

**UNIFORM INTERSTATE
FAMILY SUPPORT ACT (2001)**
(Last Amended or Revised in 2008)

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-SEVENTEENTH YEAR
IN BIG SKY, MONTANA
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**DRAFTING COMMITTEE ON AMENDMENTS TO UNIFORM INTERSTATE
FAMILY SUPPORT ACT (2001)**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in drafting these amendments consists of the following individuals:

BATTLE R. ROBINSON, 104 W. Market St., Georgetown, DE 19947, *Chair*
MARLIN J. APPELWICK, One Union Square, 600 University St., Seattle, WA 98101
BARBARA ANN ATWOOD, University of Arizona - James E. Rogers College of Law, 1201 E. Speedway, P.O. Box 210176, Tucson, AZ 85721-0176
DEBORAH E. BEHR, Office of Attorney General, P.O. Box 110300, Juneau, AK 99811
VINCENT C. DELIBERATO, JR., Legislative Reference Bureau, Main Capitol Building, Room 641, Harrisburg, PA 17120-0033
GAIL H. HAGERTY, Burleigh County Court House, P.O. Box 1013, 514 E. Thayer Ave., Bismarck, ND 58502-1013
LISA HARRIS-MOORHEAD, Legislature of the Virgin Islands, 100 Lagoon Complex Homes, Suite 2, Frederiksted, St. Croix, USVI 00840
PAUL M. KURTZ, University of Georgia School of Law, Athens, GA 30602-6012
HARRY L. TINDALL, 1300 Post Oak Blvd., Suite 1550, Houston, TX 77056-3081
JOHN J. SAMPSON, University of Texas School of Law, 727 E. Dean Keeton, Austin, TX 78705, *Reporter*

CANADIAN MEMBERS

DENISE GERVAISE, Ministere de la Justice du Quebec, 1200, Route de L'Eglise, 4e etage, Saint-Foy, Quebec, Canada G1V 4M1
TRACY MORROW, Family Law Branch, Manitoba Justice, 1230 - 405 Broadway, Winnipeg, Manitoba, Canada R3C 3L6
ANDINA VAN ISSCHOF, Department of Justice Canada, 284 Wellington St., Ottawa, Ontario, Canada KIA 0H8

ADVISORS

CLAUDIA E. DE BUEN UNNA, Mariano Escobedo 353-A Desp. 1402, Polanco, Mexico 11560, *Advisor*
ANA MARIA KUDISCH, Agustin Gonzalez de Cossio #229, Col. Del Valle, Deleg. Benito Juarez, Mexico 03100, *Advisor*

EX OFFICIO

MARTHA LEE WALTERS, Oregon Supreme Court, 1163 State St., Salem, OR 97301-2563, *President*
WILLIAM H. HENNING, University of Alabama School of Law, Box 870382, Tuscaloosa, AL 35487-0382, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

GLORIA F. DEHART, 265 Willamette Ave., Kensington, CA 94708-1055, *ABA Advisor*

JOSEPH W. BOOTH, 11900 W. 87th St. Pkwy., Suite 117, Lenexa, KS 66215, *ABA Section Advisor*

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

111 N. Wabash Ave., Suite 1010

Chicago, Illinois 60602

312/450-6600

www.nccusl.org

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PREFATORY NOTE

I. HISTORY OF UNIFORM FAMILY SUPPORT ACTS

A. INTERSTATE CASES

1. URESA and RURESA

In 1950 the National Conference of Commissioners on Uniform State Laws, a.k.a. Uniform Law Commission [NCCUSL or ULC] began a series of uniform acts dealing with cases involving cross-border establishment, enforcement, and modification of orders for “any duty of support” across state lines. This evolving process started with a revolutionary idea entitled the Uniform Reciprocal Enforcement of Support Act [URESAs], promulgated in 1950, and amended in 1952 and 1958. Further amendments in 1968 were so significant that the act was renamed the Revised Uniform Reciprocal Enforcement of Support Act [RURESAs]. Ultimately, all the states enacted one or more versions of the reciprocal support enforcement acts. A comprehensive history of the creation process from 1950 through 1968 is provided by WILLIAM J. BROCKELBANK & FELIX INFAUSTO, INTERSTATE ENFORCEMENT OF FAMILY SUPPORT (Bobbs-Merrill Co., 2d Ed. 1971). As with most revolutions, without it subsequent development would not have been possible.

2. UIFSA (1992) (1996)

By 1988, however, serious problems were perceived by the leadership of NCCUSL regarding the application of RURESAs in practice. After four iterations over nearly four decades, the last 20 years earlier, revisiting the subject was deemed necessary. A drafting committee began to prepare amendments for RURESAs, but the task proved more formidable than expected and took considerably longer than anticipated. The

1 result was the promulgation of the Uniform Interstate Family Support Act [UIFSA
2 (1992)], which was designed to serve as a complete replacement for URESA and
3 RURESА. In 1993 Arkansas and Texas were the first to enact the new act, and within
4 three years thirty-five states had adopted it.

5 The year 1996 was an eventful one for UIFSA. First, a drafting committee was
6 convened in Spring 1996 in response to requests from representatives of employer
7 groups for specific statutory directions regarding interstate child-support income
8 withholding orders. Second, the child-support community (especially the state IV-D
9 programs funded by federal subsidies) requested a substantive and procedural review.
10 As a result, the NCCUSL at its annual conference in July adopted significant
11 amendments and promulgated UIFSA (1996). Less than one month later, the U.S.
12 Congress assured that nationwide acceptance of the amended Act was virtually certain.
13 In the “welfare reform” legislation passed in August 1996, officially known as the
14 PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT
15 OF 1996 (PRWORA), the enactment of UIFSA, as amended, was mandated as a
16 condition of state eligibility for the federal funding of child support enforcement, as
17 follows:

18 Sec. 321. ADOPTION OF UNIFORM STATE LAWS [42 U.S.C. Section
19 666] is amended by adding at the end the following new subsection:

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

1 Section 321, 110 Stat. 2221.

2 In accordance with this “federal mandate,” by 1998 all U.S. jurisdictions had enacted
3 UIFSA (1996).

4 **3. UIFSA (2001)**

5 In 2000 the child-support community again requested that the act be reviewed and
6 amended as appropriate in the light of the years of experience with the 1992 and 1996
7 versions. Further, beginning in 1993 there had been an extraordinary amount of
8 comprehensive training on the act by the child-support enforcement agencies
9 throughout the nation and associated agencies and organizations of those agencies,
10 e.g., U.S. Department of Health and Human Services [HHS], Office of Child Support
11 Enforcement [OCSE]; National Child Support Enforcement Association [NCSEA];
12 Eastern Regional Interstate Child Support Association [ERICSA]; and Western
13 Interstate Child Support Enforcement Council [WICSEC]. A significant consequence of
14 this attention was that the provisions of UIFSA were far more familiar to those who
15 administered it than ever was true of its predecessor acts, URESA and RURESA.

16 The drafting committee meeting in 2001 led to several substantive and procedural
17 amendments, which clarified and extended the act without making any fundamental
18 change in the earlier policies and procedures. The widespread acceptance of UIFSA
19 has been due primarily to the fact that representatives of the child support enforcement
20 community mentioned above participated actively in the drafting of every version of the
21 act, including the current proposal, UIFSA (2008).

22 When Congress mandated that UIFSA (1996) must be in place in all states by 1998,
23 most interested parties viewed that action as an unalloyed benefit for the promulgation
24 of the uniform act. Although all states promptly adopted UIFSA (1996), in retrospect the

1 federal action became a mixed blessing when it partially froze further development of
2 the act. The currently NCCUSL-approved version is UIFSA (2001), and UIFSA (1996)
3 has been withdrawn as being no longer being appropriate for enactment. Nonetheless,
4 at present UIFSA (1996) remains in force in the majority of states. The federal Office of
5 Child Support Enforcement (OCSE) has routinely granted waivers to any state
6 requesting authority to enact UIFSA (2001). As of December, 2008, however, only
7 twenty-two states have received the waiver and enacted UIFSA (2001). Moreover,
8 UIFSA (2008) is waiting in the wings in the expectation that the new Maintenance
9 Convention will move forward, *infra*. Details about this proposal follow, *infra*.

10 For comprehensive discussions of the events described above, see UNIF.
11 INTERSTATE FAM. SUPPORT ACT, 9 Part IB U.L.A. 159, 291, 471 (2005); John J. Sampson
12 and Barry J. Brooks, *Uniform Interstate Family Support Act (2001) with Prefatory Note*
13 *and Comments (with Still More Unofficial Annotations)*, 36 FAM. L.Q. 329 (2002); John J.
14 Sampson, *Uniform Interstate Family Support Act (1996), Statutory Text, Prefatory Note,*
15 *and Commissioners Comments (with More Unofficial Annotations)*, 32 FAM. L.Q. 385
16 (1998); John J. Sampson, *Uniform Interstate Family Support Act with Unofficial*
17 *Annotations*, 27 FAM. L.Q. 91 (1993).

18 Case law developments are found in Kurtis D. Kemper, *Construction and Application*
19 *of Uniform Interstate Family Support Act*, 18 A.L.R.6th 97 (originally published in 2001);
20 Kurtis D. Kemper, *Validity, Construction, and Application of Full Faith and Credit for*
21 *Child Support Orders Act (FFCCSOA)*, 28 U.S.C.A. § 1738B—*State Cases*, 18
22 A.L.R.6th 97 (originally published in 2006).

23 In sum, the original act and two sets of amendments were propounded from 1992 to

2001. Throughout, the basic principles have remained constant, while the details have been refined by experience in the field.

II. BASIC PRINCIPLES OF UIFSA (1996) (2001)

A. IN GENERAL

1. Reciprocity not required between states.

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

2. Long-arm jurisdiction.

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

1 continuing nature of personal jurisdiction for enforcement and modification of a support
2 order, Sections 205 and 206.

3 **B. ESTABLISHING A SUPPORT ORDER**

4 **1. Family support.**

5 The act may be used only for proceedings involving the support of a child or spouse
6 of the support obligor; it does not include enforcement of other duties of support found
7 in the statutes of a few states, such as requiring support of an elderly or disabled parent
8 by an adult child. The law of the forum state, if any, is applicable to those issues of
9 family support.

10 **2. Local law.**

11 UIFSA provides that the procedures and law of the forum apply, with some
12 significant additions or exceptions:

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

19 (b) Visitation issues cannot be raised in child support proceedings, Section
20 305(d).

21 (c) Special rules for the interstate transmission of evidence and discovery are
22 added to help place the maximum amount of information before the deciding tribunal.

23 These procedures are available in cases in which the tribunal asserts jurisdiction over a

1 nonresident, (Sections 210, 316-318). These rules may have the effect of differentiating
2 between the procedures applicable in long-arm cases local cases not involving a
3 nonresident .

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

8 **3. Continuing exclusive jurisdiction and the one-order system.**

9 Under URESA and RURESAs the majority of support proceedings were de novo.
10 Even when an existing order of one state was "registered" in a second state, the
11 registering state often asserted the right to modify the registered order. This meant that
12 multiple support orders were commonly in effect in multiple states. As far as is possible,
13 under UIFSA the principle of continuing, exclusive jurisdiction aims to recognize that
14 only one valid support order may be effective at any one time, Sections 205-207. This
15 principle is carried out in Sections 203-211.

16 **4. Private attorneys.**

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

22 **5. Efficiency.**

23 UIFSA streamlines interstate proceedings as follows:

1 (a) Given the definition of “tribunal, it is clear that proceedings may be initiated by
2 or referred to administrative agencies rather than to courts in those states that use
3 those agencies to establish support orders, Sections 102(29), 301.

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

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

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

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

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

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

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

9 **6. Interstate parentage.**

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

12 **C. ENFORCING A SUPPORT ORDER**

13 **1. Direct enforcement.**

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

21 **2. Registration.**

22 Enforcement of a support order of another state or nation involving a tribunal of the
23 forum state begins with the registration of the existing support order in a tribunal of the

1 responding state, Sections 601-604. However, the registered order continues to be the
2 order of the issuing state, Sections 605-608. The role of the responding state is limited
3 to enforcing that order except in the very limited circumstances under which
4 modification is permitted, *infra*.

5 **D. MODIFYING A SUPPORT ORDER**

6 **1. Registration.**

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

13 **2. Modification statutorily restricted.**

14 Under UIFSA, the only tribunal that can modify a support order is one having
15 continuing, exclusive jurisdiction over the support issue. As an initial matter, this is the
16 tribunal that first acquires personal and subject matter jurisdiction over the parties and
17 the support obligation. If modification of the order by the issuing tribunal is no longer
18 appropriate, another tribunal may become vested with the continuing, exclusive
19 jurisdiction necessary to modify the order. Primarily this occurs when neither the
20 individual parties nor the child reside in the issuing state, or when the parties agree in a
21 record that another tribunal may assume modification jurisdiction. Only then may
22 another tribunal with personal jurisdiction over the parties assume continuing, exclusive
23 jurisdiction and have jurisdiction to modify the order, Sections 205, 206, 603(c), 609-

1 612. Further, except for modification by agreement, Sections 205 and 207, or when the
2 parties have all moved to the same new state, Section 613, the party petitioning for
3 modification must be a nonresident of the responding state and must submit himself or
4 herself to the forum state, which must have personal jurisdiction over the respondent,
5 Section 611. The vast majority of the time this is the state in which the respondent
6 resides. A colloquial short-hand summary of the principle is that ordinarily the movant
7 for modification of a child support order “must play an away game.”

8 Even if the parties and child have moved from the issuing state they may agree
9 that the tribunal that issued the controlling order will continue to exercise its continuing,
10 exclusive jurisdiction, Section 205. This recognizes the fact that it may be preferable for
11 the parties to return to a tribunal familiar with the issues rather than to be required to
12 fully inform another tribunal of all the facts and issues that have been previously
13 litigated. This exception may be particularly appropriate if both child-support and
14 spousal-support are involved in the same case; under this act, jurisdiction to modify the
15 spousal support order is exclusively reserved to the issuing tribunal, regardless of
16 where the parties reside, Section 211.

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

22 Section 614 places the duty on the party obtaining a modification to provide notice
23 of the new order to all interested tribunals, and grants the tribunal authority to sanction a

1 party who fails to perform this duty of notice.

3 III. INTERNATIONAL MAINTENANCE ORDERS

4 A. URESA AND RURESA; MINIMAL ATTENTION

5 URESA (1950, 1952, 1958) did not take into account enforcement of child-support or
6 spousal-support orders that involved a foreign country. “State” was defined as one of
7 the 50 states, the District of Columbia, or Puerto Rico. The 1958 amendments to
8 URESA expanded the definition to “any state, territory or possession of the United
9 States and the District of Columbia in which this or a substantially reciprocal law has
10 been enacted.”

11 RURESA (1968) made a significant change to the complete absence of attention to
12 international support orders by expanding the definition of “state” to “any foreign
13 jurisdiction in which this or substantially similar reciprocal law is in effect.”
14 Contemporaneous commentary indicated that the beneficiary of this amendment would
15 be Canada or certain Canadian provinces. The thought was expressed that the United
16 States Department of State might negotiate a treaty with Canada, or that under a
17 redefinition of the term “state” several Canadian provinces would be included as
18 jurisdictions that would reciprocally enforce U.S. support orders.

19 B. UIFSA (1992) (1996); MINOR CHANGE

20 The basic approach of UIFSA (1992) was to maintain the RURESA provision quoted
21 above with the following minor modification: “State ... includes a foreign jurisdiction that
22 has established procedures for issuance and enforcement of support orders which are
23 substantially similar to the procedures under this [Act].” UIFSA (1996) continued the

1 basic provisions by adding that the foreign jurisdiction might have enacted a law that
2 was substantially similar to URESA or RURESА. Further, an amendment to Section 304
3 recognized that courts in Canadian provinces entered provisional orders for support to
4 accompany their outgoing requests for establishment and enforcement, and required a
5 provisional order from a state of the United States in order to establish a support order
6 in Canada.

7 **C. (2001); BILATERAL AGREEMENTS RECOGNIZED INITIATED**

8 PRWORA, *supra*, was enacted just weeks after the promulgation of UIFSA(1996),
9 which merely continued the approach of RURESА and UIFSA (1992), i.e., define “state”
10 as including a foreign country with a “substantially similar” law to UIFSA. Indeed, this
11 approach remains the law on the statute books of those U.S. jurisdictions that continue
12 UIFSA (1996) in effect. The currently NCCUSL-approved act, UIFSA (2001), does
13 specifically recognize the existence of bilateral agreements between the United States
14 and foreign countries or their political subdivision. Of course, all states are bound by the
15 international bilateral agreements authorized by federal law, *infra*.

16 In short, the attention paid in the uniform support acts to issues involving foreign
17 support orders was inadequate, at best, until the advent of UIFSA (2001). PRWORA,
18 which tied the significant federal subsidy for child-support enforcement to the universal
19 enactment of UIFSA (1996), at the same time authorized greatly increased federal
20 activity for reaching bilateral agreements on child support enforcement with foreign
21 countries. The federal act authorized international negotiations between the United
22 States and foreign nations to formulate executive agreements for mutual reciprocal
23 enforcement of child support orders. Incidentally, this action had no direct tie to the

1 federal subsidy.

2 In response, the U.S. State Department formed teams of negotiators to provide for
3 bilateral agreements with a variety of foreign countries. Between 1998 and 2008, the
4 United States entered into bilateral agreements with thirteen nations and eleven
5 Canadian provinces (the federal government in Canada lacks jurisdiction over child-
6 support orders), see <http://www.acf.hhs.gov/programs/cse/international/index.html>

7 To accommodate the new world of bilateral orders on the federal level, UIFSA
8 (2001) redefined “state” to encompass foreign countries with a bilateral agreement with
9 the United States. Despite repeated requests to Congress to mandate adoption of that
10 version in order to facilitate increased international activity in child-support enforcement,
11 no congressional action was taken through the end of 2008, see Section 102 (26), *infra*,
12 for the text of UIFSA (2001) and the entirely new approach in UIFSA (2008).

13 **D. THE NEW MAINTENANCE CONVENTION.**

14 As of June 1, 2003, a worldwide census of child-support enforcement
15 agreements between countries could be enumerated, if not understood. There was (and
16 is) one widely accepted agreement, albeit hortatory and without practical effect,
17 sponsored by the United Nations in 1956 and referred to as the New York Convention.
18 There were (and are) four agreements promulgated by the Hague Conference on
19 Private International Law [HcCH], two covering enforcement of maintenance orders in
20 1958 and 1973, and two dealing with applicable law in 1956 and 1973 (a civil law
21 concept). These conventions operate primarily between European nations, and came to
22 be viewed by HcCH as out-of-date and relatively ineffective. In addition, there are a
23 welter of regional agreements regarding enforcement of family maintenance orders. The

1 United States is not a party to any of these multilateral agreements.

2 Beginning in June 2003, and continuing through November 2007, over 70
3 countries met in The Hague, Netherlands, in five separate negotiating sessions to forge
4 a new Hague Convention on the Enforcement of Child Support and Other Forms of
5 Family Maintenance.

6 The United States delegation, headed by the U.S. State Department and
7 including members from OCSE and other experts, was a crucial participant throughout
8 the term of negotiations. It was clearly a goal of all the parties engaging in the
9 negotiations that the United States was an active party and ultimately would adopt the
10 Convention.

