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BILL ANALYSIS



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Senate Bill 605 (as enrolled)
 Sponsor: Senator William Van Regenmorter
 Senate Committee: Families, Mental Health and Human Services
 House Committee: Judiciary and Civil Rights

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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 enacts the "Uniform Interstate Family Support Act", which generally does the following:

- Specifies circumstances under which this State's tribunal may exercise personal jurisdiction over a nonresident**

in a proceeding to establish, enforce, or modify a support order or to determine parentage.

- Provides that a tribunal of this State issuing a support order has continuing, exclusive jurisdiction over a child support order as long as the payor, the recipient, or the child resides in Michigan, or until each party consents to the jurisdiction of another state.
- Provides for the recognition and enforcement of existing multiple child support orders concerning the same payor, recipient, and child.
- Specifies that participation in a proceeding under the Act does not subject a petitioner to personal jurisdiction in another proceeding.
- Establishes rules of evidence and procedure, and specifies methods for transmitting evidence in interstate cases.
- Authorizes a responding tribunal of this State to issue a support order under certain circumstances.
- Provides for the recognition of an income-withholding order issued in another state.
- Allows a support order or an income-withholding order issued by another state to be registered in Michigan for enforcement, and prescribes procedures for a nonregistering party to contest the order.
- Provides that this State may modify an existing child support order of another state under certain circumstances.
- Requires this State to recognize a modification of its earlier child support order by another state that assumes jurisdiction pursuant to UIFSA.
- Provides that this State's tribunal may serve as an initiating or responding tribunal in a proceeding to determine parentage.
- Provides for the interstate rendition of individuals criminally charged with failure to provide support.

The Act will take effect June 1, 1997.

ARTICLE 1 - General Provisions

Definitions

"Child" is defined as an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent. "Child

support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state. "Duty of support" means an obligation imposed or imposed by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

"Employer" means that term as defined in the Support and Parenting Time Enforcement Act. "Home state" means 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 is 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 is counted as part of the six-month period or other period.

"Income" includes 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" means legal process directed to an obligor's employer or other debtor to withhold support from the obligor's income.

"Initiating state" means a state in which a proceeding under a support enforcement act is filed for forwarding to a responding state. "Initiating tribunal" means the authorized tribunal in an initiating state. "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage. "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage. "Law" includes decisional and statutory law, and rules and regulations having the force of law. "L.E.I.N." means the Law Enforcement Information Network administered under the L.E.I.N. Policy Council Act.

"Obligee" means any of the following:

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

"Obligor" means an individual about whom one of the following is true, or the estate of a decedent about whom one of the following was true before

the individual's death: the individual owes or is alleged to owe a duty of support; the individual is alleged, but has not been adjudicated, to be a child's parent; the individual is liable under a support order.

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

"Spousal support order" means a support order for an obligor's spouse or former spouse. "State" means 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 includes an Indian tribe and a foreign jurisdiction that establishes procedures for issuance and enforcement of support orders that are substantially similar to the procedures under UIFSA. "Support enforcement act" means UIFSA, 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 is in effect in this or another state. It also includes a former act substantially similar to an act just described under which an order was issued or proceeding initiated, which order or proceeding remains operative.

"Support enforcement agency" means 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" means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, spouse, or former spouse that provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney fees, and other relief. "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or determine parentage.

The bill specifies that the circuit court is the tribunal for this State.

Remedy/General Purpose

A remedy provided by UIFSA is cumulative and does not affect the availability of a remedy under other law. Further, the Act must be applied and construed to effectuate its general purpose to

make uniform the law with respect to the subject of the 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 may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if the individual:

- Is personally served with a citation, summons, or notice within this State.
- Submits 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 might have been conceived.
- Asserted parentage in the parentage registry maintained in this State.

The State also may exercise personal jurisdiction if the child resides in this State as a result of the acts or directives of the individual, or if there is 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 may apply the Act's provisions concerning evidence to receive evidence from another state, and the Act's provisions concerning requesting assistance from another state to obtain discovery through a tribunal of another state. In all other respects Articles 3 to 7 of the Act do not apply, and the tribunal must apply the procedural and substantive law of this State, including the rules on choice of law other than those established by the Act.

