



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 605 (Substitute S-2 as passed by the Senate)
 Sponsor: Senator William Van Regenmorter
 Committee: Families, Mental Health and Human Services

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RATIONALE

The National Conference of Commissioners on Uniform State Laws first promulgated the Uniform Reciprocal Enforcement of Support Act (URESA) in 1950. Before that time, it was often very difficult, if not impossible, for an individual to enforce a support order simply because his or her former spouse was outside the jurisdiction of the recipient's state courts. Considered a pioneering effort to solve the problem of interstate enforcement of child support awards, the uniform law was enacted in Michigan in 1952. Since interstate enforcement problems and delays persisted, the Uniform Law Commissioners promulgated a revised URESA in 1968. Michigan adopted the revised law in 1985, and some version of it has been enacted in every state. In the past several decades, URESA has been used across the United States when a child support award made in one state must be enforced in another--which occurs when parties to an award reside in different states.

The problem of interstate child support enforcement has continued to grow, however, and in 1992 the Uniform Law Commissioners promulgated a replacement to URESA: the Uniform Interstate Family Support Act (UIFSA). Apparently, UIFSA incorporates new solutions to interstate enforcement and reflects principles of law that were not previously available. According to the Uniform Law Commissioners, the greatest weakness of URESA is its inability to prevent multiple modifications of child support awards. Although a state may permit the enforcement of another state's award under the principle of reciprocity, the enforcing state may take modification jurisdiction and amend the award: The effect is to create two competing awards, each enforceable within the boundaries of each initiating state and equally enforceable in other

states. Also, URESA evidently is not helpful when parties locate themselves in different states before child support has been awarded.

The Uniform Interstate Family Support Act is said to solve these problems by combining principles of "long-arm" jurisdiction with principles of continuing jurisdiction and "home-state" of the child. (These issues are described in BACKGROUND.) According to the Uniform Law Commissioners, UIFSA works by 1) setting basic jurisdictional standards for state courts, which help a forum take personal jurisdiction over a party absent from the state; 2) determining what permits a state to have continuing exclusive jurisdiction over a support award after it has been adjudicated; 3) providing rules for determining which state may adjudicate a proceeding in the event simultaneous proceedings are filed in more than one state; and 4) providing rules for modifying existing support awards when they are transmitted from one state to another for enforcement.

Reportedly, 26 other states already have adopted UIFSA, and it has been suggested that Michigan also enact this uniform law.

CONTENT

The bill would enact the "Uniform Interstate Family Support Act", which generally would do the following:

- Specify circumstances under which a tribunal of this State could exercise personal jurisdiction over a nonresident in a proceeding to establish, enforce, or modify a support order or to determine parentage.**

- Provide that a tribunal of this State issuing a support order would have continuing, exclusive jurisdiction over a child support order as long as the payor, the recipient, or the child resided in Michigan, or until each party consented to the jurisdiction of another state.
- Provide for the recognition and enforcement of existing multiple child support orders concerning the same payor, recipient, and child.
- Specify that participation in a proceeding under the Act would not subject a petitioner to personal jurisdiction in another proceeding.
- Establish rules of evidence and procedure, and specify methods for transmitting evidence in interstate cases.
- Authorize a responding tribunal of this State to issue a support order under certain circumstances.
- Provide for the recognition of an income-withholding order issued in another state.
- Allow a support order or an income-withholding order issued by another state to be registered in Michigan for enforcement, and prescribe procedures for a nonregistering party to contest the order.
- Provide that this State could modify an existing child support order of another state under certain circumstances.
- Require this State to recognize a modification of its earlier child support order by another state that assumed jurisdiction pursuant to UIFSA.
- Provide that a tribunal of this State could serve as an initiating or responding tribunal in a proceeding to determine parentage.
- Provide for the interstate rendition of individuals criminally charged with failure to provide support.

The Act would take effect June 1, 1996.

ARTICLE 1 - General Provisions

Definitions

“Child” would mean an individual, whether over or under the age of majority, who was or was alleged to be owed a duty of support by the individual’s parent or who was or was alleged to be the beneficiary of a support order directed to the parent. “Child support order” would mean a

support order for a child, including a child who had attained the age of majority under the law of the issuing state. “Duty of support” would mean an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

“Employer” would mean that term as defined in the “Support and Parenting Enforcement Act” (currently entitled the “Support and Visitation Enforcement Act”). “Home state” would mean the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of petitioning for support or, if a child were less than six months old, the state in which the child lived from birth with a parent or a person acting as parent. A period of temporary absence of any of them would be counted as part of the six-month period or other period.