11 As a first step, the Convention was signed by the United States at The Hague,
12 Netherlands, on November 23, 2007. In context, this initial signature represents a
13 commitment by the executive branch of the federal government to make a good faith
14 effort to bring the Convention into force. If the Senate gives its advice and consent to
15 the Convention, it is signed by the President, and the appropriate documents are filed in
16 The Hague, the federal preemption of the issue via the treaty clause will be sufficient to
17 make the Convention “the law of the land,” see U. S. CONST. art. VI., cl. 2. However,
18 because this multilateral treaty is not self-executing, additional federal or state statutory
19 enactments are necessary to enable the treaty and make it readily accessible to bench
20 and bar. Because establishment, enforcement, and modification of family support are
21 basically matters of state law, from the perspective of the Uniform Law Commission the
22 vehicle for the acceptance into force of the new Convention must be a revision of UIFSA
23 2001, hereafter called UIFSA (2008). In time, it is anticipated the new Hague

1 Maintenance Convention will achieve a high level of integration with many other
2 countries.

4 IV. DRAFTING PRINCIPLES FOR UIFSA (2008)

5 The basic principles underlying the drafting of UIFSA (2008) anticipated a strictly
6 limited revision of the act in order to integrate the appropriate provisions of the new
7 Convention into state law. Because UIFSA (2001) had such a wide influence on the text
8 of the new Convention, in very many instances the principles, and sometimes almost
9 the exact text, of the Convention were already contained in UIFSA (2001). The clear
10 drafting goal was to integrate the Convention into state law, and not to revise UIFSA
11 (2001) in a substantive manner. Most frequently the amendment to the existing text was
12 merely to add “or a foreign country” to the directives about how a “tribunal of this state”
13 should deal with an order or another action of a “state.” Correspondingly, the definition
14 of “state” no longer contains the legal fiction that a foreign country is a state.

15 Similarly, a significant portion of the language of the Convention need not be
16 included in state law because that text speaks to the “Contracting States,” that is, to the
17 countries in which the Convention will come into force. A substantial percentage of the
18 articles in the Convention are directed to the agreement between nation states or their
19 political subdivisions which do not implicate state tribunals. A majority of the provisions,
20 however, do speak the “competent authorities,” which means to those tribunals charged
21 with the obligation of applying the Convention to actual support orders. In sum, with
22 relatively minimal amendments, the text of UIFSA (2008) combines the principles of
23 UIFSA and the Convention with the required actions of a state tribunal to put the

1 Convention into effect.

2 There are some instances in which the text of UIFSA (2008) and the Convention
3 differ in a manner that cannot be reconciled by fiat. On these occasions it is necessary
4 to accommodate the Convention language to state law in order to avoid conflict
5 between the Convention and the uniform state law. A choice had to be made; either
6 substantially amend the text of UIFSA (2001), or create an independent set of rules to
7 accommodate the differences between UIFSA and the Convention. The latter was the
8 preferred decision. An all-new Article 7 constitutes a stand-alone portion of the act
9 designed to direct a “tribunal of this state” on limited special practices and handling
10 deemed to be necessary for establishing or enforcing a Convention support order. This
11 decision was based on the conclusion that a limited number of specialized rules for
12 Convention orders would result in a simpler, smoother transition than attempting to
13 integrate new rules into the millions of existing child-support orders

14 UIFSA (2008) also may supply answers to some of the questions that the
15 Convention leaves unresolved. This is particularly apt with regard to modification of
16 existing orders when parties have moved from the issuing state or foreign country, or
17 other factual circumstances have changed significantly. Regarding modification of
18 orders, the Convention has only limited application, while UIFSA makes modification the
19 subject of significant statutory effect, see §§ 609-616.

20 In sum, UIFSA (2008) constitutes a limited, rather than comprehensive revision of
21 the act. It is designed to integrate the Convention into state law, and not to amend
22 UIFSA (2001) in any significant manner. The drafting principles are relatively simple:

23 (1) integrate the requirements of the Convention into the current text of UIFSA arts.

1 1-6 by adding “or a foreign country” when the desired actions and goals of both acts are
2 congruent;

3 (2) adapt the language of the Convention to the current text of UIFSA arts. 1 through
4 6 in order to make that language more comprehensible to the American bench and bar;

5 (3) draft a stand-alone article in UIFSA to direct a “tribunal of this state” on do’s and
6 don’ts unique to the Convention support orders containing issues only applicable under
7 the Convention; and,

8 (4) omit the Convention text that need not be included in state law because it speaks
9 only to “Contracting States.”

10 Finally, the function of the following comments to the act is not to serve as an
11 annotated version of UIFSA (2008). Other than key constitutional cases, most of the
12 citations found in previous comments to earlier iterations of the act have been omitted.

13

ARTICLE 1

GENERAL PROVISIONS

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

SECTION 102. DEFINITIONS. In this ~~Act~~ 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 state or foreign country.

(3) “Convention” means the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance.

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

(5) “Foreign country” means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

(A) which has been declared under the law of the United States to be a foreign
reciprocating country;

(B) which has established a reciprocal arrangement for child support with this state as
provided in Section 308;

(C) which has enacted a law or established procedures for the issuance and enforcement
of support orders which are substantially similar to the procedures under this [act]; or

(D) in which the Convention is in force with respect to the United States.

(6) “Foreign support order” means a support order of a foreign tribunal.

(7) “Foreign tribunal” means a court, administrative agency, or quasi-judicial entity of a foreign country which is authorized to establish, enforce, or modify support orders or to determine parentage of a child. The term includes a competent authority under the Convention.

(4) (8) “Home State state” means the State state or foreign country 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 state or foreign country in which the child lived from birth with any of them. A period of temporary

1 absence of any of them is counted as part of the six-month or other period.

2 ~~(5)~~ (9) “Income” includes earnings or other periodic entitlements to money from any source and
3 any other property subject to withholding for support under the law of this ~~State~~ state.

4 ~~(6)~~ (10) “Income-withholding order” means an order or other legal process directed to an
5 obligor’s [employer] [or other debtor], as defined by [the income-withholding law of this ~~State~~ state], to
6 withhold support from the income of the obligor.

7 ~~(7) “Initiating State means a State from which a proceeding is forwarded or in which a proceeding~~
8 ~~is filed for forwarding to a responding State under this [Act] or a law or procedure substantially similar to~~
9 ~~this [Act].~~

10 ~~(8)~~ (11) “Initiating tribunal” means the ~~authorized~~ tribunal of a ~~State~~ state or foreign country ~~in an~~
11 ~~initiating State from which a [petition] or comparable pleading is forwarded or in which a [petition] or~~
12 ~~comparable pleading is filed for forwarding to another state or foreign country.~~

13 (12) “Issuing foreign country” means the foreign country in which a tribunal issues a support
14 order or a judgment determining parentage of a child.

15 ~~(9)~~ (13) “Issuing ~~State~~ state “ means the ~~State~~ state in which a tribunal issues a support order or
16 ~~renders~~ a judgment determining parentage of a child.

17 ~~(10)~~ (14) “Issuing tribunal” means the tribunal of a state or foreign country that issues a support
18 order or ~~renders~~ a judgment determining parentage of a child.

19 ~~(11)~~ (15) “Law” includes decisional and statutory law and rules and regulations having the force
20 of law.

21 ~~(12)~~ (16) “Obligee” means:

22 (A) an individual to whom a duty of support is or is alleged to be owed or in whose favor
23 a support order ~~has been issued~~ or a judgment determining parentage of a child has been ~~rendered~~ issued;

24 (B) a foreign country, State state, or political subdivision of a state to which the rights
25 under a duty of support or support order have been assigned or which has independent claims based on
26 financial assistance provided to an individual obligee in place of child support; ~~or~~

27 (C) an individual seeking a judgment determining parentage of the individual’s child; or

28 (D) a person that is a creditor in a proceeding under [Article] 7.

29 ~~(13)~~ (17) “Obligor” means an individual, or the estate of a decedent that:

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

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

32 (C) ~~who~~ is liable under a support order; or

33 (D) is a debtor in a proceeding under [Article] 7.

34 (18) “Outside this state” means a location in another state or a country other than the United

1 States, whether or not the country is a foreign country.

2 (14) (19) "Person" means an individual, corporation, business trust, estate, trust, partnership,
3 limited liability company, association, joint venture, public corporation, government, or governmental
4 subdivision, agency, or instrumentality, ~~public corporation~~ or any other legal or commercial entity.

5 (15) (20) "Record" means information that is inscribed on a tangible medium or that is stored in
6 an electronic or other medium and is retrievable in perceivable form.

7 (16) (21) "Register" means to [record; file] in a tribunal of this state a support order or judgment
8 determining parentage of a child issued in another state or a foreign country in the [appropriate location
9 ~~for the recording or filing of foreign judgments generally or foreign support orders specifically]~~.

10 (17) (22) "Registering tribunal" means a tribunal in which a support order or judgment
11 determining parentage of a child is registered.

12 (18) (23) "Responding ~~State~~ state" means a ~~State~~ state in which a ~~proceeding~~ [petition] or
13 comparable pleading for support or to determine parentage of a child is filed or to which a ~~proceeding~~
14 [petition] or comparable pleading is forwarded for filing from ~~an initiating another State~~ state or a foreign
15 country under this [Act] or a law or procedure substantially similar to this [Act].

16 (19) (24) "Responding tribunal" means the authorized tribunal in a responding ~~State~~ state or
17 foreign country.

18 (20) (25) "Spousal-support order" means a support order for a spouse or former spouse of the
19 obligor.

20 (21) (26) "State" means a ~~State~~ state of the United States, the District of Columbia, Puerto Rico,
21 the United States Virgin Islands, or any territory or insular possession ~~subject to~~ under the jurisdiction of
22 the United States. The term includes: ~~(A) an Indian nation or tribe; and~~

23 ~~(B) a foreign country or political subdivision that:~~

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

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

28 ~~(iii) has enacted a law or established procedures for the issuance and enforcement~~
29 ~~of support orders which are substantially similar to the procedures under this [Act].~~

30 (22) (27) "Support enforcement agency" means a public official, governmental entity, or private
31 agency authorized to seek:

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

33 (B) seek establishment or modification of child support;

34 (C) request determination of parentage of a child;

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

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

3 ~~(23)~~ (28) “Support order” means a judgment, decree, order, decision, or directive, whether
4 temporary, final, or subject to modification, issued ~~by a tribunal~~ in a state or foreign country for the
5 benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care,
6 arrearages, retroactive support, or reimbursement for financial assistance provided to an individual
7 obligee in place of child support, ~~and~~ The term may include related costs and fees, interest, income
8 withholding, automatic adjustment, reasonable attorney’s fees, and other relief.

9 ~~(24)~~ (29) “Tribunal” means a court, administrative agency, or quasi-judicial entity authorized to
10 establish, enforce, or modify support orders or to determine parentage of a child.

11 **Comment**

12 The terms defined in UIFSA receive a major makeover in the expectation that the
13 Convention will enter into force in the United States at a future time. Six definitions of
14 terms are completely new, sixteen existing definitions are amended to a greater or
15 lesser degree, seven definitions remain basically untouched albeit six of these are
16 renumbered, and one term is deleted because it no longer appears in the act..

17 Many crucial definitions continue to be left to local law. For example, the definitions
18 provided by Subsections (1) “child,” and (2) “child-support order,” refer to “the age of
19 majority” without further elaboration. The exact age at which a child becomes an adult
20 for different purposes is a matter for the law of each state or foreign country as is the
21 age at which a parent's duty to furnish child support terminates. Similarly, a wide variety
22 of other terms of art are implicitly left to state law. The new Convention, *infra*, provides a
23 more explicit definition of “child” that is entirely consistent with the laws of all states.

24 There is a divergence of opinion among the several states regarding the appropriate
25 age for termination of child support. The overwhelming number of states set ages 18
26 (legal adulthood for most purposes), or 19, or one of those two ages and high school
27 graduation, whichever comes later. Several states have retained the formerly popular

1 age of 21. And, some states extend the support obligation past age 21 if the person to
2 be supported is engaged in higher education. Allegedly some support enforcement
3 agencies and some tribunals are reluctant to enforce a child-support order past age 21,
4 but under UIFSA it is the law of the issuing state or foreign country that makes the
5 determination of the appropriate age for termination of support from an obligee.
6 Because the order has been established with personal jurisdiction over the parties, it is
7 fully enforceable under the terms of the act.

8 Under the terms of the Convention, the standard obligation of a responding tribunal
9 to enforce a child-support order is for a person “under the age of 21 years.” See art. 2.
10 *Scope*. However, a contracting nation may take a reservation to limit enforcement of a
11 child-support order to “persons who have not attained the age of 18 years.” *Id.* This
12 possibility does not affect this act.

13 Subsection (3) “Convention,” identifies the Hague Maintenance Convention, the
14 basis on which UIFSA (2008) was drafted. The text of the Convention may be accessed
15 on the website of the Hague Convention on Private International Law,
16 www.hcch.net/index. As noted above, the Convention was the result of negotiations
17 involving over 70 foreign nations or, in some instances political subdivisions of a foreign
18 nation, conducted in a series of meetings from May, 2003, to November 2007.

19 Subsection (4) “Duty of support,” means the legal obligation to provide support,
20 whether or not that duty has been the subject of an order by a tribunal. This broad
21 definition includes both prospective and retrospective obligations to the extent they are
22 imposed by the relevant state law.

23 The definitions in Subsections (5) “foreign country,” (6) “foreign support order,” and

1 (7) “foreign tribunal,” are all new to UIFSA, and must be read in conjunction with the
2 prior and the new definition of “state,” now in subsection (26), *infra*. Formerly, under
3 certain circumstances a foreign country or political subdivision was declared to be a
4 “state.” Defining a foreign country or a political subdivision thereof, e.g., a Canadian
5 province, as a “state” may be traced back to 1968, where this approach first appeared in
6 the Revised Uniform Reciprocal Enforcement of Support Act [RURESA]. That fiction
7 created confusion because a foreign support order is not entitled to Full Faith and
8 Credit. Indeed, such orders of the sister states of the United States were only relatively
9 recently accorded that treatment after congressional action in 1994 with the advent of
10 FFCCSOA, *supra*. Thus, constitutional analysis is not required for enforcement of
11 foreign support orders; only state statutory issues are involved.

12 The term “foreign judgment” is used only once in UIFSA (1996) and (2001) in a
13 context that clearly intends to mean “from-another sister-state.” If an international
14 construction is intended, the text in UIFSA (2001) is uniformly “foreign country or
15 political subdivision.” The new definitions in UIFSA (2008) are fine-tuned to avoid
16 ambiguity in order to insure that “foreign” is used strictly to identify international
17 proceedings and orders.

18 Subsection (5) requires additional careful reading; under the act “foreign country” by
19 no means includes all foreign nations. Countries identified by three of the four
20 subdivisions are reasonably ascertainable. The list of reciprocating countries that have
21 negotiated an executive agreement with the United States as described in subdivision
22 (A), known as bilateral agreements, is found on the website of the federal Office of Child
23 Support Enforcement [OCSE] at
24

1 <http://www.acf.hhs.gov/programs/cse/international/index.html>.

2 The countries described in subdivision (B) have entered into an agreement with the
3 forum state, which presumptively is known to officials of that state. A combined list of all
4 such agreements of all states is not readily available.

5 Countries subject to subdivision (C) theoretically could require individualized
6 determinations on a case-by-case basis unless each state concocts a more efficient
7 method for identifying foreign countries whose laws are “substantially similar” to UIFSA
8 in either of its iterations circa 2008. The “substantially similar” test to measure the laws
9 of foreign nations, however, has been around since 1968 without eliciting much
10 controversy.

11 In the future, assuming that there will be a number of countries with the Convention
12 in force with the United States under subdivision (D), the list of those countries will be
13 well publicized. This, of course, will almost certainly result in the universal enactment of
14 UIFSA (2008) by the states (with encouragement by a federal enabling statute).

15 Finally, there are very many foreign nations that do not, and will not, fit any of the
16 definitions of “foreign country” established in the act. At present, there are 192 member
17 states in the United Nations. Recognition and enforcement of support orders from
18 nations that do not meet the definition of “foreign country” may be enforceable under the
19 doctrine of comity. Section 104.

20 Subsections (6), (7) and (12) “issuing foreign country ” set down parallel tracks for a
21 foreign support order, foreign tribunal, and foreign issuing country throughout the act.

22 For the limited purpose of resolving certain conflicts in the exercise of jurisdiction,
23 subsection (8) “home state,” borrows the concept from the UNIFORM CHILD CUSTODY

JURISDICTION ACT (UCCJA) and its successor, the UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA), versions of which have been adopted in all 50 states, and incorporated into the federal Parental Kidnapping Prevention Act, 42 U.S.C. Section 1738A (PKPA).

Subsection (10) “income withholding order,” is written broadly to include an order based on “other legal process,” as distinguished from “by order of a tribunal.” Some states issue child-support orders administratively, which are entitled to enforcement notwithstanding the fact that no judicial or quasi-judicial process is involved. Federal law requires that, in order to be eligible for federal subsidy monies, each state must provide for income withholding “without the necessity of any application therefor, or for any further action by the court or other entity which issued such order.” 42 U.S.C. Section 666(b)(2). States have complied with this requirement in a variety of ways.

From the time UIFSA began the process of replacing RURESA or URESA in 1993, direct filing of an interstate proceeding in a responding state without an initial filing in an initiating tribunal was permitted. The earlier acts were based on the procedure of an “initiating court” making a preliminary determination that support is due a child, and then forwarding documents to a “responding court.” Direct forwarding of the application for services from one support enforcement agency to another has become standard operating procedure. Thus, a petitioner in one state may seek to establish, enforce, or modify a support order in a second state by either filing in the responding state's tribunal or by directly seeking the assistance of the local or sister state support enforcement agency. Although Subsections (11) “initiating tribunal,” (23) “responding state”, and (24) “responding tribunal” supply definitions for the procedure of “initiation and response”

1 established by the predecessor acts of URESA and RURESА, that process has become
2 something of an anachronism in actual practice under UIFSA. Generally an obligee
3 contacts the local support enforcement agency, which prepares and forwards the
4 appropriate documentation to the support enforcement agency in the state in which the
5 obligor is found. The second agency files for establishment or enforcement in a tribunal
6 of the second state without any action being taken by a tribunal in the first state. The
7 further advent of administrative agencies as both establishment and enforcement
8 tribunals often further removes the old practice of initiating and responding courts. Thus,
9 one definition, “initiating state,” has been deleted because that term is no longer found
10 in the act.

11 This is not to suggest that a support order issued under URESA or RURESА is not
12 fully enforceable under UIFSA. Until a valid order issued under those laws expires of its
13 own terms or is replaced by a new UIFSA order, the support order itself continue to
14 have vitality, see *Sections 201-211, infra*. Note that a 21-year child-support order issued
15 in 1997 for an infant will not expire until 2018. In short, UIFSA continues to function with
16 the earlier acts without conflict. A support order issued under one of the earlier acts
17 must be honored and accorded full enforcement remedies. But, states shall apply the
18 limitations on modification of UIFSA, see *Section 611, infra*. In situations involving
19 multiple orders created under the former system, UIFSA mandates the application of its
20 one-order rules to determine the single order that is entitled to prospective enforcement,
21 see *Section 207, infra*.

