

UNIFORM INTERSTATE FAMILY SUPPORT ACT

Last Amended or Revised in 2001

*AMENDMENTS TO THE UNIFORM INTERSTATE FAMILY SUPPORT ACT (2001)
ARE INDICATED BY UNDERSCORE AND STRIKEOUT*

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TENTH YEAR
WHITE SULPHUR SPRINGS, WV
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ON UNIFORM STATE LAWS

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UNIFORM INTERSTATE FAMILY SUPPORT ACT (2001)

TABLE OF CONTENTS

ARTICLE 1

GENERAL PROVISIONS

SECTION <u>101</u> . SHORT TITLE. (<i>Moved from Section 902</i>).	7
SECTION <u>102</u> . DEFINITIONS. (<i>Amended</i>).	7
SECTION <u>103</u> . TRIBUNAL OF STATE. (<i>Unchanged</i>).	14
SECTION <u>104</u> . REMEDIES CUMULATIVE. (<i>Amended</i>).	15

ARTICLE 2

JURISDICTION

~~PART 1. EXTENDED PERSONAL JURISDICTION~~

SECTION 201. BASES FOR JURISDICTION OVER NONRESIDENT. (<i>Amended</i>).	17
SECTION 202. PROCEDURE WHEN EXERCISING JURISDICTION OVER NONRESIDENT <u>DURATION OF PERSONAL JURISDICTION</u> . (<i>Amended</i>).	21

~~PART 2. PROCEEDINGS INVOLVING TWO OR MORE STATES~~

SECTION 203. INITIATING AND RESPONDING TRIBUNAL OF STATE. (<i>Unchanged</i>).	22
SECTION 204. SIMULTANEOUS PROCEEDINGS IN ANOTHER STATE . (<i>Unchanged</i>).	23
SECTION 205. CONTINUING, EXCLUSIVE JURISDICTION <u>TO MODIFY</u> <u>CHILD-SUPPORT ORDER</u> . (<i>Amended</i>).	24
SECTION 206. ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER BY TRIBUNAL HAVING CONTINUING JURISDICTION <u>TO ENFORCE CHILD-SUPPORT ORDER</u> . (<i>Amended</i>).	29

~~PART 3. RECONCILIATION OF MULTIPLE ORDERS~~

SECTION 207. RECOGNITION <u>DETERMINATION OF CONTROLLING CHILD-SUPPORT</u> <u>ORDER</u> . (<i>Amended</i>).	30
SECTION 208. MULTIPLE CHILD-SUPPORT ORDERS FOR TWO OR MORE OBLIGES. (<i>Unchanged</i>).	36
SECTION 209. CREDIT FOR PAYMENTS. (<i>Amended</i>).	36
SECTION 210. <u>APPLICATION OF [ACT] TO NONRESIDENT SUBJECT TO</u> <u>PERSONAL JURISDICTION</u> . (<i>New</i>).	38
SECTION 211. <u>CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY</u> <u>SPOUSAL-SUPPORT ORDER</u> . (<i>New</i>).	39

ARTICLE 3

CIVIL PROVISIONS OF GENERAL APPLICATION

SECTION 301. PROCEEDINGS UNDER [ACT]. (<i>Amended</i>).	41
SECTION 302. ACTION PROCEEDING BY MINOR PARENT. (<i>Unchanged</i>).	42
SECTION 303. APPLICATION OF LAW OF STATE. (<i>Amended</i>).	43
SECTION 304. DUTIES OF INITIATING TRIBUNAL. (<i>Amended</i>).	43
SECTION 305. DUTIES AND POWERS OF RESPONDING TRIBUNAL. (<i>Amended</i>).	45
SECTION 306. INAPPROPRIATE TRIBUNAL. (<i>Unchanged</i>).	48
SECTION 307. DUTIES OF SUPPORT ENFORCEMENT AGENCY. (<i>Amended</i>).	48
SECTION 308. DUTY OF [ATTORNEY GENERAL STATE OFFICIAL OR AGENCY] . (<i>Amended</i>).	51
SECTION 309. PRIVATE COUNSEL. (<i>Unchanged</i>).	52
SECTION 310. DUTIES OF [STATE INFORMATION AGENCY]. (<i>Unchanged</i>).	52
SECTION 311. PLEADINGS AND ACCOMPANYING DOCUMENTS. (<i>Amended</i>).	53
SECTION 312. NONDISCLOSURE OF INFORMATION IN EXCEPTIONAL CIRCUMSTANCES. (<i>Amended</i>).	54
SECTION 313. COSTS AND FEES. (<i>Unchanged</i>).	55
SECTION 314. LIMITED IMMUNITY OF [PETITIONER]. (<i>Amended</i>).	56

SECTION 315. NONPARENTAGE AS DEFENSE. <i>(Amended)</i>	57
SECTION 316. SPECIAL RULES OF EVIDENCE AND PROCEDURE. <i>(Amended)</i>	58
SECTION 317. COMMUNICATIONS BETWEEN TRIBUNALS. <i>(Unchanged)</i>	61
SECTION 318. ASSISTANCE WITH DISCOVERY. <i>(Unchanged)</i>	62
SECTION 319. RECEIPT AND DISBURSEMENT OF PAYMENTS. <i>(Amended)</i>	62

ARTICLE 4

ESTABLISHMENT OF SUPPORT ORDER

SECTION 401. [PETITION] TO ESTABLISH SUPPORT ORDER. <i>(Amended)</i>	65
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ARTICLE 5

**ENFORCEMENT OF ORDER OF
ANOTHER STATE WITHOUT REGISTRATION**

SECTION 501. EMPLOYER’S RECEIPT OF INCOME-WITHHOLDING ORDER OF ANOTHER STATE. <i>(Unchanged)</i>	67
SECTION 502. EMPLOYER’S COMPLIANCE WITH INCOME-WITHHOLDING ORDER OF ANOTHER STATE. <i>(Unchanged)</i>	68
SECTION 503. EMPLOYER’S COMPLIANCE WITH MULTIPLE <u>TWO OR MORE</u> INCOME-WITHHOLDING ORDERS. <i>(Unchanged)</i>	72
SECTION 504. IMMUNITY FROM CIVIL LIABILITY. <i>(Unchanged)</i>	72
SECTION 505. PENALTIES FOR NONCOMPLIANCE. <i>(Unchanged)</i>	73
SECTION 506. CONTEST BY OBLIGOR. <i>(Amended)</i>	73
SECTION 507. ADMINISTRATIVE ENFORCEMENT OF ORDERS. <i>(Unchanged)</i>	75

ARTICLE 6

REGISTRATION, ENFORCEMENT, AND MODIFICATION OF SUPPORT ORDER

PART 1. REGISTRATION AND ENFORCEMENT OF SUPPORT ORDER

SECTION 601. REGISTRATION OF ORDER FOR ENFORCEMENT. <i>(Amended)</i>	77
SECTION 602. PROCEDURE TO REGISTER ORDER FOR ENFORCEMENT. <i>(Amended)</i>	78
SECTION 603. EFFECT OF REGISTRATION FOR ENFORCEMENT. <i>(Unchanged)</i>	80
SECTION 604. CHOICE OF LAW. <i>(Amended)</i>	81

PART 2. CONTEST OF VALIDITY OR ENFORCEMENT

SECTION 605. NOTICE OF REGISTRATION OF ORDER. <i>(Amended)</i>	83
SECTION 606. PROCEDURE TO CONTEST VALIDITY OR ENFORCEMENT OF REGISTERED ORDER. <i>(Unchanged)</i>	85
SECTION 607. CONTEST OF REGISTRATION OR ENFORCEMENT <i>(Amended)</i>	87
SECTION 608. CONFIRMED ORDER. <i>(Unchanged)</i>	89

PART 3. REGISTRATION AND MODIFICATION OF CHILD-SUPPORT ORDER

SECTION 609. PROCEDURE TO REGISTER CHILD-SUPPORT ORDER OF ANOTHER STATE FOR MODIFICATION. <i>(Unchanged)</i>	89
SECTION 610. EFFECT OF REGISTRATION FOR MODIFICATION. <i>(Unchanged)</i>	90
SECTION 611. MODIFICATION OF CHILD-SUPPORT ORDER OF ANOTHER STATE. <i>(Amended)</i>	90
SECTION 612. RECOGNITION OF ORDER MODIFIED IN ANOTHER STATE. <i>(Amended)</i>	97
SECTION 613. JURISDICTION TO MODIFY CHILD-SUPPORT ORDER OF ANOTHER STATE WHEN INDIVIDUAL PARTIES RESIDE IN THIS STATE. <i>(Unchanged)</i>	98
SECTION 614. NOTICE TO ISSUING TRIBUNAL OF MODIFICATION. <i>(Unchanged)</i>	99
SECTION 615. JURISDICTION TO MODIFY CHILD-SUPPORT ORDER OF <u>FOREIGN COUNTRY OR POLITICAL SUBDIVISION</u> . <i>(New)</i>	100

ARTICLE 7

DETERMINATION OF PARENTAGE

SECTION 701. PROCEEDING TO DETERMINE PARENTAGE. <i>(Amended)</i>	102
--	-----

ARTICLE 8
INTERSTATE RENDITION

SECTION 801. GROUNDS FOR RENDITION. <i>(Unchanged)</i>	103
SECTION 802. CONDITIONS OF RENDITION. <i>(Amended)</i>	104

ARTICLE 9
MISCELLANEOUS PROVISIONS

SECTION 901. UNIFORMITY OF APPLICATION AND CONSTRUCTION. <i>(Unchanged)</i>	106
SECTION 902. SHORT TITLE. <i>(Moved to Section 101)</i>	
SECTION 902. SEVERABILITY CLAUSE. <i>(Unchanged)</i>	106
SECTION 903. EFFECTIVE DATE. <i>(Unchanged)</i>	106
SECTION 904. REPEALS. <i>(Unchanged)</i>	106

APPENDIX

UIFSA AMENDMENTS APPROVED JULY 1996.	107
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UNIFORM INTERSTATE FAMILY SUPPORT ACT (2001)

PREFATORY NOTE

I. BACKGROUND INFORMATION

In 1992 the National Conference of Commissioners on Uniform State Laws [hereafter NCCUSL, the Conference, or Uniform Law Commissioners] promulgated the UNIFORM INTERSTATE FAMILY SUPPORT ACT [hereafter UIFSA] as a complete replacement for the two then-existing uniform interstate support acts, the UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT [URESAs] and its revised version [RURESAs]. In 1993 two States, Arkansas and Texas, enacted UIFSA. By the summer of 1996, 35 States had adopted the new Uniform Act. That year was a very eventful one in the history of UIFSA. First, a Drafting Committee was convened in Spring 1996 in response to requests from representatives of employer groups for more specific statutory directions regarding interstate child-support withholding orders. Second, the child-support community (primarily the IV-D programs funded by federal subsidies) requested review of the substantive and procedural provisions. As a result, significant amendments to UIFSA were adopted by the Conference in July, 1996.

The Conference promulgated UIFSA in July, 1996. Less than one month later, the U.S. Congress assured that nationwide acceptance of the amended Act was virtually certain. In the “welfare reform” legislation passed in August 1996, officially known as the PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 (PRWORA), the enactment of UIFSA, as amended, was mandated as a condition of state eligibility for the federal funding of child support enforcement, as follows:

Sec. 321. ADOPTION OF UNIFORM STATE LAWS [42 U.S.C. Section 666] is amended by adding at the end the following new subsection:

“(f) Uniform Interstate Family Support Act.—In order to satisfy [42 U.S.C. 654(20)(A)], on and after January 1, 1998, each State must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, together with any amendments officially adopted before January 1, 1998, by the National Conference of Commissioners on Uniform State Laws.” P.L. 104-193, Section 321, 110 Stat. 2221.

For a comprehensive history of the events leading up to the replacement of URESAs and RURESAs by UIFSA, see the Prefatory Notes to the 1992 and 1996 versions of the Act found in 9 UNIFORM LAWS ANNOTATED 253, 393 (2000), or John J. Sampson, *Uniform Interstate Family Support Act with Unofficial Annotations*, 27 FAM. L.Q. 91 (1993), and John J. Sampson, *Uniform Interstate Family Support Act (1996), Statutory Text, Prefatory Note, and Commissioners Comments (with More Unofficial*

Annotations), 32 FAM. L.Q. 385 (1998).

In accordance with the congressional mandate, by 1998 all U.S. jurisdictions had enacted UIFSA. Thus, the several states have had between four and eight years of experience with the various iterations of the Act. Moreover, there has been an extraordinary amount of comprehensive training about the Act by the child support enforcement agencies throughout the nation and associated agencies and organizations of those agencies, *e.g.*: U.S. Department of Health and Human Services, Office of Child Support Enforcement (OCSE); National Child Support Enforcement Association (NCSEA); Eastern Regional Interstate Child Support Association (ERICSA); and, Western Interstate Child Support Enforcement Council (WICSEC). As a consequence, the provisions of UIFSA are far more familiar to those who must administer it than ever was true of its predecessor acts, URESA and RURESAs.

In 2000 the child-support community again requested that the Act be reviewed and amendments suggested as appropriate. In response to this request, the Conference leadership appointed a new Drafting Committee (the earlier Committee had been disbanded). A single meeting in March 2001 led to significant substantive and procedural amendments that ultimately were approved by the Conference at its Annual Meeting in August, 2001. None of the amendments, however, make a fundamental change in the policies and procedures established in UIFSA 1996. The widespread acceptance of UIFSA is due primarily to the fact that representatives of the child support enforcement community mentioned above participated actively in the drafting of each version of the Act, including the amendments of 2001. In sum, although two sets of amendments have been propounded since the initial 1992 version of UIFSA, its basic principles have remained constant.

II. BASIC PRINCIPLES OF UIFSA

A. In General

1. RECIPROCITY NOT REQUIRED BETWEEN STATES. Reciprocal laws, the hallmark of RURESAs and URESAs, are not required under UIFSA. Although reciprocity became irrelevant in this country with the universal adoption of UIFSA, reciprocity continues to be an issue with regard to the recognition and enforcement of support orders of foreign countries and their political subdivisions, Sections 102(21), 104, 308. Respect and tolerance for the laws of other states and nations in order to facilitate child support enforcement is another prime goal of the Act. The 2001 amendments continue this perspective by explicitly recognizing that tribunals may extend the principle of comity to foreign support orders, Sections 104 and 210.

2. LONG-ARM JURISDICTION. UIFSA contains a broad provision for asserting long-arm jurisdiction to provide a tribunal in the State of residence of the spouse or a

child entitled to support with the maximum possible opportunity to secure personal jurisdiction over an absent respondent, Section 201. This converts what otherwise would be a two-state proceeding into a one-state proceeding. When jurisdiction over a nonresident is obtained, the tribunal may obtain evidence, provide for discovery, and elicit testimony through use of the same "information route" provided for two-state proceedings, Sections 210, 316-318. Amendments in 2001 to the basic long-arm provision, Section 201, clarified and strengthened the interrelationship between the assertion of such jurisdiction and the continuing nature of personal jurisdiction for enforcement and modification of a support order, Sections 205 and 206.

B. Establishing a Support Order

1. FAMILY SUPPORT. The Act may be used only for proceedings involving the support of a child or spouse of the support obligor; it does not include enforcement of other duties of support found in the statutes of a few states, such as requiring support of an elderly or disabled parent by an adult child, Sections 101(2),(18).

2. LOCAL LAW. UIFSA provides that the procedures and law of the forum apply, with some significant additions or exceptions:

(a) Certain procedures are prescribed for interstate cases even if they are not consistent with local law, i.e.: the contents of interstate petitions, Sections 311 and 602; the nondisclosure of certain sensitive information, Section 312; authority to award fees and costs including attorney's fees, Section 313; elimination of certain testimonial immunities, Section 314; and, limits on the assertion of nonparentage as a defense to support enforcement, Section 315.

(b) Visitation issues cannot be raised in child support proceedings, Section 305(d).

(c) Special rules for the interstate transmission of evidence and discovery are added to help place the maximum amount of information before the deciding tribunal. These procedures are available in cases in which the tribunal asserts jurisdiction over a nonresident, (Sections 210, 316-318), and may have the effect of amending local law in long-arm cases.

(d) The choice-of-law rule for the interpretation of a registered order is that the law of the issuing State governs the underlying terms of the controlling support order. One important exception exists; if the registering and issuing State have different statutes of limitation for enforcement, the longer time limit applies, Section 604.

3. CONTINUING EXCLUSIVE JURISDICTION AND THE ONE-ORDER SYSTEM. Under URESA and RURESA the majority of support proceedings were de novo. Even when an existing order of one State was "registered" in a second State, the registering State often asserted the right to modify the registered order. This meant that multiple support orders could be in effect in several states. As far as is possible, under UIFSA the principle of continuing, exclusive jurisdiction aims to recognize that only one

valid support order may be effective at any one time, Sections 205-207. This principle is carried out in Sections 203-211.

4. PRIVATE ATTORNEYS. UIFSA explicitly authorizes parties to retain private legal counsel in support proceedings, Section 309, as well as to use the services of a state support enforcement agency, Section 307(a). The Act expressly takes no position on whether the support enforcement agency's assistance of a supported family establishes an attorney-client relationship with the applicant, Section 307(c).

5. EFFICIENCY. UIFSA streamlines interstate proceedings as follows:

(a) Proceedings may be initiated by or referred to administrative agencies rather than to courts in those states that use those agencies to establish support orders, Section 101(22).

(b) Under the old system, the process began by requiring a local "initiating tribunal" to make a preliminary (and nonbinding) determination of a duty to support, and then forwarding the documents to a "responding tribunal" for a binding decision. Under UIFSA an individual party or support enforcement agency in the initiating State may file a proceeding directly in a tribunal in the responding State, Section 301. This innovation by UIFSA has proven to be a major contribution to efficient case management. In the unlikely event that some local action is needed, initiation of an interstate case in the initiating State is expressly made ministerial rather than a matter for adjudication or review by a tribunal.

(c) To facilitate efficient interstate establishment, enforcement, and modification of child support orders, forms sanctioned by the federal Office of Child Support Enforcement are available. Although developed in conjunction with the federal IV-D program, private parties and their attorneys who are engaged in an interstate child support case are well advised to use the appropriate forms for transmission of information to the responding State, Section 311(b). The information in those forms is declared to be admissible evidence, Section 316(b).

(d) Authority is provided for the transmission of information and documents through electronic and other modern means of communication, Section 316(e).

(e) Tribunals are directed to permit an out-of-state party or witness to be deposed or to testify by telephone conference, Section 316(f).

(f) Tribunals are required to cooperate in the discovery process for use in a tribunal in another State, Section 318.

(g) A tribunal and a support enforcement agency providing services to a supported family must keep the parties informed about all important developments in a case, Sections 305 and 307.

(h) A registered support order is confirmed and immediately enforceable unless the respondent files an objection in a record within a fixed period of time, almost invariably the 20 days suggested originally, Sections 603 and 607.

6. INTERSTATE PARENTAGE. UIFSA authorizes establishment of parentage in an interstate proceeding, even if not coupled with a proceeding to establish support, Section 701.

C. Enforcing a Support Order

1. DIRECT ENFORCEMENT. UIFSA provides two direct enforcement procedures that do not require assistance from a tribunal. First, a notice may be sent directly to the obligor's employer in another State, Section 501, which triggers income withholding by that employer without the necessity of a hearing unless the employee objects. The Act details the procedure to be followed by the employer in response to an interstate request for direct income withholding, Sections 502-506. Additionally, the Act provides for direct administrative enforcement by the support enforcement agency of the obligor's State, Section 507.

2. REGISTRATION. Enforcement of a support order of another State or nation involving a tribunal of the forum State begins with the registration of the existing support order in a tribunal of the responding State, Sections 601-604. However, the registered order continues to be the order of the issuing State, Sections 605-608. The role of the responding State is limited to enforcing that order except in the very limited circumstances under which modification is permitted, *infra*.

D. Modifying a Support Order

1. REGISTRATION. The first step for a party (whether obligor or obligee) requesting a tribunal of another State to modify an existing child support order is to follow the identical procedure for registration as when enforcement is sought. All modification requests are subject to strict rules, *infra*, although different sequences are allowable: *i.e.*, registration for enforcement and a later request for modification; or, a request for contemporaneous modification and enforcement.

2. MODIFICATION STATUTORILY RESTRICTED. Under UIFSA, the only tribunal that can modify a support order is one having continuing, exclusive jurisdiction over the support issue. As an initial matter, this is the tribunal that first acquires personal and subject matter jurisdiction over the parties and the support obligation. If modification of the order by the issuing tribunal is no longer appropriate, another tribunal may become vested with the continuing, exclusive jurisdiction necessary to modify the order. Primarily this occurs when neither the individual parties nor the child reside in the issuing State, or when the parties agree in a record that another tribunal may assume modification jurisdiction. Only then may another tribunal with personal jurisdiction over the parties assume continuing, exclusive jurisdiction and have jurisdiction to modify the order, Sections 205, 206, 603(c), 609-612. Further, except for modification by agreement, Section 205 and 207, or when the parties have all moved to the same new State, Section

613, the party petitioning for modification must be a nonresident of the responding State and must submit himself or herself to the forum State, which must have personal jurisdiction over the respondent, Section 611. The vast majority of the time this is the State in which the respondent resides. A colloquial short-hand summary of the principle is that ordinarily the movant for modification of a child support order “must play an away game.”

A 2001 amendment adds that even if the parties and child have moved from the issuing State they may agree that the tribunal that issued the controlling order will continue to exercise its continuing, exclusive jurisdiction, Section 205. This recognizes the fact that it may be preferable for the parties to return to a tribunal familiar with the issues rather than to be required to fully inform another tribunal of all the facts and issues that have been previously litigated. This exception may be particularly appropriate if both child-support and spousal-support are involved in the same case; under this Act, jurisdiction to modify the spousal support order is exclusively reserved to the issuing tribunal, regardless of where the parties reside.

Section 613 makes an obvious exception to the nonresident petitioner rule: if the child no longer resides in the issuing State and the parties have moved from the issuing State and by coincidence or design currently reside in the same State, that State has jurisdiction to modify the existing order and assume continuing, exclusive jurisdiction over the child support order.

