

FINAL BILL REPORT

SHB 1560

C 318 L 93
Synopsis as Enacted

Brief Description: Adopting the uniform interstate family support act.

By House Committee on Judiciary (originally sponsored by Representatives Appelwick, Leonard, Karahalios and Johanson).

House Committee on Judiciary
Senate Committee on Law & Justice

Background: The Uniform Enforcement of Support Act (URESAs) creates a mechanism for collection of child support or spousal maintenance when an obligor or obligee leaves the state in which the original order was entered. The act creates civil and criminal remedies to enforce support.

The criminal remedies allow a state to demand that the obligor be extradited to the state trying to enforce support if the obligor is charged with the crime of failing to support a person whom the obligor is ordered to support. A number of requirements apply before a criminal action may be commenced. Apparently, criminal actions and extraditions are rarely used under URESAs.

Support orders are much more commonly enforced using the state's civil procedures. Many procedures have not been changed since 1963. Since that time, congressional legislation has had a major impact upon child support enforcement collection efforts. State laws have been developed to comply with federal laws, with the result that most states have comparable support enforcement statutes. To respond to changes in state and federal laws, the Uniform Law commissioners have developed a new act to improve enforcement of support across state lines. A federal law is also being considered but has not yet passed. The Uniform Law commissioners recommend that the states adopt the new uniform act.

Summary: The Uniform Reciprocal Enforcement of Support Act (URESAs) is repealed and replaced with the Uniform Interstate Family Support Act (UIFSA). UIFSA makes a number of changes to the provisions governing interstate collection of child support or spousal maintenance. A few changes recommended

by the Washington State Bar Association have been incorporated into the bill.

GENERAL PROVISIONS

Terminology: Existing terminology in the Uniform Reciprocal Enforcement of Support Act (URESAs) has been retained as much as possible to ease the transition to UIFSA. One change is the substitution of the term "tribunal" for "court." The superior court is the tribunal for judicial proceedings, and the Office of Support Enforcement is the tribunal for administrative proceedings.

Reorganization: The act has been reorganized. Within civil proceedings, separate articles have been created for provisions common to all types of actions.

Reciprocity Not Required: Reciprocity of laws between states is no longer required. Because all states have quite similar laws, the enacting state should enforce a support obligation irrespective of another state's law. Consistent with past practice, all substantially similar state laws are deemed equivalent to UIFSA for purposes of interstate actions. Any of these acts may be used if different states have different versions in effect, which is intended to ease the transition to UIFSA. Because questions remain about how this provision will work in practice, the effective date is delayed until July 1, 1994.

Long-Arm Jurisdiction: The act contains a broad provision for asserting long-arm jurisdiction to give tribunals in the home state of the supported family the maximum opportunity to secure personal jurisdiction over an absent respondent, thereby converting what would otherwise be a two-state proceeding into a one-state lawsuit. Where jurisdiction over a nonresident is obtained, the tribunal may obtain evidence, provide for discovery, and elicit testimony through new provisions designed to facilitate discovery.

ESTABLISHING A SUPPORT ORDER

Family Support: UIFSA may be used only for proceedings involving the support of a child or spouse of the support obligor, and not to enforce other duties such as support of a parent. Under URESAs, child support and spousal support are treated identically. However, under UIFSA, spousal support is modifiable in the interstate context only after such a request is forwarded to the original issuing state from another state.

Local Law: URESAs provides that the law for establishment of duties of support is the law of the state where the obligor

was present for the period during which support is sought. In other cases, URESA generally refers to the law of the forum. UIFSA provides that the procedures and law of the forum apply, with some additions or exceptions. For example, visitation issues cannot be raised in child support proceedings, which is consistent with Washington law. The choice of law for interpretation of registered orders is that of the state issuing the underlying support order. If there are different statutes of limitation for enforcement, however, the longer one applies.