22 The term in subsection (16) “obligee,” is defined in a broad manner, which is
23 consistent with common usage. In instances of spousal support, the person owed the

1 duty of support as the obligee and the person receiving the payments are almost always
2 the same. Use of the term is more complicated in the context of child support. The child
3 is the person to whom the duty of support is owed, and therefore can be viewed as the
4 ultimate obligee. However, “obligee” usually refers to the individual receiving the
5 payments. While this is most commonly the custodial parent or other legal custodian,
6 the “obligee” may be a support enforcement agency that has been assigned the right to
7 receive support payments for providing child protection services or to recoup Temporary
8 Assistance for Needy Families (TANF), 42 U.S.C. Section 601 *et seq.*, formerly known
9 as Aid to Families with Dependent Children (AFDC). Even in the absence of such an
10 assignment, a state may have an independent statutory claim for reimbursement for
11 general assistance provided to a spouse, a former spouse, or a child of an obligor. The
12 act also uses “obligee” to identify an individual who is asserting a claim for support, not
13 just for a person whose right to support is unquestioned, presumed, or has been
14 established in a legal proceeding.

15 Subsection (17) “obligor,” provides the correlative definition, which includes an
16 individual who is alleged to owe a duty of support as well as a person whose obligation
17 has previously been determined.

18 The terms “obligor” and “obligee” inherently contain the legal obligation to pay or
19 receive support, and both terms also implicitly refer to the individuals with a duty to
20 support a child. The one-order system of UIFSA can succeed only if the respective
21 obligations of support are adjusted as the physical possession of a child changes
22 between parents or involves a third party caretaker. This must be accomplished in the
23 context of modification, and not by the creation of multiple orders attempting to reflect

1 each changing custody scenario. Obviously this issue is of concern not only to interstate
2 child-support orders, but applies to intrastate orders as well.

3 Subsection (18) “outside this state,” requires careful reading. This phrase is used in
4 the act when the application of the provision is to be as broad as possible. Rather than
5 limit the application of certain provisions of the act to other states, foreign countries as
6 defined in subsection (5), or even countries whose orders are entitled to comity under
7 Section 104, all nations and political subdivisions are truly “outside this state.” For
8 example, that term is found in Sections 316-18, which allow a tribunal of this state to
9 accept information or assistance from everywhere in the world (in the court’s discretion
10 as to its effect).

11 The definition in subsection (20) “record,” conforms UIFSA to the Conference
12 standard for legal documentation as established in the UNIFORM ELECTRONIC
13 TRANSACTIONS ACT Section 102(13) [hereafter UETA]. The phrase “in a record” replaces
14 the terminology “in writing” as the appropriate manner to recognize that electronic
15 transmissions and signatures are increasingly appropriate substitutes for more
16 traditional documentation. With the increasing use of information available from internet
17 sources, such as currency conversion calculations, the term also may include
18 appropriate “screen prints.”

19 The definitions in Subsections (23) “responding state,” and (24) “responding
20 tribunal,” accommodate the direct filing of a petition under UIFSA without the
21 intervention of an initiating tribunal. Both definitions acknowledge the possibility that
22 there may be a responding state and a responding tribunal in a situation where there is
23 no initiating tribunal. Under current practice, the initial application for services will be

1 generated by a support enforcement agency or a central authority of a foreign country.

2 As discussed above in connection with Subsections (5) through (7), the amended
3 definition in subsection (26) “state,” eliminates the legal fiction that a foreign country can
4 be a U.S. state, and clarifies and implements the purpose of the act to enforce an
5 international support order under state law. In UIFSA (2008) the term clearly is intended
6 to refer only to a state of the United States or to other designated political entities
7 subject to federal law.

8 Although the vast bulk of child support establishment, enforcement, and modification
9 in the United States is performed by the state IV-D agencies, see Part IV-D, Social
10 Security act, 42 U.S.C. Section 651 *et seq.*, subsection (27) “support enforcement
11 agency” includes not only those entities, but also any other state or local governmental
12 entities charged with establishing or enforcing support.

13 Subsection (28) “support order,” is another definition that requires more careful
14 reading than might be immediately clear. Virtually every financial aspect of a support
15 order regarding child support or spousal support is covered. Throughout the act
16 “support order” means both “child support” and “spousal support.” “Child support” is
17 used when the provision applies only to support for a child. The single provision
18 applicable solely to spousal support is Section 211, *infra*. Other forms of support that
19 might be classified as “family support,” are not dealt with by UIFSA.

20 Subsection (29) “tribunal,” takes into account that a number of states have delegated
21 various aspects of child-support establishment and enforcement to quasi-judicial bodies
22 and administrative agencies. The term accounts for the breadth of state variations in
23 dealing with support orders. This usage is standard in the child-support enforcement

community; private practitioners who only rarely are involved in such cases may still find the term unfamiliar.

Related to Convention: art. 2. Scope; art. 3. Definitions; art. 4. Designation of Central Authorities; art. 36. Public bodies as applicants; art. 61. Declarations with respect to non-unified legal systems; art. 63. Declarations.

SECTION 103. STATE TRIBUNAL OF STATE AND SUPPORT ENFORCEMENT
AGENCY.

(a) The [court, administrative agency, or quasi-judicial entity, or combination] [is the tribunal] [are the tribunals] of this ~~State~~ state.

(b) The [public official, governmental entity, or private agency] [is] [are] the support enforcement [agency] [agencies] of this state.

Legislative Note: *If a state has more than one entity serving as a tribunal or support enforcement agency, the plural text choice should be selected.*

Comment

Subsection (a) provides for the identification of the tribunal or tribunals to be charged with the application of this act.

Subsection (b) performs the same function for the support enforcement agency or agencies. By its terms it indicates the legislature may designate more than one entity as authorized to enforce a support order, including a private agency. To clarify, only a public official or governmental entity may be designated by the legislature as a support enforcement agency operating under title IV-D of the Social Security Act, and, by virtue of the receipt of a federal subsidy, subject to federal regulations. But, for example, the state legislature could identify a private agency authorized to enforce a support order not receiving services from the state or a spousal-support order not involving child support.

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(b) This ~~[Act]~~ [act] does not:

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

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

The existence of procedures for interstate establishment, enforcement, or modification of support or a determination of parentage in UIFSA does not preclude the application of the general law of the forum. Even if the parents live in different states, for example, a petitioner may decide to file an original proceeding for child support (and most likely for other relief as well) directly in the state of residence of the respondent and proceed under that forum's generally applicable support law. In so doing, the out-of-state petitioner submits to the personal jurisdiction of the forum and, for the most part, is unaffected by 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.

This section amends the act to facilitate recognition and enforcement of a foreign support order from a nation state that is entitled to have its orders recognized by comity, but is not defined as a “foreign country” under Section 102(5). Subsection (a)

1 specifically recognizes the doctrine of comity as a legitimate function of state law that on
2 a proper showing provides for the recognition of a foreign support order. Although the
3 determination by the U.S. State Department that a foreign nation is a reciprocating
4 country is binding on all states, recognition of a foreign support order through comity is
5 dependent on the law of each state. The reference to “remedies under other law” is
6 intended to recognize the principle of comity as developed in the forum state by
7 statutory or common law, rather than to create a substantive right independent of that
8 law.

9 Subsection (b)(1) gives notice that UIFSA is not the only means for establishing or
10 enforcing a support order with an interstate aspect. A potential child-support obligee
11 may voluntarily submit to the jurisdiction of another state to seek the full range of
12 desired relief under the law of that state using intrastate procedures, rather than
13 resorting to the interstate procedure provided by UIFSA. A nonresident married parent
14 may choose to file a proceeding in the forum state for dissolution of the marriage,
15 including property division and spousal support, and in conjunction seek an order
16 regarding child custody and visitation and child support. A parent may submit to the
17 jurisdiction of another state for a determination of parentage and child support. A
18 support order resulting from each of these scenarios implicates UIFSA. Invariably the
19 issuing tribunal will have continuing, exclusive jurisdiction over its controlling child-
20 support or spousal-support order as provided by Sections 205, 207, 211, *infra*, with all
21 of the attendant application of the act to those orders. Likewise, the order or judgment of
22 another state can be enforced without the necessity of registration by resort to other
23 post-judgment enforcement remedies, such as lien, levy, execution, and filing claims in

1 probate or bankruptcy actions.

2 On the other hand, subsection (b)(2) makes clear that jurisdiction to establish child
3 custody and visitation orders is distinct from jurisdiction for child-support orders. For the
4 former, jurisdiction generally rests on the child's connection with the state rather than
5 personal jurisdiction over the respondent. See UCCJEA Section 201; *May v. Anderson*,
6 345 U.S. 528 (1953) (Frankfurter concurrence). Under the Supreme Court's case law,
7 jurisdiction to establish a child support order requires personal jurisdiction over the
8 respondent. See *Kulko v. Superior Court*, 436 U.S. 84 (1978). If the child-support order
9 is sought under the authority of UIFSA, the most important aspect of this rule is that a
10 child-support obligee utilizing the provisions of UIFSA to establish child support across
11 state lines submits to jurisdiction for child support only, and does not submit to the
12 jurisdiction of the responding state with regard to child custody or visitation.

13
14 **SECTION 105. APPLICATION OF [ACT] TO RESIDENT OF FOREIGN COUNTRY**
15 **AND FOREIGN SUPPORT PROCEEDING.**

16 (a) A tribunal of this state shall apply [Articles] 1 through 6 and, as applicable, [Article] 7, to a
17 support proceeding involving:

18 (1) a foreign support order;

19 (2) a foreign tribunal; or

20 (3) an obligee, obligor, or child residing in a foreign country.

21 (b) A tribunal of this state that is requested to recognize and enforce a support order on the basis
22 of comity may apply the procedural and substantive provisions of [Articles] 1 through 6.

23 (c) [Article] 7 applies only to a support proceeding under the Convention. In such a proceeding, if
24 a provision of [Article] 7 is inconsistent with [Articles] 1 through 6, [Article] 7 controls.

25 **Comment**

26 Four distinct entities are defined as a "foreign country" with tribunals entering a
27 "foreign support order," see Section 102(5). Only one of these, a country "in which the

Convention is in force with respect to the United States” will be subject to Article 7 of the act. These countries may require special attention. If the terms of the Convention and the terms of this act, including Article 7, are in conflict, the provision of the Convention controls. With regard to the other three statutory definitions of a “foreign country,” all the terms this act in Articles 1-6 control. After the Convention comes into force in the United States, a body of case law may develop to resolve unanticipated differences between this act and the Convention.

1 **ARTICLE 2**

2 **JURISDICTION**

3 **SECTION 201. BASES FOR JURISDICTION OVER NONRESIDENT.**

4 (a) In a proceeding to establish or enforce a support order or to determine parentage of a child, a
5 tribunal of ~~State~~ state may exercise personal jurisdiction over a nonresident individual [or the individual's
6 guardian or conservator] if:

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

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

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

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

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

16 (6) the individual engaged in sexual intercourse in this ~~State~~ state and the child may have
17 been conceived by that act of intercourse;

18 (7) [the individual asserted parentage of a child in the [putative father registry]
19 maintained in this ~~State~~ state by the [appropriate agency]; or

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

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

26 **Comment**

27 **Long-arm Provisions.** Sections 201 and 202 assert what is commonly described as
28 long-arm jurisdiction over a nonresident respondent for purposes of establishing a
29 support order or determining parentage. Read together, subsections (a) and (b) provide
30 the basic jurisdictional rules established by the act for interstate application of a support
31 order. To sustain a support order the tribunal must be able to assert personal

1 jurisdiction over the parties, see *Estin v. Estin*, 334 U.S. 541, 68 S. Ct. 1213, 92 L.Ed.
2 1561 (1948) and *Vanderbilt v. Vanderbilt*, 354 U.S. 416, 77 S. Ct. 1360, 1 L.Ed.2d 1456
3 (1957) (spousal support); *Kulko v. Superior Court*, 436 U.S. 84, 98 S.Ct. 1690, 56
4 L.Ed.2d 132 (1978) (child support).

5 Inclusion of this long-arm provision in this interstate act is justified because residents
6 of two separate states are involved in the litigation, both of whom are subject to the
7 personal jurisdiction of the forum. Thus, the case has a clear interstate aspect, despite
8 the fact that the substantive and procedural law of the forum state is applicable to a
9 lawsuit in what is a one-state case. This rationale is sufficient to invoke additional
10 UIFSA provisions in an otherwise intrastate proceeding. See Sections 202, 316, and
11 318, *infra*. The intent is to insure that every enacting state has a long-arm statute that is
12 as broad as constitutionally permitted. In situations in which the long-arm statute can be
13 satisfied, the petitioner (either the obligor or the obligee) has two options: (1) utilize the
14 long-arm statute to obtain personal jurisdiction over the respondent; or (2) initiate a two-
15 state proceeding under the succeeding provisions of UIFSA seeking to establish a
16 support order in the respondent's state of residence. Of course, a third option is
17 available that does not implicate UIFSA; a petitioner may initiate a proceeding in the
18 respondent's state of residence by filing a proceeding to settle all issues between the
19 parties in a single proceeding.

20 Although this long-arm statute applies to a spousal-support order, almost all of the
21 specific provisions of this section relate to a child-support order or a determination of
22 parentage. This derives from the fact that the focus of UIFSA is primarily on child
23 support. Only Subsections (1), (2) and (8) are applicable to an action for spousal

1 support asserting long-arm jurisdiction over a nonresident. The first two subsections are
2 wholly noncontroversial insofar as an assertion of personal jurisdiction is concerned.
3 Moreover, as a practical matter assertion of personal jurisdiction under UIFSA will
4 almost always also yield jurisdiction over all matters to be decided between the
5 spouses, including division of property on divorce. Thus, the most obvious possible
6 basis for asserting long-arm jurisdiction over spousal support, i.e., “last matrimonial
7 domicile,” is not included in Section 201 to avoid the potential problem of another
8 instance of bifurcated jurisdiction. This restraint avoids a situation in which UIFSA would
9 arguably grant long-arm jurisdiction for a spousal-support order when the forum state
10 has no correlative statute for property division in divorce.

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

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

20 Subsection (1) codifies the holding of *Burnham v. Superior Court*, 495 U.S. 604
21 (1990), which reaffirms the constitutional validity of asserting personal jurisdiction based
22 on personal service within a state.

23 Subsection (2) expresses the principle that a nonresident party concedes personal

1 jurisdiction by seeking affirmative relief or by submitting to the jurisdiction by answering
2 or entering an appearance. However, the power to assert jurisdiction over an issue
3 involving child support under the act does not necessarily extend the tribunal's
4 jurisdiction to other matters. As noted above, family law is rife with instances of
5 bifurcated jurisdiction. For example, a tribunal may have jurisdiction to establish a child-
6 support order based on personal jurisdiction over the obligor under Section 201, but
7 lack jurisdiction over child custody which is a matter of status adjudication usually based
8 on the home state of the child.

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

22 On the other hand, suppose that the two parents and their child lived in State A for
23 many years, and then decided to move the family to State B to seek better employment

1 opportunities. Those opportunities did not materialize and, after several weeks or a few
2 months of frustration with the situation, one of the parents returned with the child to
3 State A. Under these facts a tribunal of State A may conclude it has long-arm
4 jurisdiction to establish the support obligation of the absent parent. But, suppose that
5 the family's sojourn in State B lasted for many years, and then one parent unilaterally
6 decides to return to State A. It is reasonable to expect that a tribunal will conclude that
7 assertion of personal jurisdiction over the absent parent immediately after the return
8 based on subsection (3) would offend due process. Note the provisions of UIFSA are
9 available to the returning parent to establish child support in State B, and that state will
10 have long-arm jurisdiction to establish support binding on the moving parent under
11 Section 201. See *also* Section 204, *infra*, for the resolution of simultaneous proceedings
12 provided by the act.

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

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

22 **Limit on Asserting Long-Arm Jurisdiction to Modify Child-Support Order.**

23 Subsection (b) elaborates on the principle by providing that modification of an existing

1 child-support order goes beyond the usual rules of personal jurisdiction over the parties.
2 Amended in UIFSA (2001), subsection (b) makes clear long-arm personal jurisdiction
3 over a respondent, standing alone, is not sufficient to grant subject matter jurisdiction to
4 a responding tribunal of the state of residence of the petitioner for that tribunal to modify
5 an existing child-support, see the extended commentaries to Sections 609-616, *infra*.
6 The limitations on modification of a child-support order provided by Sections 611 must
7 be observed irrespective of the existence of personal jurisdiction over the parties.

8 For tribunals of the United States, these sections integrate the concepts of personal
9 jurisdiction and its progeny, continuing jurisdiction, and controlling orders. Note that the
10 long-arm provisions of UIFSA (1992) were originally written with only domestic cases in
11 mind. If the tribunal of a state has personal jurisdiction over an individual residing in
12 another state (or, by implication, a foreign country), the application of local law is
13 entitled to recognition and enforcement. See Full Faith and Credit for Child Support
14 Orders Act, a.k.a. FFCCSOA, 28 U.S.C. 1738B. Integrating this federal law based on
15 the Constitution with the statutory rule of subject matter jurisdiction for modification of an
16 existing child-support order is a major accomplishment of UIFSA. Obviously, the federal
17 act is applicable to a child-support order issued by a state tribunal, but is not applicable
18 to a foreign support order. Nor does FFCCSOA in any way affect a foreign country,
19 which will apply its local law of recognition, enforcement, and modification to a child-
20 support order originating from a state of the United States. When the Convention enters
21 into force, the integration of UIFSA and the law of some foreign countries will be
22 international in scope. At that time the jurisdictional rules of all concerned become
23 significantly more complex, see Section 708, *infra*. Nonetheless, it seems likely the

1 complexity will be more theoretical than actually troublesome.

2 ***Potential Application of Long-arm Jurisdiction to Foreign Support Order.*** If the
3 facts of a case warrant, whether in an interstate or an international context, a state
4 tribunal shall apply long-arm jurisdiction to establish a support order without regard to
5 the physical location or residence of a party outside the United States. Interestingly,
6 under certain fact situations involving a request to recognize and enforce or modify a
7 foreign support order, a state tribunal may be called upon to determine the applicability
8 of long-arm jurisdiction under UIFSA to the facts of the case in order to decide the
9 enforceability of the foreign support order.

10 For example, a challenge to a request for enforcement of a foreign support order
11 may be made by a respondent based on an allegation that the foreign issuing tribunal
12 lacked personal jurisdiction over the respondent. A respondent may acknowledge that
13 the obligee or the child resides in France, and that a French tribunal issued a support
14 order. But, the respondent may further allege that there is no nexus between himself
15 and France, and therefore no personal jurisdiction over him as required by the *Kulko*
16 decision, *supra*. From the perspective of the French tribunal, the asserted lack of
17 personal jurisdiction is of no consequence. Under the law of France, like the law of
18 virtually all other foreign nations, the child-based jurisdiction stemming from the
19 residence of the obligee or child is sufficient to sustain a child-support order.

20 Thus, under the Convention a state tribunal may be called upon to determine
21 whether the facts underlying the support order would have provided the issuing foreign
22 tribunal with personal jurisdiction over the respondent under the standards of this
23 section. In effect, the question is whether the foreign tribunal would have been able to

1 exercise jurisdiction in accordance with section 201. The foregoing fact situation
2 illustrates that it is for the state tribunal to determine if the order of the French tribunal
3 would have complied with UIFSA Section 201 on the facts of the case. If so, the foreign
4 support order is entitled to recognition and enforcement. On the other hand, if the
5 foreign support order cannot be enforced because there was no appropriate nexus
6 between France and the respondent and the issuing tribunal would have lacked
7 personal jurisdiction over the respondent if this section had been applicable.

