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TESTIMONY OF RONALD W. NELSON,

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Mr. Chairman and Members of the Committee:

My name is Ronald W. Nelson. I am a lawyer engaged in private practice in Overland Park, Kansas with approximately 85% of my practice in the area of family law. I am the President Elect of the Kansas Bar Association Family Law Section and I am the Vice Chair of the Child Custody Committee of the American Bar Association Family Law Section. I have written a number of articles and presented seminars on various areas of domestic law, including articles on the Uniform Child Custody Jurisdiction and Enforcement Act. The Kansas Bar Association favors the passage of the Uniform Child Custody Jurisdiction and Enforcement Act.

In 1966 the National Council of Commissioners on Uniform State Laws (a national organization composed of representatives of all 50 states) recommended passage of the Uniform Child Custody Jurisdiction Act. This original recommendation for passage was made “[t]o remedy this intolerable state of affairs [existing at that time] where self-help and the rule of ‘seize-and-run’ prevail rather than the orderly process of the law. . . .” Prefatory Note, Uniform Child Custody Jurisdiction Act, 9 U.L.A. 117 (Part I, 1988). This Act was enacted into law by the state of Kansas in 1978. 1978 Kan. Sess. Laws, Ch. 231. Since the original recommendation by the Uniform Laws Commission, all fifty states have enacted the UCCJA, with Massachusetts being

the last state to enact the UCCJA effective December 21, 1983. Mass.Gen.Laws Ann. Ch. 209B, §§1-14.

Since its enactment, the UCCJA has provided a significant improvement in the way in which jurisdictional disputes have been handled in the states' courts resulting in greater predictability of which state should handle custody disputes and significantly impacting on the practice in existence before passage of the UCCJA of a parent running from state to state to state trying to find a court in which a stay behind parents right could be negatively effected.

As a result of various national studies showing conflicts in interpretation of the UCCJA by various states, as well as significant federal laws that impacted on the Act which had been enacted after the original draft of the UCCJA, the Family Law Committee of NCCUSL determined in 1994 that the Act needed to be revised to ensure consistency and resolve conflicts. Over the next three years, drafting committees worked on revisions to the original UCCJA. At its annual meeting in 1997, the National Conference of Commissioners on Uniform State Laws approved a major revision of the Uniform Child Custody Jurisdiction Act. The revision, titled the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) modifies and supplements the existing UCCJA in a few different ways:

First, it revises the law on child custody jurisdiction in light of significant federal laws which have been enacted since the original drafting date, including the Parental Kidnapping Prevention Act (28 U.S.C. 1738A), the Indian Child Welfare Act of 1978 (25 U.S.C. 1901, et seq.), the International Child Abduction Remedies Act (42 U.S.C. § 11601, et seq.), and other significant Acts.

Secondly, the UCCJEA revises the law in consideration of over thirty years of contradictory case law. Over the time since the original UCCJA was enacted some states' courts have read various important provisions of the Act in diametric opposition to the way in which the Uniform Laws Commission originally anticipated. In some cases, those conflicting interpretations have led to situations in which two states have exercised jurisdiction over the same child although that is exactly the situation the Act sought to avoid. As a result, the Uniform Laws Commission has modified Article 2 of the Act so that it provides a more clear way in which a determination can be made of which State is to exercise original jurisdiction over a child-custody determination. It also, for the first time, enunciates a standard of continuing jurisdiction and clarifies modification jurisdiction (which the Kansas Legislature foresaw as a needed addition by adding K.S.A. 38-1335 in 1980). Other aspects of the Article harmonize the law on what happens when simultaneous proceedings occur, application of the "clean hands" doctrine, and rules regarding "inconvenient forum."

Perhaps the most important inclusion in the UCCJEA and the only significant addition, however, is to be found in Article 3 which provides for an expedited process to enforce child custody and visitation determinations. This Article, for the first time, sets forth a simple and uniform method by which a existing orders of child custody, residency or visitation can be enforced. This Article is based on the provisions of the Hague Convention on International Child Abduction and sets forth strong means for enforcement of those Orders.

