

HOUSE BILL REPORT

HB 1560

As Reported By House Committee On:
Judiciary

Title: An act relating to the uniform interstate family support act.

Brief Description: Adopting the uniform interstate family support act.

Sponsors: Representatives Appelwick, Leonard, Karahalios and Johanson.

Brief History:

Reported by House Committee on:
Judiciary, February 23, 1993, DPS.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Forner; Johanson; Locke; Long; Mastin; H. Myers; Riley; Schmidt; Scott; Tate; and Wineberry.

Minority Report: Do not pass. Signed by 1 member: Representative Padden, Ranking Minority Member.

Staff: Patricia Shelledy (786-7149).

Background: The Uniform Enforcement of Support Act (URESAs) creates a mechanism for the 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.

The civil procedures are much more commonly used to enforce support. Many of the 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 the federal laws. Now, most states have comparable enforcement of support statutes. To respond to the 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Summary of Substitute Bill: The Uniform Reciprocal Enforcement of Support Act (URESAs) is repealed and replaced with the Uniform Interstate Family Support Act (UIFSA).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.

A. In General.

1. TERMINOLOGY. Existing terminology in the Uniform Reciprocal Enforcement of Support Act (URESAs) has been retained as much as possible to ease the transition to the new act. 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.
2. REORGANIZATION. The act has been reorganized. The order in which civil and criminal proceedings are dealt with is reversed to reflect the frequency and utility of those approaches. Within civil proceedings, separate articles have been created for provisions common to all types of actions. New jurisdictional provisions establish uniform long-arm jurisdiction over nonresidents in order to facilitate one-state proceedings whenever possible.
3. 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. Some questions still exist as to how the intent of this

provision will work in practice, so the effective date is delayed until July 1, 1994.

4. 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 possible opportunity to secure personal jurisdiction over an absent respondent, thereby converting what otherwise would 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.

B. Establishing a Support Order.

1. 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 URESA 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.
2. LOCAL LAW. URESA provides a somewhat complex choice of law for establishment of duties of support, which is the law of the state where the obligor was present for the period during which support is sought. Otherwise 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 our law in this state. The choice of law for the 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.
3. 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, the principle of continuing, exclusive jurisdiction is introduced for the first time to allow only one support order to be effective at any one time.

4. EFFICIENCY. A number of changes are made to streamline interstate proceedings:
 - (a) 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.
 - (b) 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.
 - (c) Forms which are federally mandated for use in certain interstate cases must be used in all interstate cases for transmission of information from the initiating state to the responding state, and the information in those forms is declared to be admissible evidence.
 - (d) Authority is provided for the transmission of information and documents through electronic and other modern means of communication.
 - (e) A tribunal may permit an out-of-state party or witness to be deposed or to testify by telephone conference.
 - (f) Tribunals are required to cooperate in the discovery process for use in a tribunal in another state.
 - (g) 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.
 - (h) 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.
5. PRIVATE ATTORNEYS. UIFSA explicitly authorizes parties to retain private legal counsel, as well as to use the services of the state support enforcement agency.
6. INTERSTATE PARENTAGE. UIFSA authorizes establishment of parentage in an interstate proceeding, even if not coupled with a proceeding to establish support.

C. Enforcing a support order.

1. DIRECT ENFORCEMENT. The act 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, the act provides for direct administrative enforcement by the support enforcement agency of the obligor's state.
2. REGISTRATION. All judicial enforcement activity must begin with the 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.
3. CONTESTING THE VALIDITY OF THE ORDER. The tribunal of the responding state 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 within 20 days of receipt of the notice if the party lives in the state or within 60 days of receipt if the party lives outside the state. The failure to contest the validity or enforcement of the order results in confirmation of the order. The party has the burden of proving defenses to the enforcement of the order. The defenses may not challenge the substantive provisions of the order, 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.

D. Modifying a support order.

1. REGISTRATION. A party, whether obligor or obligee, seeking to modify an existing child support order is directed to follow the identical procedure for registration as when enforcement is sought.
2. 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.

E. Parentage.

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

F. 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.

Substitute Bill Compared to Original Bill: The effective date is delayed to July 1, 1994. The Department of Social and Health Services Office of Support Enforcement replaces the attorney general as the state information officer. Two technical amendments are made.

Fiscal Note: Requested February 18, 1993.

Effective Date of Substitute Bill: The bill takes effect July 1, 1994.

Testimony For: UIFSA is an improvement over existing law and should help both parents involved in child support disputes. UIFSA should correct problems with multiple orders that may be in place in more than one state. Multiple orders are unfair to both parents. Direct

enforcement mechanisms should make collection easier, less expensive, and quicker.

Testimony Against: Concern exists that repealing URESA without UIFSA in place in more states could jeopardize our state efforts to collect support. A delayed effective date is recommended.

Witnesses: Dave Hogan, Revenue Division, Department of Social and Health Services (pro, with concerns); Kim Prochnau, Washington State Bar Association and King County Bar Association (pro); Michele Delo, Washington Families (con, in part); and Lonnie Johns-Brown, National Organization for Women (pro).