8 Interestingly, if the responding tribunal finds that the French tribunal lacked a proper
9 nexus for personal jurisdiction over the respondent, additional action is required. The
10 responding state tribunal is to establish a child-support order because it has personal
11 jurisdiction over the respondent. In this situation, the state tribunal shall treat the request
12 for recognition and enforcement or modification of the existing French order as a
13 petition for establishment or other relief, and shall go forward to establish or modify a
14 child-support order under local law. See Sections 708 and 709, *infra*.

15 The United States has taken a reservation to the Convention to Convention art. 20,
16 declining to recognize or enforce a foreign support order on child-based jurisdiction
17 founded solely on the location or residence of the obligee or child in the foreign country.
18 *Id.*

19 ***Related to Convention:*** art. 2. Scope; art. 19. Scope of the chapter; art. 20. Bases for
20 recognition and enforcement; art. 32. Enforcement under internal law; art. 62.
21 *Reservations.*
22

23 **SECTION 202. DURATION OF PERSONAL JURISDICTION.** Personal jurisdiction
24 acquired by a tribunal of this state state in a proceeding under this [act] [act] or other law of this state state
25 relating to a support order continues as long as a tribunal of this state state has continuing, exclusive
26 jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by sections 205,

1 206, and 211.

2 **Comment**

3 It is a useful legal truism after a tribunal of a state issues a support order binding on
4 the parties, which must be based on personal jurisdiction by virtue of *Kulko v. Superior*
5 *Court*, 436 U.S. 84 (1978) and *Vanderbilt v. Vanderbilt*, 354 U.S. 416 (1957), jurisdiction
6 in personam continues for the duration of the support obligation absent the statutorily
7 specified reasons to terminate the order. The rule established by UIFSA is that the
8 personal jurisdiction necessary to sustain enforcement or modification of an order of
9 child support or spousal support persists as long as the order is in force and effect, even
10 as to arrears, see Sections 205-207, 211, *infra*. This is true irrespective of the context in
11 which the support order arose, e.g., divorce, UIFSA support establishment, parentage
12 establishment, modification of prior controlling order, etc. Insofar as a child-support
13 order is concerned, depending on specific factual circumstances a distinction is made
14 between retaining continuing, exclusive jurisdiction to modify an order and having
15 continuing jurisdiction to enforce an order, see Sections 205 and 206, *infra*. Authority to
16 modify a spousal-support order is permanently reserved to the issuing tribunal, Section
17 211, *infra*.

18
19 **SECTION 203. INITIATING AND RESPONDING TRIBUNAL OF STATE.** Under
20 this ~~[Act]~~ **[act]**, a tribunal of this ~~State~~ **state** may serve as an initiating tribunal to forward proceedings to
21 **a tribunal of** another ~~State~~ **state**, and as a responding tribunal for proceedings initiated in another ~~State~~
22 **state or a foreign country**.

23 **Comment**

24 This section identifies the two roles a tribunal of the forum may serve; acting as
25 either an initiating or a responding tribunal. Under UIFSA a tribunal may serve as a

1 responding tribunal even when there is no initiating tribunal. This accommodates the
2 direct filing of a proceeding in a responding tribunal by a nonresident.

3 ***Related to Convention: art. 2. Scope; art. 37. Direct requests to competent authorities.***
4

5 **SECTION 204. SIMULTANEOUS PROCEEDINGS.**

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

9 (1) the [petition] or comparable pleading in this ~~State~~ state is filed before the expiration
10 of the time allowed in the other ~~State~~ state or the foreign country for filing a responsive pleading
11 challenging the exercise of jurisdiction by the other ~~State~~ state or the foreign country;

12 (2) the contesting party timely challenges the exercise of jurisdiction in the other ~~State~~
13 state or the foreign country; and

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

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

18 (1) the [petition] or comparable pleading in the other ~~State~~ state or foreign country is
19 filed before the expiration of the time allowed in this ~~State~~ state for filing a responsive pleading
20 challenging the exercise of jurisdiction by this ~~State~~ state;

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

23 (3) if relevant, the other ~~State~~ state or foreign country is the home ~~State~~ state of the
24 child.

25 **Comment**

26 Under the one-order system established by UIFSA, it was necessary to provide a
27 procedure to eliminate the multiple orders so common under RURESA and URESA.
28 This requires cooperation between, and deference by, state tribunals in order to avoid
29 issuance of competing support orders. To this end, tribunals are expected to take an
30 active role in seeking out information about support proceedings in another state or

1 foreign country concerning the same child. Depending on the circumstances, one or the
2 other of two tribunals considering the same support obligation should decide to defer to
3 the other. The inclusion of a foreign country in this investigation facilitates the goal of a
4 “one order world” for a support obligation.

5 UIFSA (1992) took a significant departure from the approach adopted by the UCCJA
6 (1986) (“first filing”), by choosing the “home state of the child” as the primary factual
7 basis for resolving competing jurisdictional disputes. Not coincidentally, this had
8 previously been the choice for resolving jurisdiction conflicts of the federal PARENTAL
9 KIDNAPPING PREVENTION ACT, 28 U.S.C. 1738A (1980). Given the pre-emptive nature of
10 the PKPA, and the possibility that custody and support will both be involved in some
11 cases, the PKPA/UIFSA choice for resolving disputes between competing jurisdictional
12 assertions was followed in 1997 by the decision of NCCUSL to replace the UCCJA with
13 the UCCJEA. If the child has no home state, however, “first filing” will control.

14
15 **SECTION 205. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY CHILD-**
16 **SUPPORT ORDER.**

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

20 (1) at the time of the filing of a request for modification this ~~State~~ state is the residence of
21 the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

22 (2) even if this ~~State~~ state is not the residence of the obligor, the individual obligee, or
23 the child for whose benefit the support order is issued, the parties consent in a record or in open court that
24 the tribunal of this ~~State~~ state may continue to exercise jurisdiction to modify its order.

25 (b) A tribunal of this ~~State~~ state that has issued a child-support order consistent with the law of
26 this ~~State~~ state may not exercise continuing, exclusive jurisdiction to modify the order if:

27 (1) all of the parties who are individuals file consent in a record with the tribunal of this
28 ~~State~~ state that a tribunal of another ~~State~~ state that has jurisdiction over at least one of the parties who is

1 an individual or that is located in the ~~State~~ state of residence of the child may modify the order and
2 assume continuing, exclusive jurisdiction; or

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

4 (c) If a tribunal of another ~~State~~ state has issued a child-support order pursuant to {the Uniform
5 Interstate Family Support Act} or a law substantially similar to that Act which modifies a child-support
6 order of a tribunal of this ~~State~~ state, tribunals of this ~~State~~ state shall recognize the continuing, exclusive
7 jurisdiction of the tribunal of the other ~~State~~ state.

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

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

13 **Comment**

14 This section is perhaps the most crucial provision in UIFSA. Consistent with the
15 precedent of the federal PARENTAL KIDNAPPING PREVENTION ACT, 28 U.S.C. Section
16 1738A, except in very narrowly defined circumstances the issuing tribunal retains
17 continuing, exclusive jurisdiction over a child-support order, commonly known as “CEJ.”
18 First introduced by UIFSA in 1992, this principle is in force and widely accepted in all
19 states. Indeed CEJ is fundamental to the principle of one-child-support-order-at-a-time.

20 As long as one of the individual parties or the child continues to reside in the issuing
21 state, and as long as the parties do not agree to the contrary, the issuing tribunal has
22 continuing, exclusive jurisdiction over its child-support order—which in practical terms
23 means that it may modify its order. The statute takes an even-handed approach. The
24 identity of the party remaining in the issuing state—obligor or obligee—does not matter.
25 Indeed, if the individual parties have left the issuing state but the child remains behind,
26 continuing, exclusive jurisdiction [a.k.a. CEJ] remains with the issuing tribunal. Even if
27 the parties and the child no longer reside in the issuing state, the support order

1 continues in existence and is fully enforceable unless and until a modification takes
2 place in accordance with the requirements of Article 6, *infra*. Note, however, that the
3 CEJ of the issuing tribunal over a spousal-support order is permanent, see Section 211,
4 *infra*.

5 Subsection (a)(1) states the basic rule and subsection (a)(2) states an exception to
6 that rule. First, the time to measure whether the issuing tribunal has continuing,
7 exclusive jurisdiction to modify its order, or whether the parties and the child have left
8 the state, is explicitly stated to be at the time of filing a proceeding to modify the child-
9 support order. Second, the term “remains the residence” makes clear that any
10 interruption of residence of a party between the date of the issuance of the order and
11 the date of filing the request for modification does not affect jurisdiction to modify. Thus,
12 if there is but one order, it is the controlling order in effect and enforceable throughout
13 the United States, notwithstanding the fact that everyone at one time had left the issuing
14 state. If the order is not modified during this time of mutual absence, a return to reside in
15 the issuing state by a party or child immediately identifies the proper forum at the time of
16 filing a proceeding for modification. Although the statute does not speak explicitly to the
17 issue, temporary absence should be treated in a similar fashion. Temporary
18 employment in another state may not forfeit a claim of residence in the issuing state. Of
19 course, residence is a fact question for the trial court, keeping in mind that the question
20 is residence, not domicile.

21 From the beginning of the implementation of the CEJ principle, questions have been
22 raised about why a tribunal may not modify its own order if the parties agree that it
23 should do so even after the parties have left the state. The move of the parties and the

1 child from the state may have been of a very short distance and, although the parties no
2 longer reside in the issuing state, they may prefer to continue to have the child-support
3 order be governed by the same issuing tribunal because they continue to have a strong
4 affiliation with it. For example, the child-support order may have been issued by a
5 tribunal of Washington, D.C. Subsequently the obligee and child have moved to
6 Virginia, the obligor now resides in Maryland, and perhaps one or both parties continue
7 to be employed in Washington. Subsection (a)(2) accepts the possibility that under such
8 factual circumstances the parties reasonably may prefer to continue to deal with the
9 issuing tribunal as an exception to the general rules of CEJ for modifications of a
10 support order.

11 The other side of the coin follows logically. Just as subsection (a) defines the
12 retention of continuing, exclusive jurisdiction, by clear implication the subsection also
13 identifies how jurisdiction to modify may be lost. That is, if all the relevant persons—the
14 obligor, the individual obligee, and the child—have permanently left the issuing state,
15 absent an agreement the issuing tribunal no longer has an appropriate nexus with the
16 parties or child to justify the exercise of jurisdiction to modify its child-support order.
17 Further, the issuing tribunal will have no current evidence readily available to it about
18 the factual circumstances of anyone involved, and the taxpayers of that state will have
19 no reason to expend public funds on the process. Note, however, that the original order
20 of the issuing tribunal remains valid and enforceable. That order is in effect not only in
21 the issuing state, but also in those states in which the order has been registered. The
22 order also may be registered and enforced in additional states even after the issuing
23 tribunal has lost its power to modify its order, see Sections 601-604, *infra*. In sum, the

1 original order remains in effect until it is properly modified in accordance with the narrow
2 terms of Sections 609-612, *infra*.

3 Subsection (b)(1) explicitly provides that the parties may agree in a record that the
4 issuing tribunal should relinquish its continuing, exclusive jurisdiction to modify so that a
5 tribunal in another state may assume CEJ to modify the child-support order. It is
6 believed that such consent seldom occurs because of the almost universal desire of
7 each party to prefer his or her local tribunal. The principle that the parties should be
8 allowed to agree upon an alternate forum if they so choose also extends to a situation in
9 which all the parties and the child have left the issuing state and are in agreement that a
10 tribunal of the state in which only the movant resides shall assume modification
11 jurisdiction, see Section 611.

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

17 ***Related to Convention: art. 18. Limit on proceedings.***
18

19 **SECTION 206. CONTINUING JURISDICTION TO ENFORCE CHILD-SUPPORT**
20 **ORDER.**

21 (a) A tribunal of this ~~State~~ state that has issued a child-support order consistent with the law of
22 this ~~State~~ state may serve as an initiating tribunal to request a tribunal of another ~~State~~ state to enforce:

23 (1) the order if the order is the controlling order and has not been modified by a tribunal
24 of another ~~State~~ state that assumed jurisdiction pursuant to the {Uniform Interstate Family Support Act};
25 or

26 (2) a money judgment for arrears of support and interest on the order accrued before a

1 determination that an order **of a tribunal** of another ~~State~~ **state** is the controlling order.

2 (b) A tribunal of this ~~State~~ **state** having continuing jurisdiction over a support order may act as a
3 responding tribunal to enforce the order.

4 **Comment**

5 This section is the correlative of the continuing, exclusive jurisdiction, a.k.a. CEJ,
6 asserted in the preceding section. It makes the relatively subtle distinction between the
7 CEJ “to modify a support order” established in Section 205 and the “continuing
8 jurisdiction to enforce” established in this section. A keystone of UIFSA is that the power
9 to enforce the order of the issuing tribunal is not “exclusive” with that tribunal. Rather, on
10 request one or more responding tribunals may also exercise authority to enforce the
11 order of the issuing tribunal. Secondly, under the one-order-at-a-time system, the
12 validity and enforceability of the controlling order continues unabated until it is fully
13 complied with, unless it is replaced by a modified order issued in accordance with the
14 standards established by Sections 609-616. That is, even if the individual parties and
15 the child no longer reside in the issuing state, the controlling order remains in effect and
16 may be enforced by the issuing tribunal or any responding tribunal without regard to the
17 fact that the potential for its modification and replacement exists.

18 Subsection (a) authorizes the issuing tribunal to initiate a request for enforcement of
19 its order by a tribunal of another state if its order is controlling, see Section 207, or to
20 request reconciliation of the arrears and interest due on its order if another order is
21 controlling.

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

24 ***Related to Convention: art. 19. Scope of the Chapter.***
25

1 **SECTION 207. DETERMINATION OF CONTROLLING CHILD-SUPPORT ORDER.**

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

4 (b) If a proceeding is brought under this ~~{Act}~~ **[act]**, and two or more child-support orders have
5 been issued by tribunals of this ~~State~~ **state**, another ~~State~~ **state, or a foreign country** with regard to the
6 same obligor and same child, a tribunal of this ~~State~~ **state** having personal jurisdiction over both the
7 obligor and individual obligee shall apply the following rules and by order shall determine which order
8 controls **and must be recognized**:

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

11 (2) If more than one of the tribunals would have continuing, exclusive jurisdiction under
12 this ~~{Act}~~ **[act]**:

13 (A) an order issued by a tribunal in the current home ~~State~~ **state** of the child
14 controls; ~~but~~ **or**

15 (B) if an order has not been issued in the current home ~~State~~ **state** of the child,
16 the order most recently issued controls.

17 (3) If none of the tribunals would have continuing, exclusive jurisdiction under this ~~{Act}~~
18 **[act]**, the tribunal of this ~~State~~ **state** shall issue a child-support order, which controls.

19 (c) If two or more child-support orders have been issued for the same obligor and same child,
20 upon request of a party who is an individual or **that is** a support enforcement agency, a tribunal of this
21 ~~State~~ **state** having personal jurisdiction over both the obligor and the obligee who is an individual shall
22 determine which order controls under subsection (b). The request may be filed with a registration for
23 enforcement or registration for modification pursuant to ~~[Article]~~ 6, or may be filed as a separate
24 proceeding.

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

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

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

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

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

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

3 (g) Within [30] days after issuance of an order determining which is the controlling order, the
4 party obtaining the order shall file a certified copy of it in each tribunal that issued or registered an earlier
5 order of child support. A party or support enforcement agency obtaining the order that fails to file a
6 certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises.
7 The failure to file does not affect the validity or enforceability of the controlling order.

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

11 **Comment**

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

19 Sections 209-210, and especially Section 207 are designed to span the gulf between
20 the one-order system created by UIFSA and the multiple-order system previously in
21 place under RURESAs and URESAs. Necessarily transitional procedures must provide for
22 the eventual elimination of existing multiple support orders in an expeditious and
23 efficient manner. Although FFCCSOA was effective October 20, 1994 and all U.S.
24 jurisdictions enacted UIFSA by 1998, considerable time is required to pass before its
25 one-order system could be completely in place. For example, multiple 21-year child-
26 support orders issued for an infant in 1996 and 1997 would, by their terms, not end the
27 conflict until the first expires 2017—absent resolution of the conflict by a tribunal under

1 UIFSA, of course. Nonetheless, at least on the appellate level, the problem of multiple
2 orders is fast disappearing. The relatively simple procedure designed by this section to
3 identify a single viable order that will be entitled to prospective enforcement in every
4 state has worked exceedingly well.

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

8 Subsection (b) establishes the priority scheme for recognition and prospective
9 enforcement of a single order among existing multiple orders regarding the same
10 obligor, obligee, and child. A tribunal requested to sort out the multiple orders and
11 determine which one will be prospectively controlling of future payments must have
12 personal jurisdiction over the litigants in order to ensure that its decision is binding on all
13 concerned. For UIFSA to function, one order must be denominated as the controlling
14 order, and its issuing tribunal must be recognized as having continuing, exclusive
15 jurisdiction. In choosing among existing multiple orders, none of which can be
16 distinguished as being in conflict with the principles of UIFSA, subsection (b)(1) gives
17 first priority to an order issued by the only tribunal that is entitled to continuing, exclusive
18 jurisdiction under the terms of UIFSA, i.e., an individual party or the child continues to
19 reside in that state and no other state meets this criterion. If two or more tribunals would
20 have continuing, exclusive jurisdiction under the act, Subsection (b)(2) first looks to the
21 tribunal of the child's current home state. If that tribunal has not issued a support order,
22 subsection (b)(2) looks next to the order most recently issued. Finally, subsection (b)(3)
23 provides that if none of the existing multiple orders are entitled to be denominated as

1 the controlling order because none of the preceding priorities apply, the forum tribunal is
2 directed to issue a new order, given that it has personal jurisdiction over the obligor and
3 obligee. The new order becomes the controlling order, establishes the continuing,
4 exclusive jurisdiction of the tribunal, and fixes the support obligation and its
5 nonmodifiable aspects, primarily duration of support, see Sections 604 and 611(c), *infra*.
6 The rationale for creating a new order to replace existing multiple orders is that there is
7 no valid reason to prefer the terms of any one of the multiple orders over another in the
8 absence of a fact situation described in Subsections (b)(1) or (b)(2).

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

19 It is not altogether clear whether the terms of UIFSA apply to a strictly intrastate
20 case; that is, a situation in which multiple child-support orders have been issued by
21 multiple tribunals of a single state and the parties and the child continue to reside in that
22 state. This is not an uncommon situation, often traceable to the intrastate applicability of
23 RURESA. A literal reading of the statutory language suggests the section applies.

1 Further, FFCCSOA does not make a distinction regarding the tribunals that issued
2 multiple orders. If multiple orders have been issued by different tribunals in the home
3 state of the child, most likely the most recent will be recognized as the controlling order,
4 notwithstanding the fact that UIFSA Section 207 (b)(2)(B), and FFCCSOA 42 U.S.C.
5 Section 1738B(f)(3), literally do not apply. At the very least, this section, together with
6 FFCCSOA, provide a template for resolving such conflicts.

7 Subsection (c) clarifies that any party or a support enforcement agency may request
8 a tribunal of the forum state to identify the controlling order. That party is directed to fully
9 inform the tribunal of all existing child-support orders.

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

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

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

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

9 Section 207 presumes that the parties are accorded notice and opportunity to be
10 heard by the tribunal. It also presumes that the tribunal will be fully informed about all
11 existing orders when it is requested to determine which one of the existing multiple
12 child-support orders is to be accorded prospective enforcement. If this does not occur
13 and one or more existing orders is not considered by the tribunal, the finality of its
14 decision is likely to turn on principles of estoppel on a case-by-case basis.

