

UNIFORM INTERSTATE FAMILY SUPPORT ACT (1996)

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-FIFTH YEAR
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WITH PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

UNIFORM INTERSTATE FAMILY SUPPORT ACT (1996)

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UNIFORM INTERSTATE FAMILY SUPPORT ACT (1996)

PREFATORY NOTE

I. Background Information

Congressional legislation in 1975, 1984, 1988, and 1996 has had a major impact on state child support enforcement law. Over time Congress has mandated that, in order to be eligible for federal funding of child support enforcement programs, States must adopt child support guidelines, and establish child support enforcement procedures such as wage withholding, tax intercepts, and credit reporting. Similarly, as a practical matter federal law invaded the area of substantive rules for child support; for example, the Bradley Amendment, adopted in 1986, directs States to enact laws which prohibit retroactive reduction of a child support arrearage stemming from a court order.

To respond to these developments, in 1988 the National Conference of Commissioners on Uniform State Laws (hereafter Conference) established a Drafting Committee to review the Uniform Reciprocal Enforcement of Support Act (URESA) and its revised version (RURESA), some formulation of which had been adopted in all States, and to adopt appropriate revisions to the Uniform Act. After reviewing the congressional legislation of the 1980's and the Model Interstate Income Withholding Act (MIIWA) drafted in 1984 by the American Bar Association and the National Conference of State Legislatures, the Committee originally decided that the interstate aspects of child support enforcement could be adequately addressed by amendments to RURESA.

At the Conference's Annual Meeting in the summer of 1989, the Drafting Committee presented some limited initial changes to RURESA. After obtaining the views of numerous persons familiar with the Act, however, the Committee decided to revise it much more extensively. These changes were presented for a first reading at the Conference's 1990 Annual Meeting. Following additional extensive comments at the 1990 Annual Meeting and from numerous groups and individuals, the Drafting Committee recommended, and the Executive Committee of the Conference agreed, that final approval of the revised RURESA should be delayed until the Conference's 1992 Annual Meeting. Such a timetable coincided with the work of the U.S. Commission on Interstate Child Support. Throughout 1991 and 1992, the Drafting Committee continued to work on the Act, in conjunction with numerous knowledgeable advisors and observers, including five persons who also served as members of the U.S. Commission.

The Drafting Committee and Executive Committee determined that the Act should have a new name – the Uniform Interstate Family Support Act (UIFSA), which was intended to completely revise and replace URESA and RURESAs. The Act was unanimously approved by the Uniform Law Conference in August of 1992, and officially ratified by the American Bar Association in February 1993. As of June 1, 1996, 33 States and the District of Columbia had enacted UIFSA.

Implementation of UIFSA by child support enforcement agencies throughout the nation in thousands of cases spurred requests for amendments to a limited number of provisions. A major source of these requests came from individual employers and national payroll associations. Specifically, they sought additional statutory guidance regarding direct income withholding from earnings which the original UIFSA authorized, but did not supply significant detail on its operation (only one relatively short provision controlled, Section 501). In UIFSA the Conference had established a bare legal framework for the withholding of income for child support across state lines without the necessity of involving initiating or responding tribunals or acting through a child support agency. However, employers stated that in order to act efficiently they needed additional explanation of their rights and duties upon the receipt of an out-of-state income-withholding order. Further, proposed federal legislation pending in the U.S. Congress as part of its consideration of “welfare reform” furnished another major reason to reexamine some of the terms of UIFSA.

Motivated by these developments, the Conference convened its UIFSA Oversight Committee to draft proposed amendments. Once again the Drafting Committee enlisted the volunteer assistance of a wide variety of observers, advisors, and consultants to aid in drafting the proposed amendments. Representatives of payroll associations and major employers were included in the discussions to assure that employer interests were taken into account. In this regard, the majority of employers have been very cooperative in assisting in the collection of child support. Their suggestions were centered on making their collection efforts more efficient and effective, and were not an attempt to avoid contributing to this valuable social policy. The amendments approved for incorporation into the Uniform Interstate Family Support Act (1996) were unanimously adopted by the Conference at its San Antonio, Texas, meeting in July 1996.

Shortly after the Conference adopted UIFSA 1996, the likelihood of universal acceptance of the revised Act became virtually certain. In enacting welfare reform, officially known as the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Congress mandated enactment of UIFSA in order for a State to remain eligible for the federal funding of child support enforcement, as follows:

Sec. 321. ADOPTION OF UNIFORM STATE LAWS

Section 466 (42 U.S.C. § 666) is amended by adding at the end the following new subsection:

“(f) Uniform Interstate Family Support Act. – In order to satisfy section 454(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, § 321, 110 Stat. 2221.

A description of the major changes made to the RURESA procedure by UIFSA and the 1996 amendments to the original Act are as follows.

II. Proposed Changes

A. In General

1. **TERMINOLOGY.** The terminology of URESA and RURESA has been retained as much as possible to ease the transition to UIFSA, *i.e.*, “responding” and “initiating” State. One notable change is the substitution of the term “tribunal” for “court,” in recognition of the fact that many States have created administrative agencies to establish, enforce, and modify child support.

2. **REORGANIZATION.** UIFSA is organized into a more logical and understandable order than was found in URESA and RURESA (“RURESA” hereafter will be used to refer to both versions unless they each need to be cited separately). The order in which civil and criminal proceedings are dealt with is reversed, which more accurately reflects the frequency and utility of the two proceedings. On the civil side of the docket, separate articles are created for: provisions common to all types of actions (Article 3); the establishment of support (Article 4); the enforcement of a support order of another State without registration (Article 5); the enforcement and modification of support orders after registration (Article 6); and, the determination of parentage (Article 7). In addition, new jurisdictional provisions (Article 2) establish uniform long-arm jurisdiction over nonresidents in order to facilitate one-state proceedings whenever possible. Further, the key principle of “continuing, exclusive jurisdiction” is introduced to interstate child support enforcement and modification. Finally, a method for the transition from URESA and RURESA to the new Act is provided.

3. **RECIPROCITY NOT REQUIRED.** The hallmark of URESA and RURESA, reciprocity of laws between States, is not required under UIFSA. Prior

to the promulgation of UIFSA, all States had quite similar laws. But, UIFSA takes the position that a responding State should enforce a child support obligation irrespective of another state's law. Further, to avoid conflict between state laws UIFSA declares that URESA, RURESА and all substantially similar state laws should be recognized and enforced for purposes of interstate actions (Section 101(7), (16)). Tolerance for the laws of other States and nations in order to facilitate child support enforcement is a prime goal of the Act, which also contains provisions to help ease the transition to the new system. Finally, reciprocity continues to have an impact for international enforcement of support orders.

4. LONG-ARM JURISDICTION. The Act contains a broad provision for asserting long-arm jurisdiction to provide a tribunal in the home State of the supported family 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 lawsuit. When jurisdiction over a nonresident is obtained, the tribunal may obtain evidence, provide for discovery, and elicit testimony through use of the "information route" provided (Sections 202, 316, and 318).

