7 (d) discourage continuing controversies over child  
 8 custody in the interest of greater stability of home  
 9 environment and of secure family relationships for the  
 10 child;  
 11 (e) deter abductions and other unilateral removals of  
 12 children undertaken to obtain custody awards;  
 13 (f) avoid relitigation of custody decisions of other  
 14 states in this state insofar as feasible;  
 15 (g) facilitate the enforcement of custody decrees of  
 16 other states;  
 17 (h) promote and expand the exchange of information and  
 18 other forms of mutual assistance between the courts of this  
 19 state and those of other states concerned with the same  
 20 child; and  
 21 (i) make uniform the law of those states which enact  
 22 it.  
 23 (2) This act shall be construed to promote the general  
 24 purposes stated in this section.  
 25 Section 3. Definitions. As used in this act, the

REFERENCE BILL  
*Second Printing*

1 following definitions apply:

2 (1) "Contestant" means a person, including a parent,  
3 who claims a right to custody or visitation rights with  
4 respect to a child.

5 (2) "Custody determination" means a court decision and  
6 court orders and instructions providing for the custody of a  
7 child, including visitation rights. It does not include a  
8 decision relating to child support or any other monetary  
9 obligation of any person.

10 (3) "Custody proceeding" includes proceedings in which  
11 a custody determination is one of several issues, such as an  
12 action for divorce or separation, and includes issues of  
13 custody in adoption proceedings. A "custody proceeding" is  
14 not a proceeding pursuant to Title 10, chapter 12, or Title  
15 10, chapter 13.

16 (4) "Decree" or "custody decree" means a custody  
17 determination contained in a judicial decree or order made  
18 in a custody proceeding and includes an initial decree and a  
19 modification decree.

20 (5) "Home state" means the state in which the child,  
21 immediately preceding the time involved, lived with his  
22 parents, a parent, or a person acting as parent, for at  
23 least 6 consecutive months and in the case of a child less  
24 than 6 months old the state in which the child lived from  
25 birth with any of the persons mentioned. Periods of

1 temporary absence of any of the named persons are counted as  
2 part of the 6-month or other period.

3 (6) "Initial decree" means the first custody decree  
4 concerning a particular child.

5 (7) "Modification decree" means a custody decree which  
6 modifies or replaces a prior decree, whether made by the  
7 court which rendered the prior decree or by another court.

8 (8) "Physical custody" means actual possession and  
9 control of a child.

10 (9) "Person acting as parent" means a person, other  
11 than a parent, who has physical custody of a child and who  
12 has either been awarded custody by a court or claims a right  
13 to custody.

14 (10) "State" means any state, territory, or possession  
15 of the United States, the Commonwealth of Puerto Rico, and  
16 the District of Columbia.

17 Section 4. Jurisdiction. The jurisdictional provisions  
18 of 48-331 apply to this act.

19 Section 5. Notice and opportunity to be heard. Before  
20 making a decree under this act, reasonable notice and  
21 opportunity to be heard shall be given to the contestants,  
22 any parent whose parental rights have not been previously  
23 terminated, and any person who has physical custody of the  
24 child. If any of these persons are outside this state,  
25 notice and opportunity to be heard shall be given pursuant

1 to [section 6].

2 Section 6. Notice to persons outside this state --  
 3 submission to jurisdiction. (1) Notice required for the  
 4 exercise of jurisdiction over a person outside this state  
 5 shall be given in a manner reasonably calculated to give  
 6 actual notice and may be:

7 (a) by personal delivery outside this state in the  
 8 manner prescribed for service of process within this state;

9 (b) in the manner prescribed by the law of the place  
 10 in which the service is made for service of process in that  
 11 place in an action in any of its courts of general  
 12 jurisdiction;

13 (c) by any form of mail addressed to the person to be  
 14 served and requesting a receipt; or

15 (d) as directed by the court including publication, if  
 16 other means of notification are ineffective.