“Income” would include earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this State. “Income withholding order” would mean legal process directed to an obligor’s employer or other debtor to withhold support from the income of the obligor.

“Initiating state” would mean a state in which a proceeding under a support enforcement act was filed for forwarding to a responding state. “Initiating tribunal” would mean the authorized tribunal in an initiating state. “Issuing state” would mean the state in which a tribunal issued a support order or rendered a judgment determining parentage. “Issuing tribunal” would mean the tribunal that issued a support order or rendered a judgment determining parentage. “Law” would include decisional and statutory law, and rules and regulations having the force of law. “L.E.I.N.” would mean the Law Enforcement Information Network administered under the L.E.I.N. Policy Council Act.

“Obligee” would mean any of the following:

- An individual to whom a duty of support was or was alleged to be owed or in whose favor a support order had been issued or a judgment determining parentage had been rendered.
- A state or political subdivision to which the rights under a duty of support or support order had been assigned or that had independent claims based on financial assistance provided to an individual obligee.

- An individual seeking a judgment determining parentage of the individual's child.

"Obligor" would mean an individual about whom one of the following was true, or the estate of a decedent about whom one of the following was true before the individual's death: the individual owed or was alleged to owe a duty of support; the individual was alleged, but had not been adjudicated, to be a parent of a child; the individual was liable under a support order.

"Register" would mean to file a support order or judgment determining parentage in the circuit court. "Registering tribunal" would mean a tribunal in which a support order was registered. "Responding state" would mean a state to which a proceeding was forwarded under a support enforcement act. "Responding tribunal" would mean the authorized tribunal in a responding state.

"Spousal support order" would mean a support order for a spouse or former spouse of the obligor. "State" would mean a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States. It also would include an Indian tribe and a foreign jurisdiction that had established procedures for issuance and enforcement of support orders that were substantially similar to the procedures under the bill. "Support enforcement act" would mean the bill, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or another act substantially similar to one of those acts that was in effect in this or another state. It also would include a former act substantially similar to an act just described under which an order was issued or proceeding initiated, which order or proceeding remained operative.

"Support enforcement agency" would mean a public official or agency authorized to seek enforcement of support orders or laws relating to the duty of support; establishment or modification of child support; determination of parentage; or location of obligors or their assets. "Support order" would mean a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, spouse, or former spouse that provided for monetary support, health care, arrearages, or reimbursement, and could include related costs and fees, interest, income withholding, attorney fees, and other relief. "Tribunal" would mean a court, administrative agency, or quasi-judicial entity authorized to

establish, enforce, or modify support orders or determine parentage.

Remedy/General Purpose

A remedy provided by the bill would be cumulative and would not affect the availability of a remedy under other law. Further, the bill would have to be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the proposed Act among states enacting it.

ARTICLE 2 - Jurisdiction

Part 1: Extended Personal Jurisdiction

The bill specifies that in a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this State could exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if the individual:

- Were personally served with a citation, summons, or notice within this State.
- Submitted to the jurisdiction of this State by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction.
- Resided with the child in this State.
- Resided in this State and provided prenatal expenses or support for the child.
- Engaged in this State in sexual intercourse by which the child could have been conceived.
- Asserted parentage in the putative father registry maintained in this State by the Department of Social Services.

The State also could exercise personal jurisdiction if the child resided in this State as a result of the acts or directives of the individual, or if there were any other basis consistent with the Constitutions of this State and the United States for the exercise of personal jurisdiction.

A tribunal exercising personal jurisdiction over a nonresident could apply the bill's provisions concerning evidence to receive evidence from another state, and the bill's provisions concerning requesting assistance from another state to obtain discovery through a tribunal of another state. In all other respects Articles III to VII of the bill would not apply, and the tribunal would have to apply the procedural and substantive law of this State, including the rules on choice of law other than those established by this bill.

Part 2: Multistate Proceedings

Under the bill, a tribunal of this State could serve as an initiating tribunal to forward proceedings to another state, and as a responding tribunal for proceedings initiated in another state.