Part 2: Multistate Proceedings

Under the Act, this State's tribunal may serve as an initiating tribunal to forward proceedings to another state, and as a responding tribunal for proceedings initiated in another state.

This State's tribunal also may exercise jurisdiction to establish a support order if a petition or comparable pleading is filed in this State after a petition or comparable pleading is filed in another state only if all of the following are true:

- The petition or comparable pleading in this State is 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 challenges the exercise of jurisdiction in the other state.
- This State is the child's home state, if relevant.

This State's tribunal may not exercise jurisdiction to establish a support order if a petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if all of the following are true:

- The petition or comparable pleading in the other state is 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 challenges the exercise of jurisdiction in this State.
- The other state is the child's home state, if relevant.

A tribunal of this State issuing a support order consistent with the law of this State will have continuing, exclusive jurisdiction over a child support order as long as this State remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, or until each individual party files written consent with this State's tribunal 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 may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state under a law substantially similar to the Act.

If a child support order of this State is modified by a tribunal of another state under a law substantially similar to the Act, this State's tribunal will lose its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this State and may 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.

This State's tribunal must recognize the continuing, exclusive jurisdiction of a tribunal of another state that issues a child support order under a law substantially similar to the Act. A temporary support order issued ex parte or pending resolution of a jurisdictional conflict will 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 will have continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. This State's tribunal may 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.

This State's tribunal may 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 may 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 resides in the issuing state, in subsequent proceedings the tribunal may apply the provisions of the Act concerning evidence to receive evidence from another state and the provisions of the Act concerning assistance from other states to obtain discovery through a tribunal of another state.

A tribunal of this State that lacks continuing, exclusive jurisdiction over a spousal support order may 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 is brought under the Act, and one or more child support orders have been issued in this State or other states with regard to an obligor and a child, this State's tribunal must apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

- If only one tribunal has issued a child support order, the order of that tribunal must be recognized.

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

The tribunal that issued an order recognized under these provisions will 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, this State's tribunal must enforce those orders in the same manner as if the multiple orders had been issued by this State's tribunal.

Money collected and credited for a particular period under a support order issued by a tribunal of another state must be credited against the amount that accrues for the same period under a support order issued by this State's tribunal.

ARTICLE 3 - Civil Provisions of General Application

Proceedings under the Act. Except as otherwise provided in the Act, this article applies to all proceedings under the Act. The Act provides for the following proceedings:

- Establishment of an order for spousal support or child support under Article 4.
- Enforcement of a support order and income withholding order of another state without registration under Article 5.

- Registration of an order for spousal support or child support of another state for enforcement under Article 6.
- Modification of an order for child support or spousal support issued by this State's tribunal under Article 2, Part 2.
- Registration of another state's order for child support for modification under Article 6.
- Determination of parentage under Article 7.
- Assertion of jurisdiction over nonresidents under Article 2, Part 1.

An individual petitioner or a support enforcement agency may commence a proceeding authorized under the Act 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 has or can obtain personal jurisdiction over the respondent. A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of, or for the benefit of, the minor's child.

Application of Michigan Law. Except as otherwise provided by the Act, a responding tribunal of this State must 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 may 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 Act, an initiating tribunal of this State must 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 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 is unknown.

Duties and Powers of Responding Tribunal. When a responding tribunal of this State receives a petition or comparable pleading from an initiating tribunal or directly from an individual petitioner or a support enforcement agency, the tribunal must do all of the following:

- Cause the petition or pleading to be filed.
- Notify the petitioner by first-class mail where and when it was filed.
- Notify the prosecuting attorney or the Office of the Friend of the Court (FOC). If notified, the prosecutor or FOC must conduct proceedings as appropriate under the Act.