17 (2) Notice under this section shall be served, mailed,  
 18 or delivered or last published at least 10 days before any  
 19 hearing in this state.

20 (3) Proof of service outside this state may be made by  
 21 affidavit of the individual who made the service or in the  
 22 manner prescribed by the law of this state, the order  
 23 pursuant to which the service is made, or the law of the  
 24 place in which the service is made. If service is made by  
 25 mail, proof may be a receipt signed by the addressee or

1 other evidence of delivery to the addressee.

2 (4) Notice is not required if a person submits to the  
 3 jurisdiction of the court.

4 Section 7. Simultaneous proceedings in other states.

5 (1) A court of this state may not exercise its jurisdiction  
 6 under this act if at the time of filing the petition a  
 7 proceeding concerning the custody of the child was pending  
 8 in a court of another state exercising jurisdiction  
 9 substantially in conformity with this act unless the  
 10 proceeding is stayed by the court of the other state because  
 11 this state is a more appropriate forum or for other reasons.

12 (2) Before hearing the petition in a custody  
 13 proceeding, the court shall examine the pleadings and other  
 14 information supplied by the parties under [section 10] and  
 15 shall consult the child custody registry established under  
 16 [section 17] concerning the pendency of proceedings with  
 17 respect to the child in other states. If the court has  
 18 reason to believe that proceedings may be pending in another  
 19 state, it shall direct an inquiry to the state court  
 20 administrator or other appropriate official of the other  
 21 state.

22 (3) If the court is informed during the course of the  
 23 proceeding that a proceeding concerning the custody of the  
 24 child was pending in another state before the court assumed  
 25 jurisdiction, it shall stay the proceeding and communicate



1 with the court in which the other proceeding is pending to  
 2 the end that the issue may be litigated in the more  
 3 appropriate forum and that information be exchanged in  
 4 accordance with [sections 20 through 23]. If a court of  
 5 this state has made a custody decree before being informed  
 6 of a pending proceeding in a court of another state, it  
 7 shall immediately inform that court of the fact. If the  
 8 court is informed that a proceeding was commenced in another  
 9 state after it assumed jurisdiction, it shall likewise  
 10 inform the other court to the end that the issues may be  
 11 litigated in the more appropriate forum.

12 Section 8. Inconvenient forum. (1) A court which has  
 13 jurisdiction under this act to make an initial or  
 14 modification decree may decline to exercise its jurisdiction  
 15 any time before making a decree if it finds that it is an  
 16 inconvenient forum to make a custody determination under the  
 17 circumstances of the case and that a court of another state  
 18 is a more appropriate forum.

19 (2) A finding of inconvenient forum may be made upon  
 20 the court's own motion or upon motion of a party or a  
 21 guardian ad litem or other representative of the child.

22 (3) In determining if it is an inconvenient forum, the  
 23 court shall consider if it is in the interest of the child  
 24 that another state assume jurisdiction. For this purpose it  
 25 may take into account the following factors, among others:

1 (a) if another state is or recently was the child's  
 2 home state;

3 (b) if another state has a closer connection with the  
 4 child and his family or with the child and one or more of  
 5 the contestants;

6 (c) if substantial evidence concerning the child's  
 7 present or future care, protection, training, and personal  
 8 relationships is more readily available in another state;

9 (d) if the parties have agreed on another forum which  
 10 is no less appropriate; and

11 (e) if the exercise of jurisdiction by a court of this  
 12 state would contravene any of the purposes stated in  
 13 [section 2].

14 (4) Before determining whether to decline or retain  
 15 jurisdiction, the court may communicate with a court of  
 16 another state and exchange information pertinent to the  
 17 assumption of jurisdiction by either court with a view to  
 18 assuring that jurisdiction will be exercised by the more  
 19 appropriate court and that a forum will be available to the  
 20 parties.

