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By: **Senator Giannetti**

Introduced and read first time: February 4, 2005

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Child Custody and Visitation - Child Abduction**

3 FOR the purpose of prohibiting certain persons who know that another person has  
4 certain lawful visitation rights from harboring or hiding a child within this  
5 State or outside this State or acting as an accessory to a prohibited act under  
6 certain circumstances; establishing a certain defense; applying certain  
7 penalties; defining a certain term; making stylistic changes; and generally  
8 relating to harboring or hiding a child from a person who has certain lawful  
9 visitation rights.

10 BY repealing and reenacting, with amendments,  
11 Article - Family Law  
12 Section 9-301, 9-302, and 9-304 through 9-307  
13 Annotated Code of Maryland  
14 (1999 Replacement Volume and 2004 Supplement)

15 BY repealing and reenacting, without amendments,  
16 Article - Family Law  
17 Section 9-303  
18 Annotated Code of Maryland  
19 (1999 Replacement Volume and 2004 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article - Family Law**

23 9-301.

24 (a) In this subtitle the following words have the meanings indicated.

25 (b) (1) "Lawful custodian" means a person who is authorized to have custody  
26 of and exercise control over a child who is under the age of 16 years.

1           (2)     "Lawful custodian" includes a person who is authorized to have  
2 custody by an order of a court of competent jurisdiction in this State or any other  
3 state.

4     (c)     "LAWFUL VISITATION RIGHTS" MEANS THE RIGHT TO HAVE VISITATION  
5 WITH A CHILD BY AN ORDER OF A COURT OF COMPETENT JURISDICTION IN THIS  
6 STATE OR ANY OTHER STATE.

7     (D)     "Relative" means:

8           (1)     a parent;

9           (2)     a grandparent or other ancestor;

10          (3)     a brother;

11          (4)     a sister;

12          (5)     an aunt;

13          (6)     an uncle; or

14          (7)     [an individual] A PERSON who was a lawful custodian before the  
15 commission of an act that violates § 9-304 or § 9-305 of this subtitle.

16 9-302.

17     (a)     An equity court has jurisdiction over custody and visitation of a child who  
18 is removed from this State by a parent of the child, if:

19           (1)     the parents are separated or divorced and this State was:

20                 (i)     the marital domicile of the parents; or

21                 (ii)    the domicile in which the marriage contract was last performed;

22           (2)     [1] ONE of the parents was a resident of this State when the child  
23 was removed and that parent continues to reside in this State; and

24           (3)     the court obtains personal jurisdiction over the parent who removes  
25 the child.

26     (b)     This section does not affect any other basis of an equity court's jurisdiction  
27 over custody and visitation of a child.

28 9-303.

29     (a)     This section applies if there is a conflict between a custody order of a court  
30 of this State and a custody order of a court of another state.

1 (b) Except as provided in subsection (c) of this section, a custody order of a  
2 court of this State prevails over a custody order of a court of another state.

3 (c) A custody order of a court of another state prevails over a custody order of  
4 a court of this State if the court in the other state passed its custody order:

5 (1) after the custody order was passed by a court of this State; and

6 (2) in proceedings in which the lawful custodian under the custody order  
7 of a court of this State:

8 (i) consented to the custody order passed by the court of the other  
9 state; or

10 (ii) participated personally as a party.

11 9-304.

12 (A) If a child is under the age of 16 years, a relative who knows that another  
13 person is the lawful custodian of the child may not:

14 (1) abduct, take, or carry away the child from the lawful custodian to a  
15 place within this State;

16 (2) having acquired lawful possession of the child, detain the child  
17 within this State for more than 48 hours after the lawful custodian demands that the  
18 child be returned;

19 (3) harbor or hide the child within this State, knowing that possession of  
20 the child was obtained by another relative in violation of this section; or

21 (4) act as an accessory to an act prohibited by this section.

22 (B) IF A CHILD IS UNDER THE AGE OF 16 YEARS, A RELATIVE WHO KNOWS  
23 THAT ANOTHER PERSON HAS LAWFUL VISITATION RIGHTS WITH THE CHILD MAY  
24 NOT:

25 (1) HARBOR OR HIDE THE CHILD WITHIN THIS STATE WITH THE INTENT  
26 OF KEEPING THE WHEREABOUTS OF THE CHILD UNKNOWN TO THE PERSON WITH  
27 LAWFUL VISITATION RIGHTS AND DEPRIVING THE PERSON OF EXERCISING THE  
28 PERSON'S LAWFUL VISITATION RIGHTS; OR

29 (2) ACT AS AN ACCESSORY TO AN ACT PROHIBITED BY THIS SECTION.

30 9-305.

