

6245

I N S E N A T E

(PREFILED)

January 6, 2016

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the domestic relations law and the family court act, in relation to visitation and custody rights involving non-United States citizens

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 240 of the domestic relations law is amended by
2 adding a new subdivision 1-d to read as follows:
3 1-D. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER TO THE
4 CONTRARY, NO COURT SHALL MAKE AN ORDER PROVIDING FOR VISITATION OR
5 CUSTODY OF A MINOR WHO IS A UNITED STATES CITIZEN TO A PERSON WHO
6 RESIDES OR PLANS TO RESIDE OUTSIDE THE UNITED STATES WHEN THE OTHER
7 PARTY TO SUCH ACTION IS A UNITED STATES CITIZEN AND OBJECTS TO SUCH
8 VISITATION OR CUSTODY.
9 S 2. Section 651 of the family court act is amended by adding a new
10 subdivision (g) to read as follows:
11 (G) VISITATION AND CUSTODY RIGHTS UNENFORCEABLE; NON-UNITED STATES
12 CITIZENS. NO VISITATION OR CUSTODY ORDER SHALL BE ENFORCEABLE BY A
13 PERSON WHO RESIDES OR PLANS TO RESIDE OUTSIDE THE UNITED STATES WHEN THE
14 SUBJECT OF SUCH VISITATION OR CUSTODY ORDER IS A MINOR WHO IS A UNITED
15 STATES CITIZEN AND THE OTHER PARTY TO SUCH ACTION IS A UNITED STATES
16 CITIZEN AND OBJECTS TO SUCH VISITATION OR CUSTODY.
17 S 3. Section 75-e of the domestic relations law, as added by chapter
18 386 of the laws of 2001, is amended to read as follows:
19 S 75-e. Effect of child custody determination. A child custody deter-
20 mination made by a court of this state that had jurisdiction under this
21 article binds all persons who have been served in accordance with the
22 laws of this state or notified in accordance with section seventy-five-g
23 of this title or who have submitted to the jurisdiction of the court,
24 and who have been given an opportunity to be heard. As to those persons,
25 the determination is conclusive as to all decided issues of law and fact
26 except to the extent the determination is modified or except to the

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD11869-02-5

1 extent that enforcement of an order would violate subdivision one-c OR
2 ONE-D of section two hundred forty of this chapter or section one thou-
3 sand eighty-five OR SUBDIVISION (G) OF SECTION SIX HUNDRED FIFTY-ONE of
4 the family court act.

5 S 4. Subdivision 2 of section 75 of the domestic relations law, as
6 added by chapter 386 of the laws of 2001, is amended to read as follows:

7 2. It is the intent of the legislature in enacting this article to
8 provide an effective mechanism to obtain and enforce orders of custody
9 and visitation across state lines and to do so in a manner that ensures
10 that the safety of the children is paramount and that victims of domes-
11 tic violence and child abuse are protected. It is further the intent of
12 the legislature that this article be construed so as to ensure that
13 custody and visitation by perpetrators of domestic violence or homicide
14 of a parent, legal custodian, legal guardian, sibling, half-sibling or
15 step-sibling of a child [is] OR NON-UNITED STATES CITIZEN ARE restricted
16 pursuant to [subdivision] SUBDIVISIONS one-c AND ONE-D of section two
17 hundred forty of this chapter and section one thousand eighty-five AND
18 SUBDIVISION (G) OF SECTION SIX HUNDRED FIFTY-ONE of the family court
19 act.

20 S 5. Subdivision 1 of section 77-b of the domestic relations law, as
21 added by chapter 386 of the laws of 2001, is amended to read as follows:

22 1. A court of this state shall recognize and enforce a child custody
23 determination of a court of another state if the latter court exercised
24 jurisdiction in substantial conformity with this article or the determi-
25 nation was made under factual circumstances meeting the jurisdictional
26 standards of this article and the determination has not been modified in
27 accordance with this article; provided, however, that recognition and
28 enforcement of the determination would not violate subdivision one-c OR
29 ONE-D of section two hundred forty of this chapter or section one thou-
30 sand eighty-five OR SUBDIVISION (G) OF SECTION SIX HUNDRED FIFTY-ONE of
31 the family court act.

32 S 6. The opening paragraph of subdivision 1 of section 77-c of the
33 domestic relations law, as added by chapter 386 of the laws of 2001, is
34 amended to read as follows:

35 A court of this state which does not have jurisdiction to modify a
36 child custody determination, may, if consistent with subdivision one-c
37 OR ONE-D of section two hundred forty of this chapter or section one
38 thousand eighty-five OR SUBDIVISION (G) OF SECTION SIX HUNDRED FIFTY-ONE
39 of the family court act, issue a temporary order enforcing:

40 S 7. Subdivision 2 of section 77-e of the domestic relations law, as
41 added by chapter 386 of the laws of 2001, is amended to read as follows:

42 2. A court of this state shall recognize and enforce, but may not
43 modify, except in accordance with title two of this article, a regis-
44 tered child custody determination of a court of another state; provided,
45 however, that recognition and enforcement of the determination would not
46 violate subdivision one-c OR ONE-D of section two hundred forty of this
47 chapter or section one thousand eighty-five OR SUBDIVISION (G) OF
48 SECTION SIX HUNDRED FIFTY-ONE of the family court act.

49 S 8. Subparagraph (ii) of paragraph (a) of subdivision 1 of section
50 77-i of the domestic relations law, as added by chapter 386 of the laws
51 of 2001, is amended to read as follows:

52 (ii) the child custody determination for which enforcement is sought
53 has been vacated, stayed, or modified by a court of a state having
54 jurisdiction to do so under title two of this article or enforcement of
55 the determination would violate subdivision one-c OR ONE-D of section
56 two hundred forty of this chapter or section one thousand eighty-five OR

1 SUBDIVISION (G) OF SECTION SIX HUNDRED FIFTY-ONE of the family court
2 act; or

3 S 9. Section 77-1 of the domestic relations law, as added by chapter
4 386 of the laws of 2001, is amended to read as follows:

5 S 77-1. Recognition and enforcement. A court of this state shall
6 accord full faith and credit to an order issued by another state and
7 consistent with this article which enforces a child custody determi-
8 nation by a court of another state unless the order has been vacated,
9 stayed, or modified by a court having jurisdiction to do so under title
10 two of this article, unless recognition and enforcement would violate
11 subdivision one-c OR ONE-D of section two hundred forty of this chapter
12 or section one thousand eighty-five OR SUBDIVISION (G) OF SECTION SIX
13 HUNDRED FIFTY-ONE of the family court act.

14 S 10. This act shall take effect immediately.