21 (5) If the court finds that it is an inconvenient  
 22 forum and that a court of another state is a more  
 23 appropriate forum, it may dismiss the proceedings or it may  
 24 stay the proceedings upon condition that a custody  
 25 proceeding be promptly commenced in another named state or

1 upon any other conditions which may be just and proper,  
 2 including the condition that a moving party stipulate his  
 3 consent and submission to the jurisdiction of the other  
 4 forum.

5 (6) The court may decline to exercise its jurisdiction  
 6 under this act if a custody determination is incidental to  
 7 an action for divorce or another proceeding while retaining  
 8 jurisdiction over the divorce or other proceeding.

9 (7) If it appears to the court that it is clearly an  
 10 inappropriate forum, it may require the party who commenced  
 11 the proceedings to pay, in addition to the costs of the  
 12 proceedings in this state, necessary travel and other  
 13 expenses, including attorneys' fees, incurred by other  
 14 parties or their witnesses. Payment is to be made to the  
 15 clerk of the court for remittance to the proper party.

16 (8) Upon dismissal or stay of proceedings under this  
 17 section the court shall inform the court found to be the  
 18 more appropriate forum of this fact or, if the court which  
 19 would have jurisdiction in the other state is not certainly  
 20 known, transmit the information to the court administrator  
 21 or other appropriate official for forwarding to the  
 22 appropriate court.

23 (9) Any communication received from another state  
 24 informing this state of a finding of inconvenient forum  
 25 because a court of this state is the more appropriate forum

1 shall be filed in the custody registry of the appropriate  
 2 court. Upon assuming jurisdiction, the court of this state  
 3 shall inform the original court of this fact.

4 Section 9. Jurisdiction declined by reason of conduct.

5 (1) If the petitioner for an initial decree has wrongfully  
 6 taken the child from another state or has engaged in similar  
 7 reprehensible conduct, the court may decline to exercise  
 8 jurisdiction if this is just and proper under the  
 9 circumstances.

10 (2) Unless required in the interest of the child, the  
 11 court may not exercise its jurisdiction to modify a custody  
 12 decree of another state if the petitioner, without consent  
 13 of the person entitled to custody, has improperly removed  
 14 the child from the physical custody of the person entitled  
 15 to custody or has improperly retained the child after a  
 16 visit or other temporary relinquishment of physical custody.  
 17 If the petitioner has violated any other provision of a  
 18 custody decree of another state, the court may decline to  
 19 exercise its jurisdiction if this is just and proper under  
 20 the circumstances.

21 (3) In appropriate cases a court dismissing a petition  
 22 under this section may charge the petitioner with necessary  
 23 travel and other expenses, including attorneys' fees,  
 24 incurred by other parties or their witnesses.

25 Section 10. Information under oath to be submitted to

1 the court. (1) Each party in a custody proceeding in his  
 2 first pleading or in an affidavit attached to that pleading  
 3 shall give information under oath as to the child's present  
 4 address, the places where the child has lived within the  
 5 last 5 years, and the names and present addresses of the  
 6 persons with whom the child has lived during that period.  
 7 In this pleading or affidavit each party shall further  
 8 declare under oath whether:

9 (a) he has participated (as a party, witness, or in  
 10 any other capacity) in any other litigation concerning the  
 11 custody of the same child in this or any other state;

12 (b) he has information of any custody proceeding  
 13 concerning the child pending in a court of this or any other  
 14 state; and

15 (c) he knows of any person not a party to the  
 16 proceedings who has physical custody of the child or claims  
 17 to have custody or visitation rights with respect to the  
 18 child.

19 (2) If the declaration as to any of the above items is  
 20 in the affirmative, the declarant shall give additional  
 21 information under oath as required by the court. The court  
 22 may examine the parties under oath as to details of the  
 23 information furnished and as to other matters pertinent to  
 24 the court's jurisdiction and the disposition of the case.

25 (3) Each party has a continuing duty to inform the

1 court of any custody proceeding concerning the child in this  
 2 or any other state of which he obtained information during  
 3 this proceeding.

