

**§ 1734. Court record lost or destroyed, generally**

(a) A lost or destroyed record of any proceeding in any court of the United States may be supplied on application of any interested party not at fault, by substituting a copy certified by the clerk of any court in which an authentic copy is lodged.

(b) Where a certified copy is not available, any interested person not at fault may file in such court a verified application for an order establishing the lost or destroyed record.

Every other interested person shall be served personally with a copy of the application and with notice of hearing on a day stated, not less than sixty days after service. Service may be made on any nonresident of the district anywhere within the jurisdiction of the United States or in any foreign country.

Proof of service in a foreign country shall be certified by a minister or consul of the United States in such country, under his official seal.

If, after the hearing, the court is satisfied that the statements contained in the application are true, it shall enter an order reciting the substance and effect of the lost or destroyed record. Such order, subject to intervening rights of third persons, shall have the same effect as the original record.

(June 25, 1948, ch. 646, 62 Stat. 946.)

## HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 681, 682, 683, and 684 (R.S. §§ 899, 900, 901, 902; Jan. 31, 1879, ch. 39, § 1, 20 Stat. 277).

Sections 681, 682, and 684 of title 28, U.S.C., 1940 ed., contained repetitious language which was eliminated by the consolidation.

Section 683 of title 28, U.S.C., 1940 ed., applied only to cases removed to the Supreme Court, and was revised so as to be applicable to cases transmitted to other courts not in existence in 1871 when the section was originally enacted.

Changes were made in phraseology.

**§ 1735. Court record lost or destroyed where United States interested**

(a) When the record of any case or matter in any court of the United States to which the United States is a party, is lost or destroyed, a certified copy of any official paper of a United States attorney, United States marshal or clerk or other certifying or recording officer of any such court, made pursuant to law, on file in any department or agency of the United States and relating to such case or matter, shall, on being filed in the court to which it relates, have the same effect as an original paper filed in such court. If the copy so filed discloses the date and amount of a judgment or decree and the names of the parties thereto, the court may enforce the judgment or decree as though the original record had not been lost or destroyed.

(b) Whenever the United States is interested in any lost or destroyed records or files of a court of the United States, the clerk of such court and the United States attorney for the district shall take the steps necessary to restore such records or files, under the direction of the judges of such court.

(June 25, 1948, ch. 646, 62 Stat. 946.)

## HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 685, 686 (R.S. §§ 903, 904; Jan. 31, 1879, ch. 39, §§ 2, 3, 20 Stat. 277).

A provision of section 686 of title 28, U.S.C., 1940 ed., relating to allowances to clerks and United States attorneys for their services, and disbursements incidental to restoring lost records under such section was deleted as obsolete, in view of sections 508, 509, and 604 of this title, placing such officers on a salary basis and providing for their expenses.

Words "And in all cases where any of the files, papers, or records of any court of the United States have been or shall be lost or destroyed, the files, records and papers which, pursuant to law, may have been or may be restored or supplied in place of such records, files, and papers, shall have the same force and effect, to all intents and purposes, as the originals thereof would have been entitled to," at the end of section 685 of title 28, U.S.C., 1940 ed., were omitted as fully covered by the remainder of this section and by section 1734 of this title.

Words "or agency of the United States" were substituted for "of the Government" so as to eliminate any possible ambiguity as to the scope of this section. See definitive section 451 of this title.

The phrase "so far as the judges of such courts respectively shall deem it essential to the interests of the United States that such records and files be restored or supplied," was omitted as unnecessary.

Changes were made in phraseology.

**§ 1736. Congressional Journals**

Extracts from the Journals of the Senate and the House of Representatives, and from the Executive Journal of the Senate when the injunction of secrecy is removed, certified by the Secretary of the Senate or the Clerk of the House of Representatives shall be received in evidence with the same effect as the originals would have.

(June 25, 1948, ch. 646, 62 Stat. 947.)

## HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 676 (R.S. § 895). Changes in phraseology were made.

**§ 1737. Copy of officer's bond**

Any person to whose custody the bond of any officer of the United States has been committed shall, on proper request and payment of the fee allowed by any Act of Congress, furnish certified copies thereof, which shall be prima facie evidence in any court of the execution, filing and contents of the bond.

(June 25, 1948, ch. 646, 62 Stat. 947.)

## HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 326, 499, 513, and 514 (R.S. §§ 783, 795; Feb. 22, 1875, ch. 95, § 3, 18 Stat. 333; Mar. 3, 1911, ch. 231, §§ 220, 291, 36 Stat. 1152, 1167).

Sections 326, 499, 513, and 514 of title 28, U.S.C., 1940 ed., were consolidated. They related to the bonds of particular officers, namely the Clerk of the Supreme Court, the United States marshals, and the clerks of the district courts. The revised section eliminates all inconsistent provisions of such sections.

The requirement that certified copies be furnished is new.

The other provisions of sections 326, 499, 513, and 514 of title 28, U.S.C., 1940 ed., are now incorporated in sections 544 and 952 of this title.

Changes were made in phraseology.

**§ 1738. State and Territorial statutes and judicial proceedings; full faith and credit**

The Acts of the legislature of any State, Territory, or Possession of the United States, or cop-

ies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

(June 25, 1948, ch. 646, 62 Stat. 947.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §687 (R.S. §905).

Words "Possession of the United States" were substituted for "of any country subject to the jurisdiction of the United States".

Words "or copies thereof" were added in three places. Copies have always been used to prove statutes and judicial proceedings under section 687 of title 28, U.S.C., 1940 ed. The added words will cover expressly such use.

Words "and its Territories and Possessions" were added in two places so as to make this section and section 1739 of this title uniform, the basic section of the latter having provided that nonjudicial records or books of any State, Territory, or "country subject to the jurisdiction of the United States" should be admitted in any court or office in any other State, Territory, or "such country."

Words "a judge of the court" were substituted for "the judge, chief justice or presiding magistrate" without change of substance.

At the beginning of the last paragraph, words "Such Acts" were substituted for "And the said". This follows the language of Article IV, section 1 of the Constitution.

For additional provisions as to authentication, see Rule 44 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

#### § 1738A. Full faith and credit given to child custody determinations

(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.

(b) As used in this section, the term—

(1) "child" means a person under the age of eighteen;

(2) "contestant" means a person, including a parent or grandparent, who claims a right to custody or visitation of a child;

(3) "custody determination" means a judgment, decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;

(4) "home State" means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecu-

tive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

(5) "modification" and "modify" refer to a custody or visitation determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody or visitation determination concerning the same child, whether made by the same court or not;

(6) "person acting as a parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

(7) "physical custody" means actual possession and control of a child;

(8) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States; and

(9) "visitation determination" means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.

(c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if—

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B)(i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because the child, a sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse;

(D)(i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.