Section 614 places the duty on the party obtaining a modification to provide notice of the new order to all interested tribunals, and grants the tribunal authority to sanction a party who fails to perform this duty of notice.

To facilitate modification across international borders, another exception to the nonresident petitioner rule was added in 1996 for child support orders issued by foreign jurisdictions. The amendments of 2001 recodified this procedure in a wholly new provision. Section 615 expands on the right of a tribunal of one of the several states to modify a child support order of a foreign country or political subdivision if that jurisdiction is prevented from modifying its order under its local law and the modification would be consistent with standards of due process.

ARTICLE 1
GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [Act] may be cited as the Uniform Interstate Family Support Act.

SECTION 102. DEFINITIONS. In this [Act]:

(1) “Child” means 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.

(2) “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.

(3) “Duty of support” means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(4) “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 filing of a [petition] or comparable pleading for support and, if a child is less than six months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) “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.

(6) “Income-withholding order” means an order or other legal process directed to an obligor’s [employer] [or other debtor], as defined by [the income-withholding law of this State], to withhold support from the income of the obligor.

(7) “Initiating State” means a State from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding State under this [Act] or a law or procedure substantially similar to this [Act], ~~the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.~~

(8) “Initiating tribunal” means the authorized tribunal in an initiating State.

(9) “Issuing State” means the State in which a tribunal issues a support order or renders a judgment determining parentage.

(10) “Issuing tribunal” means the tribunal that issues a support order or renders a judgment determining parentage.

(11) “Law” includes decisional and statutory law and rules and regulations having the force of law.

(12) “Obligee” means:

(A) 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;

(B) a State or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or

(C) an individual seeking a judgment determining parentage of the

individual's child.

(13) "Obligor" means an individual, or the estate of a decedent:

(A) who owes or is alleged to owe a duty of support;

(B) who is alleged but has not been adjudicated to be a parent of a child; or

(C) who is liable under a support order.

(14) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(15) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(16) "Register" means to [record; file] a support order or judgment determining parentage in the [appropriate location for the recording or filing of foreign judgments generally or foreign support orders specifically].

(17) "Registering tribunal" means a tribunal in which a support order is registered.

(18) "Responding State" means a State in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating State under this [Act] or a law or procedure substantially similar to this [Act], ~~the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.~~

(19) "Responding tribunal" means the authorized tribunal in a responding State.

(20) "Spousal-support order" means a support order for a spouse or former

spouse of the obligor.

(21) “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes:

(A) an Indian tribe; and

(B) a foreign country or political subdivision jurisdiction that:

(i) has been declared to be a foreign reciprocating country or political subdivision under federal law;

(ii) has established a reciprocal arrangement for child support with this State as provided in Section 308; or

(iii) has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this [Act], the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(22) “Support enforcement agency” means a public official or agency authorized to seek:

(A) enforcement of support orders or laws relating to the duty of support;

(B) establishment or modification of child support;

(C) determination of parentage; ~~or~~

(D) to locate location of obligors or their assets; or

(E) determination of the controlling child-support order.

(23) “Support order” means a judgment, decree, ~~or order,~~ or directive, whether

temporary, final, or subject to modification, issued by a tribunal for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief.

(24) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

Comment

The terms defined in UIFSA have undergone relatively little amendment since its original promulgation in 1992. Two new terms were added in 2001—"person" and "record," found in Subsections (14) and (15), respectively. Other definitions have been amended slightly over the years, but none as significantly as the 2001 amendments to the definition of "State" in Subsection (21).

Many crucial definitions continue to be left to local law. For example, the definitions of "child" and "child-support order" provided by Subsections (1) and (2) refer to "the age of majority" without further elaboration. The exact age at which a child becomes an adult for different purposes is a matter for the law of each State, as is the age at which a parent's duty to furnish child support terminates. Similarly, a wide variety of other terms of art are implicitly left to state law. For example, Subsection (23) refers inter alia to "health care, arrearages, or reimbursement" All of these terms are subject to individualized definitions on a state-by-state basis.

Subsection (3) defines "duty of support" to mean the legal obligation to provide support, whether or not that duty has been the subject of an order by a tribunal. This broad definition includes both prospective and retrospective obligations to the extent they are imposed by the relevant state law.

For the limited purpose of resolving certain conflicts in the exercise of jurisdiction, Subsection (4) borrows the concept of the "home State of a child" from the UNIFORM CHILD CUSTODY JURISDICTION ACT (UCCJA) and its successor, the UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA), versions of which have been adopted in all 50 states, and incorporated into the federal PARENTAL KIDNAPPING PREVENTION ACT, 42 U.S.C. Section 1738A (PKPA).

Subsection (6) is written broadly to include an "income withholding order" based on "other legal process," as distinguished from "by order of a tribunal." Some states issue

such orders administratively, which are entitled to enforcement notwithstanding the fact that no judicial or quasi-judicial process is involved. Federal law requires that, in order to be eligible for federal subsidy monies, each State must provide for income withholding "without the necessity of any application therefor, or for any further action by the court or other entity which issued such order" 42 U.S.C. Section 666(b)(2). States have complied with this requirement in a variety of ways.

From its beginning UIFSA has permitted direct filing of an interstate proceeding in a responding State without an initial filing in an initiating tribunal. This has become the standard operating procedure for child support enforcement agencies. Thus, a petitioner in one State may seek to establish, enforce, or modify a support order in a second State by either filing in the responding state's tribunal or by directly seeking the assistance of the support enforcement agency in the second State. Although Subsections (7), (8), (18) and (19) supply definitions for "initiating and responding State" and "initiating and responding tribunal," the procedure of "initiation and response" established by the predecessor acts of URESA and RURESAs has become an anachronism since the universal enactment of UIFSA.

Until the 2001 amendments, the relationship between UIFSA and the prior uniform acts was captured in the reference to URESA and RURESAs as "substantially similar" acts. This phrasing in Subsections (7), (18) and (21), and repeated several times throughout the Act, has been deleted everywhere it appears to avoid confusion that might arise from appearing to incorporate statutes that have been replaced. This is not to suggest in any way that support orders issued under URESA or RURESAs are not fully enforceable under UIFSA. Until valid orders issued under those laws expire of their own terms or are replaced by new UIFSA orders, the support orders themselves will continue to have vitality, see Sections 201-211, *infra*. In short, UIFSA is specifically designed to function with the earlier acts without conflict. Support orders issued under one of the earlier acts should be honored and enforced in every State. But, despite their common roots, neither URESA nor RURESAs can be said to be "substantially similar" with regard to the continuing, exclusive jurisdiction/one-order system established in UIFSA. States are directed to accord full enforcement remedies to support orders issued under the prior acts, but they must apply UIFSA restraint regarding modification. In situations involving multiple orders created under the former system, UIFSA mandates the application of its one-order rules to determine the single order that is entitled to prospective enforcement, *see* Section 207, *infra*.

The term "obligee" in Subsection (12) is defined in a broad manner, which is consistent with common usage. In instances of spousal support, the person owed the duty of support and the person receiving the payments are almost always the same. Use of the term is more complicated in the context of child support. The child is the person to whom the duty of support is owed, and therefore can be viewed as the ultimate obligee. However, "obligee" usually refers to the individual receiving the payments. While this is

most commonly the custodial parent or other legal custodian, the "obligee" may be a support enforcement agency that has been assigned the right to receive support payments in order to recoup Temporary Assistance for Needy Families (TANF), 42 U.S.C. Section 601 et seq., formerly known as Aid to Families with Dependent Children (AFDC). Even in the absence of such an assignment, a State may have an independent statutory claim for reimbursement for general assistance provided to a spouse, a former spouse, or a child of an obligor. The Act also uses "obligee" to identify an individual who is asserting a claim for support, not just for a person whose right to support is unquestioned, presumed, or has been established in a legal proceeding.

Subsection (13) provides the correlative definition of an "obligor," which includes an individual who is alleged to owe a duty of support as well as a person whose obligation has previously been determined.

The terms "obligor" and "obligee" inherently contain the legal obligation to pay or receive support, and both terms also implicitly refer to the individuals with a duty to support a child. The one-order system of UIFSA can succeed only if the respective obligations of support are adjusted as the physical possession of a child changes between parents or involves a third party caretaker. This must be accomplished in the context of modification, and not by the creation of multiple orders attempting to reflect each changing custody scenario. Obviously this issue is of concern not only to interstate child-support orders, but applies to intrastate orders as well.

The definition of "record" in new Subsection (14) conforms UIFSA to the Conference standard for legal documentation as established in the UNIFORM ELECTRONIC TRANSACTIONS ACT Section 102(13) [hereafter UETA]. Henceforth, the phrase "in a record" will replace the terminology "in writing" as the appropriate manner to recognize that electronic transmissions and signatures are increasingly appropriate substitutes for more traditional documentation.

The definitions of "responding State" and "responding tribunal" in Subsections (18) and (19) accommodate the direct filing of a petition under UIFSA without the intervention of an initiating tribunal. Both definitions acknowledge the possibility that there may be a responding State and a responding tribunal in a situation where there is no initiating State or initiating tribunal.

Subsection (21) no longer requires reciprocity between the several states, formerly a cornerstone of RURESA and URESA. Public policy favoring enforcement of child support orders is sufficiently strong to warrant waiving any quid pro quo requirement between U.S. jurisdictions. This was true even before the issue was mooted by the enactment of UIFSA by all states by 1998.

The 1996 amendment to Subsection (21) clarified the position that UIFSA, like

RURESAs before it, does not waive reciprocity in the international context. A major amendment to the text of Subsection (21) was made in 2001 to make clear that a foreign country or political subdivision is defined as a "State" under the Act in three situations. First, a declaration by the U.S. State Department that a foreign jurisdiction is a reciprocating country or political subdivision is controlling for all states. Second, in the absence of such a declaration, each of the several states can make an arrangement with a foreign country or political subdivision for reciprocal enforcement of child support. Finally, a finding may be made that a foreign jurisdiction has a law or procedure substantially similar to UIFSA. That is, a tribunal may consider whether the foreign jurisdiction also has laws and procedures that allow for a U.S. order to be recognized in that foreign jurisdiction independent of a formal reciprocity agreement. The inclusion of foreign political subdivisions is necessary because in some countries the central government will not or cannot bind the subdivisions. For example, reciprocal arrangements with Canada are made on the province level and not with the Canadian federal government.

Although the vast bulk of child support establishment, enforcement, and modification in the United States is performed by the state IV-D agencies, see Part IV-D, SOCIAL SECURITY ACT, 42 U.S.C. Section 651 *et seq.*, Subsection (22) defines the term "support enforcement agency" to include not only those entities, but also any other state or local governmental entities charged with establishing or enforcing support. The 2001 amendment simply adds another key task to the list of powers, that is, determination of the controlling order in multiple order situations.

In 1992 Subsection (24) introduced a completely new term, "tribunal," which replaced the term "court" used in RURESAs. With the advent of federally-funded IV-D programs, a number of states have delegated various aspects of child support establishment and enforcement to quasi-judicial bodies and administrative agencies. The term "tribunal" accounts for the breadth of state variations in dealing with support orders. By 2001 the usage has become the standard in the child support enforcement community, although private practitioners who only rarely are involved in such cases may still find the term unfamiliar.

SECTION 103. TRIBUNAL OF STATE. The [court, administrative agency, quasi-judicial entity, or combination] [is the tribunal] [are the tribunals] of this State.

SECTION 104. REMEDIES CUMULATIVE.

(a) Remedies provided by this [Act] are cumulative and do not affect the availability of remedies under other law, including the recognition of a support order of a foreign country or political subdivision on the basis of comity.

(b) This [Act] does not:

(1) provide the exclusive method of establishing or enforcing a support order under the law of this State; or

(2) grant a tribunal of this State jurisdiction to render judgment or issue an order relating to [child custody or visitation] in a proceeding under this [Act].

Comment

The existence of procedures for interstate establishment, enforcement, or modification of support or a determination of parentage in UIFSA does not preclude the application of the general law of the forum. Even if the parents live in different states, for example, a petitioner may decide to file an original proceeding for child support (and most likely for other relief as well) directly in the State of residence of the respondent and proceed under that forum's generally applicable support law. In so doing, the petitioner thereby submits to the personal jurisdiction of the forum and foregoes reliance on UIFSA. Once a child support order has been issued, this option is no longer available to interstate parties. Under UIFSA, a State may not permit a party to proceed to obtain a second support order; rather, in further litigation the tribunal must apply the Act's provisions for enforcement of an existing order and limit modification to the strict standards of UIFSA.

The 2001 addition to Subsection (a) specifically recognizes the doctrine of comity as a legitimate function of state law that on a proper showing provides for the recognition of a foreign support order, *see Mississippi Dept. Human Svcs. v. Shelnut*, 772 So.2d 1041 (Miss. 2000). Although the determination by the U.S. State Department that a foreign nation is a reciprocating country is binding on all states, recognition of foreign support orders through comity is dependent on the law of each UIFSA State. The reference to "remedies under other law" is intended to recognize the principle of comity as developed in the forum State by statutory or common law, rather than to create a substantive right independent of that law.

New Subsection (b)(1) gives notice that UIFSA is not the only means for establishing or enforcing a support order with an interstate aspect. Examples abound. A potential child-support obligee may voluntarily submit to the jurisdiction of another State to seek the full range of desired relief under the law of that State using intrastate procedures, rather than resorting to the interstate procedure provided by UIFSA. A nonresident married parent may choose to file a proceeding in the forum State for dissolution of the marriage, including property division and spousal support, and in conjunction seek an order regarding child custody and visitation and child support. A parent may submit to the jurisdiction of another State for a determination of parentage and child support. A support order resulting from each of these scenarios implicates UIFSA. Invariably the issuing tribunal will have continuing, exclusive jurisdiction over its controlling child or spousal support orders as provided by Sections 205, 207, 211, *infra*, with all of the attendant application of the Act to those orders.

On the other hand, Subsection (b)(2) states what is clear under U.S. Supreme Court decisions; the bases of jurisdiction for child custody and visitation orders and the jurisdiction for child-support orders run on separate tracks, compare *May v. Anderson*, 345 U.S. 528 (1953) with *Kulko v. Superior Court*, 436 U.S. 84 (1978). If the child-support order is sought under the authority of UIFSA, the most important aspect of this rule is that a child-support obligee utilizing the provisions of UIFSA to establish child support across State lines submits to jurisdiction for child support only, and does not submit to the jurisdiction of the responding State with regard to child custody or visitation.

ARTICLE 2
JURISDICTION

PART 1:
~~EXTENDED PERSONAL JURISDICTION.~~

SECTION 201. BASES FOR JURISDICTION OVER NONRESIDENT.

(a) In a proceeding to establish; or 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:

(1) the individual is personally served with [citation, summons, notice] within this State;

(2) the individual submits to the jurisdiction of this State by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) the individual resided with the child in this State;

(4) the individual resided in this State and provided prenatal expenses or support for the child;

(5) the child resides in this State as a result of the acts or directives of the individual;

(6) the individual engaged in sexual intercourse in this State and the child may have been conceived by that act of intercourse; ~~[or]~~

(7) [the individual asserted parentage in the [putative father registry] maintained in this State by the [appropriate agency]; or

(8)] there is any other basis consistent with the constitutions of this State and the United States for the exercise of personal jurisdiction.

(b) The bases of personal jurisdiction set forth in subsection (a) or in any other law of this State may not be used to acquire personal jurisdiction for a tribunal of the State to modify a child support order of another State unless the requirements of Section 611 or 615 are met.

Comment

Sections 201 and 202 assert what is commonly described as long-arm jurisdiction over a nonresident respondent for purposes of establishing a support order or determining parentage. Inclusion of this long-arm provision in this interstate Act is justified because residents of two separate states are involved in the litigation, both of whom are subject to the personal jurisdiction of the forum. Thus, the case has a clear interstate aspect, despite the fact that only the law of the forum State is applicable. Moreover, this is sufficient to invoke additional UIFSA provisions in an otherwise intrastate proceeding. *See* Sections 202, 316, and 318, *infra*. The intent is to insure that every enacting State has a long-arm statute that is as broad as constitutionally permitted. In situations in which the long-arm statute can be satisfied, the petitioner (either the obligor or the obligee) has two options: (1) utilize the long-arm statute to obtain personal jurisdiction over the respondent; or (2) initiate a two-state proceeding under the succeeding provisions of UIFSA seeking to establish a support order in the respondent's State of residence. Of course, a third option is available that does not implicate UIFSA; a petitioner may file a proceeding in the respondent's State of residence (perhaps to settle all issues between the parties in a single proceeding).

This long-arm statute applies to an order for spousal support as well as an order for child support. However, almost all of the specific provisions relate to child support orders or determinations of parentage. This derives from the fact that the focus of UIFSA is primarily on child support. Only Subsections (1), (2) and (8) are applicable to an action for spousal support asserting long-arm jurisdiction over a nonresident. The first two subsections are wholly noncontroversial insofar as an assertion of personal jurisdiction is concerned. Moreover, assertion of personal jurisdiction under Subsections (1), (2), or (8) will doubtless yield jurisdiction over all matters to be decided between the spouses, including division of property on divorce. Thus, the most obvious possible basis for asserting long-arm jurisdiction over spousal support, *i.e.*, "last matrimonial domicile," is not included in Section 201 to avoid the potential problem of another instance of bifurcated jurisdiction. This restraint avoids a situation in which UIFSA grants long-arm

jurisdiction for a spousal support order when the forum State has no correlative statute for property division in divorce.

Under RURESA, multiple support orders affecting the same parties were commonplace. UIFSA creates a structure designed to provide for only one support order at a time. The new one-order regime is facilitated and combined with a broad assertion of personal jurisdiction under this long-arm provision. The frequency of a two-state procedure involving the participation of tribunals in both states should be substantially reduced by the introduction of this long-arm statute.

Subsections (1) through (8) are derived from a variety of sources, including the UNIFORM PARENTAGE ACT (1973) Section 8, TEXAS FAMILY CODE Section 102.011, and NEW YORK FAMILY COURT ACT Section 154.

Subsection (1) codifies the holding of *Burnham v. Superior Court*, 495 U.S. 604 (1990), which reaffirms the constitutional validity of asserting personal jurisdiction based on personal service within a State.

Subsection (2) expresses the principle that a nonresident party concedes personal jurisdiction by seeking affirmative relief or by submitting to the jurisdiction by answering or entering an appearance. However, the power to assert jurisdiction over a support issue under the Act does not extend the tribunal's jurisdiction to other matters.

Subsections (3) through (6) identify specific fact situations justifying the assertion of long-arm jurisdiction over a nonresident. Each provides an appropriate affiliating nexus for such an assertion, when judged on a case-by-case basis with an eye on procedural and substantive due process. Further, each subsection does contain a possibility that an overly literal construction of the terms of the statute will overreach due process. For example, Subsection (3) provides that long-arm jurisdiction to establish a support order may be asserted if “the individual resided with the child in this State.” The typical scenario contemplated by the statute is that the parties lived as a family unit in the forum State, separated, and one of the parents subsequently moved to another State while the other parent and the child continued to reside in the forum. No time frame is stated for filing a proceeding; this is based on the fact that the absent parent has a support obligation that extends for at least the minority of the child (and often longer in many states).

On the other hand, suppose that the two parents and their child lived in State A for many years, and then decided to move the family to State B to seek better employment opportunities. Those opportunities did not materialize and, after several weeks or a few months of frustration with the situation, one of the parents returned with the child to State A. Under these facts a tribunal of State A may conclude it has long-arm jurisdiction to establish the support obligation of the absent parent. But, suppose that the family's sojourn in State B lasted for many years, and then one parent unilaterally decides to return

to State A. It is a reasonable expectation that all tribunals will conclude that assertion of personal jurisdiction over the absent parent immediately after the return based on Subsection (3) would offend due process. The interstate provisions of UIFSA are available to the returning parent to establish child support. Note that State B will have long-arm jurisdiction to establish support under Section 201. *See also* Section 204, *infra*, for the resolution of simultaneous proceedings provided by the Act.

The factual situations catalogued in the first seven subsections are appropriate and constitutionally acceptable grounds upon which to exercise personal jurisdiction over an individual. Subsection (7) is bracketed because not all states maintain putative father registries.

Finally, Subsection (8) tracks the broad, catch-all provisions found in many state statutes, including California, Civ. P. Code Section 410.10 (1973); New York, *supra*; and Texas, *supra*. Note, however, that the California provision, standing alone, was found to be inadequate to sustain a child support order under the facts presented in *Kulko v. Superior Court*, 436 U.S. 84 (1978).

When read together, the 2001 amendments to Subsection(a) deleting the term “modify” and the addition of new Subsection (b) are designed to preclude a tribunal of the forum from ignoring the restrictions on modification of child-support orders established by UIFSA. Some courts broadly construed the former reference to “modify” to justify ignoring the requirement of Section 611 that, absent agreement of the parties, a petitioner for modification of a child-support order of an issuing State when all parties have left that State must be a nonresident of the forum. The 2001 amendments make clear that a tribunal may not apply the long-arm provisions of Subsection (a), or any other law of the forum, and thereby assert that personal jurisdiction over both individual parties to a support order of another State is sufficient to modify that order. The limitations on the exercise of subject matter jurisdiction provided by Sections 611 and 615 must be observed irrespective of the existence of personal jurisdiction over the parties. Long-arm personal jurisdiction over the respondent, standing alone, is not sufficient to grant subject matter jurisdiction over a proposed modification to a tribunal of the State of residence of the petitioner, see *LeTellier v. LeTellier*, 40 S.W.3d 490, 90 A.L.R.5th 707 (Tenn. 2001), *reversing* 1999 WL 732487 (Tenn. App. 1999).

Subsection (b) is intended to cement the principle that modification of an existing order is not subject solely to the usual rules of personal jurisdiction over both parties. Even if a tribunal has personal jurisdiction over both parties, absent agreement of the parties it does not have subject matter jurisdiction to modify a support order of another State if one of the parties or the child reside in the issuing State at the time the modification proceeding is filed, see Section 207, *infra*. Even if everyone has moved away from the issuing State, a tribunal having personal jurisdiction over both parties may not modify the order if the petitioner is a resident of the tribunal forum—unless both

parties are residents of the forum, see Sections 611 and 613, *infra*. Absent an agreement of the parties, in all other cases the movant must be a nonresident, and the tribunal must have personal jurisdiction over the respondent. Almost invariably the respondent will be a resident of the forum.