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, and not to enforce other duties such as support of a parent (Section 101(2), (18)). Under RURESА child support and spousal support were treated identically. However, spousal support is modifiable in the interstate context under UIFSA only when such a request is forwarded to the original issuing State from an initiating State (Sections 205 and 206).

2. LOCAL LAW. A somewhat complex choice of law for establishment of duties of support was provided in RURESА, *i.e.*, the law of the State where the obligor was present for the period during which support was sought. Otherwise RURESА generally referred to the law of the forum. The new Act 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 even in one-state cases in which the tribunal asserts long-arm jurisdiction over a nonresident (Sections 202, 316, and 318), and may have the effect of amending local law for long-arm cases.

(d) The choice of law 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 there are different statutes of limitation for enforcement, the longer time limit of either the registering State or the issuing State applies (Section 604).

3. ONE-ORDER SYSTEM. Under 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. Under UIFSA, the principle of continuing, exclusive jurisdiction aims, so far as possible, to recognize that only one valid support order may be effective at any one time. This principle is carried out in Sections 204 (rules for resolving actions pending in two or more States); 205, and 206 (rules for determining which tribunal has continuing, exclusive jurisdiction over the controlling child support order); 207 (reconciliation with orders issued before the effective date of the Act); and 208 (multiple orders for two or more families supported by the same obligor).

4. PRIVATE ATTORNEYS. In support actions, UIFSA explicitly authorizes parties to retain private legal counsel (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 assisting a supported family establishes an attorney-client relationship with the applicant (Section 307(c)).

5. EFFICIENCY. A number of improvements are made to RURESA to streamline interstate proceedings:

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

(b) Initiation of an interstate case in the initiating State is expressly made ministerial rather than a matter for adjudication or review by a tribunal. Further, a

party in the initiating State may file an action directly in the responding State (Section 301(c)).

(c) To facilitate efficient interstate establishment, enforcement, and modification of child support orders, forms sanctioned by the federal Office of Child Support Enforcement, Department of Health and Human Services, are available. Although developed in conjunction with the federal IV-D program, even 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 from the initiating 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) A tribunal may 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) 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 a written objection within 20 days after service and sustains that objection (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. The Act provides two direct enforcement procedures that do not require assistance from a tribunal. First, the support order may be sent directly to the obligor's employer in another State (Section 501), which triggers wage withholding by that employer without the necessity of a hearing unless the employee objects. In response to requests from major employers and national payroll associations, UIFSA 1996 greatly expands the procedure to be followed by the employer in response to an interstate request for direct income withholding.

Instead of only Section 501 outlining the procedure, the directives on compliance with direct income-withholding now cover six sections (Sections 501-506).

In addition, the Act provides for direct administrative enforcement by the support enforcement agency of the obligor's State (Section 507).

2. REGISTRATION. The registration process of the Act is modeled after that procedure originated in RURESA, but is far more comprehensive. All judicial or administrative agency enforcement activity must begin with the registration of the existing support order in the responding State (Sections 601-604). However, the registered order continues to be the order of the issuing State; the role of the responding State is limited to enforcing that order except in the very limited circumstances under which modification is permitted (Sections 605-608).

D. Modifying a Support Order

1. REGISTRATION. A party (whether obligor or obligee) requesting a tribunal of another State to modify an existing child support order is first directed to follow the identical procedure for registration as when enforcement is sought. Various combination sequences are allowable: *i.e.*, registration for enforcement and later modification; or, a request for contemporaneous modification and enforcement.

2. MODIFICATION LIMITED. Under RURESA most courts held that a responding State could modify a support order for which enforcement was sought. Except for narrowly defined fact circumstances, under UIFSA the only tribunal that can modify a support order is the one having continuing, exclusive jurisdiction over the order. But, if the parties no longer reside in the issuing State, or if they agree in writing that another tribunal may assume modification jurisdiction, a tribunal with personal jurisdiction over the parties, has jurisdiction to modify (Sections 205, 206, 603(c), 609-612). Except for modification by agreement or when the parties have all moved to the same new State, the party petitioning for modification must submit himself or herself to the forum State where the respondent resides. To facilitate modification across international borders, an exception to this rule was added in 1996 for child support orders issued by foreign jurisdictions.

Two additional sections relating to modification were added by UIFSA 1996. Section 613 makes specific that which was previously only implied; when the parties and the child have moved from the issuing State and by coincidence or design the parties 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 continues the rule originally found in a subsection of Section 611 that the party obtaining a modification has a duty to provide notice of the new order to all interested tribunals. This stand-alone section serves to

improve the organization of the Act; the new section also grants the tribunal authority to sanction a party who fails to perform this duty of notice.

E. Parentage

It was not entirely clear whether RURESA provided for an interstate determination of parentage without also requiring the establishment of support. UIFSA clearly states that interstate determination of parentage is authorized. It may be accomplished without an accompanying establishment of support, or in a contemporaneous manner to both determine parentage and establish support. The Act provides no substantive or procedural alterations to the existing law of the forum with regard to a determination of parentage.

UNIFORM INTERSTATE FAMILY SUPPORT ACT (1996)

ARTICLE 1. GENERAL PROVISIONS

SECTION 101. 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 imposed 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:

(i) 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;

(ii) 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

(iii) an individual seeking a judgment determining parentage of the individual's child.

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

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

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

(iii) who is liable under a support order.

(14) "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].

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

(16) "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.

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

(18) "Spousal-support order" means a support order for a spouse or former spouse of the obligor.

(19) “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:

(i) an Indian tribe; and

(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.

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

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

(ii) establishment or modification of child support;

(iii) determination of parentage; or

(iv) to locate obligors or their assets.

(21) “Support order” means a judgment, decree, or order, whether temporary, final, or subject to modification, 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.

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

Comment

Twenty-two terms are defined in UIFSA as compared with the parallel RURES § 2, which had fourteen entries. 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 (21) 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 before it has been reduced to judgment. This broad definition includes both prospective and retrospective obligations to the extent they are imposed by the relevant state law.

In order to resolve certain conflicts in the exercise of jurisdiction, for limited purposes subsection (4) borrows the concept of the “home State of a child” from the Uniform Child Custody Jurisdiction Act (UCCJA), versions of which have been adopted in all 50 States, and incorporated into the federal Parental Kidnapping Prevention Act, 42 U.S.C. § 1738A (PKPA).

Subsection (6) is written broadly so states that direct income withholding by an obligor’s employer based on “other legal process,” as distinguished from an order of a tribunal, may have that legal process recognized as an income-withholding order. Federal law requires that each State 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. § 666(b)(2). States have complied with this directive in a variety of ways. For example, at the time UIFSA was originally drafted New York provided a method for obtaining income withholding of court-ordered support by authorizing an attorney, clerk of court, sheriff or agent of the child support enforcement agency to serve upon the defaulting obligor’s employer an “income execution for support enforcement.” New York McKinney’s C.P.L.R. 5241. This “other legal process” reportedly was the standard method for obtaining income withholding in that State,

while the statutory provision for an income-withholding order, C.P.L.R. 5242, was rarely used by either the courts or the litigants.