The 1999 Interim Judiciary Committee passed out the Uniform Child Custody Jurisdiction and Enforcement Act with various additions necessary to modify all laws affected by child custody jurisdiction issues, making clear (as is intended by the UCCJEA, and as has been

found applicable by the Kansas Supreme Court) that actions for guardianship, child in need of care, determination of parentage, and other similar matters are included.

In the Interim Committee hearings, it was suggested that some additional jurisdictional provisions be added to the adoption statutes since the UCCJEA specifically excludes adoptions from its coverage. The reason for this exclusion is because NCCUSL also has recommended for passage a Uniform Adoption Act that includes jurisdictional provisions specific to adoptions. The suggested additions to the Act in the Interim Committee sought to incorporate provisions from the Uniform Adoption Act since, without any addition, the UCCJEA would exclude adoption (see UCCJEA Section 203), but the Kansas Adoption statutes do not include any independent jurisdictional provisions.

In reviewing the various proposals, it appears the Kansas Legislature has two alternatives in dealing with this situation:

First, and easiest, the Legislature could simply remove the exclusion of adoption for the Act. This would be accomplished merely by deleting subsection (a) of UCCJEA 103. This is probably the easiest and best way to deal with this issue. If this is the choice of the Legislature, then Section 103 of the Act (as included in SB282) should be amended as follows:

35      New Sec. 3. (UCCJEA 103). This act does not govern ~~an adoption~~  
36      ~~proceeding or~~ a proceeding pertaining to the authorization of emergency  
37      medical care for a child. ~~Jurisdiction for adoptions shall be governed by~~  
38      ~~K.S.A. 59-2127, and amendments thereto.~~

If this choice is selected, K.S.A. 59-2127(a) can be deleted in total.

Secondly, the Legislature could include modified provisions of the Uniform Adoption Act into the Act. The Interim Committee incorporated the jurisdictional provisions of the UAA into the UCCJEA. However, in reviewing those provisions, it appears there are some additional modifications that need to be made to coordinate those sections with the federal Parental Kidnapping Prevention Act. Those are as follows:

13           Sec. 45. K.S.A. 59-2127 is hereby amended to read as follows: 59-  
14           2127. ~~(a) If the basis for venue in an agency adoption is subsection (b)(3)~~  
15           ~~of K.S.A. 59-2126 and the petitioner does not reside in Kansas and the~~  
16           ~~child to be adopted did not reside in Kansas prior to receipt of custody~~  
17           ~~by the agency, the court shall determine whether or not to exercise its~~  
18           ~~jurisdiction under this act based on the best interests of the child. For~~  
19           ~~this purpose the court shall consider the following factors:~~  
20           ~~— (1) If another state recently was the child's or mother's home state;~~  
21           ~~— (2) if another state has a closer connection with the child or the child's~~  
22           ~~adoptive or genetic parent or parents;~~  
23           ~~— (3) if substantial evidence concerning the child's present or future~~  
24           ~~care, protection, training and personal relationships is more readily avail-~~  
25           ~~able in another state;~~  
26           ~~— (4) the unavailability of placement opportunities for such child within~~  
27           ~~the state of Kansas; and~~  
28           ~~— (5) any other factor the court deems relevant in its determination of~~  
29           ~~whether or not to exercise its jurisdiction.~~  
30           (a) Except as otherwise provided in subsections (b) and (c), a court  
31           of this state has jurisdiction over a proceeding for the adoption of a minor  
32           commenced under this act if:  
33           (1) Immediately before commencement of the proceeding, the minor  
34           lived in this state with a parent, a guardian, a prospective adoptive parent,  
35           or another person acting as parent, for at least six consecutive months,  
36           excluding periods of temporary absence, or, in the case of a minor under  
37           six months of age, the minor lived in this state from birth with any of  
38           those individuals ~~and there is available in this state substantial evidence~~  
39           ~~concerning the minor's present or future care;~~  
40           (2) a court of another state does not have jurisdiction under paragraph (1), or a  
court of the home state of the child has declined to exercise jurisdiction on the ground that  
this state is the more appropriate forum under section 19 or 20 and amendments thereto,  
and immediately before commencement of the proceeding, the pro-  
41           spective adoptive parent lived in this state for at least six consecutive  
42           months, excluding periods of temporary absence, and there is available in  
43           this state substantial evidence concerning the minor's present or future