On rare occasion, however, the required personal jurisdiction over the respondent may be available only by virtue of the long-arm provisions of this section, which explains why Sections 201, 205, 207, 611 and 615 must read in conjunction with one another. An example of such a situation is as follows: the controlling child-support order was issued by a tribunal in State A, which of course had personal jurisdiction over the parties when it issued its order; the obligee and child presently reside in State B (a State the obligor has never even visited); the obligor presently is employed and resides in Nation X, although the obligor's "home base" in the United States can be identified as State C where the headquarters of the obligor's employer is located; and, finally, other than Nation X, the only states that can claim a nexus with the obligor sufficient to assert personal jurisdiction over him are State C and perhaps State A. Under this fact situation, it is necessary to invoke one of the long-arm bases of Section 201 to assert the personal jurisdiction over the obligor necessary to modify the order. Note that the long-arm statute may not be asserted in State B where the movant resides due to the restriction provided in Section 611, even if a basis exists for assertion of long-arm jurisdiction in that State. The employment connection in State C is likely to permit a tribunal in that State to assert jurisdiction to modify the support order based on the catch-all provision, Subsection (a)(8). Further, a tribunal in State A might also find that it has retained jurisdiction to modify the order under Subsection (a)(8) (remember both parties are nonresidents) given the absence or paucity of other U.S. jurisdictions with a nexus to the obligor, see *Phillips v. Phillips*, 826 S.W.2d 746 (Tex. App. 1992). Note, however, that such an action by the original issuing State must be exercised with extreme restraint or the restriction on modification in Section 611 will become a nullity. Concern that long-arm jurisdiction will be asserted in less compelling circumstances than presented in this hypothetical situation is not substantiated by experience with Section 201 in establishment cases filed since the enactment of UIFSA. In fact, overreaching assertions of long-arm jurisdiction have been dealt with satisfactorily on a case-by-case basis using due process constitutional or forum non conveniens grounds. *Rains v. Dept. of Social & Health Serv.*, 989 P.2d 558 (Wash. App. 1998); *Phillips v. Fallen*, 6 S.W.3d 862 (Mo.1999), reversing 1999 WL 50159 (Mo. App. W.D.,1999); *Abu-Dalbouh v. Abu-Dalbouh*, 547 N.W.2d 700 (Minn. App.1996).

**SECTION 202. PROCEDURE WHEN EXERCISING JURISDICTION OVER
NONRESIDENT-DURATION OF PERSONAL JURISDICTION.** Personal
jurisdiction acquired by a tribunal of this State in a proceeding under this [Act] or other

law of this State relating to a support order continues as long as a tribunal of this State has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by Sections 205, 206, and 211.

~~A tribunal of this State exercising personal jurisdiction over a nonresident under Section 201 may apply Section 316 (Special Rules of Evidence and Procedure) to receive evidence from another State and Section 318 (Assistance with Discovery) to obtain discovery through a tribunal of another State. In all other respects, Articles 3 through 7 do not apply and the tribunal shall apply the procedural and substantive law of this State, including the rules on choice of law other than those established by this [Act].~~

Comment

This section can be said to state a legal truism, albeit a useful one. That is, once a tribunal issues a support order binding on the parties, which must be based on personal jurisdiction by virtue of *Kulko v. Superior Court*, 436 U.S. 84 (1978) and *Vanderbilt v. Vanderbilt*, 354 U.S. 416 (1957), jurisdiction in personam continues absent the statutorily specified reasons for its termination. The rule established by UIFSA is that the personal jurisdiction necessary to sustain enforcement or modification of an order of child support or spousal support persists as long as the order is in force and effect, even as to arrears, see Sections 205-207, 211, *infra*. This is true irrespective of the context in which the support order arose, *e.g.*, divorce, UIFSA support establishment, parentage establishment, modification of prior controlling order, etc. Insofar as a child-support order is concerned, depending on specific factual circumstances a distinction is made between continuing, exclusive jurisdiction to modify an order and continuing jurisdiction to enforce an order, see Sections 205 and 206, *infra*. Authority to modify a spousal support order is permanently reserved to the issuing tribunal, Section 211, *infra*.

~~PART 2:~~

~~PROCEEDINGS INVOLVING TWO OR MORE STATES:~~

SECTION 203. INITIATING AND RESPONDING TRIBUNAL OF STATE.

Under this [Act], a tribunal of this State may serve as an initiating tribunal to forward

proceedings to another State and as a responding tribunal for proceedings initiated in another State.

Comment

This section identifies the various roles a tribunal of the forum may serve; as appropriate, it may act as either an initiating or a responding tribunal. Under UIFSA a tribunal may serve as a responding tribunal even when there is no initiating tribunal in another State. This accommodates the direct filing of a proceeding in a responding tribunal by a nonresident.

SECTION 204. SIMULTANEOUS PROCEEDINGS ~~IN ANOTHER STATE.~~

(a) A tribunal of this State may exercise jurisdiction to establish a support order if the [petition] or comparable pleading is filed after a pleading is filed in another State only if:

(1) 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;

(2) the contesting party timely challenges the exercise of jurisdiction in the other State; and

(3) if relevant, this State is the home State of the child.

(b) A tribunal of this State may not exercise jurisdiction to establish a support order if the [petition] or comparable pleading is filed before a [petition] or comparable pleading is filed in another State if:

(1) 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;

(2) the contesting party timely challenges the exercise of jurisdiction in this State; and

(3) if relevant, the other State is the home State of the child.

Comment

Under the one-order system established by UIFSA, it is necessary to provide a new procedure to eliminate the multiple orders so common under RURESA and URESA. This requires cooperation between, and deference by, sister-state tribunals in order to avoid issuance of competing support orders. To this end, tribunals are expected to take an active role in seeking out information about support proceedings in other States concerning the same child. Depending on the circumstances, one or the other of two tribunals considering the same support obligation should decide to defer to the other. In 1992 UIFSA took a significant departure from the approach adopted by the UCCJA ("first filing"), by choosing the "home State of the child" as the primary method for resolving competing jurisdictional disputes, thereby adopting the choice of the federal PARENTAL KIDNAPPING PREVENTION ACT, 28 U.S.C. 1238A Section (C). Given the pre-emptive nature of the PKPA, and the possibility that custody and support will both be involved in some cases, the PKPA/UIFSA choice for resolving disputes between competing jurisdictional assertions was followed in 1997 by the decision of the Conference to replace the UCCJA with the UCCJEA. If the child has no home State, however, "first filing" will continue to control.

SECTION 205. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY CHILD-SUPPORT ORDER.

(a) A tribunal of this State ~~issuing~~ that has issued a child-support order consistent with the law of this State has and shall exercise continuing, exclusive jurisdiction ~~over a~~ to modify its child-support order if the order is the controlling order and:

(1) ~~as long as~~ at the time of the filing of a request for modification this State ~~remains~~ is the residence of the obligor, the individual obligee, or the child for whose

benefit the support order is issued; or

~~(2) until all of the parties who are individuals have filed written consents with the tribunal of this State for a tribunal of another State to modify the order and assume continuing, exclusive jurisdiction even if this State is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this State may continue to exercise jurisdiction to modify its order.~~

(b) A tribunal of this State ~~issuing~~ that has issued a child-support order consistent with the law of this State may not exercise ~~its~~ continuing, exclusive jurisdiction to modify the order if ~~the order has been modified by a tribunal of another State pursuant to this [Act] or a law substantially similar to this [Act];~~:

~~(1) all of the parties who are individuals file consent in a record with the tribunal of this State that a tribunal of another State that has jurisdiction over at least one of the parties who is an individual or that is located in the State of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or~~

~~(2) its order is not the controlling order.~~

~~(c) If a child-support order of this State is modified by a tribunal of another State pursuant to this [Act] or a law substantially similar to this [Act], a tribunal of this State loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this State, and may only:~~

~~(1) enforce the order that was modified as to amounts accruing before the modification;~~

~~(2) enforce nonmodifiable aspects of that order, and
(3) provide other appropriate relief for violations of that order which occurred before the effective date of the modification. (d) A tribunal of this State shall recognize the continuing, exclusive jurisdiction of~~

If a tribunal of another State which has issued a child-support order pursuant to this [the Uniform Interstate Family Support Act] or a law substantially similar to this [that Act] which modifies a child-support order of a tribunal of this State, tribunals of this State shall recognize the continuing, exclusive jurisdiction of the tribunal of the other State.

(d) A tribunal of this State that lacks continuing, exclusive jurisdiction to modify a child-support order may serve as an initiating tribunal to request a tribunal of another State to modify a support order issued in that State.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

~~(f) A tribunal of this State issuing a spousal support order consistent with the law of this State has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this State 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.~~

Comment

This section is perhaps the most crucial provision in UIFSA. Drawing on the

precedent of the federal PARENTAL KIDNAPPING PREVENTION ACT, 28 U.S.C. Section 1738A, the issuing tribunal retains continuing, exclusive jurisdiction over a child support order, except in very narrowly defined circumstances. First introduced by UIFSA in 1992, this principle is understood and widely accepted in all jurisdictions. “CEJ,” as it is known in the child-support enforcement world, is fundamental to the one-child-support-order-at-a-time principle of UIFSA. At first glance this section appears to have been significantly rewritten; certainly minor adjustments have been made to the substantive rules established. But, with the exception of the addition of and entirely new Subsection (a)(2), the sole intent and effect of the 2001 amendments is to reorganize the statutory language for greater clarity. The basic concept that the tribunal issuing a support order retains continuing, exclusive jurisdiction to modify that order remains the cornerstone of the Act.

As long as one of the individual parties or the child continues to reside in the issuing State, and as long as the parties do not agree to the contrary, the issuing tribunal has continuing, exclusive jurisdiction over its child-support order—which in practical terms means that it may modify its order. The statute attempts to be even-handed. The identity of the remaining party—obligor or obligee—does not matter. If the individual parties have left the issuing State but the child remains behind, continuing, exclusive jurisdiction [a.k.a. CEJ] remains with the issuing State. Even if all parties and the child no longer reside in the State, the support order continues in existence and is fully enforceable unless and until a modification takes place in accordance with the requirements of Article 6, *infra*. Note, however, that the CEJ of the issuing State over a spousal support order is permanent, see Section 211, *infra*.

In 2001 a significant, albeit subtle amendment was made to Subsection (a)(1). The intent was not to make a substantive change, but rather to clarify the original intent of the Drafting Committee. First, the time to measure whether the issuing tribunal has continuing, exclusive jurisdiction to modify its order, or whether all parties and child have left the State, is explicitly stated to be at the time of filing a proceeding to modify the child support order. Second, substitution of the term "is the residence" for the term "remains the residence" makes clear that any interruption of residence of a party between the date of the issuance of the order and the date of filing the request for modification does not affect jurisdiction to modify. Thus, if there is but one order, it is the controlling order in effect and enforceable throughout the United States, notwithstanding the fact that everyone has left the issuing State. If the order is not modified during this time of absence, a return to reside in the issuing State by a party or child will immediately identify the proper forum at the time of filing a proceeding for modification. Although the statute does not speak explicitly to the issue, temporary absence should be treated in a similar fashion. Temporary employment in another State may not forfeit a claim of residence in the issuing State, *State ex rel. Havlin v. Jamison*, 971 S.W.2d 938 (Mo. App. 1998). Of course, residence is a fact question for the trial court, keeping in mind that the question is residence, not domicile.

A substantive change is made by the 2001 amendment that adds entirely new language to Subsection (a)(2). From the beginning of the implementation of the CEJ principle, questions have been raised about why a tribunal may not modify its own order if the parties agree that it should do so even after both parties have left the State. The move of the parties and the child from the State may have been of a very short distance and, although the parties reside outside the issuing State, they may prefer to continue to be governed by the same issuing tribunal because they continue to have a strong affiliation with the issuing tribunal. For example, the child-support order may have been issued by a tribunal of Washington, D.C. Subsequently the obligee and child have moved to Virginia, the obligor now resides in Maryland, and perhaps one or both parties continue to be employed in Washington. The possibility that under such circumstances the parties reasonably may prefer to continue to deal with the issuing tribunal convinced the Drafting Committee to add this exception to the basic principle of CEJ to modify.

The other side of the coin follows logically. Just as Subsection (a) defines the retention of continuing, exclusive jurisdiction, by clear implication the subsection also identifies how jurisdiction to modify may be lost. That is, if all the relevant persons—the obligor, the individual obligee, and the child—have permanently left the issuing State, the issuing State no longer has an appropriate nexus with the parties or child to justify the exercise of jurisdiction to modify its child-support order. See *In re Marriage of Erickson*, Wash. App. Div. 3 2000, 991 P.2d 123, 98 (Wash. App. 2000); *Groseth v. Groseth*, 600 N.W.2d 159 (Neb. 1999). Further, the issuing tribunal has no current information about the factual circumstances of anyone involved, and the taxpayers of that State have no reason to expend public funds on the process. Note, however, that the original order of the issuing tribunal remains valid and enforceable. That order is in effect not only in the issuing State but also in those States in which the order has been registered. It also may be registered and enforced in additional States even after the issuing State has lost its power to modify its order, see Sections 601-604, *infra*. The original order remains in effect until it is properly modified in accordance with the narrow terms of Sections 609-612, *infra*.

Subsection (b)(1), reworded in 2001, explicitly states that the issuing State may also lose its continuing, exclusive jurisdiction to modify if the parties consent in a record for another State to assume jurisdiction to modify (even though one of the parties or the child continues to reside in the issuing State). Filing of the record in the issuing State divests the issuing tribunal of its CEJ. See *Peace v. Peace*, 737 A.2d 1164 (N.J. Super. 1999). The Drafting Committee anticipated that such an agreement would seldom occur because of the almost universal desire of each party to prefer his or her local tribunal; but, the Committee also believed that the parties should be allowed to agree upon an alternate forum if they choose to do so. The 2001 rewording of this provision also makes this procedure available in a situation in which all the parties and the child have left the issuing State and are in agreement that a tribunal of the State in which only the movant resides shall assume modification jurisdiction.

Although Subsections (a) and (b) identify the methods for the retention and the loss of continuing, exclusive jurisdiction by the issuing tribunal, this section does not confer jurisdiction to modify on another tribunal. Modification requires that a tribunal have personal jurisdiction over the parties and meet other criteria as provided in Sections 609 through 615, *infra*.

SECTION 206. ~~ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER BY TRIBUNAL HAVING CONTINUING JURISDICTION TO ENFORCE CHILD-SUPPORT ORDER.~~

(a) A tribunal of this State that has issued a child-support order consistent with the law of this State may serve as an initiating tribunal to request a tribunal of another State to enforce ~~or modify a support order issued in that State;~~

(1) the order if the order is the controlling order and has not been modified by a tribunal of another State that assumed jurisdiction pursuant to [the Uniform Interstate Family Support Act]; or

(2) a money judgment for arrearages of support and interest on the order accrued before a determination that an order of another State is the controlling order.

(b) 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 Section 316 (Special Rules of Evidence and Procedure) to receive evidence from another State and Section 318 (Assistance with Discovery) to obtain discovery through a tribunal of another State.~~

~~(c) A tribunal of this State which 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.~~

Comment

This section is the correlative of the continuing, exclusive jurisdiction asserted in the preceding section. It makes the relatively subtle distinction between the CEJ “to modify a support order” established in Section 205 and the “continuing jurisdiction to enforce” established in this section. A keystone of UIFSA is that the power to enforce the order of the issuing State is not “exclusive” with that State. Rather, on request one or more responding States may also exercise authority to enforce the order of the issuing State. Secondly, under the one-order-at-a-time system, the validity and enforceability of the controlling order continues unabated until it is fully complied with, unless it is replaced by a modified order issued in accordance with the standards established by Sections 609-615. That is, even if the individual parties and the child no longer reside in the issuing State, the controlling order remains in effect and may be enforced by the issuing State or any responding State without regard to the fact that the potential for its modification and replacement exists. The 2001 amendments to Subsection (a) authorize the issuing tribunal to initiate a request for enforcement of its order by a tribunal of another State if its order is controlling, see Section 207, or to request reconciliation of the arrears and interest due on its order if another order is controlling.

Subsection (b) reiterates that the issuing State has jurisdiction to serve as a responding State to enforce its own order at the request of another State.

The 2001 amendments moved the second sentence in Subsection (b) to Section 210, *infra*, and moved Subsection (c) to Section 211, *infra*.

PART 3:

~~RECONCILIATION OF MULTIPLE ORDERS.~~

SECTION 207. ~~RECOGNITION~~ DETERMINATION OF CONTROLLING CHILD-SUPPORT ORDER.

(a) If a proceeding is brought under this [Act] and only one tribunal has issued a child-support order, the order of that tribunal controls and must be so recognized.

(b) If a proceeding is brought under this [Act], and two or more child-support

orders have been issued by tribunals of this State or another State with regard to the same obligor and same child, a tribunal of this State having personal jurisdiction over both the obligor and individual obligee shall apply the following rules ~~in determining and by order shall determine~~ which order controls ~~to recognize for purposes of continuing, exclusive jurisdiction:~~

(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this [Act], the order of that tribunal controls and must be so recognized.

(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this [Act]:

(A) an order issued by a tribunal in the current home State of the child controls; ~~and must be so recognized;~~ but

(B) if an order has not been issued in the current home State of the child, the order most recently issued controls ~~and must be so recognized.~~

(3) If none of the tribunals would have continuing, exclusive jurisdiction under this [Act], the tribunal of this State ~~having jurisdiction over the parties~~ shall issue a child-support order, which controls ~~and must be so recognized.~~

(c) If two or more child-support orders have been issued for the same obligor and same child, ~~and if the obligor or the individual obligee resides in this State,~~ an individual upon request of a party who is an individual or a support enforcement agency, ~~may request~~ a tribunal of this State having personal jurisdiction over both the obligor and the obligee who is an individual shall ~~to determine~~ which order controls ~~and must be so recognized~~ under subsection (b). ~~The request must be accompanied by a certified copy of~~

~~every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination. The request may be filed with a registration for enforcement or registration for modification pursuant to Article 6, or may be filed as a separate proceeding.~~

(d) A request to determine which is the controlling order must be accompanied by a copy of every child-support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

~~(d)~~ (e) The tribunal that issued the controlling order under subsection (a), (b), or (c) ~~is the tribunal that has continuing, exclusive jurisdiction under Section~~ to the extent provided in Section 205 or 206.

~~(e)~~ (f) A tribunal of this State ~~which that~~ determines by order the identity of which is the controlling order under subsection (b)(1) or (2) or (c), or which that issues a new controlling order under subsection (b)(3), shall state in that order:

(1) the basis upon which the tribunal made its determination;

(2) the amount of prospective support, if any; and

(3) the total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by Section 209.

~~(f)~~ (g) Within [30] days after issuance of an order determining ~~the identity of which is the controlling order~~, the party obtaining the order shall file a certified copy of it ~~with in~~ each tribunal that issued or registered an earlier order of child support. A party ~~who obtains~~ or support enforcement agency obtaining the order and that fails to file a

certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

(h) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under this [Act].

Comment

Next to the introduction of the concept of continuing exclusive jurisdiction in Section 205, *supra*, the most dramatic founding principle of UIFSA was to establish a system whereby the multiple orders created by URESA and RURESAs could be reconciled in the transition from a world with multiple child-support orders to a one-order-at-a-time world. This principle introduced by Section 207 was subsequently incorporated into the requirements of 28 USC 1738B, Full Faith and Credit for Child Support Orders, a.k.a. FFCCSOA.

Sections 207 and 209-210 are designed to span the gulf between the one-order system created by UIFSA and the multiple-order system previously in place under RURESAs and URESAs. UIFSA necessarily must provide transitional procedures for the eventual elimination of existing multiple support orders in an expeditious and efficient manner. But, even though all U.S. jurisdictions enacted UIFSA by 1998, many years will pass before its one-order system will be completely in place. Multiple orders covering the same parties and child number in the hundreds of thousands; it can be reasonably anticipated that some of these orders will continue in effect until nearly 2020. To begin the journey toward a one-order system, however, this section provides a relatively simple procedure designed to identify a single viable order that will be entitled to prospective enforcement in every UIFSA State.

Subsection (a) declares that if only one child support order exists, it is to be denominated the controlling order, irrespective of when and where it was issued and whether any of the individual parties or the child continue to reside in the issuing State.

Subsection (b) establishes the priority scheme for recognition and prospective enforcement of a single order among existing multiple orders regarding the same obligor, obligee, and child. The 2001 amendment to Subsection (b) clarifies that a tribunal requested to sort out the multiple orders and determine which one will be prospectively controlling of future payments must have personal jurisdiction over the litigants in order

to ensure that its decision is binding on all concerned. For UIFSA to function, one order must be denominated as the controlling order, and its issuing tribunal must be recognized as having continuing, exclusive jurisdiction. In choosing among existing multiple orders, none of which can be distinguished as being in conflict with the principles of UIFSA, Subsection (b)(1) gives first priority to an order issued by the only tribunal that is entitled to continuing, exclusive jurisdiction under the terms of UIFSA, *i.e.*, an individual party or the child continues to reside in that State and no other issuing State meets this criterion. If two or more tribunals would have continuing, exclusive jurisdiction under the Act, Subsection (b)(2) first looks to the tribunal of the child's current home State. If that State has not issued a support order, Subsection (b)(2) looks next to the order most recently issued. Finally, Subsection (b)(3) provides that if none of the existing multiple orders are entitled to be denominated as the controlling order because none of the preceding priorities apply, the forum tribunal is directed to issue a new order, given that it has personal jurisdiction over the obligor and obligee. The new order becomes the controlling order, establishes the continuing, exclusive jurisdiction of the tribunal, and fixes the support obligation and its nonmodifiable aspects, primarily duration of support, see Sections 604 and 611(c), *infra*. The rationale for creating a new order to replace existing multiple orders is that there is no valid reason to prefer the terms of any one of the multiple orders over another in the absence of a fact situation described in Subsections (b)(1) or (b)(2).