4 Section 11. Additional parties. If the court learns  
 5 from information furnished by the parties pursuant to  
 6 [section 10] or from other sources that a person not a party  
 7 to the custody proceeding has physical custody of the child  
 8 or claims to have custody or visitation rights with respect  
 9 to the child, it shall order that person to be joined as a  
 10 party and to be duly notified of the pendency of the  
 11 proceeding and of his joinder as a party. If the person  
 12 joined as a party is outside this state, he shall be served  
 13 with process or otherwise notified in accordance with  
 14 [section 6].

15 Section 12. Appearance of parties and the child.  
 16 (1) The court may order any party to the proceeding who is  
 17 in this state to appear personally before the court. If  
 18 that party has physical custody of the child, the court may  
 19 order that he appear personally with the child.

20 (2) If a party to the proceeding whose presence is  
 21 desired by the court is outside this state with or without  
 22 the child, the court may order that the notice given under  
 23 [section 6] include a statement directing that party to  
 24 appear personally with or without the child and declaring  
 25 that failure to appear may result in a decision adverse to

1 that party.

2 (3) If a party to the proceeding who is outside this  
3 state is directed to appear under subsection (2) or desires  
4 to appear personally before the court with or without the  
5 child, the court may require another party to pay to the  
6 clerk of the court travel and other necessary expenses of  
7 the party so appearing and of the child, if this is just and  
8 proper under the circumstances.

9 Section 13. Binding force and res judicata effect of  
10 custody decree. A custody decree rendered by a court of this  
11 state which had jurisdiction under [section 4] binds all  
12 parties who have been served in this state or notified in  
13 accordance with [section 6] or who have submitted to the  
14 jurisdiction of the court and who have been given an  
15 opportunity to be heard. As to these parties the custody  
16 decree is conclusive as to all issues of law and fact  
17 decided and as to the custody determination made unless and  
18 until that determination is modified pursuant to law,  
19 including the provisions of this act.

20 Section 14. Recognition of out-of-state custody  
21 decrees. The courts of this state shall recognize and  
22 enforce an initial or modification decree of a court of  
23 another state which had assumed jurisdiction under statutory  
24 provisions substantially in accordance with this act or  
25 which was made under factual circumstances meeting the

1 jurisdictional standards of the act, so long as this decree  
2 has not been modified in accordance with jurisdictional  
3 standards substantially similar to those of this act.

4 Section 15. Modification of custody decree of another  
5 state. (1) If a court of another state has made a custody  
6 decree, a court of this state may not modify that decree  
7 unless it appears to the court of this state that the court  
8 which rendered the decree does not now have jurisdiction  
9 under jurisdictional prerequisites substantially in  
10 accordance with this act or has declined to assume  
11 jurisdiction to modify the decree and the court of this  
12 state has jurisdiction.

13 (2) If a court of this state is authorized under  
14 subsection (1) and [section 9] to modify a custody decree of  
15 another state, it shall give due consideration to the  
16 transcript of the record and other documents of all previous  
17 proceedings submitted to it in accordance with [section 23].

18 Section 16. Filing and enforcement of custody decree  
19 of another state. (1) A certified copy of a custody decree  
20 of another state may be filed in the office of the clerk of  
21 any district court of this state. The clerk shall treat the  
22 decree in the same manner as a custody decree of the  
23 district court of this state. A custody decree so filed has  
24 the same effect and shall be enforced in like manner as a  
25 custody decree rendered by a court of this state.

1 (2) A person violating a custody decree of another  
 2 state which makes it necessary to enforce the decree in this  
 3 state may be required to pay necessary travel and other  
 4 expenses, including attorneys' fees, incurred by the party  
 5 entitled to the custody or his witnesses.