A tribunal also could exercise jurisdiction to establish a support order if a petition or comparable pleading were filed in this State after a petition or comparable pleading was filed in another state only if all of the following were true:

- The petition or comparable pleading in this State was filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state.
- The contesting party timely challenged the exercise of jurisdiction in the other state.
- This State was the home state of the child, if relevant.

A tribunal could not exercise jurisdiction to establish a support order if a petition or comparable pleading were filed before a petition or comparable pleading was filed in another state if all of the following were true:

- The petition or comparable pleading in the other state was filed before the expiration of the time allowed in this State for filing a responsive pleading challenging the exercise of jurisdiction by this State.
- The contesting party timely challenged the exercise of jurisdiction in this State.
- The other state was the home state of the child, if relevant.

A tribunal of this State issuing a support order consistent with the law of this State would have continuing, exclusive jurisdiction over a child support order as long as this State remained the residence of the obligor, the individual obligee, or the child for whose benefit the support order was issued, or until each individual party had filed written consent with the tribunal of this State for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

A tribunal of this State issuing a child support order consistent with the law of this State could not exercise its continuing jurisdiction to modify the order if the order had been modified by a tribunal of another state under a law substantially similar to the bill.

If a child support order of this State were modified by a tribunal of another state under a law

substantially similar to the bill, a tribunal of this State would lose its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this State and could do only one or more of the following :

- Enforce the order that was modified as to amounts accruing before the modification.
- Enforce nonmodifiable aspects of that order.
- Provide other appropriate relief for violations of that order that occurred before the effective date of the modification.

A tribunal of this State would have to recognize the continuing, exclusive jurisdiction of a tribunal of another state that issued a child support order under a law substantially similar to this bill. A temporary support order issued ex parte or pending resolution of a jurisdictional conflict would not create continuing, exclusive jurisdiction in the issuing tribunal.

A tribunal of this State issuing a support order consistent with the law of this State would have continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this State could not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

A tribunal of this State could serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state. A tribunal of this State having continuing, exclusive jurisdiction over a support order could act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resided in the issuing state, in subsequent proceedings the tribunal could apply the provisions of the bill concerning evidence to receive evidence from another state and the provisions of the bill concerning assistance from other states to obtain discovery through a tribunal of another state.

A tribunal of this State that lacked continuing, exclusive jurisdiction over a spousal support order could not serve as a responding tribunal to modify a spousal support order of another state.

Part 3: Reconciliation with Other States' Orders

If a proceeding were brought under the bill, and one or more child support orders had been issued in this State or other states with regard to an obligor and a child, a tribunal of this State would have to apply the following rules in determining

which order to recognize for purposes of continuing, exclusive jurisdiction:

- If only one tribunal had issued a child support order, the order of that tribunal would have to be recognized.
- If two or more tribunals had issued child support orders for the same obligor and child, and only one of the tribunals would have continuing, exclusive jurisdiction under the bill, the order of that tribunal would have to be recognized.
- If two or more tribunals had issued child support orders for the same obligor and child, and more than one of the tribunals would have continuing, exclusive jurisdiction under the bill, an order issued by a tribunal in the current home state of the child would have to be recognized or, if an order had not been issued in the current home state of the child, the order most recently issued would have to be recognized.
- If two or more tribunals issued support orders for the same obligor and child, and none of the tribunals would have continuing, exclusive jurisdiction under the bill, the tribunal of this State could issue a child support order, which would have to be recognized.

The tribunal that issued an order recognized under these provisions would be the tribunal having continuing, exclusive jurisdiction.

In responding to multiple registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of this State would have to enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this State.

Amounts collected and credited for a particular period under a support order issued by a tribunal of another state would have to be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this State.

ARTICLE 3 - Civil Provisions of General Application

Proceedings under the Act. Except as otherwise provided in the bill, this article would apply to all proceedings under the bill. The bill would provide for the following proceedings:

- Establishment of an order for spousal support or child support under Article IV.
- Enforcement of a support order and income withholding order of another state without registration under Article V.
- Registration of an order for spousal support or child support of another state for enforcement under Article VI.
- Modification of an order for child support or spousal support issued by a tribunal of this State under Article II, Part 2.
- Registration of an order for child support of another state for modification under Article VI.
- Determination of parentage under Article VII.
- Assertion of jurisdiction over nonresidents under Article II, Part 1.