A responding tribunal of this State, to the extent otherwise authorized by law, may 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 an arrearage and specify a method of payment.
- Enforce an order by civil or criminal contempt, or both.
- Set aside property for satisfaction of a support order.
- Place liens and order execution on an obligor's property.
- Order an obligor to keep the tribunal informed of his or her current residential address, telephone number, employer, and employment address and telephone number.
- Issue a bench warrant for an obligor who fails after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in the L.E.I.N.
- Order an 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 must include in a support order issued under the Act or in the documents accompanying the order the calculations on which the support order is based.

A responding tribunal of this State may not condition the payment of a support order issued under the Act upon compliance by a party with

provisions for parenting time. If a responding tribunal of this State issues an order under the Act, the tribunal must 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 is received by an inappropriate tribunal of this State, the tribunal must 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, or upon the support enforcement agency's request, the prosecutor or FOC, must provide services to a petitioner in a proceeding under the Act. A support enforcement agency, prosecutor, or FOC office that is providing services to the petitioner as appropriate must 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 the parties' income and property.
- 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 cannot be obtained.

The Act states that is neither creates nor negates 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 determines that the support enforcement agency is neglecting or refusing to provide

services to an individual, the Attorney General may order the agency to perform its duties under the Act, or may provide those services directly to the individual.

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

State Information Agency. The Office of Child Support, established under the Office of Child Support Act, is this State's information agency under UIFSA. The State information agency must do all of the following:

- Compile and maintain a current list, including addresses, of this State's tribunals that have jurisdiction under the Act and any support enforcement agencies in this State and transmit a copy to every other state's information agency.
- 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 resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under the Act received from an initiating tribunal or the initiating state's information agency.
- 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 Act must verify the petition. Unless otherwise ordered, the petition or accompanying documents must 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 is sought. The petition must be accompanied by a certified copy of any support

order in effect, and include any other information that may assist in locating or identifying the respondent, and specify the relief sought.

The petition and accompanying documents must 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 may 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 provides, a tribunal must 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 Act.

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

If an obligee prevails, a responding tribunal may 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 may 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 may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in his or her own name. Payment of support owed to the obligee will have priority over fees, costs, and expenses.

The tribunal must order the payment of costs and reasonable attorney fees if it determines that a hearing was requested primarily for delay. In a proceeding under Article 6, a hearing will be presumed to have been requested primarily for delay if a registered support order is 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, will not confer personal jurisdiction over the petitioner in another proceeding. A petitioner will not be amenable to service of civil process while physically present in this State to participate in a proceeding under the Act. This immunity, however, does not extend to civil litigation based on acts unrelated to a

proceeding under the Act committed by a party while present in this State to participate in the proceeding.

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

Evidence and Procedure. The physical presence of the petitioner in a responding tribunal of this State is not 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 will 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 may be forwarded to a responding tribunal. The copy will be evidence of the facts asserted in it and will be admissible to show whether payments were made.

If furnished to the adverse party at least 10 days before trial, a copy of a bill for testing for parentage, and for prenatal and postnatal health care of the mother or child, will be admissible in evidence to prove the amount billed and that the amount is reasonable, necessary, and customary.

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

In a proceeding under the Act, this State's tribunal may 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. This State's tribunal must cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

If a party called to testify at a civil hearing refuses to answer on the ground that the testimony might

be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

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

Communication Between Tribunals. This State's tribunal may 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. This State's tribunal may furnish similar information by similar means to a tribunal of another state.

Assistance with Discovery. This State's tribunal may request a tribunal of another state to assist in obtaining discovery, and upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

Payment Receipt and Disbursement. A support enforcement agency or tribunal of this State must promptly disburse any money received under a support order, as directed by the order. The agency or tribunal must 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 Act has not been issued, a responding tribunal of this State may issue a support order if the individual seeking the order resides in another state, or if the support enforcement agency seeking the order is located in another state.

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

Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal must issue a support order directed to the

obligor and may issue other orders as authorized in Article 3.

ARTICLE 5 - Direct Enforcement Without Registration

A person may send by first class mail to the obligor's employer an income withholding order issued in another state, without first filing a petition or comparable pleading or registering the order with a tribunal of this State. Upon receiving the order, the employer must treat an income withholding order issued in another state that appears regular on its face as if the order had been issued by this State's tribunal; immediately provide a copy of the order to the obligor; and distribute the money as directed in the withholding order.