6 Section 17. Registry of out-of-state custody decrees  
 7 and proceedings. The clerk of each district court shall  
 8 maintain a registry in which he shall enter the following:

9 (1) certified copies of custody decrees of other  
 10 states received for filing;

11 (2) communications as to the pendency of custody  
 12 proceedings in other states;

13 (3) communications concerning a finding of  
 14 inconvenient forum by a court of another state; and

15 (4) other communications or documents concerning  
 16 custody proceedings in another state which may affect the  
 17 jurisdiction of a court of this state or the disposition to  
 18 be made by it in a custody proceeding.

19 Section 18. Certified copies of custody decree. The  
 20 clerk of the district court of this state, at the request of  
 21 the court of another state or at the request of any person  
 22 who is affected by or has a legitimate interest in a custody  
 23 decree, shall certify and forward a copy of the decree to  
 24 that court or person.

25 Section 19. Taking testimony in another state. In

1 addition to other procedural devices available to a party,  
 2 any party to the proceeding or a guardian ad litem or other  
 3 representative of the child may adduce testimony of  
 4 witnesses, including parties and the child, by deposition or  
 5 otherwise, in another state. The court on its own motion  
 6 may direct that the testimony of a person be taken in  
 7 another state and may prescribe the manner in which and the  
 8 terms upon which the testimony shall be taken.

9 Section 20. Hearings and studies in another state --  
 10 orders to appear. (1) A court of this state may request the  
 11 appropriate court of another state to hold a hearing to  
 12 adduce evidence, to order a party to produce or give  
 13 evidence under other procedures of that state, or to have  
 14 social studies made with respect to the custody of a child  
 15 involved in proceedings pending in the court of this state;  
 16 and to forward to the court of this state certified copies  
 17 of the transcript of the record of the hearing, the evidence  
 18 otherwise adduced, or any social studies prepared in  
 19 compliance with the request. The cost of the services may  
 20 be assessed against the parties or, if necessary, ordered  
 21 paid by the state.

22 (2) A court of this state may request the appropriate  
 23 court of another state to order a party to custody  
 24 proceedings pending in the court of this state to appear in  
 25 the proceedings and, if that party has physical custody of

1 the child, to appear with the child. The request may state  
 2 that travel and other necessary expenses of the party and of  
 3 the child whose appearance is desired will be assessed  
 4 against another party or will otherwise be paid.

5 Section 21. Assistance to courts of other states.

6 (1) Upon request of the court of another state the courts  
 7 of this state which are competent to hear custody matters  
 8 may order a person in this state to appear at a hearing to  
 9 adduce evidence or to produce or give evidence under other  
 10 procedures available in this state or may order social  
 11 studies to be made for use in a custody proceeding in  
 12 another state. A certified copy of the transcript of the  
 13 record of the hearing or the evidence otherwise adduced and  
 14 any social studies prepared shall be forwarded by the clerk  
 15 of the court to the requesting court.

16 (2) A person within this state may voluntarily give  
 17 his testimony or statement in this state for use in a  
 18 custody proceeding outside this state.

19 (3) Upon request of the court of another state a  
 20 competent court of this state may order a person in this  
 21 state to appear alone or with the child in a custody  
 22 proceeding in another state. The court may condition  
 23 compliance with the request upon assurance by the other  
 24 state that state travel and other necessary expenses will be  
 25 advanced or reimbursed.

1 Section 22. Preservation of documents for use in other  
 2 states. In any custody proceeding in this state the court  
 3 shall preserve the pleadings, orders and decrees, any record  
 4 that has been made of its hearings, social studies, and  
 5 other pertinent documents until the child reaches 18 years  
 6 of age. Upon appropriate request of the court of another  
 7 state, the court shall forward to the other court certified  
 8 copies of any or all of such documents.

9 Section 23. Request for court records of another  
 10 state. If a custody decree has been rendered in another  
 11 state concerning a child involved in a custody proceeding  
 12 pending in a court of this state, the court of this state  
 13 upon taking jurisdiction of the case shall request of the  
 14 court of the other state a certified copy of the transcript  
 15 of any court record and other documents mentioned in  
 16 [section 22].