An individual petitioner or a support enforcement agency could commence a proceeding authorized under this bill by filing a petition in an initiating tribunal for forwarding to a responding tribunal, or by filing a petition or a comparable pleading directly in a tribunal of another state that had or could obtain personal jurisdiction over the respondent. A minor parent, or a guardian or other legal representative of a minor parent, could maintain a proceeding on behalf of, or for the benefit of, the minor's child.

Application of Michigan Law. Except as otherwise provided by this bill, a responding tribunal of this State would have to do both of the following:

- Apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this State. The tribunal could exercise the powers and provide the remedies available in those proceedings.
- Determine the duty of support and the amount payable in accordance with the law and support guidelines of this State.

Duties of Initiating Tribunal. Upon the filing of a petition authorized by the bill, an initiating tribunal of this State would have to forward three copies of the petition and its accompanying documents to each of the following:

- The responding tribunal or appropriate support enforcement agency in the responding state.
- The state information agency of the responding state with a request that the copies and documents be forwarded to the appropriate tribunal and that receipt be

acknowledged, if the identity of the responding tribunal were unknown.

Duties and Powers of Responding Tribunal. When a responding tribunal of this State received a petition or comparable pleading from an initiating tribunal or directly from an individual petitioner or a support enforcement agency, the tribunal would have to cause the petition or pleading to be filed and notify the petitioner by first-class mail where and when it was filed.

A responding tribunal of this State, to the extent otherwise authorized by law, could do one or more of the following:

- Issue or enforce a support order, modify a child support order, or render a judgment to determine parentage.
- Order an obligor to comply with a support order, specifying the amount and the manner of compliance.
- Order income withholding.
- Determine the amount of any arrearages and specify a method of payment.
- Enforce orders by civil or criminal contempt, or both.
- Set aside property for satisfaction of the support order.
- Place liens and order execution on the obligor's property.
- Order an obligor to keep the tribunal informed of his or her current residential address, telephone number, employer, address of employment, and telephone number at the place of employment.
- Issue a bench warrant for an obligor who had failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in the L.E.I.N.
- Order the obligor to seek appropriate employment by specified methods.
- Award reasonable attorney fees and other fees and costs.
- Grant another available remedy.

A responding tribunal of this State would have to include in a support order issued under the bill or in the documents accompanying the order the calculations on which the support order was based. A responding tribunal of this State could not condition the payment of a support order issued under the bill upon compliance by a party with provisions for visitation. If a responding tribunal of this State issued an order under the bill, the tribunal would have to send a copy of the order by first-class mail to the petitioner and the respondent and to the initiating tribunal, if any.

Inappropriate Tribunal. If a petition or comparable pleading were received by an inappropriate tribunal of this State, the tribunal would have to forward the pleading and accompanying documents to an appropriate tribunal in this State or another state and notify the petitioner by first-class mail where and when the pleading was sent.

Duties of Support Enforcement Agency. Upon request, a support enforcement agency of this State would have to provide services to a petitioner in a proceeding under the bill. A support enforcement agency that was providing services to the petitioner as appropriate would have to do all of the following:

- Take all steps necessary to enable an appropriate tribunal in this State or another state to obtain jurisdiction over the respondent.
- Request an appropriate tribunal to set a date, time, and place for a hearing.
- Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties.
- Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice by first-class mail to the petitioner.
- Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication by first-class mail to the petitioner.
- Notify the petitioner if jurisdiction over the respondent could not be obtained.

The bill would neither create nor negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

Duties of Attorney General. If the Attorney General determined that the support enforcement agency was neglecting or refusing to provide services to an individual, the Attorney General could order the agency to perform its duties under the bill, or could provide those services directly to the individual.

Private Counsel. An individual could employ private counsel to represent him or her in proceedings authorized by the bill.

State Information Agency. The Office of Child Support, established under the Office of Child Support Act, would be the State Information Agency under the bill. The State Information Agency would have to do all of the following:

- Compile and maintain a current list, including addresses, of the tribunals in this State that would have jurisdiction under the bill and any support enforcement agencies in this State and transmit a copy to the state information agency of every other state.
- Maintain a register of tribunals and support enforcement agencies received from other states.
- Forward to the appropriate tribunal in the place in this State in which the individual obligee or the obligor resided, or in which the obligor's property was believed to be located, all documents concerning a proceeding under the bill received from an initiating tribunal or the state information agency of the initiating state.
- Obtain information concerning the location of the obligor and the obligor's property within this State not exempt from execution by such means as postal verification and Federal or State locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver licenses, and social security.