As originally promulgated, UIFSA did not come to grips with whether existing multiple orders issued by different States might be entitled to full faith and credit without regard to the determination of the controlling order under the Act. The drafters took the position that state law, however uniform, could not interfere with the ultimate interpretation of a constitutional directive. Fortunately, this question has almost certainly been mooted by the 1996 amendment to 28 U.S.C. Section 1738B, Full Faith and Credit for Child Support Orders. Congress incorporated the multiple order recognition provisions of Section 207 of UIFSA into FFCCSOA virtually word for word in the PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996. Pub. L. 104-193, Aug. 22, 1996, 110 Stat. 2221.

It is not altogether clear whether the terms of UIFSA apply to a strictly intrastate case; that is, a situation in which multiple child support orders have been issued by multiple tribunals of a single State and all parties and the child continue to reside in that State. This is not an uncommon situation, often traceable to the intrastate applicability of RURESA. A literal reading of the statutory language suggests the section applies. Further, FFCCSOA does not make a distinction regarding the tribunals that issued multiple orders. If multiple orders have been issued by different tribunals in the home State of the child, most likely the most recent will be recognized as the controlling order, notwithstanding the fact that UIFSA Section 207(b)(2)(B) and FFCCSOA 42 U.S.C. Section 1738B(f)(3) literally do not apply. At the very least, this section, together with FFCCSOA, provide a template for resolving such conflicts.

Subsection (c), added in 1996, clarifies that any party or a support enforcement agency may request a tribunal of the forum State to identify the controlling order. That party is directed to fully inform the tribunal of all existing child support orders.

The 2001 addition of new Subsection (d) is to assure the tribunal is furnished with all the information needed to make a proper determination of the controlling order as well as the information needed to make a calculation of the consolidated arrears. The party or support enforcement agency requesting the determination of controlling order and determination of consolidated arrears is also required to notify all other parties and entities who may have an interest in either of those determinations. Those with such an interest most likely are support agencies and the obligee.

Relettered Subsection (e) provides that the determination of the controlling order under this section has the effect of establishing the tribunal with continuing, exclusive jurisdiction; only the order of that tribunal is entitled to prospective enforcement by a sister State.

Relettered Subsection (f) directs the forum tribunal to identify the details upon which it makes its determination of the controlling order. In addition, the tribunal is also directed to state specifically the amount of the prospective support, and to reconcile and consolidate the arrears and interest due on all of the multiple orders to the extent possible.

The party obtaining the determination is directed by relettered Subsection (g) to notify all interested tribunals of the decision after the fact. Although tribunals need not be given original notice of the proceeding, all tribunals that have contributed an order to the determination must be informed regarding which order was determined to be controlling, and should also be informed of the consolidated arrears and interest so that the extent of possible subsequent enforcement will be known with regard to each of the orders. The Act does not deal with the resolution of potential conflicting claims regarding arrears; this is left to case-by-case decisions or to federal regulation.

Section 207 presumes that the parties are accorded notice and opportunity to be heard by the tribunal. It also presumes that the tribunal will be fully informed about all existing orders when it is requested to determine which one of the existing multiple child support orders is to be accorded prospective enforcement. If this does not occur and one or more existing orders is not considered by the tribunal, the finality of its decision is likely to turn on principles of estoppel on a case-by-case basis. Finally, new Subsection (h), added in 2001, affirms the concept that when a fully informed tribunal makes a determination of the controlling order for prospective enforcement, or renders a judgment for the amount of the consolidated arrears, the decision is entitled to full faith and credit.

SECTION 208. MULTIPLE-CHILD-SUPPORT ORDERS FOR TWO OR MORE OBLIGEES. 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 shall enforce those orders in the same manner as if the ~~multiple~~ orders had been issued by a tribunal of this State.

Comment

Multiple orders may involve two or more families of the same obligor. Although all such orders are entitled to enforcement, practical difficulties frequently exist. For example, full enforcement of each of the multiple orders may exceed the maximum allowed for income withholding. The federal statute, 42 U.S.C. Section 666(b)(1), requires that to be eligible for the federal funding for enforcement, States must provide a ceiling for child support withholding expressed in a percentage that may not exceed the federal consumer credit code limitations on wage garnishment, 15 U.S.C. Section 1673(b). In order to allocate resources between competing families, UIFSA refers to state law. The basic principle is that one or more foreign orders for the support of an out-of-state family of the obligor, and one or more orders for an in-state family, are all of equal dignity. In allocating payments to different obligees, every child support order should be treated as if it had been issued by a tribunal of the forum State.

SECTION 209. CREDIT FOR PAYMENTS. ~~Amounts~~ A tribunal of this State shall credit amounts collected and credited for a particular period pursuant to a support order any child-support order against the amounts owed for the same period under any other child-support order for support of the same child issued by a tribunal of this or another State must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this State.

Comment

Because of the multiple orders possible under the former reciprocal acts, RURESA and URESA, the predecessor section was nominally concerned with insuring that payments made on a particular order were credited toward the amounts due on all other orders. As a practical matter, however, very little attention was paid to that provision. No mechanism was available to reconcile payments on multiple orders other than the obligor's record keeping, if any.

Quite a different situation is currently in place throughout the nation. The advent and development of IV-D agencies has brought collection of arrears and interest on those arrears to the forefront. Computerized exchange of complex information is now almost instantaneously available in many cases. Thus, deciphering the financial information available to accord credit for payment on one order against other orders is possible to a degree unknown in the days of RURESA. For example, full payment of \$300 on an order of State C earns a 100% pro tanto discharge of the current support owed on a \$200 order of State A, and a 75% credit against a \$400 order of State B. Crediting payments against arrears on multiple orders is more complex, and is subject to different constructions in various states.

Under the one-order system of UIFSA, an obligor ultimately will be ordered to pay only one sum-certain amount for current support, and a sum certain to reduce arrears and interest, if any. Nonetheless, multiple orders will exist for several years into the future. Moreover, even under a one-order system, more than one entity may be engaged in collecting past arrears. Ultimately those collections must be reported to a single entity with final accounting responsibility. Finally, because the nature of human enterprise is such that mistakes are inevitable, at least on occasion multiple orders will continue to be issued in error.

The issuing tribunal is ultimately responsible for the overall control of the enforcement methods employed and for accounting for the payments made on its order from multiple sources. Until that scheme is fully in place, however, it will be necessary to continue to mandate pro tanto credit for actual payments made against all existing orders.

The rewording of this section in 2001 reaffirms the simultaneous accrual and simultaneous credit approach, and provides further substance to the directive in Section 207(f) that a tribunal making a determination of the consolidated arrears must use this approach.

SECTION 210. APPLICATION OF [ACT] TO NONRESIDENT SUBJECT TO PERSONAL JURISDICTION. A tribunal of this State exercising personal jurisdiction over a nonresident in a proceeding under this [Act], under other law of this State relating to a support order, or recognizing a support order of a foreign country or political subdivision on the basis of comity may receive evidence from another State pursuant to Section 316, communicate with a tribunal of another State pursuant to Section 317, and obtain discovery through a tribunal of another State pursuant to Section 318. In all other respects, Articles 3 through 7 do not apply and the tribunal shall apply the procedural and substantive law of this State.

Comment

Although this section is a product of the 2001 amendments, in fact it combines provisions formerly found in Sections 202 and 206(b) into a single, comprehensive provision. Section 202 took account of the fact that assertion of long-arm jurisdiction over a nonresident results in a one-state proceeding, notwithstanding the fact that the parties reside in different States. Section 206(b) made a vital contribution to the exercise of continuing, exclusive jurisdiction to modify and continuing jurisdiction to enforce support orders if one of the parties to an original proceeding in the forum State subsequently left the State after the initial support order was issued. Indeed, it is far more common for a support order to be issued in conjunction with a divorce or determination of parentage in which both the obligor and obligee are residents of the forum than to be issued as a result of an assertion of long-arm jurisdiction. Note that either the petitioner or the respondent may be the nonresident party (either of whom may be the obligor or the obligee). And, also note that absent this provision the ordinary intrastate substantive and procedural law of the forum would apply to either fact situation without reference to the fact that one of the parties is a nonresident. In sum, whether the matter at hand involves establishment of an original support order or enforcement or modification of an existing order. If one of the parties resides outside the forum State, the nonresident may avail himself or herself of the special evidentiary and discovery provisions provided by UIFSA.

Except for the three sections specified, the provisions of UIFSA—its title labels it an interstate act—are not applicable to an intrastate proceeding. The first exception allows the tribunal to apply the special rules of evidence and procedure of Section 316 in order to facilitate decision-making when one party resides in another State. The improved

interstate exchange of information enables the nonresident to participate as fully as possible in the proceedings without the necessity of personally appearing in the forum State. The same considerations account for authorizing inter-tribunal communications as per Section 317. Finally, the two-state discovery procedures of Section 318 are made applicable in a one-state proceeding when a foreign tribunal can assist in that process. In all other situations, the ordinary substantive and procedural law of the forum State applies to a one-state proceeding. In sum, the parties and the tribunal in a one-state case may utilize those two-state procedures that contribute to economy, efficiency, and fair play.

Finally, the 2001 amendment recognizes and extends the operation of these evidentiary and discovery provisions to a case involving a foreign support order recognized on the basis of comity.

SECTION 211. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY SPOUSAL-SUPPORT ORDER.

(a) A tribunal of this State issuing a spousal-support order consistent with the law of this State has continuing, exclusive jurisdiction to modify the spousal-support order throughout the existence of the support obligation.

(b) A tribunal of this State 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.

(c) A tribunal of this State that has continuing, exclusive jurisdiction over a spousal-support order may serve as:

(1) an initiating tribunal to request a tribunal of another State to enforce the spousal-support order issued in this State; or

(2) a responding tribunal to enforce or modify its own spousal-support order.

Comment

This is not new language; a 2001 amendment moved former Section 205(f) to this stand-alone section. Complimentary provisions with regard to other aspects of CEJ over a spousal support order are also moved. An order for spousal support is treated differently than an order for child support. The issuing tribunal retains continuing, exclusive jurisdiction over an order of spousal support throughout the entire existence of the support obligation. Sections 205(f) and 206(c) state that the procedures of UIFSA are not available to a responding tribunal to modify the existing spousal support order of the issuing State. This marks a radical departure from RURESA, which treated spousal and child support orders identically. Under UIFSA, “interstate” modification of spousal support is limited to a procedure whereby a proceeding may be initiated outside of the issuing State, but only the tribunal in the original issuing State may modify the order under its law. This approach was expected to have minimal effect on actual practice, a prediction that appears to have been accurate. Interstate modification of pure spousal support was relatively rare under RURESA, and plays almost no part in the activities of support enforcement agencies.

The prohibition of modification of spousal support by a nonissuing state tribunal under UIFSA is consistent with the principle that a tribunal should apply local law to such cases to insure efficient handling and to minimize choice of law problems. Avoiding conflict of law problems is almost impossible if spousal support orders are subject to modification in a second State. For example, States take widely varying views of the effect on a spousal support order of the obligee's remarriage or nonmarital cohabitation. Making a distinction between spousal and child support is further justified because the standards for modification of child support and spousal support are very different. In most jurisdictions a dramatic improvement in the obligor's economic circumstances will have little or no relevance in a proceeding seeking an upward modification of spousal support, while a similar change in an obligor's situation typically is the primary basis for an increase in child support. This disparity is founded on a policy choice that post-divorce success of an obligor-parent should benefit the obligor's child, but not the obligor's ex-spouse.

Finally, UIFSA does not provide for shifting the continuing, exclusive jurisdiction over a spousal-support order by mutual agreement. That procedure is limited to child support under Section 205(b)(1). Note that the Act is silent rather than preclusive on the subject. If the parties wish to enter into such an agreement, it is up to the individual States to decide whether to recognize it. A waiver of continuing, exclusive jurisdiction and subsequent modification of spousal support by a tribunal of another State simply is not authorized by UIFSA, rather than prohibited.

ARTICLE 3

CIVIL PROVISIONS OF GENERAL APPLICATION

SECTION 301. PROCEEDINGS UNDER [ACT].

- (a) Except as otherwise provided in this [Act], this article applies to all proceedings under this [Act].
- (b) This [Act] provides for the following proceedings:
- (1) ~~establishment of an order for spousal support or child support pursuant to Article 4;~~
 - (2) ~~enforcement of a support order and income-withholding order of another State without registration pursuant to Article 5;~~
 - (3) ~~registration of an order for spousal support or child support of another State for enforcement pursuant to Article 6;~~
 - (4) ~~modification of an order for child support or spousal support issued by a tribunal of this State pursuant to Article 2;~~
 - (5) ~~registration of an order for child support of another State for modification pursuant to Article 6;~~
 - (6) ~~determination of parentage pursuant to Article 7; and~~
 - (7) ~~assertion of jurisdiction over nonresidents pursuant to Article 2, Part 1.~~
- (c) An individual [petitioner] or a support enforcement agency may ~~commence~~ initiate a proceeding authorized under this [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 which has or can obtain personal jurisdiction over the [respondent].

Comment

Subsection (a) mandates application of the general provisions of this article to all UIFSA proceedings.

A 2001 amendment deletes the original Subsection (b), the once controversial “road map” originally thought by the 1992 Drafting Committee to be required in order to introduce the large number of non-lawyer administrators employed by child support enforcement agencies to the intricacies of UIFSA. Given the extensive training on the Act throughout the nation, the road map no longer can be viewed as necessary.

Relettered Subsection (b) continues in a new form the basic two-state procedure long-employed by the former reciprocal acts to establish a support order in the interstate context. Direct filing of a petition in the responding State by an individual or a support enforcement agency without reference to an initiating tribunal State was introduced by UIFSA 1992. Although filing of a petition in an initiating tribunal to be forwarded to a responding tribunal is still recognized as a possible procedure, the direct filing procedure has proven to be one of the most significant improvements in efficient interstate case management. The promulgation and use of the federally mandated forms, Section 311(b), further serves to eliminate any role for the initiating tribunal.

SECTION 302. ~~ACTION~~ PROCEEDING BY MINOR PARENT. 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.

Comment

A minor parent may maintain a proceeding under UIFSA without the appointment of a guardian ad litem, even if the law of the forum jurisdiction requires a guardian for an in-state case. If a guardian or legal representative has been appointed, he or she may act on behalf of the minor's child in seeking support.

SECTION 303. APPLICATION OF LAW OF STATE. Except as otherwise provided by in this [Act], a responding tribunal of this State shall:

(1) ~~shall~~ apply the procedural and substantive law, ~~including the rules on choice of law~~, generally applicable to similar proceedings originating in this State and may exercise all powers and provide all remedies available in those proceedings; and

(2) ~~shall~~ determine the duty of support and the amount payable in accordance with the law and support guidelines of this State.

Comment

Historically States have insisted that forum law be applied to support cases whenever possible. This continues as a key principle of UIFSA. In general, a responding tribunal has the same powers in a proceeding involving interstate parties as it has in an intrastate case. This inevitably means that the Act is not self-contained; rather, it is supplemented by the forum's statutes and procedures governing support orders. To insure the efficient processing of the huge number of interstate support cases, it is vital that decision-makers apply familiar rules of local law to the maximum degree possible. This must be accomplished in a manner consistent with the overriding principle of UIFSA that enforcement is of the issuing tribunal's order, and that the responding State does not make the order its own as a condition of enforcing it.

Prior to the 2001 amendments, choice of law rules of the forum State were specifically invoked in three places; henceforth Section 604 is the sole reference to the issue.

SECTION 304. DUTIES OF INITIATING TRIBUNAL.

(a) Upon the filing of a [petition] authorized by this [Act], an initiating tribunal of this State shall forward ~~three copies of~~ the [petition] and its accompanying documents:

(1) to the responding tribunal or appropriate support enforcement agency in the responding State; or

(2) if the identity of the responding tribunal is unknown, to the State information agency of the responding State with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) ~~If a responding State has not enacted this [Act] or a law or procedure substantially similar to this [Act], a~~ requested by the responding tribunal, a tribunal of this State ~~may~~ shall issue a certificate or other document and make findings required by the law of the responding State. If the responding State is a foreign country or political subdivision jurisdiction, upon request the tribunal ~~may~~ shall specify the amount of support sought ~~and,~~ convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding State.

Comment

Under UIFSA the role of the initiating tribunal consists of the ministerial function of forwarding the documents to the appropriate entity in the responding State for action. The initiating tribunal has no substantive legal task to perform.

Subsection (b) was designed primarily to facilitate interstate enforcement between UIFSA States and URESA and RURESAs, with some applicability to cases involving foreign jurisdictions. After the nationwide enactment of UIFSA by 1998, *see* Prefatory Note, *supra*, the subsection retains its utility only with regard to support orders of foreign nations. Supplying documentation required by a foreign jurisdiction which is not otherwise required by UIFSA procedure will continue to be appropriate in the international context for the foreseeable future. An initiating tribunal is authorized to cooperate and provide whatever information or documentation is required or requested by a foreign jurisdiction. For example, a statement of the amount of support being requested is required by Canadian provinces before a tribunal will establish a support order. The 2001 amendment adds a duty for the initiating tribunal to state the amount of foreign currency equivalent to that request; there is a corresponding duty of a responding tribunal to convert the foreign currency into dollars if the foreign initiating tribunal does not,

Section 305(f).

The reference to “the applicable official or market exchange rate” takes into account the present practices of international money markets. A few countries continue to maintain an official exchange rate for their currency. The vast majority of countries recognize the fact that the value of their currency is subject to daily market fluctuations that are reported on the financial pages of many daily newspapers. Thus, in the example described above, a request for a specific amount of support in U.S. dollars, which is to be translated into Canadian dollars on a specific date, will inevitably have a variable value as the foreign currency rises or falls against the U.S. dollar.

SECTION 305. DUTIES AND POWERS OF RESPONDING TRIBUNAL.

(a) When a responding tribunal of this State receives a [petition] or comparable pleading from an initiating tribunal or directly pursuant to Section 301(b)(c) (~~Proceedings Under this [Act]~~), it shall cause the [petition] or pleading to be filed and notify the [petitioner] where and when it was filed.

(b) A responding tribunal of this State, to the extent ~~otherwise authorized~~ not prohibited by other law, may do one or more of the following:

(1) issue or enforce a support order, modify a child-support order, determine the controlling child-support order, or ~~render a judgment~~ to determine parentage;

(2) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) order income withholding;

(4) determine the amount of any arrearages, and specify a method of payment;

(5) enforce orders by civil or criminal contempt, or both;

(6) set aside property for satisfaction of the support order;

(7) place liens and order execution on the obligor's property;

(8) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(9) issue a [bench warrant; capias] for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the [bench warrant; capias] in any local and State computer systems for criminal warrants;

(10) order the obligor to seek appropriate employment by specified methods;

(11) award reasonable attorney's fees and other fees and costs; and

(12) grant any other available remedy.

(c) A responding tribunal of this State shall include in a support order issued under this [Act], or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this State may not condition the payment of a support order issued under this [Act] upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this State issues an order under this [Act], the tribunal shall send a copy of the order to the [petitioner] and the [respondent] and to the initiating tribunal, if any.

(f) If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this State shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the

applicable official or market exchange rate as publicly reported.

Comment

This section establishes a wide variety of duties for a responding tribunal. It contains: ministerial functions, Subsection (a); judicial functions, Subsection (b); and, substantive rules applicable to interstate cases, Subsections (c)-(e). Because a responding tribunal may be an administrative agency rather than a court, the Act explicitly states that a tribunal is not granted powers that it does not otherwise possess under state law. For example, authority to enforce a support order by contempt generally is limited to courts.

Subsection (a) directs the filing of the documents received without regard to whether an initiating tribunal in another State was involved in forwarding the documentation. It also directs that the individual or entity requesting the filing be notified, but leaves the means of that notification to local law. The advent of a variety of swifter, and perhaps even more reliable, forms of notice in the modern era justifies the deletion of a particular form of notice. For example, many States now authorize notice by telephone facsimile (FAX), or by an express delivery service. Already many legal documents are transmitted by electronic mail (email).

Subsection (b) lists duties that, if possessed under state law in connection with in-state cases, are allocated to the responding tribunal in UIFSA cases. Thus, each subdivision purposefully avoids mention of substantive rules. For example, Subsection (b)(7) does not identify the type, nature, or priority of liens that may be issued under UIFSA. As is generally true under the Act, those details will be determined by applicable state law concerning support enforcement remedies of local orders.

Subsection (c) clarifies that the details of calculating the child support order are to be included along with the order. Local law generally requires that variation from the child support guidelines must be explained, see 42 U.S.C. Section 667; this requirement is extended to interstate cases.

Subsection (d) states that an interstate support order may not be conditioned on compliance with a visitation order. *Chaisson v. Ragsdale*, 914 S.W.2d 739 (Ark. 1996). While this may be at variance with state law governing intrastate cases, under a UIFSA proceeding the petitioner generally is not present before the tribunal. This distinction justifies prohibiting visitation issues from being litigated in the context of a support proceeding. All States have enacted some version of either the UCCJA or the UCCJEA providing for resolution of visitation issues in interstate cases.

Subsection (e) introduces the policy determination that the petitioner, the respondent, and the initiating tribunal, if any, shall be kept informed about actions taken by the responding tribunal.

Subsection (f) is designed to facilitate enforcement of foreign support orders.

SECTION 306. INAPPROPRIATE TRIBUNAL. If a [petition] or comparable pleading is received by an inappropriate tribunal of this State, it the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal in this State or another State and notify the [petitioner] where and when the pleading was sent.

Comment

This section directs a tribunal receiving UIFSA documents in error to forward the original documents to their proper destination without undue delay, whether the appropriate tribunal is located in the same State or elsewhere. This section was originally intended to apply both to initiating and responding tribunals receiving such documents, but the practical elimination of the role of initiating tribunals under modern practice now limits the notice requirement to the petitioner, i.e., the individual party or support enforcement agency, that filed (or misfiled) the document directly. For example, if a tribunal is inappropriately designated as the responding tribunal, it shall forward the petition to the appropriate responding tribunal wherever located, if known, and notify the petitioner of its action. Such a procedure is much to be preferred to returning the documents to the petitioner to begin the process anew. Cooperation of this sort will facilitate the ultimate goals of the Act.