31 (a) If a child is under the age of 16 years, a relative who knows that another  
32 person is the lawful custodian of the child may not:

33 (1) abduct, take, or carry away the child from the lawful custodian to a  
34 place in another state;

1           (2)       having acquired lawful possession of the child, detain the child in  
2 another state for more than 48 hours after the lawful custodian demands that the  
3 child be returned;

4           (3)       harbor or hide the child in another state knowing that possession of  
5 the child was obtained by another relative in violation of this section; or

6           (4)       act as an accessory to an act prohibited by this section.

7       (b)       If a child is under the age of 16 years, a relative who knows that another  
8 person is the lawful custodian of the child may not:

9           (1)       abduct, take, or carry away the child from the lawful custodian to a  
10 place that is outside of the United States or a territory of the United States or the  
11 District of Columbia or the Commonwealth of Puerto Rico;

12          (2)       having acquired lawful possession of the child, detain the child in a  
13 place that is outside of the United States or a territory of the United States or the  
14 District of Columbia or the Commonwealth of Puerto Rico for more than 48 hours  
15 after the lawful custodian demands that the child be returned;

16          (3)       harbor or hide the child in a place that is outside of the United States  
17 or a territory of the United States or the District of Columbia or the Commonwealth  
18 of Puerto Rico knowing that possession of the child was obtained by another relative  
19 in violation of this section; or

20          (4)       act as an accessory to an act prohibited by this section.

21       (C)       IF A CHILD IS UNDER THE AGE OF 16 YEARS, A RELATIVE WHO KNOWS  
22 THAT ANOTHER PERSON HAS LAWFUL VISITATION RIGHTS WITH THE CHILD MAY  
23 NOT:

24          (1)       HARBOR OR HIDE THE CHILD OUTSIDE THIS STATE WITH THE  
25 INTENT OF KEEPING THE WHEREABOUTS OF THE CHILD UNKNOWN TO THE PERSON  
26 WITH LAWFUL VISITATION RIGHTS AND DEPRIVING THE PERSON OF EXERCISING  
27 THE PERSON'S LAWFUL VISITATION RIGHTS; OR

28          (2)       ACT AS AN ACCESSORY TO AN ACT PROHIBITED BY THIS SECTION.

29 9-306.

30       (a)       If [an individual] A PERSON violates the provisions of § 9-304 or § 9-305  
31 of this subtitle, the [individual] PERSON may file in an equity court a petition that:

32          (1)       states that, at the time the act was done, a failure to do the act would  
33 have resulted in a clear and present danger to the health, safety, or welfare of the  
34 child; and

35          (2)       seeks to revise, amend, or clarify the custody OR VISITATION order.

1 (b) (1) If a petition is filed as provided in subsection (a) of this section within  
2 96 hours of the act, a finding by the court that, at the time the act was done, a failure  
3 to do the act would have resulted in a clear and present danger to the health, safety,  
4 or welfare of the child is a complete defense to any action brought for a violation of §  
5 9-304 or § 9-305 of this subtitle.

6 (2) IT IS A COMPLETE DEFENSE TO ANY ACTION BROUGHT FOR A  
7 VIOLATION OF § 9-304(B) OR § 9-305(C) OF THIS SUBTITLE THAT A NOTIFICATION  
8 DIVULGING THE WHEREABOUTS OF THE CHILD WAS MADE TO THE PERSON WITH  
9 LAWFUL VISITATION RIGHTS WITHIN 30 DAYS OF THE ACT CONSTITUTING THE  
10 VIOLATION.

11 9-307.

12 (a) A person who violates any provision of § 9-304 of this subtitle is guilty of a  
13 misdemeanor and on conviction is subject to a fine not exceeding \$250 or  
14 imprisonment not exceeding 30 days.

15 (b) If the child is out of the custody of the lawful custodian for not more than  
16 30 days OR IF THE WHEREABOUTS OF THE CHILD ARE UNKNOWN TO THE PERSON  
17 WITH LAWFUL VISITATION RIGHTS FOR NOT MORE THAN 30 DAYS, a person who  
18 violates any provision of § 9-305(a) OR (C) of this subtitle is guilty of a felony and on  
19 conviction is subject to a fine not exceeding \$250 or imprisonment not exceeding 30  
20 days, or both.

21 (c) If the child is out of the custody of the lawful custodian for more than 30  
22 days OR IF THE WHEREABOUTS OF THE CHILD ARE UNKNOWN TO THE PERSON WITH  
23 LAWFUL VISITATION RIGHTS FOR MORE THAN 30 DAYS, a person who violates any  
24 provision of § 9-305(a) OR (C) of this subtitle is guilty of a felony and on conviction is  
25 subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year, or both.

26 (d) A person who violates any provision of § 9-305(b) of this subtitle is guilty of  
27 a felony and on conviction is subject to a fine not exceeding \$5,000 or imprisonment  
28 not exceeding 3 years or both.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
30 October 1, 2005.