Pleadings. A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under the bill would have to verify the petition. Unless otherwise ordered, the petition or accompanying documents would have to provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number, and date of birth of each child for whom support was sought. The petition would have to be accompanied by a certified copy of any support order in effect. The petition would have to include any other information that could assist in locating or identifying the respondent.

The petition would have to specify the relief sought. The petition and accompanying documents would have to conform substantially with the requirements imposed by the forms mandated by Federal law for use in cases filed by a support enforcement agency.

Nondisclosure. Upon a finding, which could be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provided, a tribunal would have to order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under the bill.

Costs and Fees. A petitioner could not be required to pay a filing fee or other costs.

If an obligee prevailed, a responding tribunal could assess against an obligor filing fees, reasonable attorney fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal could not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney fees could be taxed as costs and could be ordered paid directly to the attorney, who could enforce the order in the attorney's own name. Payment of support owed to the obligee would have priority over fees, costs, and expenses.

The tribunal would have to order the payment of costs and reasonable attorney fees if it determined that a hearing was requested primarily for delay. In a proceeding under Article VI, a hearing would be presumed to have been requested primarily for delay if a registered support order were confirmed or enforced without change.

Limited Immunity of Petitioner. Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency would not confer personal jurisdiction over the petitioner in another proceeding. A petitioner would not be amenable to service of civil process while physically present in this State to participate in a proceeding under the bill. This immunity, however, would not extend to civil litigation based on acts unrelated to a proceeding under the bill committed by a party while present in this State to participate in the proceeding.

Nonparentage as Defense. A party whose parentage of a child had been previously determined by law could not plead nonparentage as a defense to a proceeding under the bill.

Evidence & Procedure. The physical presence of the petitioner in a responding tribunal of this State would not be required for the establishment,

enforcement, or modification of a support order or the rendition of a judgment determining parentage.

A verified petition, affidavit, document substantially complying with Federally mandated forms, or document incorporated by reference in any of them that would not be excluded as hearsay if given in person would be admissible in evidence if given under oath by a party or witness residing in another state.

A copy of a record of child support payments certified as a true copy of the original by the custodian of the record could be forwarded to a responding tribunal. The copy would be evidence of the facts asserted in it and would be admissible to show whether payments were made.

Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 10 days before trial, would be admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

Documentary evidence transmitted from another state to a tribunal of this State by telephone, telecopier, or other means that did not provide an original writing could not be excluded from evidence on an objection based on the means of transmission.

In a proceeding under the bill, a tribunal of this State could permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this State would have to cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

If a party who was called to testify at a civil hearing refused to answer on the ground that the testimony could be self-incriminating, the trier of fact could draw an adverse inference from the refusal.

A privilege against disclosure of communications between spouses would not apply in a proceeding under the bill. The defense of immunity based on the relationship of husband and wife or parent and child also would not apply.

Communication Between Tribunals. A tribunal of this State could communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws

of that state, the legal effect of a judgment, decree, or order of that tribunal, or the status of a proceeding in the other state. A tribunal of this State could furnish similar information by similar means to a tribunal of another state.

Assistance with Discovery. A tribunal of this State could request a tribunal of another state to assist in obtaining discovery, and upon request, compel a person over whom it had jurisdiction to respond to a discovery order issued by a tribunal of another state.

Payment Receipt & Disbursement. A support enforcement agency or tribunal of this State would have to disburse promptly any money received under a support order, as directed by the order. The agency or tribunal would have to furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

ARTICLE 4 - Establishment of Support Order

If a support order entitled to recognition under the bill had not been issued, a responding tribunal of this State could issue a support order if the individual seeking the order resided in another state, or if the support enforcement agency seeking the order were located in another state.

The tribunal could issue a temporary child support order if the respondent had signed a verified statement acknowledging parentage, if the respondent had been determined by law to be the child's parent, or if there were other clear and convincing evidence that the respondent was the child's parent.

Upon finding, after notice and opportunity to be heard, that an obligor owed a duty of support, the tribunal would have to issue a support order directed to the obligor and could issue other orders as authorized in the bill.