Subsections (7) and (8) define “initiating State” and “initiating tribunal” similarly to RURESA § 2(d). It is important to note, however, that UIFSA permits the direct filing of an interstate action in the responding State without an initial filing in an initiating tribunal. Thus, in addition to the traditional resort to a local “initiating tribunal,” a petitioner in one State may seek to establish 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.

The relationship between UIFSA and the prior Uniform Acts is captured in the phrasing of subsection (7), and repeated several times throughout the Act. *See, i.e.*, subsections (16) and (19). The Act declares that URESA and RURESA are compatible with UIFSA, and the new Act is designed to function with the earlier Acts without conflict. Support orders issued under one of the earlier Acts should be honored and enforced in any State with any of the three Uniform Acts. But, despite their common roots, neither URESA nor RURESA can be said to be “substantially similar” to the one-order system established in UIFSA. States enacting UIFSA are directed to accord full enforcement remedies to support orders from those States, but also to apply UIFSA restraint regarding modification, and to apply its “one-order” rule to orders from non-UIFSA States, *infra*.

The term “obligee” in subsection (12) is defined in a broad manner similar to RURESA § 2(f), 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 a child support order. 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. § 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 action.

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 definitions of “responding State” and “responding tribunal” in subsections (16) and (17) 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 or tribunal in a situation where there is no initiating State or tribunal.

Subsection (19) withdraws the requirement of reciprocity between the several States and other U.S. jurisdictions formerly demanded by RURESA and URESA. A State need not enact UIFSA for support orders issued by its tribunals to be enforced by other States. Public policy favoring such enforcement is sufficiently strong to warrant waiving any quid pro quo among the States. This provision will be mooted by the likelihood that all States will enact UIFSA by January 1, 1998, as mandated by Congress in its 1996 welfare reform. In the original promulgation of UIFSA, the language of subsection (19) was somewhat ambiguous regarding the necessity of extending reciprocity to an Indian tribe and to foreign jurisdictions. By reorganizing the statutory language, the 1996 amendment clarifies that reciprocity is not required between the several States and Indian tribes. Further, the additional language and reorganization in subsection (19)(ii) makes clear that in this instance UIFSA follows the pattern of RURESA to require that a foreign nation must have substantially similar law or procedures to either UIFSA, RURESA, or URESA (that is, reciprocity) in order for its support orders to be treated as if they had been issued by a sister State. This is sharply different from the rule for States; amended UIFSA 1996 recognizes that in international relations the concept of reciprocity is crucial to acceptance of child support orders by other nations.

Subsection (20), “Support Enforcement Agency,” includes the state IV-D agency (Part IV-D, Social Security Act, 42 U.S.C. § 651 et seq.), and other state or local governmental entities charged with establishing or enforcing support.

Subsection (22) introduces a completely new term, “tribunal,” which replaces the term “court” used in RURESA. 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. UIFSA adopts the term “tribunal” to account for the breadth of state variations in dealing with support orders. Unless expressly noted otherwise, throughout the Act the term refers to a tribunal of the enacting State. To avoid confusion, however, when actions of tribunals of the enacting State and another State are contrasted in the same section or subsection, the phrases “tribunal of this State” and “tribunal of another State” are used for the sake of clarity.

SECTION 102. TRIBUNAL OF STATE. The [court, administrative agency, quasi-judicial entity, or combination] [is the tribunal] [are the tribunals] of this State.

Comment

The enacting State must identify the court, administrative agency, or the combination of those entities, which constitute the tribunal or tribunals authorized to deal with family support. In a particular State there may be several different such entities authorized to determine family support matters.

SECTION 103. REMEDIES CUMULATIVE. Remedies provided by this [Act] are cumulative and do not affect the availability of remedies under other law.

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 action 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.

ARTICLE 2. JURISDICTION

PART 1. EXTENDED PERSONAL JURISDICTION

SECTION 201. BASES FOR JURISDICTION OVER NONRESIDENT.

In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this State may exercise personal jurisdiction over a nonresident individual [or the individual's guardian or conservator] if:

- (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, 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;
- [(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.

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 lawsuit. *See* Sections 202, 316, and 318, *infra*. The intent is to insure that every enacting State has a long-arm statute 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 action 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 suit 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 for child support. However, almost all of the specific provisions relate to child support orders or determinations of parentage. This accords with the fact that very few States have chosen to enact specific domestic relations long-arm statutes and 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 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. That is, a situation is not created in which a tribunal is authorized to order a nonresident to pay spousal support, but may not personally bind the nonresident to a property division on 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 § 8, Texas Family Code § 102.011, and New York Family Court Act § 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 suit; 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 one parent unilaterally decides to return to State A. Many, and perhaps 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 § 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 of California for San Francisco*, 436 U.S. 84 (1978).

SECTION 202. PROCEDURE WHEN EXERCISING JURISDICTION

OVER NONRESIDENT. 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

Assertion of long-arm jurisdiction over a nonresident essentially results in a one-state proceeding, notwithstanding the fact that the parties reside in different States. With two exceptions, the provisions of UIFSA – labeled an interstate act – are not applicable to such a proceeding. To facilitate interstate exchange of information and to enable the nonresident to participate as fully as possible in the proceedings without the necessity of personally appearing in the forum State, Section 202 expressly incorporates two special UIFSA sections to long-arm cases. 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, even though that party is subject to the personal jurisdiction of the tribunal. The same consideration accounts for the second exception; the two-

state discovery procedures of Section 318 are applicable to a one-state proceeding when a foreign tribunal can assist in that process. In all other situations, the substantive and procedural law of the forum State applies. In sum, a one-state UIFSA case may utilize those two-state procedures which forward the interests of economy, efficiency, and fair play.

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

Sections 203 through 206 track the traditional RURESAs action involving residents of separate States. In this situation the initiating State does not assert personal jurisdiction over the nonresident, but instead forwards the case to another, responding State, which has the authority to assert personal jurisdiction over its resident. 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 an action 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

This section is similar to Section 6 of the Uniform Child Custody Jurisdiction Act. 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 this regard, UIFSA makes a significant departure from the approach adopted by the UCCJA, which chooses “first filing” as the method for resolving competing jurisdictional disputes. In the analogous situation, the federal Parental Kidnapping Prevention Act chooses the

home State of the child to establish priority. Given the preemptive nature of the PKPA, and the possibility that custody and support are both involved in the case, UIFSA opts for the federal method of resolving disputes between competing jurisdictional assertions by establishing a priority for the tribunal in the child's home State. If the child has no home State, "first filing" controls.

SECTION 205. CONTINUING, EXCLUSIVE JURISDICTION.

(a) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a child-support order:

(1) as long as this State remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(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.

