

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108-370, §1, Oct. 25, 2004, 118 Stat. 1750, provided that: “This Act [amending section 9006 of this title] may be cited as the ‘Prevention of Child Abduction Partnership Act’.”

SHORT TITLE

Pub. L. 100-300, §1, Apr. 29, 1988, 102 Stat. 437, provided that: “This Act [enacting this chapter and amending section 663 of Title 42, The Public Health and Welfare] may be cited as the ‘International Child Abduction Remedies Act’.”

§ 9002. Definitions

For the purposes of this chapter—

(1) the term “applicant” means any person who, pursuant to the Convention, files an application with the United States Central Authority or a Central Authority of any other party to the Convention for the return of a child alleged to have been wrongfully removed or retained or for arrangements for organizing or securing the effective exercise of rights of access pursuant to the Convention;

(2) the term “Convention” means the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980;

(3) the term “Parent Locator Service” means the service established by the Secretary of Health and Human Services under section 653 of title 42;

(4) the term “petitioner” means any person who, in accordance with this chapter, files a petition in court seeking relief under the Convention;

(5) the term “person” includes any individual, institution, or other legal entity or body;

(6) the term “respondent” means any person against whose interests a petition is filed in court, in accordance with this chapter, which seeks relief under the Convention;

(7) the term “rights of access” means visitation rights;

(8) the term “State” means any of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(9) the term “United States Central Authority” means the agency of the Federal Government designated by the President under section 9006(a) of this title.

(Pub. L. 100-300, §3, Apr. 29, 1988, 102 Stat. 437.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act” meaning Pub. L. 100-300, Apr. 29, 1988, 102 Stat. 437, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note under section 9001 of this title and Tables.

CODIFICATION

Section was formerly classified to section 11602 of Title 42, The Public Health and Welfare.

§ 9003. Judicial remedies**(a) Jurisdiction of courts**

The courts of the States and the United States district courts shall have concurrent original jurisdiction of actions arising under the Convention.

(b) Petitions

Any person seeking to initiate judicial proceedings under the Convention for the return of a child or for arrangements for organizing or securing the effective exercise of rights of access to a child may do so by commencing a civil action by filing a petition for the relief sought in any court which has jurisdiction of such action and which is authorized to exercise its jurisdiction in the place where the child is located at the time the petition is filed.

(c) Notice

Notice of an action brought under subsection (b) shall be given in accordance with the applicable law governing notice in interstate child custody proceedings.

(d) Determination of case

The court in which an action is brought under subsection (b) shall decide the case in accordance with the Convention.

(e) Burdens of proof

(1) A petitioner in an action brought under subsection (b) shall establish by a preponderance of the evidence—

(A) in the case of an action for the return of a child, that the child has been wrongfully removed or retained within the meaning of the Convention; and

(B) in the case of an action for arrangements for organizing or securing the effective exercise of rights of access, that the petitioner has such rights.

(2) In the case of an action for the return of a child, a respondent who opposes the return of the child has the burden of establishing—

(A) by clear and convincing evidence that one of the exceptions set forth in article 13b or 20 of the Convention applies; and

(B) by a preponderance of the evidence that any other exception set forth in article 12 or 13 of the Convention applies.

(f) Application of Convention

For purposes of any action brought under this chapter—

(1) the term “authorities”, as used in article 15 of the Convention to refer to the authorities of the state of the habitual residence of a child, includes courts and appropriate government agencies;

(2) the terms “wrongful removal or retention” and “wrongfully removed or retained”, as used in the Convention, include a removal or retention of a child before the entry of a custody order regarding that child; and

(3) the term “commencement of proceedings”, as used in article 12 of the Convention, means, with respect to the return of a child located in the United States, the filing of a petition in accordance with subsection (b) of this section.

(g) Full faith and credit

Full faith and credit shall be accorded by the courts of the States and the courts of the United States to the judgment of any other such court ordering or denying the return of a child, pursuant to the Convention, in an action brought under this chapter.

(h) Remedies under Convention not exclusive

The remedies established by the Convention and this chapter shall be in addition to remedies available under other laws or international agreements.