SECTION 307. DUTIES OF SUPPORT ENFORCEMENT AGENCY.

(a) A support enforcement agency of this State, upon request, shall provide services to a [petitioner] in a proceeding under this [Act].

(b) A support enforcement agency of this State that is providing services to the [petitioner] ~~as appropriate~~ shall:

(1) take all steps necessary to enable an appropriate tribunal in this State or another State to obtain jurisdiction over the [respondent];

- (2) request an appropriate tribunal to set a date, time, and place for a hearing;
- (3) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;
- (4) within [two] days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of ~~a written~~ notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the [petitioner];
- (5) within [two] days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of ~~a written~~ communication in a record from the [respondent] or the [respondent's] attorney, send a copy of the communication to the [petitioner]; and
- (6) notify the [petitioner] if jurisdiction over the [respondent] cannot be obtained.

(c) A support enforcement agency of this State that requests registration of a child-support order in this State for enforcement or for modification shall make reasonable efforts:

- (1) to ensure that the order to be registered is the controlling order; or
- (2) if two or more child-support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

(d) A support enforcement agency of this State that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

(e) A support enforcement agency of this State shall [issue or] request a tribunal of this State to issue a child-support order and an income-withholding order that redirect payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another State pursuant to Section 319 of the Uniform Interstate Family Support Act.

~~(e)~~ (f) This [Act] does not create or 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.

Comment

The focus of Subsection (a) is on providing services to a petitioner, and not merely on “representing” the obligee. Care should be exercised in the use of terminology given this substantial alteration of past practice under RURESA. Not only may either the obligee or the obligor request services, but that request may be in the context of the establishment of an initial child-support order, enforcement or review and adjustment of an existing child-support order, or a modification of that order (upward or downward). Note that the Act does not distinguish between child support and spousal support for purposes of providing services. Note also, that the services available may differ significantly; for example, modification of spousal support is limited to the issuing State, see Section 205(f), *supra*.

Subsection (b) responds to the past complaints of many petitioners that they were not properly kept informed about the progress of their requests for services.

The 2001 additions of Subsections (c) and (d) are procedural clarifications reflecting actual practice of the support agencies developed after years of experience with the Act. Subsection (c) imposes a duty on all support enforcement agencies to facilitate the UIFSA one-order world by actively searching for cases with multiple orders and obtaining a determination of the controlling order as expeditiously as possible. This agency duty correlates to new Subsection 602(d) regarding the registration process and cases with multiple orders.

Read in conjunction with Section 319, *infra*, new Subsection (e) requires the state support enforcement agency to facilitate redirection of the stream of child support in order that the payments be more efficiently received by the obligee.

Subsection (f) explicitly states that UIFSA neither creates nor rejects the establishment of an attorney-client or fiduciary relationship between the support enforcement agency and a petitioner receiving services from that agency. This highly controversial issue is left to otherwise applicable state law.

SECTION 308. DUTY OF [~~ATTORNEY GENERAL~~ STATE OFFICIAL OR AGENCY].

(a) If the ~~Attorney General~~ [appropriate state official or agency] determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the ~~Attorney General~~ [state official or agency] may order the agency to perform its duties under this [Act] or may provide those services directly to the individual.

(b) The [appropriate state official or agency] may determine that a foreign country or political subdivision has established a reciprocal arrangement for child support with this State and take appropriate action for notification of the determination.

Comment

In a carryover from RURESA, Subsection (a) provides that the State Attorney General, or an alternative designated by state law, is given oversight responsibility for the diligent provision of services by the support enforcement agency and the power to seek compliance with the Act.

The 2001 addition of Subsection (b) makes clear that a State has a variety of options in determining the scope of its support enforcement program. In the absence of controlling federal action declaring a foreign jurisdiction to be a reciprocating country or political subdivision, see Section 102(21)(B)(i), *supra*, each State may designate an official with authority to make a statewide, binding determination recognizing a foreign country or political subdivision as having a reciprocal arrangement with the that State.

SECTION 309. PRIVATE COUNSEL. An individual may employ private counsel to represent the individual in proceedings authorized by this [Act].

Comment

The right of a party to retain private counsel in a proceeding brought under UIFSA is explicitly recognized. The failure to clearly recognize that power under the prior uniform acts led to confusion and inconsistent decisions.

SECTION 310. DUTIES OF [STATE INFORMATION AGENCY].

(a) The [Attorney General's Office, State Attorney's Office, State Central Registry or other information agency] is the state information agency under this [Act].

(b) The state information agency shall:

(1) compile and maintain a current list, including addresses, of the tribunals in this State which have jurisdiction under this [Act] and any support enforcement agencies in this State and transmit a copy to the state information agency of every other State;

(2) maintain a register of names and addresses of tribunals and support enforcement agencies received from other States;

(3) forward to the appropriate tribunal in the ~~place~~ [county] in this State in which the ~~individual~~ obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this [Act] received from an initiating tribunal or the state information agency of the initiating State; and

(4) 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's licenses, and social security.

Comment

Subsection (a) identifies the central information agency. Subsection (b) details the duties of that agency insofar as interstate proceedings are concerned. Subsection (b)(4) does not provide independent access to the information sources or to the governmental documents listed. Because States have different requirements and limitations concerning such access based on differing views of the privacy interests of individual citizens, the agency is directed to use all lawful means under the relevant state law to obtain and disseminate information.

SECTION 311. PLEADINGS AND ACCOMPANYING DOCUMENTS.

(a) ~~✶~~ In a proceeding under this [Act], a [petitioner] seeking to establish or modify a support order, or to determine parentage in a proceeding under the [Act], or to register and modify a support order of another State must verify the file a [petition].

Unless otherwise ordered under Section 312 (~~Nondisclosure of Information in Exceptional Circumstances~~), 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 or the parent and alleged parent, and the name, sex, residential address, social security number, and date of birth of each child for ~~whom~~ whose benefit support is sought or whose parentage is to be determined. ~~The~~ Unless filed at the time of registration, the [petition] must be accompanied by a certified copy of any support order

~~in effect~~ known to have been issued by another tribunal. The [petition] may include any other information that may assist in locating or identifying the [respondent].

(b) The [petition] must 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.

Comment

This section establishes the basic requirements for drafting and filing interstate pleadings. Subsection (a) should be read in conjunction with Section 312, which provides for the confidentiality of certain information if disclosure is likely to result in harm to a party or a child. The 2001 amendments are directed at improving the efficiency of the process. Illustrative of that goal is the requirement that all known support orders be attached to the petition for relief, coupled with the elimination of the requirement that such copies be certified. If a dispute arises over the authenticity of a purported order, the tribunal must, of necessity, sort out conflicting claims at that time. Another improvement is the deletion of the requirement for verified pleadings originated in URESA and carried forward in the original version of UIFSA.

Subsection (b) provides authorization for the use of the federally authorized forms promulgated in connection with the IV-D child support enforcement program and mandates substantial compliance with those forms. Although the use of other forms is not prohibited, standardized documents have resulted in substantial improvement in the efficient processing of UIFSA proceedings.

SECTION 312. NONDISCLOSURE OF INFORMATION IN EXCEPTIONAL CIRCUMSTANCES. ~~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 shall 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 this [Act].~~ If a party alleges in an

affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

Comment

Derived from the UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT, Section 209. Information To Be Submitted to Court. This section is the latest version of the statutory formulation originally developed in UIFSA 1992. Public awareness of and sensitivity to the dangers of domestic violence has significantly increased since interstate enforcement of support originated. This section authorizes confidentiality in instances where there is a serious risk of domestic violence or child abduction. Although local law generally governs the conduct of the forum tribunal, state law may not provide for maintaining secrecy about the exact whereabouts of a litigant or other information ordinarily required to be disclosed under state law, i.e., Social Security number of the parties or the child. If so, this section creates a confidentiality provision that is particularly appropriate in the light of the intractable problems associated with interstate parental kidnapping, see the PARENTAL KIDNAPPING PREVENTION ACT (PKPA), 28 U.S.C. Section 1738A.

SECTION 313. COSTS AND FEES.

(a) The [petitioner] may not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney's 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's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under Article 6 (~~Enforcement and Modification of Support Order After Registration~~), a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

Comment

Under UIFSA either the obligor or the obligee may file a proceeding or seek services from a support enforcement agency, Subsection (a) permits either party to file without payment of a filing fee or other costs. Subsection (b), however, provides that only the support obligor may be assessed the authorized costs and fees.

Subsection (c) provides a sanction to deal with a frivolous contest regarding compliance with an interstate withholding order, registration of a support order, or comparable delaying tactics regarding an appropriate enforcement remedy.

SECTION 314. LIMITED IMMUNITY OF [PETITIONER].

(a) Participation by a [petitioner] in a proceeding under this [Act] before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the [petitioner] in another proceeding.

(b) A [petitioner] is not amenable to service of civil process while physically present in this State to participate in a proceeding under this [Act].

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this [Act] committed by a party while physically present in this State to participate in the proceeding.

Comment

Under Subsection (a), direct or indirect participation in a UIFSA proceeding does not subject a petitioner to an assertion of personal jurisdiction over the petitioner by the forum State in other litigation between the parties. The primary object of this prohibition is to preclude joining disputes over child custody and visitation with the establishment, enforcement, or modification of child support. This prohibition strengthens the ban on visitation litigation established in Section 305(d). A petition for affirmative relief under UIFSA limits the jurisdiction of the tribunal to the boundaries of the support proceeding. In sum, proceedings under UIFSA are not suitable vehicles for the relitigation of all of the issues arising out of a foreign divorce or custody cases. Only enforcement or modification of the support portion of such decrees or orders are relevant. Other issues, such as custody and visitation, or matters relating to other aspect of the divorce decree, are collateral and have no place in a UIFSA proceeding. *Chaisson v. Ragsdale*, 914 S.W.2d 739 (Ark. 1996).

Subsection (b) grants a litigant a variety of limited immunity from service of process during the time that party is physically present in a State for a UIFSA proceeding. The immunity provided is in no way comparable to diplomatic immunity, however, which should be clear from reading Subsection (c) in conjunction with the other subsections.

Subsection (c) does not extend immunity to civil litigation unrelated to the support proceeding which stems from contemporaneous acts committed by a party while present in the State for the support litigation. For example, a petitioner involved in an automobile accident or a contract dispute over the cost of lodging while present in the State does not have immunity from a civil suit on those issues.

SECTION 315. NONPARENTAGE AS DEFENSE. A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this [Act].

Comment

Arguably this section does no more than restate the basic principle of *res judicata*. However, there is a great variety of state law regarding presumptions of parentage and available defenses after a prior determination of parentage. As long as a proceeding is brought in an appropriate forum, this section is intended neither to discourage nor encourage collateral attacks in situations in which the law of a foreign jurisdiction is at significant odds with local law. If a collateral attack on a parentage decree is permissible under the law of the issuing jurisdiction, such a proceeding must be pursued in that forum and not in a UIFSA proceeding.

In sum, this section mandates that a parentage decree rendered by another tribunal “pursuant to law” is not subject to collateral attack in a UIFSA proceeding. *State v. Hanson*, 725 So.2d 514 (La. App. 1998). Of course, an attack on an alleged final order based on a fundamental constitutional defect in the parentage decree is permissible in the forum State. For example, a responding tribunal may find that a foreign tribunal acted unconstitutionally by denying a party due process because of a failure of notice and opportunity to be heard or a lack of personal jurisdiction over a party who did not answer or appear. Insofar as the latter ground is concerned, the universal enactment of the long-arm statute asserting personal jurisdiction over a respondent if the child “may have been conceived” in the forum State may greatly reduce successful attacks on a parentage determinations, see Section 201(a)(6), *supra*.

Similarly, the law of the issuing State may provide for a determination of parentage based on certain specific acts of the obligor, such as voluntarily acknowledging parentage as a substitute for a decree. UIFSA also is neutral regarding a collateral attack on such a parentage determination filed in the issuing State. In the meantime, however, the responding tribunal must give effect to such an act of acknowledgment of parentage if it is recognized as determinative in the issuing State. The consistent theme is that a collateral attack on a parentage determination cannot be made in a UIFSA proceeding other than on fundamental due process grounds.

SECTION 316. SPECIAL RULES OF EVIDENCE AND PROCEDURE.

(a) The physical presence of ~~the [petitioner]~~ a nonresident party who is an individual 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.

(b) ~~A verified [petition]~~, An affidavit, a document substantially complying with federally mandated forms, ~~and~~ or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under ~~oath~~ penalty of perjury by a party or witness residing in another State.

(c) A copy of the 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 is evidence of facts asserted in it, and is admissible to show whether payments were made.

(d) 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 [ten] days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(e) Documentary evidence transmitted from another State to a tribunal of this State by telephone, telecopier, or other means that do not provide an original ~~writing~~ record may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this [Act], a tribunal of this State ~~may~~ shall permit a party or witness residing in another State to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that State. A tribunal of this State shall cooperate with

tribunals of other States in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under this [Act].

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this [Act].

(j) A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

Comment

This section combines many time-tested procedures with additional innovative methods for gathering evidence in interstate cases. The amendment to Subsection (a) ensures that a nonresident petitioner or a nonresident respondent may fully participate in a proceeding under the Act without being required to appear personally. This was always the intent of the provision, but the text was ambiguous in this regard.

Subsections (b) through (f) greatly expand the special rules of evidence originally propounded in RURESA which are designed to take into account the virtually unique nature of the interstate proceedings under this Act. These sections provide exceptions to the otherwise guiding principle of UIFSA, *i.e.*, local procedural and substantive law should apply. Because the out-of-state party, and that party's witnesses, necessarily do not ordinarily appear in person at the hearing, deviation from the ordinary rules of evidence is justified in order to assure that the tribunal will have available to it the maximum amount of information on which to base its decision. The intent throughout these subsections is to eliminate by statute as many potential hearsay problems as possible in interstate litigation, with the goal of providing each party with the means to present evidence, even if not physically present. *See Attorney General v. Litten*, 999 S.W.2d 74 (Tex. App. 1999); *State ex rel. T.L.R. v. R.W.T.*, 737 So.2d 688 (La. 1999).

Perhaps the most dramatic of the 2001 amendments affecting these special rules of evidence is the change of a single word. The authorization in Subsection (f) of telephonic or audiovisual testimony in depositions and in hearing now substitutes the word “shall” for the word “may.” Adoption by the States may herald the day when every relevant court room will be equipped with a speaker phone, at the minimum, if not cameras and audiovisual receivers. This amendment will also eliminate decisions such as *Schwier v. Bernstein*, 734 So.2d 531 (Fla. App. 1999), which construed the use of electronic transmission of testimony to be wholly within the discretion of the tribunal. On a related track, the 2001 amendments to Subsection (b): (1) recognize the pervasive effect of the federal forms promulgated by the Office of Child Support Enforcement, HHS; (2) replace the necessity of swearing to a document “under oath” with the simpler requirement that the document be provided “under penalty of perjury,” as is required by federal income tax form 1040.

Subsection (d) provides a simplified means for proving health care expenses related to the birth of a child. Because ordinarily these charges are not in dispute, this is designed to obviate the cost of having health care providers appear in person or of obtaining affidavits of business records from each provider.

Subsections (e) and (f) encourage tribunals and litigants to take advantage of modern methods of communication in interstate support litigation; most dramatically, the out-of-state party is authorized to testify by telephone and supply documents by fax. One of the most useful applications of these subsections has been the combining of (c) and (e) to provide an enforcing tribunal with up-to-date information concerning the amount of arrears.

Subsection (g) codifies the rule in effect in many States that in civil litigation an adverse inference may be drawn from a litigant's silence. If a party refuses to submit to genetic testing, the refusal may be admitted into evidence and the court may resolve the question of paternity against that party on the basis of an inference that the results of the tests would have been unfavorable to the interests of the refusing party.

Subsection (j), new in 2001, complies with the federally mandated procedure that every State must honor the “acknowledgment of paternity” validly made in another State.

SECTION 317. COMMUNICATIONS BETWEEN TRIBUNALS. A tribunal of this State may communicate with a tribunal of another State or foreign country or political subdivision in writing a record, 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, and the status of a proceeding in the other State or foreign country or political subdivision. A tribunal of this State may furnish similar information by similar means to a tribunal of another State or foreign country or political subdivision.

Comment

This section authorizes communications between tribunals in order to facilitate decisions. The 2001 amendments extend the coverage of the section to tribunals of foreign nations. Broad cooperation between tribunals is permitted to expedite establishment and enforcement of a support order.

SECTION 318. ASSISTANCE WITH DISCOVERY. A tribunal of this State may:

- (1) request a tribunal of another State to assist in obtaining discovery; and
- (2) upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another State.

Comment

This section takes another logical step to facilitate interstate cooperation by enlisting the power of the forum to assist a tribunal of another State with the discovery process. The grant of authority is quite broad, enabling the tribunal of the enacting State to fashion its remedies to facilitate discovery consistent with local practice.

SECTION 319. RECEIPT AND DISBURSEMENT OF PAYMENTS.

(a) A support enforcement agency or tribunal of this State shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall 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.

(b) If neither the obligor, nor the obligee who is an individual, nor the child resides in this State, upon request from the support enforcement agency of this State or another State, [the support enforcement agency of this State or] a tribunal of this State shall:

(1) direct that the support payment be made to the support enforcement agency in the State in which the obligee is receiving services; and

(2) issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.

(c) The support enforcement agency of this State receiving redirected payments from another State pursuant to a law similar to subsection (b) shall furnish to a requesting party or tribunal of the other State a certified statement by the custodian of the record of the amount and dates of all payments received.

Comment

The first sentence of Subsection (a) is truly hortatory in nature, although its principle is implemented insofar as support enforcement agencies are concerned by federal regulations promulgated by the Office of Child Support Enforcement. The second sentence confirms the duty of the agency or tribunal to furnish payment information in interstate cases.

The 2001 amendments to Subsections (b) and (c) were inspired by the federal Office of Child Support Enforcement (OCSE), U.S. Department of Health and Human Services. Support enforcement agencies are directed to cooperate in the efficient and expeditious collection and transfer of child support from obligor to obligee. States may choose whether only a tribunal may order redirection of support payments, or whether a support enforcement agency of the State is also authorized to render such an order. Under either approach, the request for such redirection that must be acted upon may only be made by a

support enforcement agency in either the issuing State or another State. The basic idea is that redirection of payments will be facilitated, with the proviso that the issuing tribunal be kept informed as to the disposition of the payments made under its order.

ARTICLE 4

ESTABLISHMENT OF SUPPORT ORDER

SECTION 401. [PETITION] TO ESTABLISH SUPPORT ORDER.

(a) If a support order entitled to recognition under this [Act] has not been issued, a responding tribunal of this State may issue a support order if:

- (1) the individual seeking the order resides in another State; or
- (2) the support enforcement agency seeking the order is located in another

State.

(b) The tribunal may issue a temporary child-support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

- (1) a presumed father of the child;
- (2) petitioning to have his paternity adjudicated;
- (3) identified as the father of the child through genetic testing;
- (4) an alleged father who has declined to submit to genetic testing;
- (5) shown by clear and convincing evidence to be the father of the child;
- (6) an acknowledged father as provided by [applicable state law];
- (7) the mother of the child; or
- (8) an individual who has been ordered to pay child support in a previous

proceeding and the order has not been reversed or vacated.

- ~~(1) the [respondent] has signed a verified statement acknowledging parentage;~~
- ~~(2) the [respondent] has been determined by or pursuant to law to be the~~

parent; or

~~(3) there is other clear and convincing evidence that the [respondent] is the child's parent.~~

(c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to Section 305 (~~Duties and Powers of Responding Tribunal~~).

Comment

This section authorizes a tribunal of the responding State to issue temporary and permanent support orders binding on an obligor over whom the tribunal has personal jurisdiction. UIFSA does not permit such orders to be issued when another support order exists, thereby prohibiting a second tribunal from establishing another support order and the accompanying continuing, exclusive jurisdiction over the matter, see Sections 205 and 206.

The 2001 rewording of Subsection (b) conforms the language to the provisions of the UNIFORM PARENTAGE ACT (2000) regarding the individual party who may be ordered to pay temporary support.

ARTICLE 5
ENFORCEMENT OF ORDER OF
ANOTHER STATE WITHOUT REGISTRATION

SECTION 501. EMPLOYER'S RECEIPT OF INCOME-WITHHOLDING

ORDER OF ANOTHER STATE. An income-withholding order issued in another State may be sent by or on behalf of the obligee, or by the support enforcement agency, to the person ~~or entity~~ defined as the obligor's employer under [the income-withholding law of this State] without first filing a [petition] or comparable pleading or registering the order with a tribunal of this State.

Comment

In 1984 Congress mandated that all States adopt procedures for enforcing income-withholding orders of sister States. Direct recognition by the out-of-state obligor's employer of a withholding order issued by another State long was sought by support enforcement associations and other advocacy groups. In 1992 UIFSA recognized such a procedure. The article was extensively amended in 1996, but was the subject only of clarifying amendments in 2001.

Section 501 is deliberately written in the passive voice; the Act does not restrict those who may send an income-withholding order across state lines. Although the sender will ordinarily be a child support enforcement agency or the obligee, the obligor or any other person may supply an employer with the income-withholding order. "Sending a copy" of a withholding order to an employer is clearly distinguishable from "service" of that order on the same employer. Service of an order necessarily intends to invoke a tribunal's authority over an employer doing business in the State. Thus, for there to be valid "service" of a withholding order on an employer in a State, the tribunal must have authority to bind the employer. In most cases, this requires the assertion of the authority of a local responding tribunal in a "registration for enforcement" proceeding. In short, the formality of "service" defeats the whole purpose of direct income withholding across state lines.

In sum, the process contemplated in this article is direct "notification" of an employer

in another State of a withholding order without the involvement of initiating or responding tribunals. Therefore, receipt of a copy of a withholding order by facsimile, regular first class mail, registered or certified mail, or any other type of direct notice is sufficient to provide the requisite notice to trigger direct income withholding in the absence of a contest by the employee-obligor.