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

(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 a tribunal of another State which has issued a child-support order pursuant to this [Act] or a law substantially similar to this [Act].

(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 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. § 1738A, the issuing tribunal retains continuing, exclusive jurisdiction over a child support order, except in very narrowly defined circumstances. 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 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 remains with the issuing State.

The other side of the coin follows logically. Just as subsection (a)(1) defines the retention of continuing, exclusive jurisdiction, by clear implication the

subsection also defines 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 exercise of jurisdiction to modify. 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 and those States in which the order has been registered, but 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 (Registration and Enforcement of Support Order), *infra*. The original order remains in effect until it is properly modified in accordance with the narrow terms of Sections 609-612 (Registration and Modification of Child Support Order), *infra*.

According to the logical implication of subsection (a)(2), the issuing State may also lose its continuing, exclusive jurisdiction to modify if the parties consent in writing for another State to assume jurisdiction to modify (even though one of the parties or the child continues to reside in the issuing State). The only statutory requirement for the parties to divest the issuing tribunal of its continuing, exclusive jurisdiction is the filing of a written agreement to that effect with that tribunal. 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.

Although subsection (a) identifies the methods for the retention and the loss of continuing, exclusive jurisdiction by the issuing tribunal, it 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 614, *infra*. It should also be noted that nothing in this section is intended to deprive a tribunal which has lost continuing, exclusive jurisdiction of the power to enforce arrearages that have accrued during the existence of a valid order.

Spousal support is treated differently; 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, modification of spousal support is limited to a procedure whereby an action is initiated outside of the issuing State and a tribunal in that original State modifies its order under its law. While UIFSA revises RURESA in this regard, in fact this

will have a minimal effect on actual practice. Interstate modification of pure spousal support was relatively rare under RURESA, and played 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 an action 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 subsection (a)(2). 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 under the auspices of UIFSA.

**SECTION 206. ENFORCEMENT AND MODIFICATION OF
SUPPORT ORDER BY TRIBUNAL HAVING CONTINUING
JURISDICTION.**

(a) A tribunal 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.

(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. Subsection (a) authorizes a tribunal of the enacting State to initiate a request for enforcement or modification to the tribunal with continuing, exclusive jurisdiction over a support order.

Subsection (b) confirms the power of the issuing tribunal to modify its child support order as the responding tribunal, provided it retains a sufficient nexus with its order. UIFSA defines that nexus as a situation in which the child or at least one of the parties continues to reside in the issuing State. Subsection (b) also makes a vital contribution to the exercise of its continuing, exclusive jurisdiction if one of the parties leaves the State after the initial order was issued. The petitioner and the absent respondent may take advantage of the special rules of evidence and discovery in order to provide the tribunal with maximum current information in a modification proceeding.

Subsection (c) is the correlative of Section 205(f), acknowledging the continuing, exclusive jurisdiction of the tribunal ordering alimony and specifically prohibiting a responding tribunal from modifying a spousal support order of another State.

PART 3. RECONCILIATION OF MULTIPLE ORDERS

SECTION 207. RECOGNITION 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 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 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], 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) 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 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) The tribunal that issued the controlling order under subsection (a), (b), or (c) is the tribunal that has 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.

Comment

Sections 207-209 are designed to span the gulf between the one-order system created by UIFSA and the multiple-order system previously in place under RURES and URESA. A keystone of UIFSA is to provide a transitional procedure for the eventual elimination of existing multiple support orders in an expeditious and

efficient manner. But, even assuming all U.S. jurisdictions enact UIFSA, 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 tens of thousands; it can be reasonably anticipated that these orders will continue in effect far into the future. To begin the process towards 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. 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 the 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, 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, assuming that it has personal jurisdiction over the obligor and obligee. The new order is to be treated as the controlling order, establishing the support obligation, the nonmodifiable aspects of the support obligation, see Section 611(c), *infra*, and the issuing tribunal's continuing, exclusive jurisdiction. The rationale for creating yet another order is that there is no valid reason under UIFSA to prefer the terms of one of the multiple orders over another.

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. § 1738B, Full Faith and Credit for Child Support Orders. Congress adopted the terms of Section 207 of UIFSA 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. For a tribunal of the issuing State to so conclude will further the goal of the Act of identifying a single controlling order for prospective enforcement and modification. At the very least, the section provides a template for resolving such conflicts, most likely yielding a determination that the last order is the controlling order.

Subsection (c), added in 1996, clarifies that any party 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.

Amended subsection (d) 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. To help insure regularity, subsection (e) directs the forum tribunal to set forth the basis of its finding. Finally, the party obtaining the determination is directed by subsection (f) to notify all interested tribunals of the decision.

Section 207 presumes that a tribunal will be fully informed about all existing orders if 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. Assuming that the parties were accorded notice and opportunity to be heard by the tribunal, a final decision on the subject 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 are often presented. 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. § 666(b)(1), requires that to be eligible for the federal funding for enforcement, States must provide for a maximum to be withheld from earnings for child support in a percentage that may not exceed the federal consumer credit code limitations on wage garnishment, 15 U.S.C. § 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 of 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 collected and credited for a particular period pursuant to a support order issued by a tribunal of 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

This section is derived from RURESA § 31 (Application of Payments). Because of the multiple orders possible under RURESA, that section was primarily concerned with insuring that payments made on a particular order were credited towards the amounts due on all other orders. 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 (a sum certain to reduce arrears, if any).

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.

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, Part 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 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

This section is a “road map” of the types of actions authorized by UIFSA. Although such a section is unusual for a Uniform Act, it is justified in this instance because the majority of those persons administering the Act are not attorneys and will doubtless find such assistance to be useful.

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

Subsection (b) identifies the general principles and structure of the Act. Note that although orders for spousal support and child support are generally dealt with in the same manner, subsection (b)(5) implicitly restates the fact that the modification provisions are limited to child support orders, and do not apply to spousal support orders.

Subsection (c) establishes the basic two-state procedure contemplated by the Act. The initiating responding procedure is derived from the two-state procedure under RURESА. Direct filing in the responding State by an individual or a support enforcement agency without reference to an initiating State is new to this Act, however.

SECTION 302. ACTION 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

This section is derived from RURESА § 13. A minor parent may maintain an action 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 this [Act], a responding tribunal of this State:

(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 an action 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.

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 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.

Comment

Under RURESA § 14, the initiating tribunal was required to make a preliminary finding of the existence of a support obligation. As a practical matter, observance of this obligation was at best erratic across the nation; very often courts viewed the finding as boilerplate. By contrast, under UIFSA the role of the initiating tribunal clearly consists of the ministerial function of forwarding the documents. *See Mossburg v. Coffman*, 6 Kan. App. 2d 428, 629 P.2d 745 (1981); *Neff v. Johnson*, 391 S.W.2d 760 (Tex. Civ. App. – Houston 1965, no writ).