ARTICLE 5 - Direct Enforcement Without Registration

An income withholding order issued in another state could be sent by first-class mail to the obligor's employer without first filing a petition or comparable pleading or registering the order with a tribunal of this State. Upon receipt of the order, the employer would have to treat an income withholding order issued in another state that appeared regular on its face as if the order had been issued by a tribunal of this State; immediately

provide a copy of the order to the obligor; and distribute the money as directed in the withholding order.

An obligor could contest the validity or enforcement of an income withholding order issued in another state in the same manner as if the order had been issued by a tribunal of this State. The obligor would have to give notice of the contest to a support enforcement agency providing services to the obligee and to the person or agency designated to receive payments in the income withholding order or, if no person or agency were designated, to the obligee.

A party seeking to enforce a support order or an income withholding order or both, issued by a tribunal of another state could send the documents required for registering the order to a support enforcement agency of this State.

Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, would have to consider and, if appropriate, use an administrative procedure authorized by the law of this State to enforce a support order or an income withholding order, or both. If the obligor did not contest administrative enforcement, the order would not have to be registered. If the obligor contested the validity or administrative enforcement of the order, the support enforcement agency would have to register the order.

ARTICLE 6 - Enforcement & Modification After Registration

Part 1: Registration & Enforcement

A person could register in this State for enforcement of a support order or an income withholding order issued by a tribunal of another state by sending all of the following documents and information to the circuit court:

- A letter of transmittal to the tribunal requesting registration and enforcement.
- Two copies, including one certified copy, of all orders to be registered, including any modification of an order.
- A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage.
- The name of the obligor and, if known, the obligor's address and social security

number; the name and address of the obligor's employer and any other source of income to the obligor; and a description and the location of property of the obligor in this State not exempt from execution.

- The name and address of the obligee and, if applicable, the agency or person to whom support payments were to be remitted.

Upon receiving a request for registration, the registering tribunal would have to cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

A petition or comparable pleading seeking a remedy that had to be affirmatively sought under other law of this State could be filed either at the same time as the request for registration, or later. The pleading would have to specify the grounds for the remedy sought.

A support order or income withholding order issued in another state would be registered when the order was filed in the registering tribunal of this State. A registered order issued in another state would be enforceable in the same manner, and would be subject to the same procedures, as an order issued by a tribunal of this State.

Except as otherwise provided in the bill, a tribunal of this State would have to recognize and enforce, but could not modify, a registered order if the issuing tribunal had jurisdiction.

The law of the issuing state would govern the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

In a proceeding for arrearages, the longer of the statutes of limitations of this State or the issuing state would apply.

Part 2: Contest of Validity or Enforcement

The registering tribunal would have to notify the nonregistering party when a support order or income withholding order issued in another state was registered. Notice would have to be by first-class, certified, or registered mail, or by any means of personal service authorized by the law of this State. The notice would have to be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

The notice would have to inform the nonregistering party of all of the following:

- That a registered order was enforceable as of the date of registration in the same manner as an order issued by a tribunal of this State.
- That a hearing to contest the validity or enforcement of the registered order would have to be requested within 20 days after the date of mailing or personal service of the notice.
- That failure to contest the validity or enforcement of the registered order in a timely manner would result in confirmation and enforcement of the order and the alleged arrearages, and would preclude further contest of that order with respect to any matter that could have been asserted.
- The amount of alleged arrearages.

Upon registration of an income withholding order for enforcement, the registering tribunal would have to notify the obligor's employer as provided in the Support and Parenting Time Enforcement Act.

A nonregistering party seeking to contest the validity or enforcement of a registered order in this State would have to request a hearing within 20 days after the date of mailing or personal service of notice of the registration. The nonregistering party could seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages.

If the nonregistering party failed to contest the validity or enforcement of the registered order in a timely manner, the order would be confirmed by operation of law. If a nonregistered party requested a hearing to contest the validity or enforcement of the registered order, the registering tribunal would have to schedule the matter for hearing and give notice to the parties by first-class mail of the date, time, and place of the hearing.

A party contesting the validity or enforcement of a registered order or seeking to vacate the registration would have the burden of proving one or more of the following defenses:

- The issuing tribunal lacked personal jurisdiction over the contesting party.
- The order was obtained by fraud.