An obligor may 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 this State's tribunal. The obligor must 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 is 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 may send the documents required for registering the order to a support enforcement agency of this State.

Upon receiving the documents, the support enforcement agency, without initially seeking to register the order, must 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 does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency must register the order.

ARTICLE 6 - Enforcement and Modification After Registration

Part 1: Registration and Enforcement

A person may register in this State for enforcement 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 this State's tribunal:

- 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 are to be remitted.

Upon receiving a registration request, the registering tribunal must 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 must be affirmatively sought under another law of this State may be filed either at the same time as the request for registration, or later. The pleading must specify the grounds for the remedy sought.

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

Except as otherwise provided in the Act, this State's tribunal must recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

The law of the issuing state will 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 will apply.

Part 2: Contest of Validity or Enforcement

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

The notice must inform the nonregistering party of all of the following:

- That a registered order is enforceable as of the registration date in the same manner as an order issued by this State's tribunal.
- That a hearing to contest the validity or enforcement of the registered order must 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 will result in confirmation and enforcement of the order and the alleged arrearages, and will preclude further contest of that order with respect to a matter that could have been asserted.
- The amount of alleged arrearages.

Upon registration of an income withholding order for enforcement, the registering tribunal must 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 must request a hearing within 20 days after the date of mailing or personal service of notice of the registration. The nonregistering party may 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 an alleged arrearage.

If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order will be confirmed by operation of law. If a nonregistered party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal must 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 will 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 has been vacated, suspended, or modified by a later order.
- The issuing tribunal has stayed the order pending appeal.
- There is a defense under the law of this State to the remedy sought.
- Full or partial payment has been made.
- The statute of limitations as prescribed by the Act precludes enforcement of some or all of the arrearages.

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

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

Part 3: Registration and Modification

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

This State's tribunal may 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 this State's tribunal, but the registered order may be modified only if the following requirements are met.

After a child support order issued in another state is registered in this State, the responding tribunal of this State may modify that order only if, after notice and hearing, it finds that 1) the child, the individual obligee, and the obligor do not reside in the issuing state; a petitioner who is a nonresident of this State seeks modification; and the respondent is subject to the personal jurisdiction of this State's tribunal, or 2) an individual party or the child is subject to the personal jurisdiction of the tribunal and all of the individual parties have filed a written consent in the issuing tribunal providing that this State's tribunal may modify the support order and assume continuing, exclusive jurisdiction over the order.

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

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

Within 30 days after issuance of a modified child support order, the party obtaining the modification must 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 knows that earlier order is registered.

This State's tribunal must 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 Act and, upon request and except as otherwise provided in the Act, must enforce the order that was modified only as to an amount 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

This State's tribunal may serve as an initiating or responding tribunal in a proceeding brought under a support enforcement act to determine that the

petitioner is a particular child's parent or to determine that a respondent is that child's parent.

In a proceeding to determine parentage, the responding tribunal of this State must 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" includes an individual performing the functions of governor or the executive authority of a state covered by the Act.

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

A provision for an individual's extradition not inconsistent with the Act will apply to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has 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 an obligee's support, the Governor of this State may 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 Act or that the proceeding would be of no avail.

If, under a support enforcement act, the governor of another state demands 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 may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective, but has not been initiated, the Governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

If a proceeding for support is initiated and the individual whose rendition is demanded prevails, the Governor may decline to honor the demand. If the petitioner prevails and the individual whose surrender is demanded is subject to a support order, the Governor may decline to honor the demand if the individual is complying with the support order.

MCL 552.1101-552.1901

BACKGROUND

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

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 will facilitate interstate actions with the 26 other states that already have adopted the law.

Opposing Argument

Under the bill, employers in Michigan will be required to respond directly to income withholding orders issued by other states. According to the former Department of Social Services (now the Family Independence Agency), this essentially means that employers will 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 will 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 will increase support collections significantly.

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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.