New subsection (b), a transition provision, facilitates interstate enforcement between UIFSA States and those URESA and RURESA States prior to the likely nationwide enactment of UIFSA by January 1, 1998. *See* P.L. 104-193, § 321. Although the three uniform acts seek the same goal – interstate child support – and are compatible in the main, neither URESA nor RURESA can be said to be “substantially similar” to UIFSA. Careful reading of UIFSA reveals that an arms-length view is maintained on this topic, see Section 101(7), (16), and (19)(ii), *supra*. Exemplary of the imperfect fit between the acts is the number of complaints received during the period between the original promulgation of the Act in February 1993 and the amendments in July 1996 alleging that the elimination of the RURESA requirement for certification of a duty of support had led to serious communication problems between RURESA States and UIFSA States. Supposedly the difference in procedure and documentation required by the two acts caused a tribunal in one State or the other to refuse to enforce a child support obligation unless the paperwork conformed to its requirements or, alternatively, a tribunal refused to provide the requested documents on the basis that the law of its State did not

require the production of such documents. The loser in the exercise of such hypertechnical interstate recalcitrance was the child who was due support. In response to such bureaucratic impasses, the 1996 amendment authorizes a tribunal in a UIFSA State to provide whatever documentation is required by a RURESA State to facilitate child support enforcement.

Supplying documentation required by a foreign jurisdiction that is not required by UIFSA procedure will continue to be necessary into the future. The initiating tribunal is authorized to cooperate and provide whatever information or documentation is requested by the foreign jurisdiction, *i.e.*, a statement of the amount of support being requested is required by Canadian provinces.

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] where and when it was filed.

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

(1) issue or enforce a support order, modify a 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.

Comment

This section revises RURESA §§ 9, 18, 19, 24, 25, and 26. It contains both ministerial functions, such as those in subsection (a); judicial functions, as in 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 orders by contempt often is limited to courts.

Subsection (a) eliminates the authorization of notice “by first class mail.” Several reasons underlie this deletion. Originally the authorization of first class mail was intended to facilitate relatively informal notice of the issuing tribunal’s action, that is, formal service of the order by an officer was not to be required. The intent was that first class mail notice would be sufficient. The deletion of specificity regarding notice is not intended to increase the burden of giving notice. Rather, the advent of a variety of swifter and perhaps even more reliable forms of notice in the modern era justifies the deletion of the first class mail requirement, which may very well be unduly restrictive. For example, many States now authorize notice by telephone facsimile (FAX), or by an express delivery company. In addition, the authorization of legal notice of at least some documents by electronic mail (email) may not be far off. Finally, authorization of notice by first class mail in UIFSA could be regarded as an undue interference with state law, something a Uniform Act should avoid.

Subsection (b)(7) purposefully avoids mention of the priority of liens issued under UIFSA. As is generally true under the Act, that priority will be determined by applicable state law concerning support liens. Subsection (b) supplies much more detail than did RURESA §§ 24 and 26 to make explicit the wide range of specific powers of the responding tribunal. Subsection (b)(9) replaces RURESA § 16 (Jurisdiction By Arrest), which authorized the responding tribunal “to obtain the body of the obligor” if the tribunal “believes that the obligor may flee” Under UIFSA, the physical seizure of an obligor is left to the procedures available under state law in other civil cases.

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. § 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. While this may be at variance with state law governing intrastate cases, under a UIFSA action 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.

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.

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] 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 is intended to apply both to initiating and responding tribunals receiving such documents. 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 initiating tribunal of its action. Such a procedure is much to be preferred to returning the documents to the initiating tribunal to begin the process anew. Cooperation of this sort will facilitate the ultimate goals of the Act.

For a full explanation regarding the deletion of the authorization of notice by first class mail, see the Comment to Section 305.

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 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 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 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) 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

This section is derived from RURESA §§ 12, 18, and 19.

Subsection (a) changes the focus of RURESA § 12 (Officials to Represent Obligee) from representation of an obligee to providing services to a petitioner. 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 support order, enforcement or review and adjustment of an existing order, or

a modification of that order (upwards or downwards). 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 complaint of many RURESA petitioners that they were not properly kept informed about the progress of their requests for services.

Subsection (c) 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.

For a full explanation regarding the deletion of the authorization of notice by first class mail, see the Comment to Section 305.

SECTION 308. DUTY OF [ATTORNEY GENERAL]. If the [Attorney General] determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the [Attorney General] may order the agency to perform its duties under this [Act] or may provide those services directly to the individual.

Comment

This section continues the principle of RURESA § 18(c), under which 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.

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 an action to be brought under UIFSA is explicitly recognized. RURESAs failure to clearly recognize that power led to some 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 tribunals and support enforcement agencies received from other States;

(3) forward to the appropriate tribunal in the place in this State in which the individual obligee or the obligor resides, or in which the obligor’s property is believed to be located, all documents concerning a proceeding under 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

This section, based on RURESA § 17 (State Information Agency), continues the information-gathering duties of the central information agency.

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) A [petitioner] seeking to establish or modify a support order or to determine parentage in a proceeding under this [Act] must verify the [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, and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The [petition] must be accompanied by a certified copy of any support order in effect. 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

Derived from RURESA § 11, 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.

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, statutory preapproval of forms that substantially conform to those sanctioned by federal law will help to standardize documents, with a concomitant improvement in the efficient processing of UIFSA actions.

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].

Comment

Public awareness of and sensitivity to the dangers of domestic violence has significantly increased since the original promulgation of URESA and RURESA. 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 provision creates a confidentiality provision which is particularly appropriate in the light of the intractable problems associated with interstate (as opposed to intrastate) childnapping.

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

This section is derived from RURESA § 15 (Costs and Fees), which authorized fees and costs to be assessed against "the obligor." In recognition of the fact that under UIFSA either the obligor or the obligee may file suit 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, continues the RURESAs determination that only the support obligor may be assessed the specified 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 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 present in this State to participate in the proceeding.

Comment

This section significantly expands RURESAs § 32. 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.

Similarly, subsection (b) grants a litigant a variety of limited immunity from service of process during the time a party is physically present in a State for a UIFSA action. 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 action 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. 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 an action 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 is not subject to collateral attack in a UIFSA proceeding. Of course, an attack on an alleged final order on a fundamental constitutional ground is permissible in the forum State, such as a denial of 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.

Similarly, the law of the issuing State may provide for a determination of parentage based on certain specific acts of the obligor acknowledging parentage as a substitute for a decree, *i.e.*, signing the child's birth certificate or publicly acknowledging a duty of support after receiving the child into his home. UIFSA also is neutral regarding a collateral attack on such a parentage determination. 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 of this section is that a collateral attack cannot be made in a UIFSA proceeding.

SECTION 316. SPECIAL RULES OF EVIDENCE AND PROCEDURE.

(a) The physical presence of the [petitioner] in a responding tribunal of this State is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

(b) A verified [petition], affidavit, document substantially complying with federally mandated forms, and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath 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 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 permit a party or witness residing in another State to be deposed or to testify by telephone,

audiovisual means, or other electronic means at a designated tribunal or other location in that State. A tribunal of this State 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].