17 Section 24. International application. The general  
 18 policies of this act extend to the international area. The  
 19 provisions of this act relating to the recognition and  
 20 enforcement of custody decrees of other states apply to  
 21 custody decrees and decrees involving legal institutions  
 22 similar in nature to custody institutions rendered by  
 23 appropriate authorities of other nations if reasonable  
 24 notice and opportunity to be heard have been given to all  
 25 affected persons.

1 Section 25. Priority. A custody proceeding which  
 2 raises a question of existence or exercise of jurisdiction  
 3 under this act shall be given calendar priority and handled  
 4 expeditiously.

5 Section 26. ~~Section 48-317, R.C.M., 1947, is amended to~~  
 6 ~~read as follows:~~

7 ~~"48-317. Procedure --- commencement --- pleadings ---~~  
 8 ~~abolition of existing defenses --- (1) Except for proceedings~~

9 ~~coming under the Uniform Child Custody Jurisdiction Act, all~~  
 10 ~~proceedings under this act are commenced and proceed in~~

11 ~~the manner provided by the Montana rules of civil procedure~~  
 12 ~~(2) The verified petition in a proceeding for~~

13 ~~dissolution of marriage or legal separation shall allege~~  
 14 ~~that the marriage is irretrievably broken and shall set~~

15 ~~forth:~~  
 16 ~~(a) the age, occupation, and residence of each party~~

17 ~~and his length of residence in this state;~~  
 18 ~~(b) the date of the marriage and the place at which it~~

19 ~~was registered;~~  
 20 ~~(c) that the jurisdictional requirements of section~~

21 ~~48-316 exist and that the marriage is irretrievably broken~~  
 22 ~~in that either~~

23 ~~(i) the parties have lived separate and apart for a~~  
 24 ~~period of more than one hundred eighty (180) days next~~

25 ~~preceding the commencement of this proceeding; or~~

1 ~~(ii) that there is serious marital discord which~~  
 2 ~~adversely affects the attitude of one or both of the parties~~  
 3 ~~toward the marriage and that there is no reasonable~~  
 4 ~~prospect of reconciliation;~~

5 ~~(d) the names, ages, and addresses of all living~~  
 6 ~~children of the marriage and whether the wife is pregnant;~~

7 ~~(e) any arrangements as to support, custody, and~~  
 8 ~~visitation of the children and maintenance of a spouse; and~~

9 ~~(f) the relief sought;~~  
 10 ~~(3) Either or both parties to the marriage may~~

11 ~~initiate the proceeding;~~  
 12 ~~(4) If a proceeding is commenced by one of the~~

13 ~~parties, the other party must be served in the manner~~  
 14 ~~provided by the Montana rules of civil procedure and may~~

15 ~~within twenty (20) days after the date of service file a~~  
 16 ~~verified response. No decree may be entered until twenty~~

17 ~~(20) days after the date of service;~~  
 18 ~~(5) Previously existing defenses to divorce and legal~~

19 ~~separation, including but not limited to condonation,~~  
 20 ~~connivance, collusion, recrimination, insanity, and lapse of~~

21 ~~time, are abolished;~~  
 22 ~~(6) The court may join additional parties proper for~~

23 ~~the exercise of its authority to implement this act."~~  
 24 ~~SECTION 48-315, R.C.M., 1947, IS AMENDED TO READ AS FOLLOWS:~~

25 ~~"48-315. Application of the Montana rules of civil~~

1 procedure to proceedings under this act. (1) ~~The Except for~~  
 2 ~~proceedings coming under the uniform child custody~~  
 3 ~~jurisdiction act, the~~ Montana rules of civil procedure apply  
 4 to all proceedings under this act, except as otherwise  
 5 provided in this act.