15 Finally, subsection (h), affirms the concept that when a fully informed tribunal makes
16 a determination of the controlling order for prospective enforcement, or renders a
17 judgment for the amount of the consolidated arrears, the decision is entitled to full faith
18 and credit.

19 **SECTION 208. CHILD-SUPPORT ORDERS FOR TWO OR MORE OBLIGEES.** In
20 responding to registrations or [petitions] for enforcement of two or more child-support orders in effect at
21 the same time with regard to the same obligor and different individual obligees, at least one of which was
22 issued by a tribunal of another State state or a foreign country, a tribunal of this State state shall enforce
23 those orders in the same manner as if the orders had been issued by a tribunal of this State state.

24 **Comment**

Multiple orders may involve two or more families of the same obligor. Although all such orders are entitled to enforcement, practical difficulties frequently exist. For example, full enforcement of each of the multiple orders may exceed the maximum allowed for income withholding. The federal statute, 42 U.S.C. Section 666(b)(1), requires that to be eligible for the federal funding for enforcement, states must provide a ceiling for child support withholding expressed in a percentage that may not exceed the federal consumer credit code limitations on wage garnishment, 15 U.S.C. Section 1673(b). In order to allocate resources between competing families, UIFSA refers to state law. The basic principle is that one or more support orders for an out-of-state family of the obligor, and one or more orders for an in-state family, are 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, that is, preferential treatment for a local family over an out-of-state family is prohibited by local law. The addition of a foreign support order to the formula supplied by this section should assure that all children will have equal ability to obtain their share of child support.

SECTION 209. CREDIT FOR PAYMENTS. A tribunal of this ~~State~~ state shall credit amounts collected for a particular period pursuant to any child-support order against the amounts owed for the same period under any other child-support order for support of the same child issued by a tribunal of this state, or another State, or a foreign country.

Comment

Because of the multiple orders possible under the former reciprocal acts, the predecessor section in RURESA was nominally concerned with insuring that payments made on a particular order were credited toward the amounts due on all other orders. As a practical matter, however, very little attention was paid to that provision. No actual

1 mechanism was available to reconcile payments made on multiple orders other than the
2 obligor's record keeping, if any.

3 Quite a different situation is currently in place throughout the United States. The
4 advent and development of IV-D agencies has brought collection of arrears and interest
5 on those arrears to the forefront. Today electronic exchange of complex information is
6 virtually instantaneously available. Thus, deciphering the financial information available
7 to credit payments on one order against other orders is possible to a degree unknown in
8 the days of RURESA. For example, full payment of \$300 on an order of State C earns a
9 100% pro tanto discharge of the current support owed on a \$200 order of State A, and a
10 75% credit against a \$400 order of State B. Crediting payments against arrears on
11 multiple orders is more complex, and is subject to different constructions in various
12 states.

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

21 The issuing tribunal is ultimately responsible for the overall control of the
22 enforcement methods employed and for accounting for the payments made on its order
23 from multiple sources. Until that scheme is fully in place, however, it will be necessary to

1 continue to mandate pro tanto credit for actual payments made against all existing
2 orders. The addition to include a foreign support order in the calculation should assure
3 all payments of support are properly credited. This section does not attempt to impact
4 the way support paid in an individual case is apportioned or distributed between the
5 obligee and one or more states asserting a claim to the monies.

6
7 **SECTION 210. APPLICATION OF [ACT] TO NONRESIDENT SUBJECT TO**
8 **PERSONAL JURISDICTION.** A tribunal of this ~~State~~ state exercising personal jurisdiction over a
9 nonresident in a proceeding under this ~~[Act]~~ [act], under other law of this ~~State~~ state relating to a support
10 order, or recognizing a foreign support order ~~of a foreign country or political subdivision on the basis of~~
11 ~~comity~~ may receive evidence from ~~another~~ outside this State state pursuant to Section 316, communicate
12 with a tribunal ~~of another~~ outside this State state pursuant to Section 317, and obtain discovery through a
13 tribunal ~~of another~~ outside this State state pursuant to Section 318. In all other respects, [Articles] 3
14 through 6 7 do not apply, and the tribunal shall apply the procedural and substantive law of this ~~State~~
15 state.

16 **Comment**

17 Assertion of long-arm jurisdiction over a nonresident results in a one-state
18 proceeding without regard to the fact that one of the parties resides in a different state
19 or in a foreign country. On obtaining personal jurisdiction the tribunal must apply the law
20 of the forum. Once personal jurisdiction has been asserted over a nonresident, the
21 issuing tribunal retains continuing, exclusive jurisdiction to modify [CEJ], and continuing
22 jurisdiction to enforce, a support order in accordance with the provisions of the act. Of
23 course, it is far more common for a support order to be issued in conjunction with a
24 divorce or determination of parentage in which both the obligor and obligee are
25 residents of the forum than to be issued as a result of an assertion of long-arm
26 jurisdiction. Note that either the petitioner or the respondent may be the nonresident

1 party (either of whom may be the obligor or the obligee). Also note that absent this
2 provision, the ordinary intrastate substantive and procedural law of the forum would
3 apply to either fact situation without reference to the fact that one of the parties is a
4 nonresident. Thus, CEJ applies whether the matter at hand involves establishment of an
5 original support order or enforcement or modification of an existing order. In any event,
6 if one of the parties resides outside the forum state, the nonresident may avail himself
7 or herself of the special evidentiary and discovery provisions provided by UIFSA.

8 Except for the three sections specified, the provisions of UIFSA—its title labels it an
9 interstate act—are not applicable to an intrastate proceeding. The first exception allows
10 the tribunal to apply the special rules of evidence and procedure of Section 316 in order
11 to facilitate decision-making when one party resides in another state. The improved
12 interstate exchange of information enables the nonresident to participate as fully as
13 possible in the proceedings without the necessity of personally appearing in the forum
14 state. The same considerations account for authorizing interstate communications
15 between tribunals as per Section 317. Finally, the two-state discovery procedures of
16 Section 318 are made applicable in a one-state proceeding when a foreign tribunal can
17 assist in that process. In all other situations, the ordinary substantive and procedural law
18 of the forum state applies to a one-state proceeding. In sum, the parties and the tribunal
19 in a one-state case may utilize those two-state procedures that contribute to economy,
20 efficiency, and fair play.

21 ***Related to Convention: art. 20. Bases for recognition and enforcement.***
22

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

25 (a) A tribunal of this ~~State~~ state issuing a spousal-support order consistent with the law of this

1 ~~State~~ state has continuing, exclusive jurisdiction to modify the spousal-support order throughout the
2 existence of the support obligation.

3 (b) A tribunal of this ~~State~~ state may not modify a spousal-support order issued by a tribunal of
4 another ~~State~~ state or a foreign country having continuing, exclusive jurisdiction over that order under the
5 law of that ~~State~~ state or foreign country.

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

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

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

11 **Comment**

12 This is the only section in the act that deals specifically with spousal support. The
13 balance uses the term “support order” to indicate that spousal support and child support
14 are subject to the same rules. In other instances, child support is dealt with separately.

15 Treating an order for spousal support quite differently than an order for child support
16 is often justified. No doubt the most striking of these distinctions is that the issuing
17 tribunal retains continuing, exclusive jurisdiction over an order of spousal support
18 throughout the entire existence of the support obligation. This marks a radical departure
19 from RURESA, which treated spousal-support and child-support orders identically.
20 Under UIFSA, “interstate” modification of spousal support is limited to a procedure
21 whereby a proceeding may be initiated outside of the issuing state, but only the issuing
22 tribunal in the original state may modify the order under its law. This approach was
23 expected to have minimal effect on actual practice, a prediction that appears to have
24 been accurate. Interstate modification of pure spousal support was relatively rare under
25 RURESA, and plays almost no part in the activities of support enforcement agencies.

26 The prohibition of modification of spousal support by a nonissuing tribunal under
27 UIFSA is consistent with the principle that a tribunal should apply local law to such

1 cases to insure efficient handling and to minimize choice of law problems. Avoiding
2 conflict of law problems is almost impossible if a spousal-support order is subject to
3 modification in a second state. For example, states take widely varying views of the
4 effect on a spousal-support order of the obligee's remarriage or nonmarital cohabitation.
5 Making a distinction between spousal and child support is further justified because the
6 standards for modification of child support and spousal support are very different. In
7 most jurisdictions a dramatic improvement in the obligor's economic circumstances will
8 have little or no relevance in a proceeding seeking an upward modification of spousal
9 support, while a similar change in an obligor's situation typically is the primary basis for
10 an increase in child support. This disparity is founded on a policy choice that post-
11 divorce success of an obligor-parent should benefit the obligor's child, but not the
12 obligor's ex-spouse.

13 The amendment to subsection (b) ensures that the restriction on modification of an
14 out-of-state spousal-support order extends to a foreign order. At the same time,
15 subsection (b) provides that the question of continuing exclusive jurisdiction be resolved
16 under the law of the issuing tribunal. Thus, if a foreign spousal support order were
17 subject to modification in another country by the law of the issuing tribunal, this section
18 would permit modification in a tribunal of this state.

19 Further, UIFSA does not provide for shifting the continuing, exclusive jurisdiction
20 over a spousal-support order by mutual agreement. That procedure is limited to child
21 support under Section 205(b)(1). Note that the act is silent rather than preclusive on the
22 subject. If the parties wish to enter into such an agreement for a tribunal of another state
23 to modify a spousal support order, it is up to an individual state to decide whether to

1 recognize the agreement. A waiver of continuing, exclusive jurisdiction and subsequent
2 modification of spousal support by a tribunal of another state simply is not prohibited by
3 UIFSA, rather it is simply not explicitly authorized.

4 Another crucial difference in enforcing spousal support is that it does not receive
5 services from the support enforcement agency as a normal course. Rather, the
6 representation before a tribunal will most often be pro se or by private counsel.
7 However, IV-D services are generally available if the spousal support order was issued
8 in conjunction with a child-support order. The Convention contains the same limitation.

9 ***Related to Convention: art. 2. Scope.***
10

1 **ARTICLE 3**
2 **CIVIL PROVISIONS OF GENERAL APPLICATION**
3 **Introductory Comment**

4 This article adds a wide variety of procedural provisions to the statutory and
5 procedural rules for general and civil cases. If there is a conflict between those
6 provisions found for other litigation and UIFSA rules set forth in this article, obviously
7 UIFSA rules prevail. For example, it is unlikely that a state will have provision for
8 testimony by telephone or audiovisual means in a final hearing. Section 316 of this act
9 does create such a right for an out-of-state individual. Revisions in this article shift the
10 perspective slightly to accommodate the inclusion of a foreign support order in the
11 equation. Many, but not all, of the provisions in this article are based upon the fact that a
12 party does not “reside in this state.” Application of these provisions is not solely based
13 on whether the absent party resides in “another state,” as formerly was the case.
14 Rather, three distinct formulations are employed depending on the intended application
15 of the provision “residing in a state;” “residing in ... a foreign country;” or, “residing
16 outside this state” The third alternative is intentionally the broadest because it includes
17 persons residing anywhere and is not limited to persons residing in a “foreign country”
18 as defined in Section 102.

19
20 **SECTION 301. PROCEEDINGS UNDER [ACT].**

21 (a) Except as otherwise provided in this ~~[Act]~~ [act], this [article] applies to all proceedings under
22 this ~~[Act]~~ [act].

23 (b) An individual [petitioner] or a support enforcement agency may initiate a proceeding
24 authorized under this ~~[Act]~~ [act] by filing a [petition] in an initiating tribunal for forwarding to a
25 responding tribunal or by filing a [petition] or a comparable pleading directly in a tribunal of another
26 ~~State~~ state or a foreign country which has or can obtain personal jurisdiction over the [respondent].

1 **Comment**

2 Subsection (a) mandates application of the general provisions of this article to all
3 UIFSA proceedings, including those affecting a foreign support order.

4 The statement in subsection (b) is axiomatic that the tribunal in which a petition is
5 filed for establishment or enforcement of a support order, or for modification of a child-
6 support order, must be able to assert personal jurisdiction over the respondent. It is also
7 axiomatic that an individual petitioner requesting affirmative relief under this act submits
8 to the personal jurisdiction of the tribunal. Subsection (b) also continues reference to the
9 basic two-state procedure long-employed by the former reciprocal acts to establish a
10 support order in the interstate context. Direct filing of a petition in a state tribunal by an
11 individual or a support enforcement agency without reference to an initiating tribunal in
12 another state was introduced by UIFSA (1992). Although the filing of a petition in an
13 initiating tribunal to be forwarded to a responding tribunal is still recognized as an
14 available procedure, the direct filing procedure has proven to be one of the most
15 significant improvements in efficient interstate case management. The promulgation and
16 use of the federally mandated forms, Section 311(b), further serves to eliminate any role
17 for the initiating tribunal. Incidentally, the Convention contains approved forms for use in
18 international cases and recognition of the direct filing of a petition.

19 ***Related to Convention:*** art. 2. Scope; art. 10. Available applications; art. 19. Scope of
20 the chapter; art. 20. Bases for recognition and enforcement; art. 32. Enforcement under
21 internal law; art. 33. Non-discrimination; art. 34. Enforcement measures; 37. Direct
22 requests to competent authorities.
23

24 **SECTION 302. PROCEEDING BY MINOR PARENT.** A minor parent, or a guardian or other
25 legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the
26 minor's child.

1 **Comment**

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

6
7 **SECTION 303. APPLICATION OF LAW OF STATE.** Except as otherwise provided in this
8 ~~[Act]~~ **[act]**, a responding tribunal of this ~~State~~ **state** shall:

9 (1) apply the procedural and substantive law generally applicable to similar proceedings
10 originating in this ~~State~~ **state** and may exercise all powers and provide all remedies available in those
11 proceedings; and

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

14 **Comment**

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

1
2 **SECTION 304. DUTIES OF INITIATING TRIBUNAL.**

3 (a) Upon the filing of a [petition] authorized by this ~~[Act]~~ **[act]**, an initiating tribunal of this ~~State~~
4 **state** shall forward the [petition] and its accompanying documents:

5 (1) to the responding tribunal or appropriate support enforcement agency in the
6 responding ~~State~~ **state**; or

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

10 (b) If requested by the responding tribunal, a tribunal of this ~~State~~ **state** shall issue a certificate or
11 other document and make findings required by the law of the responding ~~State~~ **state**. If the responding
12 ~~State tribunal~~ is in a foreign country ~~or political subdivision~~, upon request the tribunal of this state shall
13 specify the amount of support sought, convert that amount into the equivalent amount in the foreign
14 currency under applicable official or market exchange rate as publicly reported, and provide any other
15 documents necessary to satisfy the requirements of the responding ~~State~~ foreign tribunal.

16 **Comment**

17 Subsection (a) was designed primarily to facilitate interstate enforcement between
18 UIFSA states and URESA and RURESAs, with some applicability to cases
19 involving foreign jurisdictions. After the nationwide enactment of UIFSA by 1998, see
20 Prefatory Note, *supra*, this subsection is little utilized.

21 Subsection (b), however, retains its utility with regard to a support order of a foreign
22 nation. Supplying documentation required by a foreign jurisdiction, which is not
23 otherwise required by UIFSA procedure, is appropriate in the international context. For
24 example, a venerable process in British Commonwealth countries is known provisional
25 and confirming orders. A “provisional order” is a statement of the nonbinding amount of
26 support being requested by a Canadian tribunal for establishment of a support order by
27 a state responding tribunal. A state responding tribunal will receive information about
28 the amount of support provisionally calculated by a tribunal in Canada. It needs to be

borne in mind that a request to establish support from a Canadian tribunal will be accomplished in accordance with the law of the responding state. Thus, the Canadian provisional order is informative, but not binding on the responding tribunal. An order issued by the responding tribunal, whether for the amount suggested in the provisional order or another amount based on the local law of the responding tribunal, is known as a confirming order. Similarly, the state support enforcement agency, knowing that a provisional order will be required by the Canadian tribunal, is directed to cooperate and provide a statement of the amount of support being provisionally requested.

The initiating tribunal of this state also has a duty to identify the amount of foreign currency equivalent to its request to the Canadian tribunal and a corresponding duty for a responding tribunal to convert the foreign currency into dollars if the foreign initiating tribunal has not done so, Section 305(f). The reference to “the applicable official or market exchange rate” takes into account the present practices of international money markets. A few countries continue to maintain an official exchange rate for their currency. The vast majority of countries recognize the fact that the value of their currency is subject to daily market fluctuations that are reported on the financial pages of many daily newspapers. Thus, in the example described above, a request for a specific amount of support in U.S. dollars, which is to be translated into Canadian dollars on a specific date, will inevitably have a variable value as the foreign currency rises or falls against the U.S. dollar.

Related to Convention: art. 31. *Decisions produced by the combined effect of provisional and confirmation orders.*

SECTION 305. DUTIES AND POWERS OF RESPONDING TRIBUNAL.

(a) When a responding tribunal of this ~~State~~ state receives a [petition] or comparable pleading

1 from an initiating tribunal or directly pursuant to Section 301(b), it shall cause the [petition] or pleading to
2 be filed and notify the [petitioner] where and when it was filed.

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

5 (1) ~~issue~~ **establish** or enforce a support order, modify a child-support order, determine
6 the controlling child-support order, or determine parentage **of a child**;

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

9 (3) order income withholding;

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

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

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

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

14 (8) order an obligor to keep the tribunal informed of the obligor's current residential
15 address, **electronic-mail address**, telephone number, employer, address of employment, and telephone
16 number at the place of employment;

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

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

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

22 (12) grant any other available remedy.

23 (c) A responding tribunal of this ~~State~~ **state** shall include in a support order issued under this
24 ~~{Act}~~ **[act]**, or in the documents accompanying the order, the calculations on which the support order is
25 based.

26 (d) A responding tribunal of this ~~State~~ **state** may not condition the payment of a support order
27 issued under this ~~{Act}~~ **[act]** upon compliance by a party with provisions for visitation.

28 (e) If a responding tribunal of this ~~State~~ **state** issues an order under this ~~{Act}~~ **[act]**, the tribunal
29 shall send a copy of the order to the [petitioner] and the [respondent] and to the initiating tribunal, if any.

30 (f) If requested to enforce a support order, arrears, or judgment or modify a support order stated
31 in a foreign currency, a responding tribunal of this ~~State~~ **state** shall convert the amount stated in the
32 foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate
33 as publicly reported.

34 Comment

1 Subsection (f) is designed to facilitate enforcement of a foreign support order.

2 ***Related to Convention:*** art. 19. Scope of the Chapter; art. 34. Enforcement
3 measures; art. 35. Transfer of funds; art. 43. Recovery of costs..
4

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

9 **Comment**

10 This section directs a tribunal receiving UIFSA documents in error to forward the
11 original documents to their proper destination without undue delay, whether the
12 appropriate tribunal is located in the same state or elsewhere. This section was
13 originally intended to apply both to initiating and responding tribunals receiving such
14 documents, but the practical elimination of the role of initiating tribunals under modern
15 practice now limits the notice requirement to the petitioner, i.e., the individual party or
16 support enforcement agency, that filed (or misfiled) the document directly. For example,
17 if a tribunal is inappropriately designated as the responding tribunal, it shall forward the
18 petition to the appropriate responding tribunal wherever located, if known, and notify the
19 petitioner of its action. Such a procedure is much to be preferred to returning the
20 documents to the petitioner to begin the process anew. Cooperation of this sort will
21 facilitate the ultimate goals of the act. Although by its terms this section applies only to a
22 tribunal of this state, it can be anticipated that the support enforcement agency will also
23 assist in transferring documents to the appropriate tribunal.