Comment

This section combines RURESA §§ 9, 19, 21, 22, and 23; and, provides additional innovative methods for gathering evidence in interstate cases.

Subsections (b) through (f) greatly expand on RURESA § 23 (Rules of Evidence). The intent is to eliminate as many potential hearsay problems as possible in interstate litigation because the out-of-state party and that party's witnesses usually do not appear in person at the hearing.

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.

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. *See, i.e., In re Matter of Joseph P.*, 487 N.Y.S.2d 685 (Fam. Ct. 1985); Pa. Cons. Stats. Ann., Tit. 23, § 5104(c) (1991) and La. Rev. Stats., Tit. 9, § 396(A) (1992) ("if any party

refuses to submit to such tests, the court may resolve the question of paternity against such party”); 9 N.J. Stats. Ann. 17-51(d) (1991) (“refusal to submit to blood tests or genetic tests, or both, may be admitted into evidence and shall give rise to the presumption that the results of the tests would have been unfavorable to the interests of the party refusing”).

SECTION 317. COMMUNICATIONS BETWEEN TRIBUNALS. A

tribunal of this State may communicate with a tribunal of another State in writing, or by telephone or other means, to obtain information concerning the laws of that State, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other State. A tribunal of this State may furnish similar information by similar means to a tribunal of another State.

Comment

This section is derived from UCCJA § 7(d) (Inconvenient Forum), which authorizes communications between courts in order to facilitate decisions under that Act. In contrast to RURESA, broad cooperation between tribunals is permitted under UIFSA 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 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.

Comment

The first sentence of this section is derived from RURESA § 29 (Additional Duty of Initiating Court). The second sentence confirms the duty of the agency or tribunal to furnish payment information in interstate cases.

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:

- (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* Section 205 (Continuing, Exclusive Jurisdiction) and Section 206 (Enforcement and Modification of Support Order by Tribunal Having Continuing Jurisdiction).

**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 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. As a result, the Child Support Project of the American Bar Association and the National Conference of State Legislatures promulgated a Model Interstate Income Withholding Act in 1985; however, the Model Act was not widely enacted. RURESA was silent on the subject. 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 1993 UIFSA recognized such a procedure.

Section 501 is deliberately written in the passive voice; the Act does not restrict 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. Further, "sending a copy" of a withholding order to an employer is clearly distinguishable from "service" of that order on the same employer. The latter necessarily intends to invoke the tribunal's authority only over an employer doing business in the forum State. But, for there to be valid "service" of a withholding order on an employer in another 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. The formality of "service" defeats the whole purpose of direct income withholding across state lines. This explains the deletion of the original requirement in the 1993 version of UIFSA that the income-withholding order of one State "may be sent by first class mail." In sum, the process contemplated is direct "notification" to 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.

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

Major employers and national payroll associations urged the National Conference of Commissioners on Uniform State Laws 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 that set forth a series of steps for the employer to track.

The employer's first step is to notify the employee of receipt of the out-of-state withholding order. If the employee disputes the validity of the withholding order, it is the employee's responsibility to take appropriate defensive measures to contest the withholding. 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 takes a permissive view of communication notice on the assumption that an obligor will act to prevent a wrongful invasion of income 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. Thus, subsection (a) makes clear that employers who refuse to recognize out-of-state withholding orders will be subjected to whatever remedies are otherwise available under state law.

Subsection (c) is the answer to employers' complaints that insufficient direction for action was given by the original UIFSA. Formerly the 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, and those terms that are subject to compliance with local law. 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 currently do not provide the detail necessary for the employer to comply with each and every directive. Fortunately, when the long-anticipated federal forms are finally promulgated, more uniformity in the text of child support orders will eventually occur. 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. An order for a "percentage of the obligor's net income," for example, does not satisfy this requirement. A State that typically issues its orders as a percentage of income is not entitled to compliance by an employer receiving an interstate income-withholding order by an employer. Such a State should revisit the issue and provide an order for a sum certain if the procedures set forth in this article are to be employed.

Subsection (c)(2) states the obvious: Necessary information 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.

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 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 wages is subject to a veto. It is up to the 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, rather than the law of the issuing State, should apply. 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 of the list of local law concerns 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 and the practical concern for uniform computer programming, however, mandate this solution.

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.

Comment

Consistent with the Act's general problem-solving approach, the employer is directed to deal with multiple income orders for multiple families in a manner consistent with local law.

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 the 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 should be subject to enforcement procedures. Local law is the appropriate source for the applicable sanctions.

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 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; 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 the law regarding defenses an alleged obligor may raise to an intrastate withholding order into the interstate context. Generally, States have accepted the IV-D requirement that the only viable defense is a “mistake of fact.” 42 U.S.C. § 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 legal action in the State having continuing, exclusive jurisdiction over the support order, not in a UIFSA proceeding.

After the employer receives a withholding order from another State, the first step is to notify the employee that income withholding for child support will begin within the time frame specified by state law, just as it would if the withholding order is 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.

This procedure is based on the assumption that defenses to income withholding for child support are few and far between. Experience has shown that only in a relatively few cases does an employee-obligor have a defense, *i.e.*, 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. The employee's simplest, most efficient, cost-effective method to assert a defense is probably 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. In the absence of expeditious action by the employee to assert a defense and contest the request, however, the employer must begin income withholding in a timely fashion.

In contrast to the multiple-order system of RURESA, another issue the employee 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 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 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 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. Thereafter, the order may be registered with a tribunal for enforcement if that is the next step for an intrastate order, see Sections 601-608, *infra*.

**ARTICLE 6. 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 greatly expand the procedure for the registration of interstate support orders available under RURESA §§ 35-40. The common practice under RURESA was to initiate a new suit for the establishment of a support order, even though there was an existing order for child support. That practice is specifically rejected by UIFSA. The fact that RURESA permitted (really encouraged) initiation of a new suit 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, refer to Section 207 for resolution of the conflict). Registration of that order in the responding State is the first step to enforcement by a tribunal of that State. Rather than being an optional procedure, as was the case under RURESA, registration for enforcement under UIFSA is the primary method for interstate enforcement of child support. If the prior support order has been validly issued by a tribunal with continuing, exclusive jurisdiction, see Section 205, only 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.

Registration should be employed if the purpose is enforcement. Although registration not accompanied by a request for affirmative relief 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 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 to be registered, including any modification of an order;

(3) a sworn statement by the party seeking 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:

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

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

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

(5) 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.

Comment

This section outlines the mechanics for registration of an interstate order. Subsection (c) warns that if a particular enforcement remedy must be specifically sought under local law, the same rule of pleading is applicable in an interstate case. The authorization of a later filing to comply with local law contemplates that interstate pleadings may be liberally amended to conform to local practice.