One-Order System: Under the present URESA, the registering state often asserts the right to modify the other state's registered order. This means that more than one valid support order can be in effect in more than one state. Under UIFSA, continuing, exclusive jurisdiction allows only one support order to be effective at any one time.

Efficiency: A number of changes are made to streamline interstate proceedings:

- (1) Proceedings may be initiated by or referred to administrative agencies rather than to courts in those states that use those agencies to establish support orders.
- (2) Initiation of an interstate case in the initiating state is expressly made ministerial rather than a matter of court adjudication or review. Further, a party in the initiating state may file an action directly in the responding state.
- (3) Forms which are federally mandated for use in certain interstate cases must be used in all interstate cases.
- (4) Authority is provided for the transmission of information and documents through electronic and other modern means of communication.
- (5) A tribunal may permit an out-of-state party or witness to be deposed or to testify by telephone conference.
- (6) Tribunals are required to cooperate in the discovery process for use in a tribunal in another state.
- (7) A tribunal and a support enforcement agency providing services to a supported family must keep the parties informed about all important developments in a case.

- (8) A registered support order is confirmed and immediately enforceable unless the respondent files a written objection within 20 days after service and sustains that objection.

Private Attorneys: UIFSA explicitly authorizes parties to retain private legal counsel, as well as to use the services of the state support enforcement agency.

Interstate Parentage: UIFSA authorizes establishment of parentage in an interstate proceeding, even if not coupled with a proceeding to establish support.

ENFORCING A SUPPORT ORDER

Direct Enforcement: UIFSA provides two direct enforcement procedures that do not require assistance from a tribunal. First, the support order may be mailed directly to an obligor's employer in another state, which triggers wage withholding by that employer without the necessity of a hearing unless the employee objects. Second, UIFSA provides for direct administrative enforcement by the support enforcement agency of the obligor's state.

Registration: All judicial enforcement activity must begin with registration of the existing support order in the responding state. However, the registered order continues to be the order of the issuing state, and the role of the responding state is limited to enforcing that order except in the very limited circumstances where modification is permitted.

Contesting the Order's Validity: The responding state's tribunal must notify the obligor of the support order by certified or registered mail or by personal service. The party may request a hearing to contest the order. The failure to contest the validity or enforcement of the order results in confirmation. The party has the burden of proving defenses to enforcement. The defenses may not challenge the order's substantive provisions, only whether the issuing tribunal lacked personal jurisdiction over the party, whether the order was obtained by fraud or has been vacated or stayed, whether the amounts due have been paid, or whether the statute of limitations for enforcement has expired.

MODIFYING A SUPPORT ORDER

Registration: A party, whether obligor or obligee, seeking to modify an existing child support order must follow the same registration procedure that is required for enforcement.

Modification Limited: Under URESA, most courts have held that a responding state can modify a support order for which enforcement has been sought. Except under narrowly defined fact circumstances, under UIFSA the only tribunal that can modify a support order is the one having continuing, exclusive jurisdiction over the order. If the parties no longer reside in the issuing state, a tribunal with personal jurisdiction over both parties or with power given by agreement of the parties, has jurisdiction to modify.

PARENTAGE

UIFSA clearly states that interstate determination of parentage is authorized. It may be accomplished without establishing a support obligation, or contemporaneously to determine parentage and establish support. UIFSA provides no substantive or procedural alterations to existing law of the forum regarding determination of parentage.

AWARD OF COSTS AND FEES

The petitioner may not be required to pay a filing fee or other costs. If an obligee prevails in a support enforcement proceeding, a responding tribunal may assess against an obligor filing fees, reasonable attorneys' fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligor's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency unless the obligee or agency has acted in bad faith or has violated the provisions of Civil Rule 11 which establishes rules for signing legal documents. The tribunal may also award statutory attorneys' fees. The court may award either party costs and reasonable attorneys' fees in an action to establish or modify support as provided in current law.

Votes on Final Passage:

House	98	0
Senate	42	1

Effective: July 1, 1994