The 2001 amendments acknowledge that this process is now widely used by not only child support enforcement agencies, but also by private collection agencies or private attorneys acting on behalf of obligees.

**SECTION 502. EMPLOYER'S COMPLIANCE WITH
INCOME-WITHHOLDING ORDER OF ANOTHER STATE.**

(a) Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income-withholding order issued in another State which appears regular on its face as if it had been issued by a tribunal of this State.

(c) Except as otherwise provided in subsection (d) and Section 503, the employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order which specify:

(1) the duration and amount of periodic payments of current child-support, stated as a sum certain;

(2) the person ~~or agency~~ designated to receive payments and the address to which the payments are to be forwarded;

(3) medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(4) the amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(5) the amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(d) An employer shall comply with the law of the State of the obligor's principal place of employment for withholding from income with respect to:

(1) the employer's fee for processing an income-withholding order;

(2) the maximum amount permitted to be withheld from the obligor's income;

and

(3) the times within which the employer must implement the withholding order and forward the child-support payment.

Comment

In 1996 major employers and national payroll associations urged NCCUSL to supply more detail regarding the rights and duties of an employer on receipt of an income-withholding order from another State. The Conference obliged with amendments to UIFSA establishing a series of steps for employers to track.

When an employer receives an income withholding order from another State, the first step is to notify the employee that an income withholding order has been received naming the employee as the obligor of child support, and that income withholding will begin within the time frame specified by local law. In other words, the employer will initially proceed just as if the withholding order had been received from a tribunal of the employer's State. It is the responsibility of the employee to take whatever protective measures are necessary to prevent the withholding if the employee asserts a defense as provided in Section 506, *infra*.

At this point neither an initiating nor a responding tribunal is directly involved. The withholding order may have been forwarded by the obligee, the obligee's attorney, or the out-of-state IV-D agency. In fact, there is no prohibition against anyone sending a valid

copy of an income-withholding order, even a stranger to the litigation, such as the child's grandparent. Subsection (a) does not specify the method for sending this relatively informal notice for direct income withholding, but rather makes the assumption that the employer's communication to the employee regarding receipt of the order will cause an employee-obligor to act to prevent a wrongful invasion of his or her income if it is not owed as current child support or arrears.

Subsection (b) directs an employer of the enacting State to recognize a withholding order of a sister State, subject to the employee's right to contest the validity of the order or its enforcement. Prior to the promulgation of UIFSA, agencies in several States adopted a procedure of sending direct withholding requests to out-of-state employers. A contemporaneous study by the federal General Accounting Office reported that employers in a second State routinely recognized withholding orders of sister States despite an apparent lack of statutory authority to do so. UIFSA marked the first official sanction of this practice. Subsection (b) does not define "regular on its face," but the term should be liberally construed, *see U.S. v. Morton*, 467 U.S. 822 (1984) ("legal process regular on its face"). The rules governing intrastate procedure and defenses for withholding orders will apply to interstate orders.

Subsection (c) answered employers' complaints that insufficient direction for action was given by the original UIFSA. Prior to the 1996 amendments an employer was merely told to "distribute the funds as directed in the withholding order." This section clarifies the terms of the out-of-state order with which the employer must strictly comply. As a general principle, an employer is directed to comply with the specific terms contained in the order, but there are exceptions. Moreover, many income-withholding orders received at that time did not provide the detail necessary for the employer to comply with every directive. Since then, however, the long-anticipated federal forms were promulgated throughout 1997 and 1998, with periodic updates to the present time. Most recently, the text of income withholding orders for child support is fast becoming subject to a nationwide norm. To the extent that an order is silent, the employer is not required to respond to unstated demands of the issuing State. Formerly, employers often were so concerned about ambiguous or incomplete orders that they telephoned child support enforcement agencies in other States to attempt to understand and comply with unstated terms. Employers should not be expected to become investigators or shoulder the responsibility of learning the law of 50 States.

Subsection (c)(1) directs that the amount and duration of periodic payments of current child support must be stated in a sum certain in order to elicit compliance. The duration of the support obligation is fixed by the controlling order and should be stated in the withholding order so that the employer is informed of the date on which the withholding is anticipated to terminate. The "sum certain" requirement is crucial to facilitating the employer's compliance. For example, an order for a "percentage of the obligor's net income," does not satisfy this requirement and is not entitled to compliance from an

employer receiving an such an interstate income-withholding order.

Subsection (c)(2) states the obvious: information necessary for compliance must be clearly stated. For example, the destination of the payments must correspond to the destination originally designated or subsequently authorized by the issuing tribunal, such as by the redirection of payments pursuant to Section 319, *supra*. Absent such action by the issuing tribunal, no redirection by any support enforcement agency or other person or entity is authorized by this section.

Subsection (c)(3) provides that medical support for the child must be stated either by a periodic cash payment or, alternatively, by an order directing the employee-obligor to provide health insurance coverage from his employment. In the absence of an order for payment of a sum certain, an order for medical support as child support requires the employer to enroll the obligor's child for coverage if medical insurance is available through the obligor's employment. Failure to enroll the child should elicit, at the least, registration of the order for enforcement in the responding State, to be implemented by an order of a tribunal directing the employer to comply. Because the employer is so directed by the medical support order, enrollment of the child in the health care plan at the employee-obligor's expense is not dependent on the obligor's consent, any more than withholding a sum certain from the obligor's income is subject to a veto. It is up to the employee-obligor to assert any defense to prevent the employer from abiding by the medical support order.

Subsection (c)(4) identifies certain costs and fees incurred in conjunction with the support enforcement that may be added to the withholding order.

Subsection (c)(5) requires that the amount of periodic payments for arrears and interest on arrears also must be stated as a sum certain. If the one-order system is to function properly, the issuing State ultimately must be responsible to account for payments and maintain the record of arrears and interest rate on arrears. Full compliance with the support order will only be achieved when the issuing State determines that the obligation no longer exists.

Subsection (d) identifies those narrow provisions in which the law of the employee's work State applies, rather than the law of the issuing State. A large employer will almost certainly have a number of employees subject to income-withholding orders. From the employer's perspective, the procedural requirements for compliance should be uniform for all of those employees. Certain issues should be matters for the law of the employee's work State, such as the employer's fee for processing, the maximum amount to be withheld, and the time in which to comply. The latter necessarily includes the frequency with which income withholding must occur. This is also consistent with regard to the tax consideration imposed by choice of law considerations. The only element in the list of local laws identified in Subsection (d) which stirred any controversy whatsoever was the

fact that the maximum amount permitted to be withheld is to be subject to the law of the employee's work State. Demands of equal treatment for all citizens of the responding State, plus the practical concern that large employers require uniform computer programming mandate this solution.

SECTION 503. EMPLOYER'S COMPLIANCE WITH MULTIPLE TWO OR MORE INCOME-WITHHOLDING ORDERS. If an obligor's employer receives ~~multiple~~ two or more income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the ~~multiple~~ orders if the employer complies with the law of the State of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for ~~multiple~~ two or more child-support obligees.

Comment

Consistent with the Act's general problem-solving approach, the employer is directed to deal with multiple income orders for multiple families in the same manner as required by local law for orders of the forum State.

SECTION 504. IMMUNITY FROM CIVIL LIABILITY. An employer who complies with an income-withholding order issued in another State in accordance with this article is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

Comment

Because employer cooperation is a key element in interstate child support enforcement, it is sound policy to state explicitly that an employer who complies with an income-withholding order from another State is immune from civil liability.

SECTION 505. PENALTIES FOR NONCOMPLIANCE. An employer who willfully fails to comply with an income-withholding order issued by another State and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this State.

Comment

Only an employer who willfully fails to comply with an interstate order will be subject to enforcement procedures. Local law is the appropriate source for the applicable sanctions and other remedies available under state law.

SECTION 506. CONTEST BY OBLIGOR.

(a) An obligor may contest the validity or enforcement of an income-withholding order issued in another State and received directly by an employer in this State by registering the order in a tribunal of this State and filing a contest to that order as provided in Article 6, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this State. ~~Section 604 (Choice of Law) applies to the contest.~~

(b) The obligor shall give notice of the contest to:

(1) a support enforcement agency providing services to the obligee;

(2) each employer that has directly received an income-withholding order relating to the obligor; and

(3) the person ~~or agency~~ designated to receive payments in the income-withholding order or, if no person ~~or agency~~ is designated, to the obligee.

Comment

This section incorporates into the interstate context the law regarding defenses an employee-obligor may raise to an intrastate withholding order. Generally, States have accepted the IV-D requirement that the only viable defense is a "mistake of fact." 42 U.S.C. Section 666(b)(4)(A). This apparently includes "errors in the amount of current support owed, errors in the amount of accrued arrearage or mistaken identity of the alleged obligor" while excluding "other grounds, such as the inappropriateness of the amount of support ordered to be paid, changed financial circumstances of the obligor, or lack of visitation." H.R. Rep. No. 98-527, 98th Cong., 1st Sess. 33 (1983). The latter claims must be pursued in a separate proceeding in the appropriate State, not in a UIFSA proceeding.

This procedure is based on the assumption that valid defenses to income withholding for child support are few and far between. Experience has shown that in relatively few cases does an employee-obligor have a complete defense, *e.g.*, the child has died, another contingency ending the support has occurred, the order has been superseded, or there is a case of mistaken identity and the employee is not the obligor. An employee's complaint that "The child support is too high" must be ignored.

However, situations do arise where an employer has received multiple withholding notices regarding the obligor-employee and the same obligee. The notices may even allege conflicting amounts due, especially for payments on arrears. Additionally, many employees claim to have only learned of default orders when the withholding notice is delivered to the employer; this leads to claims that the order being enforced through income withholding was entered without personal jurisdiction over the obligor-employee.

The 2001 rewording of Subsection (a) affirms that a simple, efficient, and cost-effective method for an employee-alleged obligor to assert a defense is to register the withholding order with a local tribunal and seek protection from that tribunal pending resolution of the contest. This may be accomplished through the obligor's employment of private counsel or by a request for services made to the child support enforcement agency of the responding State. Some States provide administrative procedures for challenging the income withholding that may provide quicker resolution of a dispute than a judicially-based registration and hearing process. In the absence of expeditious action by the employee to assert a defense and contest the direct filing of a notice for withholding, however, the employer must begin income withholding in a timely fashion.

In contrast to the multiple-order system of RURESA, another issue the employee-obligor may raise is that the withholding order received by the employer is not based on the controlling child support order issued by the tribunal with continuing, exclusive jurisdiction, see Section 207, *supra*. Such a claim does not constitute a defense to the obligation of child support, but does put at issue the identity of the order to which

the employer must respond. Clearly the employer is in no position to make such a decision. When multiple orders involve the same employee-obligor and child, as a practical matter resort to a responding tribunal to resolve a dispute over apportionment almost certainly is necessary.

SECTION 507. ADMINISTRATIVE ENFORCEMENT OF ORDERS.

(a) A party or support enforcement agency 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.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any 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 shall register the order pursuant to this [Act].

Comment

This section authorizes summary enforcement of an interstate child support order through the administrative means available for intrastate orders. Under Subsection (a), an interested party in another State, which necessarily may include a private attorney or a support enforcement agency, may forward a support order or income-withholding order to a support enforcement agency of the responding State. The term “responding State” in this context does not necessarily contemplate resort to a tribunal as an initial step.

Subsection (b) directs the support enforcement agency in the responding State to employ that State's regular administrative procedures to process an out-of-state order. Thus, a local employer accustomed to dealing with the local agency need not change its

procedure to comply with an out-of-state order. Similarly, the administrative agency is authorized to apply its ordinary rules equally to both intrastate and interstate orders. For example, if the administrative hearing procedure must be exhausted for an intrastate order before a contesting party may seek relief in a tribunal, the same rule applies to an interstate order received for administrative enforcement.

ARTICLE 6

REGISTRATION, ENFORCEMENT, AND MODIFICATION OF SUPPORT

~~ORDER AFTER REGISTRATION~~

PART 1

REGISTRATION AND ENFORCEMENT OF SUPPORT ORDER

SECTION 601. REGISTRATION OF ORDER FOR ENFORCEMENT. A

support order or an income-withholding order issued by a tribunal of another State may be registered in this State for enforcement.

Comment

Sections 601 through 604 establish the basic procedure for the registration of interstate support orders. Formerly, the common practice under RURESA was to initiate a new proceeding for the establishment of a support order, even though there was an existing order for child support. That practice was specifically rejected by UIFSA; the fact that RURESA permitted (really encouraged) initiation of new proceedings under those circumstances led to the multiple support order system that UIFSA is designed to eliminate.

Under the one-order system of UIFSA, only one existing order is to be enforced prospectively. If more than one child-support order exists, Section 207 is designed to resolve the conflict by determining which order is controlling. Registration of an order in a tribunal of the responding State is the first step to enforce a child-support order of another State. Similarly, it is the first step for modification of another State's child-support order and may be the same for identification of the controlling order. Rather than being an optional procedure, as was the case under RURESA, registration under UIFSA is the primary method for interstate enforcement or modification of a child-support order by a tribunal of a responding State. If the prior support order has been validly issued by a tribunal with continuing, exclusive jurisdiction, see Section 205, that order is to be prospectively enforced against the obligor in the absence of narrow, strictly-defined fact situations in which an existing order may be modified, see Sections 609 through 612. Until that order is modified, however, it is fully enforceable in the responding State.

Although registration that is not accompanied by a request for the affirmative relief of enforcement or modification is not prohibited, the Act does not contemplate registration as serving a purpose in itself.

SECTION 602. PROCEDURE TO REGISTER ORDER FOR ENFORCEMENT.

(a) A support order or income-withholding order of another State may be registered in this State by sending the following ~~documents~~ records and information to the [appropriate tribunal] in this State:

(1) a letter of transmittal to the tribunal requesting registration and enforcement;

(2) two copies, including one certified copy, of ~~all orders~~ the order to be registered, including any modification of ~~an~~ the order;

(3) a sworn statement by the ~~party seeking~~ person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(4) the name of the obligor and, if known:

(A) the obligor's address and social security number;

(B) the name and address of the obligor's employer and any other source of income of the obligor; and

(C) a description and the location of property of the obligor in this State not exempt from execution; and

(5) except as otherwise provided in Section 312, the name and address of the obligee and, if applicable, the ~~agency or~~ person to whom support payments are to be

remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

(c) A [petition] or comparable pleading seeking a remedy that must be affirmatively sought under other law of this State may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

(d) If two or more orders are in effect, the person requesting registration shall:

(1) furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;

(2) specify the order alleged to be the controlling order, if any; and

(3) specify the amount of consolidated arrears, if any.

(e) A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

Comment

Subsection (a) outlines the mechanics for registration of an interstate order. Substantial compliance with the requirements is expected, *Twaddell v. Anderson*, 523 S.E.2d 710 (N.C. App. 1999); *In re Chapman*, 973 S.W.2d 346 (Tex. App. 1998.)

Subsection (b) confirms that the order being registered is not converted into an order of the responding State, but rather continues to be an order of the issuing State.

Subsection (c) warns that if a particular enforcement remedy must be specifically sought under local law, the same rule of pleading is applicable as in an interstate case. For example, if license suspension or revocation is sought as a remedy for alleged noncompliance with the terms of the order, the substantive and procedural rules of the responding State apply. Whether the range of application of the remedy in the responding State is wider or narrower than that available in the issuing State is irrelevant. The responding tribunal will apply the familiar law of its State, and is neither expected nor authorized to consider the law of the issuing State. In short, the path in enforcing the order of a tribunal of another State is identical to the path followed for enforcing an order of the responding State. The authorization of a later filing to comply with local law contemplates that interstate pleadings may be liberally amended to conform to local practice.

The 2001 amendments adding Subsections (d) and (e) amplify the procedures to be followed when two or more child-support orders exist and registration for enforcement or modification is sought. In such instances, the requester is directed to furnish the tribunal with sufficient information and documentation so that the tribunal may make determinations of the controlling order and of the amount of consolidated arrears and interest as provided by Section 207, *supra*.

SECTION 603. EFFECT OF REGISTRATION FOR ENFORCEMENT.

(a) A support order or income-withholding order issued in another State is registered when the order is filed in the registering tribunal of this State.

(b) A registered order issued in another State is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this State.

(c) Except as otherwise provided in this article, a tribunal of this State shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

Comment

Until the advent of the 2001 amendments, the registration procedure under UIFSA was nearly identical to that of RURESA. But, the underlying intent of UIFSA registration has always been radically different. Under RURESA, once an order of State A was

registered in State B, it became an order of the latter. Under UIFSA, the order continues to be an order of State A, which is to be enforced by a tribunal of State B. The rules of evidence and procedure of State B apply to hearings, except as local law is supplemented or specifically superseded by the Act. The purpose of the 2001 amendments to the registration procedure set forth in Sections 601 through 604 is to confirm and clarify that the order being registered remains a State A order unless and until modification is accomplished.

RURESA specifically subjected a registered order to "proceedings for reopening, vacating, or staying as a support order of this State." These procedures are not authorized under UIFSA. Subsection (b) states that an interstate support order is to be enforced and satisfied in the same manner as if it had been issued by a tribunal of the registering State, although it remains an order of the issuing State. Conceptually, the responding State is enforcing the order of another State, not its own order.

Subsection (c) mandates enforcement of the registered order, see also Sections 606 through 608, *infra*. This is at sharp variance with the common interpretation of RURESA, which was generally construed as converting the foreign order into an order of the registering State. Once the registering court concluded that it was enforcing its own order, the next logical step was to issue an order as the court deemed appropriate. Although quite often couched in terms of a "modification," this procedure resulted in yet another order and was a major contributor to the multiple-order system. UIFSA mandates an end to this process. Under UIFSA there will be only one order in existence at any one time. That order is enforceable in a responding State irrespective of whether the order may be modified. In most instances, the support order will be subject to the continuing, exclusive jurisdiction of the issuing State. But sometimes the issuing State will not be able to exercise its authority to modify the order because neither the child nor the parties reside in the issuing State. Nonetheless, the order may be registered and is fully enforceable in a responding State until the potential for modification actually occurs in accordance with the strict terms for such a proceeding, see Sections 609-612, *infra*. Thus, the registering tribunal always must bear in mind that the enforcement procedures taken, whether to enforce current support or to assist collecting current and future arrears and interest are made on behalf of the issuing State, and are not to be viewed as modifications of the controlling order.

SECTION 604. CHOICE OF LAW.

(a) ~~The~~ Except as otherwise provided in subsection (d), the law of the issuing State governs:

(1) the nature, extent, amount, and duration of current payments and other obligations of support and under a registered support order;

(2) the computation and payment of arrearages and accrual of interest on the arrearages under the support order; and

(3) the existence and satisfaction of other obligations under the support order.

(b) In a proceeding for ~~arrearages~~ arrears under a registered support order, the statute of limitation ~~under the laws~~ of this State or of the issuing State, whichever is longer, applies.

(c) A responding tribunal of this State shall apply the procedures and remedies of this State to enforce current support and collect arrears and interest due on a support order of another State registered in this State.

(d) After a tribunal of this or another State determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this State shall prospectively apply the law of the State issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.

Comment

This section identifies situations in which local law is inapplicable. A basic principle of UIFSA is that throughout the process the controlling order remains the order of the issuing State, and that responding States only assist in the enforcement of that order. Absent a loss of continuing, exclusive jurisdiction and a subsequent modification of the order, the order never becomes an “order of the responding State.” Ultimate responsibility for enforcement and final resolution of the obligor’s compliance with all aspects of the support order belongs to the issuing State. Thus, calculation of whether the obligor has fully complied with the payment of current support, arrears, and interest on arrears is the duty of the issuing State. For example, under Subsection (a) the responding State must recognize and enforce an order of the issuing State for the support of a child until age 21, notwithstanding the fact that the duty of support of a child ends at age 18 under the law of

the responding State, *see Robdau v. Commonwealth, Virginia Dept. Social Serv.*, 543 S.E.2d 602 (Va. App. 2001); *State ex rel. Harnes v. Lawrence*, 538 S.E.2d 223 (N.C. App. 2000). Similarly, the law of the issuing State governs whether a payment made for the benefit of a child, such as a Social Security benefit for a child of a disabled obligor, should be credited against the obligor's child support obligation. The amendments of 2001 to Subsection (a) are intended to clarify the range of subjects that are governed by the choice of law rules established in this section.

Subsection (b) contains another choice of law provision that may diverge from local law. In situations in which the statutes of limitation differ from State to State, the statute with the longer term is to be applied. *Attorney General v. Litten*, 999 S.W.2d 74 (Tex. App. 1999). In interstate cases, arrearages often will have accumulated over a considerable period of time before enforcement is perfected. The rationale for this exception to the general rule is that the obligor should not gain an undue benefit from the choice of residence if the forum State has a shorter statute of limitations for arrearages than does the controlling order State. On the other side of the coin, i.e., the forum has a longer statute of limitations, the obligor will be treated in an identical manner as all other obligors in that State.

Subsection (c) mandates that local law controls with regard to enforcement procedures. For example, if the issuing State has enacted a wide variety of license suspension or revocation statutes, while the responding State has a much narrower list of licenses subject to suspension or revocation, local law prevails.

Subsection (d) may appear to state another truism—the law of the State that issued the controlling order is superior with regard to the terms of the support order itself. However, the last clause in the sentence provides a very important clarifying provision; that is, the law of the issuing State is to be applied to the consolidated arrears, even if the support orders of other States contributed a portion to those arrears.

In sum, the local tribunal applies its own familiar procedures to enforce a support order, but it is clearly enforcing an order of another State and not an order of the forum.

PART 2 CONTEST OF VALIDITY OR ENFORCEMENT

SECTION 605. NOTICE OF REGISTRATION OF ORDER.

(a) When a support order or income-withholding order issued in another State is

registered, the registering tribunal shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) ~~The~~ A notice must inform the nonregistering party:

(1) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this State;

(2) that a hearing to contest the validity or enforcement of the registered order must be requested within [20] days after notice;

(3) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

(4) of the amount of any alleged arrearages.