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

Subsection (a) is derived from RURESA § 39(a), which stated that “filing constitutes registration.” Although the registration procedure under UIFSA is nearly identical to that of RURESA, the underlying intent of registration is 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 a State A order, which is to be enforced by a State B tribunal. State B’s rules of evidence and

procedure apply to hearings, except as local law is supplemented or specifically superseded by the Act. The order itself remains a State A order.

Subsection (b) is derived from RURESА § 40(a). RURESА 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. 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* Sections 606 through 608. This is at sharp variance with the common interpretation of RURESА § 40, which stated that “the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State.” This language 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 modify the order as the court deemed appropriate. This rationale resulted in yet another order in the multiple-order system. UIFSA mandates an end to this process, except as modification is authorized in this article. *See* Sections 609 through 612.

Ultimately, 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 such an 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 have lost its authority to modify the order because neither the child nor the parties continue to 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 an action. *See* Sections 609-612.

SECTION 604. CHOICE OF LAW.

(a) The law of the issuing State governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

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

Comment

This section identifies situations in which local law is inapplicable. The basic principle of the Act 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 Gonzalez-Goengaga v. Gonzalez*, 426 So.2d 1106 (Fla. App. 1983); *Taylor v. Taylor*, 122 Cal. App. 3d 209, 175 Cal. Rptr. 716 (1981). 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.

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. In interstate cases, arrearages often will have accumulated over a considerable period of time before enforcement is perfected. The obligor should not gain an undue benefit from the choice of residence if the forum State has a short statute of limitations for arrearages.

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 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 precludes further contest of that order with respect to any matter that could have been asserted; and

(4) of the amount of any alleged arrearages.

(c) 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.

This section directs 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.

For a full explanation regarding the deletion of the authorization of notice by first class mail, see the Comment to Section 305. The same considerations apply to the deletion of the additional methods of notice originally prescribed in this section.

**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) is derived in part from RURESA § 40(b), under which the “obligor” was directed to contest the registration of a foreign order within a short period of time. This procedure is continued, but the terminology is changed to “nonregistering party” because either the obligor or the obligee may seek to register a foreign support order.

Moreover, subsection (a) is philosophically very different from RURESA § 40, which directed that a registered order “shall be treated in the same manner as a support order issued by a court of this state.” 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, the respondent may assert defenses such as “payment” or “the obligation has terminated” to allegations of past noncompliance with the registered order. Similarly, a constitutionally-based attack may always be asserted, *i.e.*, an alleged lack of personal jurisdiction over a party by the issuing tribunal. There is no defense, however, to the 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. § 666(b). Additional, codification of the procedure process is unwise.

For a full explanation regarding the deletion of the authorization of notice by first class mail, see the Comment to Section 305. The same considerations apply to the deletion of the additional methods of notice originally identified in this section.

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 arrearages.

(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.

If the obligor is liable for current support, under subsection (b) the tribunal must enter an order to enforce that obligation. Proof of arrearages must result in enforcement; under the Bradley Amendment, 42 U.S.C. § 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.

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

The policy determination that a foreign support order may need to be confirmed by the forum tribunal is derived from RURESA § 40, which incidentally did not explain the details of the confirmation procedure. Under UIFSA, confirmation of an order may be the result of operation of law because of a failure to contest or an unsuccessful contest after a hearing. Either method precludes 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. *See Chapman v. Chapman*, 205 Cal. App. 3d 253, 252 Cal. Rptr. 359 (1988).

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 614 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 jurisdiction over the parties as established in Section 611, 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 (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 Section 611.

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:

(1) the following requirements are met:

(i) the child, the individual obligee, and the obligor do not reside in the issuing State;

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

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

(2) 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 written consents 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 order.

(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) 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.

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

[§ 611(e) moved to § 614, *infra*]

Comment

As long as the issuing State retains its continuing, exclusive jurisdiction over its child support order, a registering sister State is precluded from modifying that order. This is a very significant departure from the multiple-order, multiple-modification system of RURESA. However, if the issuing State no longer has a sufficient interest in the modification of its order under the factual circumstances described in this section, after registration the responding State may assume the power to modify. Note that under UIFSA a responding State does not have authority to modify a spousal support order; modification of a spousal support order is restricted to the original issuing tribunal. *See* Sections 205(f) and 206(c), *supra*.

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 the RURESA registration provisions as also authorizing prospective modification of the registered order, see, *i.e.*, *Lagerwey v. Lagerwey*, 681 P.2d 309 (Alaska 1984); *In re Marriage of Aron*, 224 Cal. App. 3d 1086 (1990); *MacFadden v. Martini*, 119 Misc. 2d 94, 463 N.Y.S.2d 674 (1983); *Pinner v. Pinner*, 33 N.C. App. 204, 234 S.E.2d 633 (1977). In sum, by its terms RURESA contemplated the existence of multiple support orders, none of which was 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. Tribunals in other States often assumed jurisdiction to enter new orders or to modify an out-of-state support order.

Under UIFSA, registration is subdivided into distinct categories: registration for enforcement, for modification, or both. UIFSA is based on recognizing the truism that when a foreign support order is registered for enforcement, the rights 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 of the parties. In fact, even under RURESA more elaborate procedures were required by most States prior to the issuance of a modified order. The requirements for modification of a child support order are much more explicit and restrictive under UIFSA.

Under UIFSA a tribunal may 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(b) (Continuing, Exclusive Jurisdiction), establishes the conditions under which the continuing, exclusive jurisdiction of the issuing tribunal is released. The degree to which new standards are established is illustrated by comparing UIFSA to the Uniform Child Custody Jurisdiction Act. Sections 12-14 of the UCCJA provide 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 UIFSA system begins with Section 205, which mandates that the continuing, exclusive jurisdiction of the issuing tribunal remains intact as long as one individual party or the child continues to reside in the issuing State, or unless the parties mutually agree to the contrary. This is also the standard for recognition of sister state custody orders under the federal Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A. Once every individual party and the child leave the issuing State, the continuing, exclusive jurisdiction of the issuing tribunal to modify its order terminates, although its order remains in effect and enforceable until it is modified by another tribunal with authority to do so under the Act. If and when the order is modified by a tribunal of another State, the basic principle of UIFSA is further ratified. The order of the modifying tribunal becomes the operative “controlling order” and the modifying tribunal assumes continuing, exclusive jurisdiction over the only operative child support order.

Under subsection (a)(1), the individual parties affected by the initial order must have moved from the issuing State before a tribunal in a new forum may modify. In the overwhelming majority of cases, the party seeking modification must seek that relief in a new forum, almost invariably the State of residence of the other party. 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 forum 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.

The policies underlying the change affected by subsection (a)(1) contemplate that the issuing State has lost continuing, exclusive jurisdiction and that

the obligee may seek modification in the obligor's State of residence, or that the obligor may seek a modification in the obligee's State of residence. 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 which has personal jurisdiction over the obligor other than the State of the obligee's residence. Most typically 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 obligor is required to make that motion in a State other than that of his or her residence; most likely, the obligee's State of residence.