- The order had been vacated, suspended, or modified by a later order.
- The issuing tribunal had stayed the order pending appeal.
- There was a defense under the law of this State to the remedy sought.
- Full or partial payment had been made.
- The statute of limitations as prescribed by the bill would preclude enforcement of some or all of the arrearages.

If a party presented evidence establishing a full or partial defense, a tribunal could stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order could be enforced by all remedies available under the law of this State. If the contesting party did not establish a defense to the validity or enforcement of the order, the registering tribunal would have to issue an order confirming the registered order.

Confirmation of a registered order, whether by operation of law or after notice and hearing, would preclude further contest of the order with respect to any matter that could have been asserted at the time of registration.

Part 3: Registration & Modification

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state would have to register that order in this State in the same manner provided in Part 1 of this article if the order had not been registered. A petition for modification could be filed at the same time as a request for registration or later. The pleading would have to specify the grounds for modification.

A tribunal of this State could enforce a child support order of another state registered for purposes of modification in the same manner as if the order had been issued by a tribunal of this State, but the registered order could be modified only if the following requirements were met.

After a child support order issued in another state had been registered in this State, the responding tribunal of this State could modify that order only if, after notice and hearing, it found that 1) the child, the individual obligee, and the obligor did not reside in the issuing state; a petitioner who was a nonresident of this State sought modification; and the respondent was subject to the personal

jurisdiction of the tribunal of this State, or 2) an individual party or the child was subject to the personal jurisdiction of the tribunal and all of the individual parties had filed a written consent in the issuing tribunal providing that a tribunal of this State could modify the support order and assume continuing, exclusive jurisdiction over the order.

Modification of a registered child support order would be subject to the same requirements, procedures, and defenses that would apply to the modification of an order issued by a tribunal of this State, and the order could be enforced and satisfied in the same manner. A tribunal of this State could not modify any aspect of a child support order that could not be modified under the law of the issuing state.

On issuance of an order modifying a child support order issued in another state, a tribunal of this State would become the tribunal of continuing, exclusive jurisdiction.

Within 30 days after issuance of a modified child support order, the party obtaining the modification would have to file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knew that earlier order had been registered.

A tribunal of this State would have to recognize a modification of its earlier child support order by a tribunal of another state that assumed jurisdiction under a law substantially similar to the bill and, upon request and except as otherwise provided in the bill, would have to enforce the order that was modified only as to amounts accruing before the modification; enforce only nonmodifiable aspects of that order; provide other appropriate relief only for violations of that order that occurred before the effective date of the modification; and recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

ARTICLE 7 - Determination of Parentage

A tribunal of this State could serve as an initiating or responding tribunal in a proceeding brought under a support enforcement act to determine that the petitioner was a parent of a particular child or to determine that a respondent was a parent of that child.

In a proceeding to determine parentage, a responding tribunal of this State would have to apply the Paternity Act, the procedural and

substantive law of this State, and the rules of this State on choice of law.

ARTICLE 8 - Interstate Rendition

For purposes of this article, "governor" would include an individual performing the functions of governor or the executive authority of a state covered by the bill.

The Governor of this State could, 1) demand that the governor of another state surrender an individual found in the other state who was charged criminally in this State with having failed to provide for the support of an obligee, and 2) on the demand by the governor of another state, surrender an individual found in this State who was charged criminally in the other state with having failed to provide for the support of an obligee.

A provision for extradition of individuals not inconsistent with the bill would apply to the demand even if the individual whose surrender was demanded were not in the demanding state when the crime was allegedly committed and had not fled from that state.

Before making demand that the governor of another state surrender an individual charged criminally in this State with having failed to provide for the support of an obligee, the Governor of this State could require a prosecutor of this State to demonstrate that at least 60 days previously the obligee had initiated proceedings for support as provided in the bill or that the proceeding would be of no avail.

If, under a support enforcement act, the governor of another state demanded that the Governor of this State surrender an individual charged criminally in that state with having failed to provide for the support of a child, or other individual to whom a duty of support was owed, the Governor could require a prosecutor to investigate the demand and report whether a proceeding for support had been initiated or would be effective. If it appeared that a proceeding would be effective, but had not been initiated, the Governor could delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

If a proceeding for support had been initiated and the individual whose rendition was demanded prevailed, the Governor could decline to honor the demand. If the petitioner prevailed and the individual whose rendition was demanded were subject to a support order, the Governor could

decline to honor the demand if the individual were complying with the support order.