24 **SECTION 307. DUTIES OF SUPPORT ENFORCEMENT AGENCY.**

25 Alternative A

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

1 Alternative B

2 (a) In a proceeding under this [act], a support enforcement agency of this state, upon request:

3 (1) shall provide services to a [petitioner] residing in a state;

4 (2) shall provide services to a [petitioner] requesting services through a central authority
5 of a foreign country as described in Section 102(5)(A) or (D); and

6 (3) may provide services to a [petitioner] who is an individual not residing in a state.

7 End of Alternatives

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

10 (1) take all steps necessary to enable an appropriate tribunal ~~in this State or another State~~
11 of this state, another state, or a foreign country to obtain jurisdiction over the [respondent];

12 (2) request an appropriate tribunal to set a date, time, and place for a hearing;

13 (3) make a reasonable effort to obtain all relevant information, including information as
14 to income and property of the parties;

15 (4) within [two] days, exclusive of Saturdays, Sundays, and legal holidays, after receipt
16 of notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the
17 [petitioner];

18 (5) within [two] days, exclusive of Saturdays, Sundays, and legal holidays, after receipt
19 of communication in a record from the [respondent] or the [respondent's] attorney, send a copy of the
20 communication to the [petitioner]; and

21 (6) notify the [petitioner] if jurisdiction over the [respondent] cannot be obtained.

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

24 (1) to ensure that the order to be registered is the controlling order; or

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

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

32 (e) A support enforcement agency of this ~~State~~ state shall [issue or] request a tribunal of this ~~State~~
33 state to issue a child-support order and an income-withholding order that redirect payment of current
34 support, arrears, and interest if requested to do so by a support enforcement agency of another ~~State~~ state

1 pursuant to Section 319 of the Uniform Interstate Family Support Act.

2 (f) This ~~[Act]~~ [act] does not create or negate a relationship of attorney and client or other
3 fiduciary relationship between a support enforcement agency or the attorney for the agency and the
4 individual being assisted by the agency.

5 Legislative Note: The state legislature may adopt Alternative A at any time in order to maintain the
6 practice under current law.

7
8 The state legislature may choose to adopt Alternative B if the federal legislation enabling the
9 entry into force of the Convention contains a provision authorizing an option for the state enforcement
10 agency to accept or reject an application for services originating in a foreign country that is not a country
11 defined in Section 102(5)(A) or (D), a foreign reciprocating country or a foreign treaty country
12 respectively.

13 **Comment**

14 At the time this comment is being written, it is unclear whether Alternative A or
15 Alternative B will be available in their present form. The focus of subsection (a) is on
16 providing services to a petitioner. Either the obligee or the obligor may request services,
17 and that request may be in the context of the establishment of an initial child-support
18 order, enforcement or review and adjustment of an existing child-support order, or a
19 modification of that order (upward or downward). Note that the section does not
20 distinguish between child support and spousal support for purposes of providing
21 services. Note also, the services available may differ significantly; for example,
22 modification of spousal support is limited to the issuing tribunal, see Section 205(f),
23 *supra*.

24 Alternative A continues the longstanding rule that this state's support enforcement
25 agency shall provide services upon request to a petitioner seeking relief under this act.
26 Under Alternative B, the support agency may exercise discretion to provide assistance
27 to an applicant residing overseas in a country other than a reciprocating country or
28 Convention country. The lack of services, of course, may impact the means by which an
29 individual is able to obtain assistance in pursuing an action in the appropriate tribunal.

1 Alternative B, which leaves the matter to state legislative choice rather than federal
2 policy, will be available only if an enabling statute for the Convention authorizes such
3 discretion by state enforcement agencies.

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

6 Subsections (c) is a procedural clarification reflecting actual practice of the support
7 agencies developed after years of experience with the act. It imposes a duty on all
8 support enforcement agencies to facilitate the UIFSA one-order world by actively
9 searching for cases with multiple orders and obtaining a determination of the controlling
10 order as expeditiously as possible. This agency duty correlates to new subsection
11 602(d) regarding the registration process and cases with multiple orders.

12 Subsection (d) imposes a duty of currency conversion on a support enforcement
13 agency similar to that imposed on an initiating tribunal in Section 304(b).

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

17 Subsection (f) explicitly states that UIFSA neither creates nor rejects the
18 establishment of an attorney-client or fiduciary relationship between the support
19 enforcement agency and a petitioner receiving services from that agency. This once-
20 highly controversial issue is left to otherwise applicable state law, which generally has
21 concluded that attorneys employed by a state support enforcement agency do not form
22 an attorney-client relationship with either the parties or the child as the ultimate obligee.

23 ***Related to Convention: art. 35. Transfer of funds.***

SECTION 308. DUTY OF [STATE OFFICIAL OR AGENCY].

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

Comment

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

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

(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~~ **[act]**.

- (1) compile and maintain a current list, including addresses, of the tribunals in this State

1 state which have jurisdiction under this ~~[Act]~~ [act] and any support enforcement agencies in this ~~State~~
2 state and transmit a copy to the state information agency of every other ~~State~~ state;

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

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

9 (4) obtain information concerning the location of the obligor and the obligor's property
10 within this ~~State~~ state not exempt from execution, by such means as postal verification and federal or
11 state locator services, examination of telephone directories, requests for the obligor's address from
12 employers, and examination of governmental records, including, to the extent not prohibited by other law,
13 those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses,
14 and social security.

15 **Comment**

16 Subsection (a) identifies the central information agency.

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

24 **SECTION 311. PLEADINGS AND ACCOMPANYING DOCUMENTS.**

25 (a) In a proceeding under this ~~[Act]~~ [act], a [petitioner] seeking to establish a support order, to
26 determine parentage of a child, or to register and modify a support order of a tribunal of another ~~State~~
27 state or a foreign country must file a [petition]. Unless otherwise ordered under Section 312, the [petition]
28 or accompanying documents must provide, so far as known, the name, residential address, and social
29 security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex,
30 residential address, social security number, and date of birth of each child for whose benefit support is

1 sought or whose parentage is to be determined. Unless filed at the time of registration, the [petition] must
2 be accompanied by a copy of any support order known to have been issued by another tribunal. The
3 [petition] may include any other information that may assist in locating or identifying the [respondent].

4 (b) The [petition] must specify the relief sought. The [petition] and accompanying documents
5 must conform substantially with the requirements imposed by the forms mandated by federal law for use
6 in cases filed by a support enforcement agency.

7 **Comment**

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

17 Note, however, that a request for registration of a foreign support order for which the
18 Convention is in force is subject to Section 706. This is due to the fact that the list of
19 documents comprising the required record in subsection (a) differs in a measurable
20 degree with Convention arts. 11 and 25.

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

efficient processing of UIFSA proceedings. Not coincidentally, the Convention also contains annexed forms for international use.

***Related to Convention:** art. 10. Available applications; Article 11. Application contents; Article 12. Transmission, receipt and processing of applications and cases through Central Authorities; art. 25. Documents; Annex 1. Transmittal form under Article 12(2); Annex 2. Acknowledgement form under Article 12(3)*

SECTION 312. NONDISCLOSURE OF INFORMATION IN EXCEPTIONAL CIRCUMSTANCES. If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

Comment

UIFSA (1992) recognized that enforcement of child support across state lines might have an unintended consequence of putting an obligee or child at risk if domestic violence was involved in the past. This section is the latest version of the statutory formulation originally developed in UIFSA (1992), see UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT, Section 209. Public awareness of and sensitivity to the dangers of domestic violence has significantly increased since interstate enforcement of support originated. This section authorizes confidentiality in instances where there is a serious risk of domestic violence or child abduction.

Although local law generally governs the conduct of the forum tribunal, state law may not provide for maintaining secrecy about the exact whereabouts of a litigant or other information ordinarily required to be disclosed under state law, i.e., Social Security number of the parties or the child. If so, this section creates a confidentiality provision that is particularly appropriate in the light of the intractable problems associated with

interstate parental kidnapping, see the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. Section 1738A.

Related to Convention: art. 38. Protection of personal data; art. 39. Confidentiality; art. 40. Non-disclosure of information.

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 of this state 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 responding ~~State~~ state or foreign country, 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, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

Comment

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

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

Related to Convention: art. 14. Effective access to procedures; art. 43. Recovery of costs.

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

Comment

Comment

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

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

6
7 **SECTION 315. NONPARENTAGE AS DEFENSE.** A party whose parentage of a child has
8 been previously determined by or pursuant to law may not plead nonparentage as a defense to a
9 proceeding under this ~~{Act}~~ **[act]**.

10 **Comment**

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

19 In sum, this section mandates that a parentage decree rendered by another tribunal
20 “pursuant to law” is not subject to collateral attack in a UIFSA proceeding. Of course, an
21 attack on an alleged final order based on a fundamental constitutional defect in the
22 parentage decree is permissible in the forum state. For example, a responding tribunal
23 may find that a foreign tribunal acted unconstitutionally by denying a party due process
24 because of a failure of notice and opportunity to be heard or a lack of personal

1 jurisdiction over a party who did not answer or appear. Insofar as the latter ground is
2 concerned, the universal enactment of the long-arm statute asserting personal
3 jurisdiction over a respondent if the child “may have been conceived” in the forum state
4 may greatly reduce successful attacks on a parentage determination, see Section
5 201(a)(6), *supra*.

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

16 **SECTION 316. SPECIAL RULES OF EVIDENCE AND PROCEDURE.**

17 (a) The physical presence of a nonresident party who is an individual in a tribunal of this ~~State~~
18 state is not required for the establishment, enforcement, or modification of a support order or the rendition
19 of a judgment determining parentage of a child.

20 (b) An affidavit, a document substantially complying with federally mandated forms, or a
21 document incorporated by reference in any of them, which would not be excluded under the hearsay rule
22 if given in person, is admissible in evidence if given under penalty of perjury by a party or witness
23 residing ~~in another~~ outside this State state.

24 (c) A copy of the record of child-support payments certified as a true copy of the original by the
25 custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted
26 in it, and is admissible to show whether payments were made.

27 (d) Copies of bills for testing for parentage of a child, and for prenatal and postnatal health care of

1 the mother and child, furnished to the adverse party at least ~~ten~~ [10] days before trial, are admissible in
2 evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and
3 customary.

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

7 (f) In a proceeding under this ~~{Act}~~ [act], a tribunal of this ~~State state~~ shall permit a party or
8 witness residing ~~in another~~ outside this State state to be deposed or to testify under penalty of perjury by
9 telephone, audiovisual means, or other electronic means at a designated tribunal or other location ~~in that~~
10 ~~State~~. A tribunal of this ~~State state~~ shall cooperate with other tribunals ~~of other States~~ in designating an
11 appropriate location for the deposition or testimony.

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

14 (h) A privilege against disclosure of communications between spouses does not apply in a
15 proceeding under this ~~{Act}~~ [act].

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

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

20 **Comment**

21 Note that the special rules of evidence and procedure are applicable to a party or
22 witness “residing outside this state,” substituting for “residing in another state.” This is
23 the broadest application possible because the utility of these special rules is not limited
24 to parties in other states, or in foreign countries, as defined in the act, but extends to an
25 individual residing anywhere. This extremely broad application of the special rules is to
26 facilitate the processing of a support order in this state or elsewhere. This section
27 combines many time-tested procedures with innovative methods for gathering evidence
28 in interstate cases.

1 Subsection (a) ensures that a nonresident petitioner or a nonresident respondent
2 may fully participate in a proceeding under the act without being required to appear
3 personally.

4 Subsection (b) recognizes the pervasive effect of the federal forms promulgated by
5 the Office of Child Support Enforcement, which replace the necessity of swearing to a
6 document “under oath” with the simpler requirement that the document be provided
7 “under penalty of perjury,” as has long been required by federal income tax form 1040.

8 Subsections (b) through (f) provide special rules of evidence designed to take into
9 account the virtually unique nature of the interstate proceedings under this act. These
10 subsections provide exceptions to the otherwise guiding principle of UIFSA, i.e., local
11 procedural and substantive law should apply. Because the out-of-state party, and that
12 party's witnesses, necessarily do not ordinarily appear in person at the hearing,
13 deviation from the ordinary rules of evidence is justified in order to assure that the
14 tribunal will have available to it the maximum amount of information on which to base its
15 decision. The intent throughout these subsections is to eliminate by statute as many
16 potential hearsay problems as possible in interstate litigation, with the goal of providing
17 each party with the means to present evidence, even if not physically present.

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

22 Subsections (e) and (f) encourage tribunals and litigants to take advantage of
23 modern methods of communication in interstate support litigation; most dramatically, the

1 out-of-state party is authorized to testify by telephone and supply documents by fax.
2 One of the most useful applications of these subsections is to provide an enforcing
3 tribunal with up-to-date information concerning the amount of arrears.

4 Subsection (f) unambiguously mandates that telephone or audiovisual testimony in
5 depositions and hearings must be allowed. At the very least, every relevant courtroom
6 must be equipped with a speaker phone. In a day when laptop computers often come
7 equipped with a video camera, live testimony from a remote location is not only
8 possible, but almost as reliable as if the testimony was given in person. No doubt a
9 demeanor is better judged in person than by viewing a video screen, but the latter is
10 certainly preferable to only a disembodied voice.

11 Subsection (g) codifies the rule in effect in many states that in civil litigation an
12 adverse inference may be drawn from a litigant's silence—that restriction of the Fifth
13 Amendment does not apply. A related analogy is that a refusal to submit to genetic
14 testing may be admitted into evidence and a trier of fact may resolve the question of
15 parentage against the refusing party on the basis of an inference that the results of the
16 test would have been unfavorable to the interest that party.

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

19 ***Related to Convention:*** art. 13. Means of communication; art. 14. Effective access
20 to procedures; art. 29. Physical presence of the child or the applicant not required.
21

22 **SECTION 317. COMMUNICATIONS BETWEEN TRIBUNALS.** A tribunal of this State
23 ~~state~~ may communicate with a tribunal of another outside this State ~~state or foreign country or political~~
24 ~~subdivision~~ in a record or by telephone, electronic mail, or other means, to obtain information concerning
25 the laws, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding ~~in~~
26 ~~the other State or foreign country or political subdivision.~~ A tribunal of this State state may furnish

1 similar information by similar means to a tribunal of another outside this State state or foreign country or
2 political subdivision.

3 **Comment**

4 This section was an innovation in UIFSA (1992) in response to complaints about
5 lack of communication between states. It was derived from UCCJA § 7(d) authorizing
6 communication between tribunals in order to facilitate decisions. The amendment in
7 UIFSA (2008) not only expands the authorization to world-wide scope, i.e., “outside this
8 state,” but specifically adds email to the select modes of communication. Broad
9 cooperation by tribunals is strongly encouraged in order to expedite establishment and
10 enforcement of a support order. American judges are very familiar with this procedure. It
11 remains to be seen whether overseas communication between judges will be received
12 with similar cooperation.

13
14 **SECTION 318. ASSISTANCE WITH DISCOVERY.** A tribunal of this state may:

15 (1) request a tribunal of another outside this State state to assist in obtaining discovery; and

16 (2) upon request, compel a person over ~~whom~~ which it has jurisdiction to respond to a discovery
17 order issued by a tribunal of another outside this State state.

18 **Comment**

19 This section takes another logical step to facilitate interstate and international
20 cooperation by enlisting the power of the forum to assist a tribunal of another state or
21 country with the discovery process. The grant of authority is quite broad, enabling the
22 tribunal of the enacting state to fashion its remedies to facilitate discovery consistent
23 with local practice.

1

2 **SECTION 319. RECEIPT AND DISBURSEMENT OF PAYMENTS.**

3 (a) A support enforcement agency or tribunal of this ~~State~~ state shall disburse promptly any
4 amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall
5 furnish to a requesting party or tribunal of another ~~State~~ state or a foreign country a certified statement by
6 the custodian of the record of the amounts and dates of all payments received.

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

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

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

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

18 **Comment**

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

24 As an exception to the usual provisions in Article 3, subsections (b) and (c) are
25 applicable only to interstate cases. The procedure described was inspired by the Office
26 of Child Support Enforcement (OCSE), U.S. Department of Health and Human
27 Services, which is designed to speed up receipt of support payments. Support
28 enforcement agencies are directed to cooperate in the efficient and expeditious

1 collection and transfer of child support from obligor to obligee. States may choose
2 whether only the tribunal that issued the support order may order redirection of support
3 payments, or whether the support enforcement agency of the state that issued the
4 support order is also authorized to render such an order. Under either approach, the
5 request for such redirection that must be acted upon may only be made by a support
6 enforcement agency that is subject to the federal regulations regarding payment of child
7 support through a state disbursement unit. The basic idea is that redirection of
8 payments will be facilitated, with the proviso that the issuing tribunal be kept informed
9 as to the disposition of the payments made under its order.

10

ARTICLE 4
ESTABLISHMENT OF SUPPORT ORDER OR DETERMINATION OF
PARENTAGE

INTRODUCTORY COMMENT

A fundamental principle of U.S. jurisprudence is that our courts are open to all litigants with a valid cause of action. This article makes clear the principle applies to support actions, whether initiated by residents of the United States or residents of foreign nations.

Related to Convention: art. 11. Application contents; art. 14. Effective access to procedures; art. 15. Free legal assistance for child support applications; art. 16. Declaration to permit use of child-centered means test; art. 17. Applications not qualifying under 15 or 16; art. 20. Bases for recognition and enforcement; art. 25. Documents; art. 27. Findings of fact; art. 28. No review of the merits; art. 37. Direct requests to competent authorities; art. 56. Transitional provisions.

SECTION 401. [PETITION] TO ESTABLISH SUPPORT ORDER.

(a) If a support order entitled to recognition under this ~~[Act]~~ [act] has not been issued, a responding tribunal of this ~~State~~ state with personal jurisdiction over the parties may issue a support order if:

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

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

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

1 (8) an individual who has been ordered to pay child support in a previous proceeding and
2 the order has not been reversed or vacated.

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

6 **Comment**

7 This section authorizes a responding tribunal of this state to issue temporary and
8 permanent support orders binding on an obligor over whom the tribunal has personal
9 jurisdiction when the person or entity requesting the order is “outside this state,” i.e.,
10 anywhere else in the world. UIFSA does not permit such orders to be issued when
11 another support order exists, thereby prohibiting a second tribunal from establishing
12 another support order and the accompanying continuing, exclusive jurisdiction over the
13 matter, see *Sections 205 and 206, supra*.

14
15 **SECTION 402. PROCEEDING TO DETERMINE PARENTAGE.** A tribunal of this state
16 authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to
17 determine parentage of a child brought under this [act] or a law or procedure substantially similar to this
18 [act].

19 **Comment**

20 This article authorizes a “pure” parentage action in the interstate context, i.e., an
21 action not joined with a claim for support. The mother, an alleged father of a child, or a
22 support enforcement agency may bring such an action. Typically an action to determine
23 parentage across a state line or international border will also seek to establish a support
24 order, see Section 401. An action to establish parentage under UIFSA is to be treated
25 identically to such an action brought in the responding state.

26 In a departure from the rest of this act, in UIFSA (2001) the term “tribunal” was
27 replaced by “court” in this section. The several states have a variety of combinations of

1 judicial or administrative entities that are authorized to establish, enforce, and modify a
2 child-support order. Because the UNIFORM PARENTAGE ACT (2000) restricts parentage
3 determinations to “a court,” see UPA (2000) Section 104, the drafters took the view that
4 only a judicial officer should determine parentage as a matter of public policy. This
5 conclusion was in error insofar as some states are concerned and is reversed in this
6 iteration of the act.