1 care;

2 (3) a court of another state does not have or has declined to exercise  
3 jurisdiction under paragraphs (1) or (2) and the agency that placed the minor for adoption  
4 is located in this  
5 state and ~~either it is in the best interest of the minor that a court of this state~~  
6 ~~assume jurisdiction because:-~~  
7 (A) The minor and the minor's parents, or the minor and the pro-  
8 spective adoptive parent, have a significant connection with this state;  
9 ~~and/or~~  
10 (B) there is available in this state substantial evidence concerning the  
11 minor's present or future care;

12 (4) a court of another state does not have or has declined to exercise  
13 jurisdiction under paragraphs (1), (2) or (3) and the minor and the prospective adoptive  
14 parent are physically pres-  
15 ent in this state and the minor has been abandoned or it is necessary in  
16 an emergency to protect the minor because the minor has been subjected  
17 to or threatened with mistreatment or abuse; or  
18 (5) all courts having jurisdiction under paragraph (1), (2), (3) or (4)  
19 have declined to exercise jurisdiction on the ground that a court of this  
20 state is the more appropriate forum to determine the custody of the child.  
21 (b) A court of this state may not exercise jurisdiction over a proceed-  
22 ing for adoption of a minor if at the time the petition for adoption is filed  
23 a proceeding concerning the custody or adoption of the minor is pending  
24 in a court of another state exercising jurisdiction substantially in conform-  
25 ity with the uniform child custody jurisdiction act, or the uniform child  
26 custody jurisdiction and enforcement act, or this act unless the proceeding  
27 is stayed by the court of the other state.  
28 (c) If a court of another state has issued a decree or order concerning  
29 the custody of a minor who may be the subject of a proceeding for adop-  
30 tion in this state, a court of this state may not exercise jurisdiction over a  
31 proceeding for adoption of the minor unless:  
32 (1) The court of this state finds that the court of the state which issued  
33 the decree or order:  
34 (A) Does not have continuing jurisdiction to modify the decree or order  
35 under jurisdictional prerequisites substantially in accordance with the  
36 uniform child custody jurisdiction act, or the uniform child custody ju-  
37 risdiction and enforcement act, or has declined to assume jurisdiction to  
38 modify the decree or order, or  
39 (B) does not have jurisdiction over a proceeding for adoption sub-  
40 stantially in conformity with subsection (a)(1) through (4) or has declined  
41 to assume jurisdiction proceeding for adoption; and  
42 (2) the court of this state has jurisdiction over the proceeding.  
43 (b)(d) Before determining whether or not to exercise its jurisdiction  
the court may communicate with a court of another state and exchange  
information pertinent to the assumption of jurisdiction by either court  
with a view to assuring that jurisdiction will be exercised by such court  
of another state and that a forum will be available to the parties.

- 1           ~~(c)~~(e) If the court determines not to exercise its jurisdiction, it may
- 2           dismiss the proceedings, or it may stay the proceedings upon condition
- 3           that an adoption proceeding be promptly commenced in another named
- 4           state or upon any other conditions which may be just and proper.

By adding these provisions, the language complies with the provisions of the federal Parental Kidnapping Prevention Act by including a preference for “home state” jurisdiction and an order for acceptance of jurisdiction if not home state.

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