(c) If the registering party asserts that two or more orders are in effect, a notice must also:

(1) identify the two or more orders and the order alleged by the registering person to be the controlling order and the consolidated arrears, if any;

(2) notify the nonregistering party of the right to a determination of which is the controlling order;

(3) state that the procedures provided in subsection (b) apply to the determination of which is the controlling order; and

(4) state that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(c) (d) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to [the income-withholding law of this State].

Comment

Sections 605-608 provide the procedure for the nonregistering party to contest registration of an order, either because the order is allegedly invalid, superseded, or no longer in effect, or because the enforcement remedy being sought is opposed by the nonregistering party.

Subsections (a) and (b) direct that the nonregistering party be fully informed of the effect of registration. After such notice is given, absent a successful contest by the nonregistering party, the order will be confirmed and future contest will be precluded.

Subsection (c), with new text in 2001, is the correlative to Section 602(d) and (e) regarding the notice to be given to the nonregistering party if a controlling order determination must be made because of the existence of two or more child-support orders. The petitioner requesting this affirmative relief is directed to identify the order alleged to be controlling under Section 207, *supra*. If the nonregistering party does not contest this allegation, either by default or agreement, the order identified as controlling will be confirmed by operation of law by the following section.

Relettered Subsection (d) states the obvious; the obligor's employer must also be notified if income is to be withheld.

SECTION 606. PROCEDURE TO CONTEST VALIDITY OR ENFORCEMENT OF REGISTERED ORDER.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this State shall request a hearing within [20] days after 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 any alleged arrearages pursuant to Section 607 (~~Contest of Registration or Enforcement~~).

(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

Comment

Subsection (a) directs the “nonregistering party” to contest the registration of a foreign order within a short period of time or forfeit the opportunity to contest. UIFSA provides that either the obligor, the obligee, or a state enforcement agency, may seek to register a foreign support order. In fact, even a stranger to the litigation, for example a grandparent or an employer of an alleged obligor, may register a support order. Thereafter, the nonregistering party is put on notice of the registration and is required to assert any existing defense to the alleged order or forfeit the opportunity. Note that either the obligor or the obligee may have objections to the registered order, although in the vast majority of cases doubtless the obligor will be the nonregistering party. For example, there is a possibility that in multiple order situations either party may register the order most favorable to that party rather than the likely controlling order, thus triggering a contest. However, such chicanery is contrary to Subsection 605(c) and is specifically forbidden for a support enforcement agency, Subsection 307(c).

Subsection (a) is philosophically very different from RURESA which directed that a registered order "shall be treated in the same manner as a support order issued by a court of this State." Under UIFSA a contest of the fundamental provisions of the registered order is not permitted in the responding State. The nonregistering party must return to the issuing State to prosecute such a contest (obviously only as the law of that State permits). The procedure adopted here is akin to the prohibition found in Section 315 against asserting a nonparentage defense in a UIFSA proceeding. In short, raising a collateral issue in a UIFSA proceeding is prohibited, but no attempt is made to preclude the issue from being litigated in another, more appropriate forum if otherwise allowed by that

forum.

On the other hand, a nonregistering obligor may assert defenses such as "payment" or "the obligation has terminated" in response to allegations of noncompliance with the registered order. Similarly, a constitutionally-based attack may be asserted, *i.e.*, an alleged lack of personal jurisdiction by the issuing tribunal over a party. There is no defense, however, to registration of a valid foreign support order.

Subsection (b) precludes an untimely contest of a registered support order. As noted above, the nonregistering party is free to seek redress in the issuing State from the tribunal with continuing, exclusive jurisdiction over the support order.

Subsection (c) directs that a hearing be scheduled when the nonregistering party contests some aspect of the registration. At present, federal regulations govern the allowable time frames for contesting income withholding in IV-D cases, see 42 U.S.C. Section 666(b). Additional codification of the procedure process is unwise.

SECTION 607. CONTEST OF REGISTRATION OR ENFORCEMENT.

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

- (1) the issuing tribunal lacked personal jurisdiction over the contesting party;
- (2) the order was obtained by fraud;
- (3) the order has been vacated, suspended, or modified by a later order;
- (4) the issuing tribunal has stayed the order pending appeal;
- (5) there is a defense under the law of this State to the remedy sought;
- (6) full or partial payment has been made; ~~or~~
- (7) the statute of limitation under Section 604 (~~Choice of Law~~) precludes

enforcement of some or all of the alleged arrearages; or

(8) the alleged controlling order is not the controlling order.

(b) If a party presents evidence establishing a full or partial defense under subsection (a), a tribunal may 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 may be enforced by all remedies available under the law of this State.

(c) If the contesting party does not establish a defense under subsection (a) to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

Comment

Subsection (a) places the burden on the nonregistering party to assert narrowly defined defenses to registration of a support order. The 2001 amendment added an obvious defense that was inadvertently omitted from the original list of defenses. In a multiple order situation, if the nonregistering party contests the allegation regarding the controlling order, either because it allegedly has not been registered or because another order has been misidentified as such, the nonregistering party may defend against enforcement of another order by asserting the existence of a controlling order. Presumably the defense must be substantiated by registration of the other alleged controlling order to be effective.

If the obligor is liable for current support, in the absence of a valid defense under Subsection (b) the registering tribunal must enter an order to enforce that obligation. *State Dept. of Revenue ex rel. Rochell v. Morris*, 736 So. 2d 41 (Fla. App. 1999); *Welsher v. Rager*, 491 S.E.2d 661 (N.C. App. 1997); *Cowan v. Moreno*, 903 S.W.2d 119 (Tex. App.—Austin 1995). Proof of arrearages must result in enforcement; under the Bradley Amendment, 42 U.S.C. Section 666(a)(10), all States are required to treat child support payments as final judgments as they come due (or lose federal funding). Therefore, such arrearages are not subject to retroactive modification.

Subsection (c) provides that failure to successfully contest a registered order requires the tribunal to confirm the validity of the registered order. Although the statute is silent on the subject, it seems likely that res judicata requires that both the registering and nonregistering party who fail to register the "true" controlling order will be estopped from

subsequently collaterally attacking the confirmed order on the basis that the unmentioned “true order should have been confirmed instead.”

SECTION 608. CONFIRMED ORDER. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

Comment

If the nonregistering party fails to contest, the registered support order is confirmed by operation of law and no tribunal action is necessary. If contested, a registered support order must be confirmed by the forum tribunal if the defense authorized in Section 607 is rejected after a hearing. Either result precludes the nonregistering party from raising any issue that could have been asserted in a hearing. Confirmation of a foreign support order validates both the terms of the order and the asserted arrearages.

**PART 3
REGISTRATION AND MODIFICATION OF CHILD-SUPPORT ORDER**

SECTION 609. PROCEDURE TO REGISTER CHILD-SUPPORT ORDER OF ANOTHER STATE FOR MODIFICATION. A party or support enforcement agency seeking to modify, or to modify and enforce, a child-support order issued in another State shall register that order in this State in the same manner provided in Part 1 if the order has not been registered. A [petition] for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

Comment

Sections 609 through 615 deal with situations in which it is permissible for a registering State to modify the existing child-support order of another State. A petitioner wishing to register a support order of another State for purposes of modification must

conform to the general requirements for pleadings in Section 311 (Pleadings and Accompanying Documents), and follow the procedure for registration set forth in Section 602 (Procedure To Register Order for Enforcement). If the tribunal has the requisite personal jurisdiction over the parties as established in Sections 611, 613, or 615, modification may be sought in conjunction with registration and enforcement, or at a later date after the order has been registered, confirmed, and enforced.

SECTION 610. EFFECT OF REGISTRATION FOR MODIFICATION. A

tribunal of this State 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 a tribunal of this State, but the registered order may be modified only if the requirements of Section 611, 613, or 615 (~~Modification of Child Support Order of Another State~~) have been met.

Comment

An order registered for purposes of modification may be enforced in the same manner as an order registered for purposes of enforcement. But, the power of the forum tribunal to modify a child-support order of another tribunal is limited by the specific factual preconditions set forth in Sections 611, 613, and 615.

SECTION 611. MODIFICATION OF CHILD-SUPPORT ORDER OF ANOTHER STATE.

(a) ~~After~~ If Section 613 does not apply, except as otherwise provided in Section 615, upon [petition] a tribunal of this State may modify a child-support order issued in another State has been which is registered in this State, the responding] tribunal of this State may modify that order only if Section 613 does not apply and if, after notice and hearing it, the tribunal finds that:

- (1) the following requirements are met:

(A) neither the child, nor the individual obligee who is an individual, and nor the obligor do not resides in the issuing State;

(B) a [petitioner] who is a nonresident of this State seeks modification;
and

(C) the [respondent] is subject to the personal jurisdiction of the tribunal of this State; or

(2) this State is the State of residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal of this State, and all of the parties who are individuals have filed ~~a written~~ consents in a record in the issuing tribunal for a tribunal of this State to modify the support order and assume continuing, exclusive jurisdiction ~~over the order. However, if the issuing State is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this [Act], the consent otherwise required of an individual residing in this State is not required for the tribunal to assume jurisdiction to modify the child-support law.~~

(b) Modification of a registered child-support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this State and the order may be enforced and satisfied in the same manner.

(c) ~~▲~~ Except as otherwise provided in Section 615, a tribunal of this State may not modify any aspect of a child-support order that may not be modified under the law of the issuing State, including the duration of the obligation of support. If two or more tribunals have issued child-support orders for the same obligor and same child, the order that controls and must be so recognized under Section 207 establishes the aspects of the

support order which are nonmodifiable.

(d) In a proceeding to modify a child-support order, the law of the State that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this State.

(d) (e) On the issuance of an order by a tribunal of this State modifying a child-support order issued in another State, a the tribunal of this State becomes the tribunal having continuing, exclusive jurisdiction.

Comment

Under the procedure established by RURESA, after a support order was registered for the purpose of enforcement it was treated as if it had originally been issued by the registering tribunal. Most States interpreted these registration provisions as also authorizing prospective “modification” of the registered order. However, except in circumstances in which both States had the same version of RURESA and the formalities were scrupulously followed, the registering tribunal did not have the legal authority to replace the original order with its own order. In short, most often the purported modification in essence established a new obligation. In sum, by its very terms RURESA contemplated, or even encouraged, the existence of multiple support orders, none of which were directly related to any of the others. Although the issuing tribunal under RURESA retained a version of continuing, exclusive jurisdiction to modify its own order, that power was not exclusive. The typical scenario of those days was that an obligee would seek assistance from a local court, which would determine a duty of support existed and forward a certificate and order and petition to a responding court. The subsequent proceeding in the responding State would bring the obligor before the court. The obligor typically sought modification of the support obligation (which almost always was not being paid) in a forum which presented him with the “hometown advantage.” Thus arose the common practice of the issuance of a new, lower child-support order.

Under UIFSA, as long as the issuing State has continuing, exclusive jurisdiction over its child-support order, see Section 205(a), *supra*, a registering sister State is precluded from modifying that order. Without doubt, this is the most significant departure from the multiple-order system established by the prior Uniform Act. However, if the issuing State no longer has a sufficient interest in the modification of its order under the factual circumstances described in Section 205(b), *supra*, and restated in this section, after

registration the responding State may assume the power to modify the controlling order.

Registration is subdivided into distinct categories: registration for enforcement, for modification, or both. UIFSA is based on recognizing the truism that when an out-of-state support order is registered, the rights and duties of the parties affected have been previously litigated. Because the obligor already has had a day before an appropriate tribunal, an enforcement remedy may be summarily invoked. On the other hand, modification of an existing order presupposes a change in the rights or duties of the parties. The requirements for modification of a child-support order are much more explicit under UIFSA, which allows a tribunal to modify an existing child-support order of another State only if certain quite limited conditions are met. First, the tribunal must have all the prerequisites for the exercise of personal jurisdiction required for rendition of an original support order. Second, one of the restricted fact situations described in Subsection (a) must be present. This section, which is a counterpart to Section 205(a), establishes the conditions under which the continuing, exclusive jurisdiction of the issuing tribunal is released.

Under Subsection (a)(1), before a tribunal in a new forum may modify the controlling order three specific criteria must be satisfied. First, the individual parties affected by the controlling order and the child must no longer reside in the issuing State. Second, the party seeking modification must register the order in a new forum, almost invariably the State of residence of the other party. A colloquial (but easily understood) description of this requirement is that the modification movant must “play an away game on the other party’s home field.” This rule applies to either obligor or obligee, depending on which of those parties seeks to modify. Proof of the fact that neither individual party nor the child continues to reside in the issuing State may be made directly in the registering State; no purpose would be served by requiring the petitioner to return to the original issuing State for a document to confirm the fact that none of the relevant persons still lives there. Third, the forum must have personal jurisdiction over the parties. This is supplied by the movant submitting to the personal jurisdiction of the forum by seeking affirmative relief, almost always coupled with the fact that the respondent resides in the forum. On rare occasion, the personal jurisdiction over the respondent may be supplied by other factors, see Section 201 and the comment thereto, *supra*.

The policies underlying the change affected by Subsection (a)(1) contemplate that the issuing State no longer has an interest in exercising its continuing, exclusive jurisdiction to modify its order. This restriction attempts to achieve a rough justice between the parties in the majority of cases by preventing a litigant from choosing to seek modification in a local tribunal to the marked disadvantage of the other party. For example, an obligor visiting the children at the residence of the obligee cannot be validly served with citation accompanied by a motion to modify the support order. Even though such personal service of the obligor in the obligee's home State is consistent with the jurisdictional requisites of *Burnham v. Superior Court*, 495 U.S. 604 (1990), the motion

to modify does not fulfill the requirement of being brought by "a [petitioner] who is a nonresident of this State ...” In short, the obligee is required to register the existing order and seek modification of that order in a State that has personal jurisdiction over the obligor other than the State of the obligee’s residence. Again, almost invariably this will be the State of residence of the obligor. Similarly, fairness requires that an obligee seeking to modify or modify and enforce the existing order in the State of residence of the obligor will not be subject to a cross-motion to modify custody or visitation merely because the issuing State has lost its continuing, exclusive jurisdiction over the support order. The same is true of the obligor, who also is required to make a motion to modify support in a State other than that of his or her residence. Yet another benefit is supplied by the procedure mandated in this section. The most typical case is a motion to increase child support by the obligee, the enforcement of which ultimately will primarily, if not exclusively, take place in the obligor’s State of residence. Modification and enforcement in the same forum promotes efficiency.

Several arguments sustain the jurisdictional choice made by UIFSA. First, “jurisdiction by ambush” will be avoided. That is, personal service on either the custodial or noncustodial party found within the state borders will not yield jurisdiction to modify. Thus, a parent seeking to exercise rights of visitation, delivering or picking-up the child for such visitation, or engaging in unrelated business activity in the State, will not be involuntarily subjected to protracted litigation in an inconvenient forum. The rule avoids the possible chilling effect on the exercise of parental contact with the child that the possibility of such litigation might have. Second, almost all disputes about whether the tribunal has jurisdiction will be eliminated; submission by the petitioner to the State of residence of the respondent alleviates this issue completely. Finally, because there is an existing order the primary focus will shift to enforcement, thereby curtailing to a degree unnecessary, time-consuming modification efforts. The array of enforcement procedures available administratively to support enforcement agencies may be invoked without resort to action by a tribunal, which had constituted a bottleneck under RURESA and URESA.

There are two exceptions to the rule of Subsection (a)(1) requiring the petitioner to be a nonresident of the forum in which modification is sought. First, under Subsection (a)(2) the parties may agree that a particular forum may serve to modify the order. Second, Section 613, *infra*, applies if all parties have left the original issuing State and now reside in the same new forum State. Subsection (a)(2), which authorizes the parties to terminate the continuing, exclusive jurisdiction of the issuing State by agreement, is based on several implicit assumptions. First, the subsection applies even if the issuing tribunal has continuing, exclusive jurisdiction because one of the parties or the child continues to reside in that State. Subsection (a)(2) also is applicable if the individual parties and the child no longer reside in the issuing State, but agree to submit the modification issue to a tribunal in the petitioner’s State of residence. Also implicit in a shift of jurisdiction over the child-support order is that the agreed-upon tribunal must have subject matter jurisdiction and personal jurisdiction over at least one of the parties or the child, and that

the other party submits to the personal jurisdiction of that forum. In short, UIFSA does not contemplate that absent parties can agree to confer jurisdiction on a tribunal without a nexus to the parties or the child. But if the other party agrees, either the obligor or the obligee may seek assertion of jurisdiction to modify by a tribunal of the State of residence of either party.

The requirements of Subsection (a) are demonstrated to the tribunal being asked to assume continuing, exclusive jurisdiction. No action to transfer, surrender, or otherwise participate is required or anticipated by the original order-issuing tribunal. The Act does not grant discretion to refuse to yield jurisdiction to the issuing tribunal; nor does it extend discretion to refuse to accept jurisdiction to the assuming tribunal when the statutory requisites are met.. However, there is a distinction between the processes involved under Subsection (a)(1) and (a)(2). Once the requirements of (a)(1) or Section 613 have been met for assumption of jurisdiction, the assuming jurisdiction acts on the modification and then notifies the tribunal whose order has been replaced by the order of the assuming tribunal, *see* Section 614, *infra*. In contrast, for a tribunal of another State to assume modification jurisdiction under Subsection (a)(2) it is necessary that the individual parties first agree in a record to submit modification of child support to that tribunal and file their agreement with the issuing tribunal. Thereafter they may then proceed to petition the assuming tribunal to take jurisdiction.

Modification of child support under Subsections (a)(1) and (a)(2) is distinct from custody modification under the federal Parental Kidnapping Prevention Act, 42 U.S.C. Section 1738A, which provides that the court of continuing, exclusive jurisdiction may "decline jurisdiction." Similar provisions are found in the UCCJA, Section 14. In those statutes the methodology for the declination of jurisdiction is not spelled out, but rather is left to the discretion of possibly competing courts for case-by-case determination. The privilege of declining jurisdiction, thereby creating the potential for a vacuum, is not authorized under UIFSA, *see Rosen v. Lantos*, 938 P.2d 729, 734 (N.M. App. 1997). Once a controlling initial child-support order is established under UIFSA, at all times thereafter there is an existing order in effect to be enforced. Even if the issuing tribunal no longer has continuing, exclusive jurisdiction, its order remains fully enforceable until a tribunal with modification jurisdiction issues a new order in conformance with this article.

The degree to which the new standards of one tribunal with continuing, exclusive jurisdiction has been accepted is illustrated by comparing UIFSA to the UNIFORM CHILD CUSTODY JURISDICTION ACT, Sections 12-14, and UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT Sections 201-202. The UCCJA provides general principles for the judicial determination of an appropriate fact situation for subsequent modification of an existing custody order by another court. In contrast, UIFSA establishes a set of "bright line" rules which must be met before a tribunal may modify an existing child-support order. The intent is to eliminate multiple support orders to the maximum

extent possible consistent with the principle of continuing, exclusive jurisdiction that pervades the Act. The UCCJEA borrows heavily, but not identically, from UIFSA. Both UIFSA and UCCJEA seek a world in which there is but one-order-at-a-time for child support and custody and visitation. Both have similar restrictions on the ability of a tribunal to modify the existing order. The major difference between the two acts results from the fact that the basic jurisdictional nexus of each is founded on different consideration. UIFSA has its focus on the personal jurisdiction necessary to bind the obligor to payment of a child-support order. UCCJEA places its focus on the factual circumstances of the child, primarily the “home State” of the child; personal jurisdiction over a parent in order to bind that parent to the custody decree is not required. An example of the disparate consequences of this difference is the fact that a return to the decree State does “not reestablish” continuing jurisdiction under the custody jurisdiction Act, see comment to UCCJEA Section 202. But, under UIFSA similar facts permit the issuing State to exercise continuing, exclusive jurisdiction to modify its child-support order if at the time the proceeding is filed the issuing State “is the residence” of one of the individual parties or the child, see Section 205(a), *supra*.

Subsection (b) states that when the forum has assumed modification jurisdiction because the issuing State has lost continuing, exclusive jurisdiction, the proceedings will generally follow local law with regard to modification of child-support orders.

The 2001 amendment to Subsection (c) and the addition of Subsection (d) are designed to eliminate scattered attempts to subvert a significant policy decision made when UIFSA was first promulgated. Prior to 1993, American case law was thoroughly in chaos regarding modification of the duration of a child-support obligation when an obligor or obligee moved from one State to another with different ages regarding the duration of the child-support obligation. In those circumstances, whether the obligation ended, extended, or was curtailed was left almost to chance. In a RURESA proceeding, on the obligee’s motion some States would increase the duration of the support obligation when the obligor resided in a State with a higher age for the child support obligation. Other States decreased the obligor’s duration of child support when the obligor countered with a motion that the new RURESA support order should reflect a shorter duration of the obligation in accordance with local law. Multiple durations of the support obligation, as well as multiple support amounts, were both major problem areas addressed by UIFSA.

From its original promulgation UIFSA determined that the duration of child-support obligation should be fixed by the controlling order, see *Robdau v. Commonwealth, Virginia Dept. Social Serv.*, 543 S.E.2d 602 (Va. App. 2001). If the language was insufficiently specific before the 2001, the amendments should make this decision absolutely clear. The original time frame for support is not modifiable unless the law of the issuing State provides for modification of its duration. Some courts have sought to subvert this policy by holding that completion of the obligation to support a child through

age 18 established by the now-completed controlling order does not preclude the imposition of a new obligation thereafter to support the child through age 21 or even to age 23 if the child is enrolled in higher education. Subsection (d) is designed to eliminate these attempts to create multiple, albeit successive, support obligations. Consistent with this principle, if a domestic violence protective order has been entered with a child-support provision that has a duration less than the general child support law of the State that issues the controlling order, the law of that State determines the maximum duration. In sum, absent tribunal error the first child-support order issued under UIFSA will invariably be the initial controlling order. The initial controlling order may be modified and replaced by a new controlling order in accordance with the terms of Sections 609-615, but the duration of the child-support obligation remains constant, even though virtually every other aspect of the original order may be changed. This is also the standard in situations involving multiple valid child-support orders—a problem that will progressively decrease over time as RURESA multiple orders *supra* expire or a determination of the initial controlling order is made under Section 207, *supra*. Once a controlling order is identified under these standards, the duration of the support obligation is fixed.