7 ***Related to Convention:*** art. 2. Scope; art. 6. Specific functions of Central
8 Authorities; art. 10. Available applications.
9

1 **ARTICLE 5**
2 **ENFORCEMENT OF SUPPORT ORDER OF ANOTHER**
3 **STATE WITHOUT REGISTRATION**
4

5 **Introductory Comment**

6 Except as provided in Section 507, the provisions of this article only apply to
7 interstate cases and do not apply to an income withholding order from a foreign country.
8 Indeed, income withholding orders from foreign countries are quite rare at this time,
9 although instances of that enforcement remedy are expected to increase in the near
10 future. With that one exception, the article governs direct filing of an income withholding
11 order from one state to an employer in another state. Employers in the United States
12 are quite used to receiving such orders, but surely are not used to seeing such orders
13 from foreign nations. That process should be limited to the support enforcement agency
14 process, which is what is provided for in Section 507, *infra*.

15
16 **SECTION 501. EMPLOYER'S RECEIPT OF INCOME-WITHHOLDING ORDER OF**
17 **ANOTHER STATE.** An income-withholding order issued in another ~~State~~ state may be sent by or on
18 behalf of the obligee, or by the support enforcement agency, to the person defined as the obligor's
19 employer under [the income-withholding law of this ~~State~~ state] without first filing a [petition] or
20 comparable pleading or registering the order with a tribunal of this ~~State~~ state.

21 **Comment**

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

1 clarifying amendments in 2001.

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

14 In sum, the process contemplated in this article is direct “notification” of an employer
15 in another state of a withholding order without the involvement of initiating or responding
16 tribunals. Therefore, receipt of a copy of a withholding order by facsimile, regular first
17 class mail, registered or certified mail, or any other type of direct notice is sufficient to
18 provide the requisite notice to trigger direct income withholding in the absence of a
19 contest by the employee-obligor. This process is now widely used by not only child
20 support enforcement agencies, but also by private collection agencies or private
21 attorneys acting on behalf of obligees.

22 ***Related to Convention:*** Except as provided in Section 507. Administrative
23 Enforcement of Orders, none of the sections in Article 5 are intended to apply to foreign
24 support orders. While it is appropriate for U.S. employers to enforce sister state income
25 withholding orders routinely, enforcement of the wide variety of possible foreign support

1 *orders provides too many complexities and challenges to require an employer to*
2 *interpret and enforce ostensible foreign income-withholding orders.*
3

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

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

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

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

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

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

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

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

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

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

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

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

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

30 **Comment**

31 In 1996 major employers and national payroll associations urged NCCUSL to supply
32 more detail regarding the rights and duties of an employer on receipt of an income-
33 withholding order from another state. The Conference obliged with amendments to

1 UIFSA establishing a series of steps for employers to follow.

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

10 At this point neither an initiating nor a responding tribunal is directly involved. The
11 withholding order may have been forwarded by the obligee, the obligee's attorney, or
12 the out-of-state IV-D agency. In fact, there is no prohibition against anyone sending a
13 valid copy of an income-withholding order, even a stranger to the litigation, such as the
14 child's grandparent. Subsection (a) does not specify the method for sending this
15 relatively informal notice for direct income withholding, but rather makes the assumption
16 that the employer's communication to the employee regarding receipt of the order will
17 cause an employee-obligor to act to prevent a wrongful invasion of his or her income if it
18 is not owed as current child support or arrears.

19 Subsection (b) directs an employer of the enacting state to recognize a withholding
20 order of a sister state, subject to the employee's right to contest the validity of the order
21 or its enforcement. Prior to the promulgation of UIFSA, agencies in several states
22 adopted a procedure of sending direct withholding requests to out-of-state employers. A
23 contemporaneous study by the federal General Accounting Office reported that

1 employers in a second state routinely recognized withholding orders of sister states
2 despite an apparent lack of statutory authority to do so. UIFSA marked the first official
3 sanction of this practice. Subsection (b) does not define “regular on its face,” but the
4 term should be liberally construed, see *U.S. v. Morton*, 467 U.S. 822 (1984) (“legal
5 process regular on its face”). The rules governing intrastate procedure and defenses for
6 withholding orders will apply to interstate orders.

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

23 Subsection (c)(1) directs that the amount and duration of periodic payments of

1 current child support must be stated in a sum certain in order to elicit compliance. The
2 amount of current support and duration of the support obligation are fixed by the
3 controlling order and should be stated in the withholding order so that the employer is
4 informed of the date on which the withholding is anticipated to terminate. The “sum
5 certain” requirement is crucial to facilitating the employer’s compliance. For example, an
6 order for a “percentage of the obligor’s net income,” does not satisfy this requirement
7 and is not entitled to compliance from an employer receiving an interstate income-
8 withholding order.

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

15 Subsection (c)(3) provides that medical support for the child must be stated either by
16 a periodic cash payment or, alternatively, by an order directing the employee-obligor to
17 provide health insurance coverage from his employment. In the absence of an order for
18 payment of a sum certain, an order for medical support as child support requires the
19 employer to enroll the obligor’s child for coverage if medical insurance is available
20 through the obligor’s employment. Failure to enroll the child should elicit, at the least,
21 registration of the order for enforcement in the responding state, to be implemented by
22 an order of a tribunal directing the employer to comply. Because the employer is so
23 directed by the medical support order, enrollment of the child in the health care plan at

1 the employee-obligor's expense is not dependent on the obligor's consent, any more
2 than withholding a sum certain from the obligor's income is subject to a veto. It is up to
3 the employee-obligor to assert any defense to prevent the employer from abiding by the
4 medical support order.

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

7 Subsection (c)(5) requires that the amount of periodic payments for arrears and
8 interest on arrears also must be stated as a sum certain. If the one-order system is to
9 function properly, the issuing tribunal ultimately must be responsible to account for
10 payments and maintain the record of arrears and interest rate on arrears. Full
11 compliance with the support order will only be achieved when the issuing tribunal
12 determines that the obligation no longer exists. The amount of periodic payments for
13 arrears is also fixed by the controlling order unless the law of the issuing state or the
14 state where the order is being enforced provides a procedure for redetermination of the
15 amount.

16 Subsection (d) identifies those narrow provisions in which the law of the employee's
17 work state applies, rather than the law of the issuing state. A large employer will almost
18 certainly have a number of employees subject to income-withholding orders. From the
19 employer's perspective, the procedural requirements for compliance should be uniform
20 for all of those employees. Certain issues should be matters for the law of the
21 employee's work state, such as the employer's fee for processing, the maximum
22 amount to be withheld, and the time in which to comply. The latter necessarily includes
23 the frequency with which income withholding must occur. This is also consistent with

1 regard to the tax consideration imposed by choice of law considerations. The only
2 element in the list of local laws identified in subsection (d) which stirred any controversy
3 whatsoever was the fact that the maximum amount permitted to be withheld is to be
4 subject to the law of the employee's work state. Demands of equal treatment for all
5 obligees, plus the practical concern that large employers require uniform computer
6 programming mandate this solution.

7
8 **SECTION 503. EMPLOYER'S COMPLIANCE WITH TWO OR MORE INCOME-**
9 **WITHHOLDING ORDERS.** If an obligor's employer receives two or more income-withholding orders
10 with respect to the earnings of the same obligor, the employer satisfies the terms of the orders if the
11 employer complies with the law of the ~~State~~ state of the obligor's principal place of employment to
12 establish the priorities for withholding and allocating income withheld for two or more child-support
13 obligees.

14 **Comment**

15 Consistent with the act's general problem-solving approach, the employer is directed
16 to deal with multiple income orders for multiple families in the same manner as required
17 by local law for orders of the forum state. In addition to income withholding orders
18 issued by tribunals, state support enforcement agencies issue income withholding
19 orders to enforce a foreign child-support order.

20
21 **SECTION 504. IMMUNITY FROM CIVIL LIABILITY.** An employer ~~who~~ that complies
22 with an income-withholding order issued in another ~~State~~ state in accordance with this [article] is not
23 subject to civil liability to an individual or agency with regard to the employer's withholding of child
24 support from the obligor's income.

25 **Comment**

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

4
5 **SECTION 505. PENALTIES FOR NONCOMPLIANCE.** An employer ~~who~~ that willfully
6 fails to comply with an income-withholding order issued ~~by~~ in another ~~State~~ state and received for
7 enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued
8 by a tribunal of this ~~State~~ state.

9 **Comment**

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

13
14 **SECTION 506. CONTEST BY OBLIGOR.**

15 (a) An obligor may contest the validity or enforcement of an income-withholding order issued in
16 another ~~State~~ state and received directly by an employer in this ~~State~~ state by registering the order in a
17 tribunal of this ~~State~~ state and filing a contest to that order as provided in [Article] 6, or otherwise
18 contesting the order in the same manner as if the order had been issued by a tribunal of this ~~State~~ state.

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

- 20 (1) a support enforcement agency providing services to the obligee;
21 (2) each employer that has directly received an income-withholding order relating to the
22 obligor; and
23 (3) the person designated to receive payments in the income-withholding order or, if no
24 person is designated, to the obligee.

1 **Comment**

2 This section incorporates into the interstate context the local law regarding defenses
3 an employee-obligor may raise to a income-withholding order. Generally, states have
4 accepted the IV-D requirement that the only viable defense is a mistake of fact, 42
5 U.S.C. Section 666(b)(4)(A). This apparently includes errors in the amount of current
6 support owed, in the amount of accrued arrearage, or mistaken identity of the alleged
7 obligor. Other grounds are excluded, such as inappropriate amount of support ordered,
8 changed financial circumstances of the obligor, or lack of visitation. H.R. Rep. No. 98-
9 527, 98th Cong., 1st Sess. 33 (1983). The latter claims must be pursued in a separate
10 proceeding in the appropriate state, not in a UIFSA proceeding.

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

17 Situations do arise where an employer has received multiple withholding notices
18 regarding the obligor-employee and the same obligee. The notices may even allege
19 conflicting amounts due, especially for payments on arrears. Additionally, many
20 employees claim to have only learned of default orders when the withholding notice is
21 delivered to the employer. This claim often is based on an assertion that the order being
22 enforced through income withholding was entered without personal jurisdiction over the

1 obligor-employee. A variety of similar fundamental defenses may be asserted, such as
2 mistaken identity, full payment, another order controlling, etc.

3 Subsection (a) provides for a simple, efficient, and cost-effective method for an
4 employee-alleged obligor to assert a defense. For example, if the existence of a support
5 obligation is acknowledged but the details are at issue, the obligor may register the
6 underlying “controlling” support order with a local tribunal and seek temporary protection
7 pending resolution of the contest. This may be accomplished pro se, employment of
8 private counsel, or by a request for services from the child support enforcement agency
9 of the responding state. Some states provide administrative procedures for challenging
10 the income withholding that may provide quicker resolution of a dispute than a judicially-
11 based registration and hearing process. In the absence of expeditious action by the
12 employee to assert a defense and contest the direct filing of a notice for withholding,
13 however, the employer must begin income withholding in a timely fashion.

14 In contrast to the multiple-order system of RURESA, another issue the employee-
15 obligor may raise is that the withholding order received by the employer is not based on
16 the controlling child-support order issued by the tribunal with continuing, exclusive
17 jurisdiction, see Section 207, *supra*. Such a claim does not constitute a defense to the
18 obligation of child support, but does put at issue the identity of the order to which the
19 employer must respond. Clearly the employer is in no position to make such a decision.
20 When multiple orders involve the same employee-obligor and child, as a practical
21 matter resort to a responding tribunal to resolve a dispute over apportionment almost
22 certainly is necessary.

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(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~~ 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~~ [act].

Sections 501 through 506 are posited on the belief that U.S. employers ought not be burdened with enforcement of foreign income withholding orders received directly from overseas. This view inapplicable if a support enforcement agency is involved. The procedural safeguards built into the IV-D system of processing requests between central agencies provides reasonable assurance that the income withholding order to be enforced is genuine.

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.

1 Thus, a local employer accustomed to dealing with the local agency need not change its
2 procedure to comply with an out-of-state order. Similarly, the administrative agency is
3 authorized to apply its ordinary rules equally to both intrastate and interstate orders. For
4 example, if the administrative hearing procedure must be exhausted for an intrastate
5 order before a contesting party may seek relief in a tribunal, the same rule applies to an
6 interstate order received for administrative enforcement.

7 If a support enforcement agency receives a request for services from the central
8 authority of a foreign country, the support enforcement agency is very likely to respond
9 summarily. If the request is from an individual and is accompanied by a copy of a
10 foreign support order, the agency may commence administrative enforcement if
11 available under applicable state law.

12

ARTICLE 6
REGISTRATION, ENFORCEMENT, AND MODIFICATION OF
SUPPORT ORDER

Introductory Comment

The registration and enforcement provisions in Sections 601 through 608 are consistent with the “recognition and enforcement” provisions of the Convention. The terms of this article, and Article 7, *infra*, suffice to direct international support orders into the proper channels.

Sections 601 through 604 establish the basic procedure for the registration of a support order from another state or a foreign support order. Under RURESA when a tribunal of a responding state was requested to register and enforce an existing child-support order, the common practice was to ignore the request; rather, a separate proceeding would be initiated for the establishment of a new support order. This practice was specifically rejected by UIFSA; this practice under RURESA created the multiple support order system that UIFSA was specifically designed to eliminate. Under Sections 205-207, *supra*, the one-order system allows only one existing order to be enforced prospectively.

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. Other enforcement remedies may be available without resort to the UIFSA process under the law of the responding state, see Section 104, *supra*.

1
2 **PART 1. REGISTRATION FOR ENFORCEMENT OF SUPPORT ORDER**

3 **SECTION 601. REGISTRATION OF ORDER FOR ENFORCEMENT.** A SUPPORT
4 ORDER OR INCOME-WITHHOLDING ORDER ISSUED ~~IN BY A TRIBUNAL OF~~
5 ~~ANOTHER STATE~~ STATE OR A FOREIGN SUPPORT ORDER MAY BE REGISTERED IN
6 THIS STATE FOR ENFORCEMENT.

7
8 **Comment**

9 Registration of an order in a tribunal of the responding state is the first step to
10 enforce a support order from another state or foreign country. If a prior support order
11 has been validly issued by a tribunal with continuing, exclusive jurisdiction, see Section
12 205, that order is to be prospectively enforced against the obligor in the absence of
13 narrow, strictly-defined fact situations in which an existing order may be modified, see
14 *Sections* 609 through 614, *infra*. Until and unless that order is modified, however, it
15 remains an order of the issuing tribunal and is fully enforceable in the responding state.

16 Although registration that is not accompanied by a request for the affirmative relief of
17 enforcement is not prohibited, the act does not contemplate registration as serving a
18 purpose in itself.

19 ***Related to Convention:*** art. 23. *Procedure on an application for recognition and*
20 *enforcement;* art. 26. *Procedure on an application for recognition.*
21

22 **SECTION 602. PROCEDURE TO REGISTER ORDER FOR ENFORCEMENT.**

23 (a) Except as otherwise provided in Section 706, ~~A~~ a support order or income-withholding order
24 of another ~~State~~ state or a foreign support order may be registered in this ~~State~~ state by sending the
25 following records ~~and information~~ to the [appropriate tribunal] in this ~~State~~ state:

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

27 (2) two copies, including one certified copy, of the order to be registered, including any

1 modification of the order;

2 (3) a sworn statement by the person requesting registration or a certified statement by the

3 custodian of the records showing the amount of any arrearage;

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

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

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

7 income of the obligor; and

8 (C) a description and the location of property of the obligor in this ~~State~~ state not

9 exempt from execution; and

10 (5) except as otherwise provided in Section 312, the name and address of the obligee and,

11 if applicable, the person to whom support payments are to be remitted.

12 (b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed

13 as ~~a foreign judgment~~ an order of another state or a foreign country, together with one copy of the

14 documents and information, regardless of their form.

15 (c) A [petition] or comparable pleading seeking a remedy that must be affirmatively sought under

16 other law of this ~~State~~ state may be filed at the same time as the request for registration or later. The

17 pleading must specify the grounds for the remedy sought.

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

19 (1) furnish to the tribunal a copy of every support order asserted to be in effect in addition

20 to the documents specified in this section;

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

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

23 (e) A request for a determination of which is the controlling order may be filed separately or with

24 a request for registration and enforcement or for registration and modification. The person requesting

25 registration shall give notice of the request to each party whose rights may be affected by the

26 determination.

27 **Comment**

28 Subsection (a) outlines the mechanics for registration of an interstate or foreign

29 support order. Substantial compliance with the requirements is expected. The

30 procedure for registration and enforcement set forth in this section is unchanged for a

31 foreign support order; indeed, all of Sections 601 to 608 apply, Note, however, that a

32 request for registration of a foreign support order for which the Convention is in force is

1 subject to Section 706. This is due to the fact that the list of documents comprising the
2 required record in subsection (a) differs in a measurable degree with Convention art. 11
3 and 25.

4 Millions of interstate domestic cases have been, and will continue to be, processed
5 under the procedure specified in this section. As of December 2008, approximately less
6 than one-tenth of one percent (0.001%) involve a foreign support order. Thus, the
7 documentation required by this section is unchanged for interstate and foreign support
8 orders other than those from a Convention country, for which a separate list is added in
9 Section 706 to accommodate the differences. Because child support enforcement
10 agencies have successfully dealt with foreign support orders with increasing frequency
11 during the UIFSA era, this may well prove to be a distinction without much difference.

12 Subsection (b) confirms that the support order being registered is not converted into
13 an order of the responding state; rather, it continues to be an order of the tribunal of the
14 issuing state or foreign country.

15 Subsection (c) warns that if a particular enforcement remedy must be specifically
16 sought under local law, the same rules of procedure and substantive law apply to an
17 interstate or international case. For example, if license suspension or revocation is
18 sought as a remedy for alleged noncompliance with an order, the substantive and
19 procedural rules of the responding state apply. Whether the range of application of the
20 remedy in the responding state is wider or narrower than that available in the issuing
21 state or foreign country is irrelevant. The responding tribunal will apply the familiar law
22 of its state, and is neither expected nor authorized to consider the law of the issuing
23 state or foreign country. In short, the responding tribunal follows the identical path for

1 enforcing the order of a tribunal of another state or foreign country as it would when
2 enforcing an order of the responding state. The authorization of a later filing to comply
3 with local law contemplates that interstate or international pleadings may be liberally
4 amended to conform to local practice.

5 Subsections (d) and (e) amplify the procedures to be followed when two or more
6 child-support orders exist and registration for enforcement is sought. In such instances,
7 the requester is directed to furnish the tribunal with sufficient information and
8 documentation so that the tribunal may make a determination of the controlling order
9 and of the amount of consolidated arrears and interest. See Section 207, *supra*.

10 ***Related to Convention:*** art. 11. Application contents; art. 20. Bases for recognition
11 and enforcement; art. 21. Severability and partial recognition and enforcement; art. 22.
12 Grounds for refusing recognition and enforcement; art. 23. Procedure on an application
13 for recognition and enforcement; art. 25. Documents.

14 15 **SECTION 603. EFFECT OF REGISTRATION FOR ENFORCEMENT.**

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

18 (b) A registered support order issued in another ~~State~~ state or a foreign country is enforceable in
19 the same manner and is subject to the same procedures as an order issued by a tribunal of this ~~State~~ state.