(Pub. L. 100-300, § 4, Apr. 29, 1988, 102 Stat. 438.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (f) to (h), was in the original “this Act” meaning Pub. L. 100-300, Apr. 29, 1988, 102 Stat. 437, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note under section 9001 of this title and Tables.

CODIFICATION

Section was formerly classified to section 11603 of Title 42, The Public Health and Welfare.

§ 9004. Provisional remedies**(a) Authority of courts**

In furtherance of the objectives of article 7(b) and other provisions of the Convention, and subject to the provisions of subsection (b) of this section, any court exercising jurisdiction of an action brought under section 9003(b) of this title may take or cause to be taken measures under Federal or State law, as appropriate, to protect the well-being of the child involved or to prevent the child’s further removal or concealment before the final disposition of the petition.

(b) Limitation on authority

No court exercising jurisdiction of an action brought under section 9003(b) of this title may, under subsection (a) of this section, order a child removed from a person having physical control of the child unless the applicable requirements of State law are satisfied.

(Pub. L. 100-300, § 5, Apr. 29, 1988, 102 Stat. 439.)

CODIFICATION

Section was formerly classified to section 11604 of Title 42, The Public Health and Welfare.

§ 9005. Admissibility of documents

With respect to any application to the United States Central Authority, or any petition to a court under section 9003 of this title, which seeks relief under the Convention, or any other documents or information included with such application or petition or provided after such submission which relates to the application or petition, as the case may be, no authentication of such application, petition, document, or information shall be required in order for the application, petition, document, or information to be admissible in court.

(Pub. L. 100-300, § 6, Apr. 29, 1988, 102 Stat. 439.)

CODIFICATION

Section was formerly classified to section 11605 of Title 42, The Public Health and Welfare.

§ 9006. United States Central Authority**(a) Designation**

The President shall designate a Federal agency to serve as the Central Authority for the United States under the Convention.

(b) Functions

The functions of the United States Central Authority are those ascribed to the Central Authority by the Convention and this chapter.

(c) Regulatory authority

The United States Central Authority is authorized to issue such regulations as may be necessary to carry out its functions under the Convention and this chapter.

(d) Obtaining information from Parent Locator Service

The United States Central Authority may, to the extent authorized by the Social Security Act [42 U.S.C. 301 et seq.], obtain information from the Parent Locator Service.

(e) Grant authority

The United States Central Authority is authorized to make grants to, or enter into contracts or agreements with, any individual, corporation, other Federal, State, or local agency, or private entity or organization in the United States for purposes of accomplishing its responsibilities under the Convention and this chapter.

(f) Limited liability of private entities acting under the direction of the United States Central Authority**(1) Limitation on liability**

Except as provided in paragraphs (2) and (3), a private entity or organization that receives a grant from or enters into a contract or agreement with the United States Central Authority under subsection (e) of this section for purposes of assisting the United States Central Authority in carrying out its responsibilities and functions under the Convention and this chapter, including any director, officer, employee, or agent of such entity or organization, shall not be liable in any civil action sounding in tort for damages directly related to the performance of such responsibilities and functions as defined by the regulations issued under subsection (c) of this section that are in effect on October 1, 2004.

(2) Exception for intentional, reckless, or other misconduct

The limitation on liability under paragraph (1) shall not apply in any action in which the plaintiff proves that the private entity, organization, officer, employee, or agent described in paragraph (1), as the case may be, engaged in intentional misconduct or acted, or failed to act, with actual malice, with reckless disregard to a substantial risk of causing injury without legal justification, or for a purpose unrelated to the performance of responsibilities or functions under this chapter.

(3) Exception for ordinary business activities

The limitation on liability under paragraph (1) shall not apply to any alleged act or omission related to an ordinary business activity, such as an activity involving general administration or operations, the use of motor vehicles, or personnel management.

(Pub. L. 100-300, § 7, Apr. 29, 1988, 102 Stat. 439; Pub. L. 105-277, div. G, title XXII, § 2213, Oct. 21, 1998, 112 Stat. 2681-812; Pub. L. 108-370, § 2, Oct. 25, 2004, 118 Stat. 1750.)