Relettered Subsection (e) provides that upon modification the new order becomes the one order to be recognized by all UIFSA States, and the issuing tribunal acquires continuing, exclusive jurisdiction. Good practice mandates that the tribunal should explicitly state in its order that it is assuming responsibility for the controlling child-support order. Neither the parties nor other tribunals should be required to speculate about the effect of the action taken by the tribunal under this section.

SECTION 612. RECOGNITION OF ORDER MODIFIED IN ANOTHER

STATE. ~~A~~ If a child-support order issued by a tribunal of this State shall recognize a modification of its earlier child-support order is modified by a tribunal of another State which assumed jurisdiction pursuant to this [Act] or a law substantially similar to this [Act] and, upon request, except as otherwise provided in this [Act], shall the Uniform Interstate Family Support Act, a tribunal of this State:

(1) may enforce the its order that was modified only as to amounts arrears and interest accruing before the modification;

(2) ~~enforce only nonmodifiable aspects of that order;~~

~~(3)~~ may provide ~~other~~ appropriate relief ~~only~~ for violations of ~~that~~ its order which occurred before the effective date of the modification; and

~~(4)~~ (3) shall recognize the modifying order of the other State, upon registration, for the purpose of enforcement.

Comment

A key aspect of UIFSA is the deference to the controlling child-support order of a sister State demanded from a tribunal of the forum State. This applies not just to the original order, but also to a modified child-support order issued by a second State under the standards established by Section 611, 613, and 615. For the Act to function properly, the original issuing State must recognize and accept the modified order as controlling, and must regard its prior order as prospectively inoperative. Because the UIFSA system is based on an interlocking series of state laws, it is fundamental that a modifying tribunal of one State lacks the authority to direct the original issuing State to release its continuing, exclusive jurisdiction. That result is accomplished through the enactment of UIFSA by all States, which empowers a modifying tribunal to assume continuing, exclusive jurisdiction from the original issuing State and requires an issuing State to recognize such an assumption of jurisdiction. This explains why the U.S. Congress took the extraordinary measure in PRWORA of mandating universal passage of UIFSA 1996, as amended, *see* Prefatory Note,

The original issuing tribunal retains authority post-modification to take remedial actions directly connected to its now-modified order.

SECTION 613. JURISDICTION TO MODIFY CHILD-SUPPORT ORDER OF ANOTHER STATE WHEN INDIVIDUAL PARTIES RESIDE IN THIS STATE.

(a) If all of the parties who are individuals reside in this State and the child does not reside in the issuing State, a tribunal of this State has jurisdiction to enforce and to modify the issuing State's child-support order in a proceeding to register that order.

(b) A tribunal of this State exercising jurisdiction under this section shall apply the provisions of Articles 1 and 2, this article, and the procedural and substantive law of

this State to the proceeding for enforcement or modification. Articles 3, 4, 5, 7, and 8 do not apply.

Comment

A 1996 amendment explicitly dealt with the possibility that the parties and the child subject to a child-support order no longer reside in the issuing State and that the individual parties have moved to the same new State. This section makes it clear that, when the issuing State no longer has continuing, exclusive jurisdiction to modify its order, a tribunal of the State of mutual residence of the individual parties has jurisdiction to modify the child-support order and assume continuing, exclusive jurisdiction. Although the individual parties must reside in the forum State, there is no requirement that the child must also reside in the forum State (although the child must have moved from the issuing State).

Finally, because modification of the child-support order when all parties reside in the forum is essentially an intrastate matter, Subsection (b) withdraws authority to apply most of the substantive and procedural provisions of UIFSA, *i.e.*, those found in the Act other than in Articles 1, 2, and 6. Note, however, that the provision in Section 611(c) forbidding modification of nonmodifiable aspects of the controlling order applies. For example, the duration of the support obligation remains fixed by the original controlling order despite the subsequent residence of all parties in a new State. The fact that the State of the new controlling order has a different duration of for child support is specifically declared to be irrelevant by UIFSA, see Section 611, *supra*. Note that the even-handed approach of the Act is sustained; neither an increase nor a decrease in the duration in the obligation of child support is permitted.

SECTION 614. NOTICE TO ISSUING TRIBUNAL OF MODIFICATION.

Within [30] days after issuance of a modified child-support order, the party obtaining the modification shall 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 the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue

of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

Comment

This stand-alone provision is designed to clarify the organization of the Act; it states the crucial proposition that the prevailing party must inform the original issuing tribunal about its loss of continuing, exclusive jurisdiction over its child-support order. Thereafter, the original tribunal may not modify, or review and adjust, the amount of child support. Notice to the issuing tribunal and other affected tribunals that the continuing, exclusive jurisdiction of the former controlling order has been modified is crucial to avoid the confusion and chaos of the multiple-order system UIFSA is designed to replace.

Additionally, the tribunal has authority to impose sanctions on a party who fails to comply with the requirement to give notice of a modification to all interested tribunals. Note, however, that failure to notify a displaced tribunal of a modification of its order does not affect the validity of the modified order.

SECTION 615. JURISDICTION TO MODIFY CHILD-SUPPORT ORDER OF FOREIGN COUNTRY OR POLITICAL SUBDIVISION.

(a) If a foreign country or political subdivision that is a State will not or may not modify its order pursuant to its laws, a tribunal of this State may assume jurisdiction to modify the child-support order and bind all individuals subject to the personal jurisdiction of the tribunal whether or not the consent to modification of a child-support order otherwise required of the individual pursuant to Section 611 has been given or whether the individual seeking modification is a resident of this State or of the foreign country or political subdivision.

(b) An order issued pursuant to this section is the controlling order.

Comment

The amendments of 2001 added Section 615, which expands upon language moved from Section 611 (a)(2). A tribunal of one of the several States may modify a support order of a foreign country or political subdivision when a tribunal of the foreign jurisdiction would have jurisdiction to modify its order under the standards of UIFSA, but under the law or procedure of that foreign jurisdiction the tribunal will not or may not exercise that jurisdiction to modify its order. The standard example cited for the necessity of this special rule involves the conundrum posed to a tribunal of a foreign country having a requirement that the parties be physically present in order to sustain a modification of child support, and lacking the authority to compel a party residing outside of the borders of the country to appear. In such an instance, a tribunal of the forum State may modify the order if it has personal jurisdiction over both parties, including jurisdiction over the absent party who has submitted to the jurisdiction of the forum by making a request for modification of the support order.

ARTICLE 7

DETERMINATION OF PARENTAGE

SECTION 701. PROCEEDING TO DETERMINE PARENTAGE.

(a) A ~~tribunal~~ court of this State authorized to determine parentage of a child may serve as ~~an initiating or a~~ responding tribunal in a proceeding to determine parentage brought under this [Act] or a law or procedure substantially similar to this [Act]. ~~the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the [petitioner] is a parent of a particular child or to determine that a [respondent] is a parent of that child.~~

(b) ~~In a proceeding to determine parentage, a responding tribunal of this State shall apply the [Uniform Parentage Act,] [procedural and substantive law of this State,] and the rules of this State on choice of law.~~

Comment

This article authorizes a "pure" parentage action in the interstate context, *i.e.*, an action not joined with a claim for support. Either the mother or a man alleging himself to be the father of a child may bring such an action. Typically, an action to determine parentage across state lines will also seek to establish a support order under the Act, see Section 401. An action to establish parentage under UIFSA is to be treated identically to such an action brought in the responding State. Note that in a departure from the rest of this Act, the term "tribunal" is replaced by "court." Although in the several States there are various combinations of judicial and administrative entities that are authorized to establish, enforce, and modify child-support orders, the UNIFORM PARENTAGE ACT (2000) restricts parentage determinations to "a court," *see* UPA (2000) Section 104. The view that only a judicial officer should determine parentage is based on what the Conference believes is sound public policy.

ARTICLE 8
INTERSTATE RENDITION

SECTION 801. GROUNDS FOR RENDITION.

(a) For purposes of this article, “governor” includes an individual performing the functions of governor or the executive authority of a State covered by this [Act].

(b) 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; or

(2) on the demand by of 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.

(c) A provision for extradition of individuals not inconsistent with this [Act] applies 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 therefrom.

Comment

This section has not been amended substantively since 1968. Virtually no controversy has been generated regarding this procedure. Arguably application of Subsection (c) is problematic in situations in which the obligor neither was present in the demanding State at the time of the commission of the crime nor fled from the demanding State. The possibility that an individual may commit a crime in a State without ever being physically present there has elicited considerable discussion and some case law. *See* L. BRILMAYER, AN INTRODUCTION TO JURISDICTION IN THE AMERICAN FEDERAL SYSTEM, 329-335 (1986) (discussing minimum contacts theory for criminal jurisdiction); Rotenberg, *Extraterritorial Legislative Jurisdiction and the*

State Criminal Law, 38 TEX. L. REV. 763, 784-87 (1960) (due process requires that the behavior of the defendant must be predicably subject to State's criminal jurisdiction); *cf. Ex parte Boetscher*, 812 S.W.2d 600 (Tex. Crim. App. 1991) (Equal Protection Clause limits disparate treatment of nonresident defendants); *In re King*, 3 Cal.3d 226, 90 Cal. Rptr. 15, 474 P.2d 983 (1970), cert. denied 403 U.S. 931 (enhanced offense for nonresidents impacts constitutional right to travel).

SECTION 802. CONDITIONS OF RENDITION.

(a) Before making a 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 may require a prosecutor of this State to demonstrate that at least [60] days previously the obligee had initiated proceedings for support pursuant to this [Act] or that the proceeding would be of no avail.

(b) If, under this [Act] or a law substantially similar to this [Act], ~~the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act~~ the governor of another State makes a demand 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 is 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.

(c) If a proceeding for support has been 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 rendition 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.

Comment

This section has not undergone significant change since 1968. Interstate rendition remains the last resort for support enforcement, in part because a governor may exercise considerable discretion in deciding whether to honor a demand for rendition of an obligor.

ARTICLE 9

MISCELLANEOUS PROVISIONS

SECTION 901. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

~~This [Act] shall be applied and construed to effectuate its general purpose to make uniform~~ In applying and construing this Uniform Act consideration must be given to the need to promote uniformity of the law with respect to the its subject of this [Act] matter among States enacting that enact it.

~~**SECTION 902. SHORT TITLE.** This [Act] may be cited as the Uniform Interstate Family Support Act.~~

~~**SECTION 903-902. SEVERABILITY CLAUSE.** If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.~~

~~**SECTION 904-903. EFFECTIVE DATE.** This [Act] takes effect~~

~~**SECTION 905-904. REPEALS.** The following acts and parts of acts are hereby~~

repealed:

(1)

(2)

(3)

APPENDIX

UIFSA AMENDMENTS APPROVED JULY 1996 BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

This appendix provides only those titles, subsections, and paragraphs in strike and score that were amended in 1996. To get the full text of a Section, please refer to the Act to which this appendix is attached.

SECTION 101. DEFINITIONS.

(7) "Initiating state" means a state ~~from [in]~~ which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this [Act] or a law or procedure substantially similar to this [Act], the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act ~~[is filed for forwarding to a responding state]~~.

(16) "Responding state" means a state ~~in [to]~~ which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this [Act] or a law or procedure substantially similar to this [Act], the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(19) "State" means a state of the United States, the District of Columbia, ~~[the Commonwealth of]~~ Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term ~~["state"]~~ includes:

____(i) an Indian tribe; and ~~includes~~

(ii) a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this [Act], the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

SECTION 102. TRIBUNAL~~S~~ OF ~~THIS~~ STATE. (Section title only)

ARTICLE 2
JURISDICTION

PART 1 ~~{A}~~. EXTENDED PERSONAL JURISDICTION

PART 2 ~~{B}~~. PROCEEDINGS INVOLVING TWO OR MORE STATES

SECTION 203. INITIATING AND RESPONDING TRIBUNAL OF ~~{THIS}~~ STATE.

SECTION 205. CONTINUING, EXCLUSIVE JURISDICTION.

(a)(2) until **all of the parties who are individuals have** ~~each individual party~~
~~has~~ filed written consents with the tribunal of this State for a tribunal of another state to
modify the order and assume continuing, exclusive jurisdiction.

PART 3 ~~{C}~~. RECONCILIATION **OF MULTIPLE** ~~{WITH}~~ ORDERS ~~{OF OTHER~~
STATES}

SECTION 207. RECOGNITION OF **CONTROLLING CHILD-SUPPORT**
ORDER~~{S}~~.

~~{(a) If a proceeding is brought under this [Act], and one or more child~~
~~support orders have been issued in this or another state with regard to an obligor~~
~~and a child, a tribunal of this State shall apply the following rules in determining~~

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

~~(1) If only one tribunal has issued a child support order, the order of that tribunal must be recognized.~~

~~(2) 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 this [Act], the order of that tribunal must be recognized.~~

~~(3) 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 this [Act], an order issued by a tribunal in the current home state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.~~

~~(4) If two or more tribunals have issued child support orders for the same obligor and child, and none of the tribunals would have continuing, exclusive jurisdiction under this [Act], the tribunal of this State may issue a child support order, which must be recognized.}~~

~~(a) [rewritten § 207(a)(1)] If a proceeding is brought under this [Act] and only one tribunal has issued a child-support order, the order of that tribunal **controls and** must be so recognized.~~

~~(b) [rewritten § 207(a)(2),(3),(4)] If a proceeding is brought under this [Act], and two or more child-support orders have been issued ~~fin~~ by tribunals of this State or another state with regard to the same obligor and child, a tribunal of this State shall apply the following rules in determining which order to recognize for~~

purposes of continuing, exclusive jurisdiction:

(1) ~~{(2)}~~ If only one of the tribunals would have continuing, exclusive jurisdiction under this [Act], the order of that tribunal **controls and** must be **so** recognized.

(2) ~~{(3)}~~ If more than one of the tribunals would have continuing, exclusive jurisdiction under this [Act], an order issued by a tribunal in the current home state of the child **controls and** must be **so** recognized, but if an order has not been issued in the current home state of the child, the order most recently issued **controls and** must be **so** recognized.

(3) ~~{(4)}~~ If none of the tribunals would have continuing, exclusive jurisdiction under this [Act], the tribunal of this State **having jurisdiction over the parties shall** ~~**may**~~ issue a child-support order, which **controls and** must be **so** recognized.

(c) If two or more child-support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this State, a party may request a tribunal of this State to determine which order controls and must be so recognized under subsection (b). The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(d) ~~{(b)}~~ The tribunal that ~~**has**~~ issued **the controlling ~~{an}~~** order ~~**recognized**~~ under subsection (a), **(b), or (c)** is the tribunal **that has ~~{having}~~** continuing, exclusive jurisdiction **under Section 205.**

(e) A tribunal of this State which determines by order the identity of the

controlling order under subsection (b)(1) or (2) or which issues a new controlling order under subsection (b)(3) shall state in that order the basis upon which the tribunal made its determination.

(f) Within [30] days after issuance of an order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

ARTICLE 3

CIVIL PROVISIONS OF GENERAL APPLICATION

SECTION 301. PROCEEDINGS UNDER ~~{THIS}~~ [ACT].

(b)(7) assertion of jurisdiction over nonresidents pursuant to Article 2, Part 1 ~~{A}~~.

SECTION 303. APPLICATION OF LAW OF ~~{THIS}~~ STATE.

SECTION 304. DUTIES OF INITIATING TRIBUNAL.

(b) If a responding State has not enacted this [Act] or a law or procedure substantially similar to this [Act], a tribunal of this State may issue a certificate or other document and make findings required by the law of the responding State. If the responding State is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding State.

SECTION 305. DUTIES AND POWERS OF RESPONDING TRIBUNAL.

(a) When a responding tribunal of this State receives a [petition] or comparable pleading from an initiating tribunal or directly pursuant to Section 301(c) (Proceedings Under this [Act]), it shall cause the [petition] or pleading to be filed and notify the [petitioner] ~~{by first class mail}~~ where and when it was filed.

(e) If a responding tribunal of this State issues an order under this [Act], the

tribunal shall send a copy of the order ~~{by first class mail}~~ to the [petitioner] and the [respondent] and to the initiating tribunal, if any.

SECTION 306. INAPPROPRIATE TRIBUNAL.

If a [petition] or comparable pleading is received by an inappropriate tribunal of this State, it shall 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.

SECTION 307. DUTIES OF SUPPORT ENFORCEMENT AGENCY.

(b)(4) 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];

(b)(5) 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];

ARTICLE 5

~~{DIRECT}~~ ENFORCEMENT OF ORDER OF ANOTHER STATE WITHOUT
REGISTRATION

SECTION 501. EMPLOYER'S RECEIPT ~~{RECOGNITION}~~ OF INCOME-
WITHHOLDING ORDER OF ANOTHER STATE.

~~{(a)}~~ An income-withholding order issued in another state may be sent ~~{by first class mail}~~ to the person or entity defined as the obligor's employer under [the income-withholding law of this State] without first filing a [petition] or comparable pleading or registering the order with a tribunal of this State.

SECTION 502. EMPLOYER'S COMPLIANCE WITH INCOME-
WITHHOLDING ORDER OF ANOTHER STATE.

~~{(a) ~~{§ 501(a)(2)}~~}~~ Upon receipt of an income-withholding ~~{the}~~ order, the obligor's employer shall immediately provide a copy of the order to the obligor ~~{, and}~~.

~~{(b) ~~{§ 501(a)(1)}~~}~~ The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State.

~~{(c) ~~{§ 501(a)(3)}~~}~~ Except as otherwise provided in subsection (d) and Section 503, the employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order which specify:

(1) the duration and amount of periodic payments of current child-support, stated as a sum certain;

(2) the person or agency designated to receive payments and the address to which the payments are to be forwarded;

(3) medical support, whether in the form of periodic cash payment, stated

as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(4) the amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(5) the amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(d) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(1) the employer's fee for processing an income-withholding order;

(2) the maximum amount permitted to be withheld from the obligor's income; and

(3) the times within which the employer must implement the withholding order and forward the child support payment.

SECTION 503. COMPLIANCE WITH MULTIPLE INCOME-WITHHOLDING ORDERS

If an obligor's employer receives multiple income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.

SECTION 504. IMMUNITY FROM CIVIL LIABILITY.

An employer who complies with an income-withholding order issued in another state in accordance with this article is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

SECTION 505. PENALTIES FOR NONCOMPLIANCE.

An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this State.

SECTION 506. CONTEST BY OBLIGOR.

(a) ~~§ 501(b)~~ An obligor may contest the validity or enforcement of an income-withholding order issued in another state **and received directly by an employer in this State** in the same manner as if the order had been issued by a tribunal of this State. Section 604 (Choice of Law) applies to the contest.

(b) The obligor shall give notice of the contest to:

(1) ~~any~~ a support enforcement agency providing services to the obligee;
{and to}:

(2) each employer that has directly received an income-withholding order; and

(3) ~~(1)~~ the person or agency designated to receive payments in the income-withholding order **{; or (2)}** or if no person or agency is designated, **to** the obligee.

SECTION 507 ~~§ 502~~. ADMINISTRATIVE ENFORCEMENT OF ORDERS.

ARTICLE 6
ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER
AFTER REGISTRATION

PART 1 ~~{A}~~. REGISTRATION AND ENFORCEMENT OF SUPPORT ORDER

PART 2 ~~{B}~~. CONTEST OF VALIDITY OR ENFORCEMENT

SECTION 605. NOTICE OF REGISTRATION OF ORDER.

(a) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. ~~{Notice must be given 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 the order.

(b)(2) 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;

SECTION 606. PROCEDURE TO CONTEST VALIDITY OR ENFORCEMENT OF REGISTERED ORDER.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this State shall 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 any alleged arrearages pursuant to Section 607 (Contest of Registration or Enforcement).

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties ~~{by first class mail}~~ of the date, time, and place of

the hearing.

PART ~~3~~ ~~{C}~~. REGISTRATION AND MODIFICATION OF CHILD-SUPPORT ORDER

SECTION 609. PROCEDURE TO REGISTER CHILD-SUPPORT ORDER OF ANOTHER STATE FOR MODIFICATION.

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

SECTION 611. MODIFICATION OF CHILD-SUPPORT ORDER OF ANOTHER STATE.

(a) After a child-support order issued in another state has been registered in this State, the responding tribunal of this State may modify that order only if **Section 613 does not apply and** ~~{,}~~ after notice and hearing ~~{,}~~ it finds that:

(a)(2) ~~{an individual party or}~~ the child, **or a party who is an individual**, is subject to the personal jurisdiction of the tribunal **of this State** and all of the ~~{individual}~~ parties **who are individuals** have filed a written consent~~s~~ in the issuing tribunal **for** ~~{providing that}~~ a tribunal of this State **to** ~~{may}~~ modify the support order and assume continuing, exclusive jurisdiction over the order. **However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this [Act], the consent otherwise required of an individual residing in this State is not required for the tribunal to assume jurisdiction to modify the child-support order.**

(c) A tribunal of this State may not modify any aspect of a child-support order that may not be modified under the law of the issuing state. **If two or more tribunals have issued child-support orders for the same obligor and child, the order that controls**

and must be so recognized under Section 207 establishes the aspects of the support order which are nonmodifiable.

[§ 611(e) moved to § 614, *infra*]

SECTION 613. JURISDICTION TO MODIFY CHILD-SUPPORT ORDER OF ANOTHER STATE WHEN INDIVIDUAL PARTIES RESIDE IN THIS STATE.

(a) If all of the parties who are individuals reside in this State and the child does not reside in the issuing state, a tribunal of this State has jurisdiction to enforce and to modify the issuing state's child-support order in a proceeding to register that order.

(b) A tribunal of this State exercising jurisdiction under this section shall apply the provisions of Articles 1 and 2, this article, and the procedural and substantive law of this State to the proceeding for enforcement or modification. Articles 3, 4, 5, 7, and 8 do not apply.

SECTION 614. NOTICE TO ISSUING TRIBUNAL OF MODIFICATION

~~§ 611(e)~~ Within [30] days after issuance of a modified child-support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal ~~that [which]~~ had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows ~~the [that]~~ earlier order has been registered. **A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.**