The procedure put in place by UIFSA is in marked contrast to the actual system under RURESA. The multiple-order system provided virtually no incentive for an obligor to seek to reduce an unfair or unduly burdensome child support order. Rather, the obligor typically waited for an enforcement proceeding to be filed in his State of residence and then sought modification in a forum which presented him with the "hometown advantage." Two major arguments sustain the choice of venue made by the Act. 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, parents 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 chilling effect on the exercise of parental contact with the child that the possibility of such litigation might have is avoided. Second, 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.

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. In contrast to subsection (a)(1), the written consents of the individual parties to an agreement to submit modification of child support to a tribunal of another State must be filed with the issuing tribunal. The Act does not extend discretion to refuse to yield jurisdiction to the issuing tribunal. In sum, the section contemplates that mutual agreement of the parties to submit themselves to the continuing, exclusive jurisdiction of another tribunal is sufficient to accomplish that goal.

The 1996 amendments provide a different rule if the issuing State is a foreign nation that has not enacted UIFSA or a similar statute or procedure. The policies underlying provisions of UIFSA are wholly inapplicable to a jurisdiction which is unlikely to enact the Act or even a similar act. For example, suppose the foreign jurisdiction has a prohibition against modification unless the parties actually appear before the tribunal in person. Without the amendment, an obligor who moved to the United States could have successfully warded off an attempt to modify the child support obligation in his State of residence by asserting that the obligee or child continued to reside in the foreign nation, which therefore had continuing, exclusive jurisdiction under UIFSA. This despite the fact that the issuing nation does not recognize a continuing, exclusive jurisdiction concept, and will not modify its own child support order without the obligor being physically present. Merely by refusing to agree to a modification and refusing to travel to the issuing nation, the obligor would have been able to forestall modification indefinitely. If the child support order is that of a foreign nation, the UIFSA State of residence of the obligor may adjudicate whether modification of child support is appropriate under its internal law.

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. § 1738A, which provides that the court of continuing, exclusive jurisdiction may "decline jurisdiction." Similar provisions are found in the UCCJA, § 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. Once an initial child support order is established, 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.

Subsection (b) states that if the forum has 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. However, subsection (c) prevents the modification of any final, nonmodifiable aspect of the original order. For example, if child support was ordered through age 21 in accordance with the law of the issuing State and the law of the forum State ends the support obligation at 18, modification by the forum tribunal may not affect the duration of the support order to age 21. The 1996 amendment clarifies that when multiple orders have been issued prior to the effective date of UIFSA, there will almost certainly be nonmodifiable aspects at variance from the two or more tribunals that have acted in the past. The amendment clarifies that it is the controlling order's nonmodifiable aspects that prospectively determine those issues throughout the minority of the child.

Subsection (d) 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.

SECTION 612. RECOGNITION OF ORDER MODIFIED IN

ANOTHER STATE. A tribunal of this State shall recognize a modification of its earlier child-support order 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:

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

(2) enforce only nonmodifiable aspects of that order;

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

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

Comment

Independent support orders relating to the same parties, a hallmark of RURESA, are replaced in UIFSA by deference to the support order of a sister 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 (Modification of Child Support Order of Another State). For the Act to function properly, the original issuing State must recognize and defer to such a modified order, and must regard its prior order as prospectively inoperative. Because the modifying tribunal lacks the authority to direct the original issuing State to release its continuing, exclusive jurisdiction, each State must recognize this effect by enacting UIFSA.

Power is retained over post-modification by the original issuing tribunal for remedial actions directly connected to its now-modified order. A tribunal may enforce its subsequently modified order for violations of that order which occurred before the modification. Further, aspects of the original order that have become final or are not modifiable may be prospectively enforced by the issuing tribunal. For example, a contractual obligation to provide a college education trust fund for a child may be enforced under the law of the issuing State irrespective of the law of the modifying State.

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

The Comment to Section 611(e) in the 1992 version of UIFSA contains the following statement:

“Finally, note that if the parties have left the issuing state and now reside in the same state, this section is not applicable. Such a fact situation does not present an interstate matter and UIFSA does not apply. Rather, the issuing state has lost its continuing, exclusive jurisdiction and the forum state, as the residence of the parties, should apply local law without regard to the interstate Act.”

The intent of the Comment was to state what seemed at the time to the Drafting Committee to be obvious; an action between two citizens of the same State is not a matter for interstate concern or application. A significant number of knowledgeable commentators, however, found the statement in the Comment to be wholly inadequate. After all, the commentary is not substantive law, but rather merely expresses an interpretive opinion of the drafters of the Act. On reflection, the Drafting Committee decided that the critics were correct; the Act should deal explicitly with the possibility that the parties and the child no longer reside in the issuing State and that the individual parties have moved to the same new State. After all, there is an interstate aspect when one State purports to modify the child support order of another State. Moreover, a literal reading of the Act could yield a construction that the issuing State has lost its continuing, exclusive jurisdiction to modify, but no State is permitted under UIFSA to take its place to do so.

This section is designed to make it clear that when the issuing State no longer has continuing, exclusive jurisdiction and the obligor and obligee reside in the same State, a tribunal of that State 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 despite the subsequent residence of all parties in a new State with a different duration of child support.

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 section, derived from former Section 611(e) of the 1993 version of the Act, is made a stand-alone provision to clarify the organization of the Act. Section 614 states a crucial proposition; the prevailing party must inform the original issuing tribunal that it has lost continuing, exclusive jurisdiction over the 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 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 1996 amendment grants the tribunal the authority to impose sanctions on a party who fails to comply with the requirement to give notice of a modification to all interested tribunals. As originally enacted, this provision could have been regarded as hortatory because no penalty was authorized for failure to comply with the directive of the statute. The 1996 amendment not only provides discretion for sanctions as appropriate, but also states that failure to notify of a modification does not affect the validity of the modified order.

ARTICLE 7. DETERMINATION OF PARENTAGE

SECTION 701. PROCEEDING TO DETERMINE PARENTAGE.

(a) A tribunal of this State may serve as an initiating or responding tribunal in a proceeding 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 to be the father of a child may bring such an action. More commonly, an action to determine parentage across state lines will also seek to establish a support order under the Act. *See* Section 401 ([Petition] to Establish Support Order).

An action to establish parentage under UIFSA is to be treated identically to such an action brought in the responding State.

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 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 tracks RURES § 5 (Interstate Rendition) with no substantive change. Virtually no controversy has been generated regarding this portion of RURES. 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 predictably 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 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 tracks RURES § 6 (Conditions of Interstate Rendition) without significant change. 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 the law with respect to the subject of this [Act] among States enacting it.

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

Comment

Renaming the Act reflects the dramatic departure from the structure of the earlier interstate reciprocal support acts, URESA and RURESА.

SECTION 903. 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. EFFECTIVE DATE. This [Act] takes effect

.....

SECTION 905. REPEALS. The following acts and parts of acts are hereby

repealed:

(1)

(2)

(3)