6 (2) A proceeding for dissolution of marriage, legal  
 7 separation, or declaration of invalidity of marriage shall  
 8 be entitled "In re the Marriage of \_\_\_\_\_ and  
 9 \_\_\_\_\_". A custody or support proceeding shall be  
 10 entitled "In re the (Custody) (Support) of \_\_\_\_\_".

11 (3) The initial pleading in all proceedings under this  
 12 act shall be denominated a petition. A responsive pleading  
 13 shall be denominated a response. Other pleadings, and all  
 14 pleadings in other matters under this act, shall be  
 15 denominated as provided in the Montana rules of civil  
 16 procedure.

17 (4) In this act, "decree" includes "judgment".

18 (5) A decree of dissolution or of legal separation, if  
 19 made, shall not be awarded to one of the parties, but shall  
 20 provide that it affects the status previously existing  
 21 between the parties in the manner decreed."

22 Section 27. Section 48-331, R.C.M. 1947, is amended to  
 23 read as follows:

24 "48-331. Jurisdiction -- commencement of proceedings.  
 25 (1) A court of this state competent to decide child custody

1 matters has jurisdiction to make a child custody  
 2 determination by initial or modification decree if:

3 (a) this state  
 4 (i) is the home state of the child at the time of  
 5 commencement of the proceedings, or  
 6 (ii) had been the child's home state within six (6)  
 7 months before commencement of the proceeding and the child  
 8 is absent from this state because of his removal or  
 9 retention by a person claiming his custody or for other  
 10 reason, and a parent or person acting as parent continues to  
 11 live in this state; or

12 (b) it is in the best interest of the child that a  
 13 court of this state assume jurisdiction because

14 (i) the child and his parents, or the child and at  
 15 least one contestant, have a significant connection with  
 16 this state, and

17 (ii) there is available in this state substantial  
 18 evidence concerning the child's present or future care,  
 19 protection, training, and personal relationships; or

20 (c) the child is physically present in this state and  
 21 (i) has been abandoned or

22 (ii) it is necessary in an emergency to protect him  
 23 because he has been subjected to or threatened with  
 24 mistreatment or abuse or is neglected or dependent; or

25 (d) (i) no other state has jurisdiction under



1 prerequisites substantially in accordance with paragraphs  
 2 (a), (b), or (c), or another state has declined to exercise  
 3 jurisdiction on the ground that this state is the more  
 4 appropriate forum to determine custody of the child, and

5 (ii) it is in his best interest that the court assume  
 6 jurisdiction.

7 (2) Except under paragraphs (c) and (d) of subsection  
 8 (1), physical presence in this state of the child, or of the  
 9 child and one of the contestants, is not alone sufficient to  
 10 confer jurisdiction on a court of this state to make a child  
 11 custody determination.

12 (3) Physical presence of the child, while desirable,  
 13 is not a prerequisite for jurisdiction to determine his  
 14 custody.

15 (4) A child custody proceeding is commenced in the  
 16 district court:

17 (a) by a parent, by filing a petition

18 (i) for dissolution or legal separation; or

19 (ii) for custody of the child in the county in which he  
 20 is permanently resident or found; or

21 (b) by a person other than a parent, by filing a  
 22 petition for custody of the child in the county in which he  
 23 is permanently resident or found, but only if he is not in  
 24 the physical custody of one of his parents.

25 (5) Notice of a child custody proceeding shall be

1 given to the child's parent, guardian, and custodian, those  
 2 persons having physical custody of the child, and all other  
 3 contestants, who may appear, be heard, and file a responsive  
 4 pleading. The court, upon a showing of good cause, may  
 5 permit intervention of other interested parties."

6 Section 28. Severability. If a part of this act is  
 7 invalid, all valid parts that are severable from the invalid  
 8 part remain in effect. If a part of this act is invalid in  
 9 one or more of its applications, the part remains in effect  
 10 in all valid applications that are severable from the  
 11 invalid applications.

-End-