BACKGROUND

The following is excerpted from a document prepared by the National Conference of Commissioners on Uniform State Law.

Long-Arm Jurisdiction

“A court of any state must be able to obtain personal jurisdiction over the parties to a child support proceeding in order to adjudicate it. This is a due process requirement. The issue, as the U.S. Supreme Court has been primarily responsible for developing it, is the ‘connection’ the party has with the state... Finding ‘connection’ is easy if all the parties are within the geographic boundaries of the state when it serves notice of the pending proceeding upon them. Presence in a state is sufficient connection...”

“When a party is absent from the geographical area of a state, the issue of ‘connection’ is different. It then becomes a question of acts and events within the state that connect the party with the state and the controversy, even though a party is not physically present. If a court can find ‘connection’ in this sense, then it can serve process and take jurisdiction over the out-of-state party. This is what happens when a court has ‘long-arm’ jurisdiction. Over time, through case law and by statute, principles of connection that are appropriate to a child support proceeding have been worked out. They are distilled into a set of ‘long-arm’ provisions in UIFSA. For example, UIFSA finds a ‘connection’ if the individual ever resided with the child in the state. It finds ‘connection’ if the child resides in the state as a result of acts or directives of the individual over whom it is necessary to obtain jurisdiction... The notion of the ‘long-arm’ is the notion that a court of one state has powers over individuals that are not within the state...”

Continuing Exclusive Jurisdiction

“The ‘long-arm’ provisions make it easier and better for a state meeting the connection criteria to take jurisdiction over a child support proceeding. Once there is a child support award by a court in a state that has taken jurisdiction, then the problem is to limit modification jurisdiction to just one jurisdiction at a time...”

“The concept of continuing, exclusive jurisdiction will prevent other states with the ability to exercise jurisdiction from exercising it. They will defer to the state with continuing, exclusive jurisdiction. That means that one state will retain the power to modify the award.”

Simultaneous Proceedings

“In addition, if more than one state has the ability to obtain jurisdiction, and more than one simultaneously acts to exercise jurisdiction, then there is a kind of sorting out rule in UIFSA that permits only one of the competing states to exercise jurisdiction. The state that is the ‘home state’ of the child is the preferred state, and the one to which other states should defer. In the event there is no home state, or other ground to challenge jurisdiction, the first state to proceed past the time when jurisdiction may be challenged, gains priority. All other states should then defer to it.”

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

According to various reports, one in four children in the United States grows up in a single-parent household, and interstate child support enforcement cases--about 30% of cases nationally--are the most difficult to resolve. Under family law rules that were revised over a quarter of a century ago, parents are able to obtain child-support orders from judges in more than one state. Discrepancies between the awards apparently can be so great that parents feud for years in multiple courts while their children receive less support than they are entitled to, or no support at all. In fact, crossing state lines reportedly is one of the most common methods used by people trying to evade support obligations.

To eliminate jurisdictional disputes, the Uniform Interstate Family Support Act provides for one-state control of a case and for a clear, efficient method of interstate case processing. The Act also streamlines the communications and evidentiary problems that encumber enforcement actions, and permits direct enforcement across state lines of wage withholding orders. The Act is not confined to child support orders, but also may

be used to enforce spousal support awards, and allows states to initiate parentage proceedings in responding states. According to the Uniform Law Commissioners, "The overall effect of UIFSA is greater interstate cooperation in the whole spectrum of child support establishment and enforcement. It contemplates enhanced services by state agencies to implement the national campaign to assure that each child in the United States has adequate support."

Enactment of UIFSA in Michigan would facilitate interstate actions with the 26 other states that already have adopted the law.

Opposing Argument

Under the bill, employers in Michigan would be required to respond directly to income withholding orders issued by other states. According to the Department of Social Services, this essentially means that employers would have to direct payments for support deducted from employees' checks to other state child support agencies as well as to Friend of the Court offices in Michigan.

Legislative Analyst: S. Margules

FISCAL IMPACT

The fiscal impact of the bill appears to be minimal. Additional resources would be needed initially for forms and training for employees at the Friend of the Court, the Office of Child Support, and the prosecuting attorneys office. It is indeterminate whether the new system would increase support collections significantly.

Fiscal Analyst: M. Bain
C. Cole

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.