20 (c) Except as otherwise provided in this ~~article~~ [act], a tribunal of this ~~State~~ state shall recognize
21 and enforce, but may not modify, a registered support order if the issuing tribunal had jurisdiction.

22 **Comment**

23 Initially the text of the registration procedure under UIFSA (1992) was nearly
24 identical to that set forth in RURESA. But, the intent of UIFSA registration was always
25 radically different. Under UIFSA, registration of a support order of State A continues to
26 be an order of that state, which is to be enforced by a tribunal of State B. The ordinary
27 rules of evidence and procedure of State B apply to hearings, except as local law may
28 be supplemented or specifically superseded by other local law, i.e., UIFSA. The

1 purpose of the registration procedure in Sections 601 through 604 is that the order
2 being registered remains a State A order until modified,

3 First, note that subsection (a) is phrased in the passive voice; “A support order ... is
4 registered when the order is filed in the registering tribunal” This drafting is
5 deliberate. By indirection, in effect UIFSA provides that either the obligor, the obligee, or
6 a state enforcement agency, may register a support order of another state or a foreign
7 support order. In fact, even a stranger to the litigation, for example a grandparent or an
8 employer of an alleged obligor, may register a support order. Presumptively, the order
9 registered is the valid, controlling order. If not, the act depends on the respondent to
10 contest the registration, see Sections 605-608.

11 Subsection (b) provides that a support order of another state or a foreign support
12 order is to be enforced and satisfied in the same manner as if it had been issued by a
13 tribunal of the registering state. Conceptually, the responding tribunal is enforcing the
14 order of a tribunal of another state or a foreign support order, not its own order.

15 Subsection (c) mandates enforcement of the registered order, but forbids
16 modification unless the terms of Sections 609-614, *infra*, are met. Under UIFSA there
17 will be only one order in existence at any one time. That order is enforceable in a
18 responding state irrespective of whether the order may be modified. In most instances,
19 a child-support order will be subject to the continuing, exclusive jurisdiction of the
20 issuing tribunal. Sometimes the issuing tribunal will not be able to exercise its authority
21 to modify the order because neither the child nor the parties reside in the issuing state.
22 Nonetheless, the order may be registered and is fully enforceable in a responding state
23 until the potential for modification actually occurs in accordance with the strict terms for

1 such a proceeding, see Section 611, *infra*. Thus, the registering tribunal always must
2 bear in mind that the enforcement procedures taken, whether to enforce current support
3 or to assist collecting current and future arrears and interest, are made on behalf of the
4 issuing tribunal, and are not a modification of the controlling order.

5 ***Related to Convention:*** art. 11. *Application contents*; art. 20. *Bases for recognition*
6 *and enforcement*; art. 21. *Severability and partial recognition and enforcement*; art. 22.
7 *Grounds for refusing recognition and enforcement*; art. 23. *Procedure on an application*
8 *for recognition and enforcement*; art. 25. *Documents*.

9 10 **SECTION 604. CHOICE OF LAW.**

11 (a) Except as otherwise provided in subsection (d), the law of the issuing ~~State~~ state or foreign
12 country governs:

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

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

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

18 (b) In a proceeding for arrears under a registered support order, the statute of limitation of this
19 ~~State~~ state, or of the issuing ~~State~~ state or foreign country, whichever is longer, applies.

20 (c) A responding tribunal of this ~~State~~ state shall apply the procedures and remedies of this ~~State~~
21 state to enforce current support and collect arrears and interest due on a support order of another ~~State~~
22 state or a foreign country registered in this ~~State~~ state.

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

27 **Comment**

28 Subsection (a) is intended to clarify the wide range of subjects that are governed by
29 the choice of law rules established in this section. The task is to identify those aspects
30 of the case for which local law is inapplicable. A basic principle of UIFSA is that
31 throughout the process the controlling order remains the order of the tribunal of the

1 issuing state or foreign country until a valid modification. The responding tribunal only
2 assists in the enforcement of that order. Absent a loss of continuing, exclusive
3 jurisdiction by the issuing tribunal and a subsequent modification of the order, the order
4 never becomes an order of a responding tribunal.

5 Subsection (a) first identifies those aspects of the initial child-support order that are
6 governed by the terms original decision and the function of the issuing tribunal. First and
7 foremost, ultimate responsibility for enforcement and final resolution of the obligor's
8 compliance with all aspects of the support order belongs to the issuing tribunal. Thus,
9 calculation of whether the obligor has fully complied with the payment of current
10 support, arrears, and interest on arrears is also the duty of the issuing tribunal.

11 In UIFSA (1992) the decision was made by NCCUSL that the duration of child
12 support should be fixed by the initial controlling child-support order, see Section 611(c),
13 *infra*. This policy decision was somewhat controversial at the time, especially given the
14 general rule that "local law controls." But, case law regarding issues created by
15 movement from one state with one duration to a state with another policy was
16 hopelessly muddled, so a solution was sought. Then, as now, the policies of states on
17 this subject varied greatly: today, a few states continue to set the once most-common
18 age of 21 as the cut-off date; some continue the obligation past 21, dependent on
19 enrollment in higher education (often with limited time specified); at the other end of the
20 spectrum, some states end the obligation of child support at age 18; in others at 19;
21 and, most popularly, at one or the other of either age 18 or 19, plus graduation from
22 high school, whichever is later.

23 Under subsection (a), if the initial issuing tribunal set the age for termination of child

1 support at 18, a responding state must recognize and enforce that child-support order. If
2 the responding state sets its child support to age 21, the responding tribunal may not
3 apply that time duration to require additional support to that age. The converse is also
4 true. If the controlling order of another state ends the support obligation at 21, the
5 responding tribunal in a state with 18 as the maximum duration for child support must
6 enforce the controlling order until age 21. The dissent on this policy decision in UIFSA
7 has abated over time. Interestingly, the Convention establishes age 21 as the hallmark,
8 which of course will be consistent with UIFSA.

9 Under Convention art. 2(2), a foreign country may reserve the right to limit the
10 application of the Convention with regard to child support to persons who have not
11 reached the age of 18. The United States will not make such a reservation because in
12 many U.S. states a support obligation continues until age 21, or even beyond in some
13 states in cases involving higher education. Under this section, all U.S. states are bound
14 to recognize and enforce a child-support order from another state or foreign nation for
15 the duration specified by the controlling order, see Section 207, *supra*.

16 Similarly, subsection (a) directs that the law of the issuing state or foreign country
17 governs whether a payment made for the benefit of a child, such as a Social Security
18 benefit for a child of a disabled obligor, should be credited against the obligor's child
19 support obligation. In sum, on these limited subjects the consistent rule is that the State
20 A order controls in State B (and State C as well).

21 Note that as soon as a general proposition is identified, an exception will likely be
22 presented. Subsection (b) contains a choice of law provision that will often diverge from
23 other local law. In situations in which the statutes of limitation differ from state to state,

1 the statute with the longer term is to be applied. In interstate cases, arrearages often will
2 have accumulated over a considerable period of time before enforcement is perfected.
3 The rationale for this exception to the general rule of “local law applies” is that the
4 obligor should not gain an undue benefit from his or her choice of residence if the forum
5 state, as the obligor’s state of residence, has a shorter statute of limitations for
6 arrearages than does the controlling order state. On the other side of the coin, i.e., if the
7 forum has a longer statute of limitations, the obligor will be treated in an identical
8 manner as all other obligors in that state. This choice of limitations is applicable not only
9 to how retroactively arrears may be collected, but also to the time period after the
10 accrual of the obligation in which to bring an enforcement action.

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

15 Subsection (d) may appear to state another truism—the law of the state that issued
16 the controlling order is superior with regard to the terms of the support order itself. The
17 last clause in the sentence contains an important clarifying provision; that is, the law of
18 the issuing state or foreign country is to be applied to the consolidated arrears,
19 particularly the interest to be charged prospectively, even if the support orders of other
20 states contributed a portion to those arrears. In sum, the local tribunal applies its own
21 familiar procedures to enforce a support order, but it is clearly enforcing an order of a
22 tribunal of another state and not an order of the forum.

23 ***Related to Convention:*** art. 2. Scope; art. Scope; art. 11. Application contents; art.
24 20. Bases for recognition and enforcement; art. 21. Severability and partial recognition

1 *and enforcement; art. 22. Grounds for refusing recognition and enforcement; art. 23.*
2 *Procedure on an application for recognition and enforcement; art. 25. Documents.*

3
4 **PART 2. CONTEST OF VALIDITY OR ENFORCEMENT**

5 **SECTION 605. NOTICE OF REGISTRATION OF ORDER.**

6 (a) When a support order or income-withholding order issued in another ~~State~~ state or a foreign
7 support order is registered, the registering tribunal of this state shall notify the nonregistering party. The
8 notice must be accompanied by a copy of the registered order and the documents and relevant information
9 accompanying the order.

10 (b) A notice must inform the nonregistering party:

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

13 (2) that a hearing to contest the validity or enforcement of the registered order must be
14 requested within [20] days after notice unless the registered order is under Section 707;

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

18 (4) of the amount of any alleged arrearages.

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

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

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

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

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

28 (d) Upon registration of an income-withholding order for enforcement, the support enforcement
29 agency or the registering tribunal shall notify the obligor's employer pursuant to [the income-withholding
30 law of this ~~State~~ state].
31

Comment

Subsection (a) requires the registering tribunal to provide notice to the nonregistering party 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. The notice contemplates far more than merely announcing an intent to initiate enforcement of an existing support order. The registered order or orders and other relevant documents and information must accompany the notice, including details about the alleged arrears.

Subsection (b) provides the nonregistering party with a wealth of information about the proceeding, including that: (1) the order is immediately enforceable; (2) a hearing must be requested within a relatively short time; (3) failure to contest “will result” in a confirmation of the order (roughly the equivalent of a default judgment); and (4) the amount of arrears, if any. Initially subsection (b) made the suggestion, via brackets, that [20] days be the time within which a request for a hearing to contest the support order be made. The rationale for this relatively short period was that the matter had already been litigated, and the obligor had already had the requisite “day in court,” and was allegedly in default of a known order. Moreover, advocates of child-support enforcement stressed the necessity of quick resolution of an instance of nonsupport.

On the other hand, the Convention requires notice of hearing to be within a fixed time of 30 days, and further a fixed time of 60 days if the respondent resides in a foreign country, see Convention art. 23(a). This difference between UIFSA and the Convention is accommodated in Section 707. The time frame for notice of registration for an

1 interstate support order and a foreign support order not subject to the Convention will be
2 established by local law.

3 Subsection (c) is the correlative to Section 602 regarding the notice to be given to
4 the nonregistering party if determination of a controlling order must be made because of
5 the existence of two or more child-support orders. The petitioner requesting this
6 affirmative relief is directed to identify the order alleged to be controlling under Section
7 207, *supra*.

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

10 ***Related to Convention:*** art. 20. Bases for recognition and enforcement; art. 23.
11 *Procedure on an application for recognition and enforcement.*
12

13 **SECTION 606. PROCEDURE TO CONTEST VALIDITY OR ENFORCEMENT OF**
14 **REGISTERED SUPPORT ORDER.**

15 (a) A nonregistering party seeking to contest the validity or enforcement of a registered support
16 order in this ~~State~~ state shall request a hearing within ~~[20] days after notice of the registration~~ the time
17 required by Section 605. The nonregistering party may seek to vacate the registration, to assert any
18 defense to an allegation of noncompliance with the registered order, or to contest the remedies being
19 sought or the amount of any alleged arrearages pursuant to Section 607.

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

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

25 **Comment**

26 Subsection (a) directs the "nonregistering party" to contest the registration of an
27 interstate support order or a foreign support order not subject to the Convention within a
28 short period of time or forfeit the opportunity to contest. As noted in Section 605, that

1 time frame is extended for cases subject to the Convention.

2 Notice of registration is the first step for enforcement or modification of another
3 state's child-support order. Once the nonregistering party is put on notice of the
4 registration, if an error allegedly has been made, the second step is crucial. The
5 nonregistering party is required to assert any existing defense to the alleged controlling
6 order, or forfeit the opportunity to contest the allegations. Note that either the obligor or
7 the obligee may have objections to the registered order, although in the vast majority of
8 cases the obligor is the nonregistering party. On the other hand, there is a possibility
9 that in multiple order situations either party may register the order most favorable to that
10 party rather than the likely controlling order, thus triggering a contest. While chicanery is
11 contrary to subsection 605(c), and specifically forbidden for a support enforcement
12 agency, Subsection 307(c), there may be an honest difference of opinion as to which
13 order controls. The nonregistering obligor has a significant stake in assuring the arrears
14 are correctly stated.

15 Under UIFSA a contest of the fundamental provisions of the registered order is not
16 permitted in the responding state. The nonregistering party must return to the issuing
17 state or foreign country to prosecute such a contest (obviously only as the law of that
18 state or foreign country permits). This approach is akin to the prohibition found in
19 Section 315 against asserting a nonparentage defense in a UIFSA proceeding. There is
20 no attempt by UIFSA to preclude a collateral attack on the support order from being
21 litigated in the appropriate forum.

22 Subsection (b) precludes an untimely contest of a registered support order.

23 Subsection (c) directs that a hearing be scheduled when the nonregistering party

1 contests some aspect of the registration. At present, federal regulations govern the
2 allowable time frames for contesting income withholding in IV-D cases, see 42 U.S.C.
3 Section 666(b).

4 ***Related to Convention:*** art. 20. Bases for recognition and enforcement; art. 22.
5 *Grounds for refusing recognition and enforcement;* art. 23. *Procedure on an application*
6 *for recognition and enforcement;* art. 26. *Procedure on an application for recognition.*
7

8 **SECTION 607. CONTEST OF REGISTRATION OR ENFORCEMENT.**

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

- 11 (1) the issuing tribunal lacked personal jurisdiction over the contesting party;
12 (2) the order was obtained by fraud;
13 (3) the order has been vacated, suspended, or modified by a later order;
14 (4) the issuing tribunal has stayed the order pending appeal;
15 (5) there is a defense under the law of this ~~State~~ state to the remedy sought;
16 (6) full or partial payment has been made;
17 (7) the statute of limitation under Section 604 precludes enforcement of some or all of the
18 alleged arrearages; or
19 (8) the alleged controlling order is not the controlling order.

20 (b) If a party presents evidence establishing a full or partial defense under subsection (a), a
21 tribunal may stay enforcement of ~~the~~ a registered support order, continue the proceeding to permit
22 production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of
23 the registered support order may be enforced by all remedies available under the law of this ~~State~~ state.

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

27 **Comment**

28 Subsection (a) places the burden on the nonregistering party to assert narrowly
29 defined defenses to registration of a support order. The first of the listed defenses, lack
30 of personal jurisdiction over the nonregistering party in the original proceeding, is
31 undoubtedly the most widely discussed topic. It appears that at the appellate level,

1 several of the other listed defenses are more commonly asserted. The decision in *Kulko*
2 *v. Superior Court*, 436 U.S. 84 (1978) (6-3) was somewhat controversial when
3 delivered, and has remained so, at least in the international context. As a practical
4 matter, however, the requirement that a support order be based on personal jurisdiction
5 over both parties—but primarily the obligor—is a well-established fixture in the
6 jurisprudence of the United States; relatively few appellate cases on this subject have
7 been reported.

8 A nonregistering obligor may assert a wide variety of listed defenses, such as
9 "payment" or "the obligation has terminated," in response to allegations of
10 noncompliance with the registered order. There is no defense, however, to registration
11 of a valid foreign support order. The nonregistering party also may contest the allegedly
12 controlling order because its terms have been modified. Or, the defense may be based
13 on the existence of a different controlling order, see Section 207, *supra*. Presumably
14 this defense must be substantiated by registration of the alleged controlling order to be
15 effective.

16 While subsection (a)(6) is couched in terms that imply the defense to the amount of
17 alleged arrears can only be that they are less, the converse is also available. For
18 example, if the registering party is the obligor and asserts an amount of arrears that the
19 obligee believes is too low, as the nonregistering party the obligee must contest to
20 preclude confirmation of the alleged amount.

21 In the absence of a valid defense, if the obligor is liable for current support, the
22 registering tribunal must enter an order to enforce that obligation. Proof of arrearages
23 must result in enforcement under the Bradley Amendment, 42 U.S.C. Section

1 666(a)(10), which requires all states to treat child support payments as final judgments
2 as they come due (or lose federal funding). Therefore, arrearages are not subject to
3 retroactive modification.

4 Subsection (c) provides that failure to contest a registered order successfully
5 requires the tribunal to confirm the validity of the registered order.

6 ***Related to Convention:*** art. 26. *Procedure on an application for recognition.*

7
8 **SECTION 608. CONFIRMED ORDER.** Confirmation of a registered support order, whether
9 by operation of law or after notice and hearing, precludes further contest of the order with respect to any
10 matter that could have been asserted at the time of registration.

11 **Comment**

12 If, after notice, the nonregistering party fails to contest, the registered support order
13 is confirmed by operation of law and no further action by a responding tribunal is
14 necessary. Although the statute is not explicit on the subject, it seems likely in the
15 absence of a contest both the registering and nonregistering party would be estopped
16 from subsequently collaterally attacking the confirmed order, whether on the basis that
17 “the wrong order was registered” or otherwise.

18 If contested, a registered support order must be confirmed by the responding
19 tribunal if, after a hearing, the defenses authorized in Section 607 are rejected. Thus,
20 either scenario precludes the nonregistering party from raising any issue that could
21 have been asserted in a hearing. Confirmation of a support order validates both the
22 terms of the order and the asserted arrearages.

23 ***Related to Convention:*** art. 22. *Grounds for refusing recognition and enforcement;*
24 *art. 26. Procedure on an application for recognition.*
25

1 **PART 3. REGISTRATION AND MODIFICATION OF**
2 **CHILD-SUPPORT ORDER OF ANOTHER STATE**

3 **Introductory Comment**

4 Authority to modify a support order of another state depends on the interaction of
5 these sections with the continuing, exclusive jurisdiction of the issuing tribunal, see
6 Sections 205-206. This also might involve the determination of the controlling order in a
7 situation involving multiple child-support orders. These concepts are not present in the
8 international context, see Sections 615, 616, and 711. *Modification of Convention child-*
9 *support order.*

10 In direct contrast to the balance of this article, Sections 609 through 614 apply
11 only to modification of an interstate child-support order. Most of the act applies to “a
12 support order,” which includes both child-support and spousal support. Both categories
13 are generally subject to interstate enforcement under UIFSA. But, as a practical matter,
14 the actual process of that enforcement is quite different. Child support is enforced
15 almost exclusively by governmentally sponsored IV-D agencies, which also may enforce
16 spousal support if it is included in the same order. In some states, local funds are
17 appropriated for enforcement of spousal support as well. Only occasionally will a private
18 attorney be involved in a child support case, but spousal support not issued in
19 conjunction with a child-support order generally requires representation pro se or by
20 private counsel. More importantly, a tribunal of a responding state may enforce spousal
21 support, but it does not have authority to modify a spousal-support order of another
22 state or foreign country unless the law of that jurisdiction does not assert continuing,
23 exclusive jurisdiction over its order, see Section 211.

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~~ state shall register that order in this ~~State~~ state in the same manner provided in ~~Part 4~~ Sections 601 through 608 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. The first step for modification of another state's child-support order is registration in the responding tribunal under Sections 601 to 604. In some situations, this may also involve identification of the controlling order. 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, and follow the procedure for registration set forth in Section 602. If the tribunal has the requisite personal jurisdiction over the parties and may assume subject matter jurisdiction as provided in Sections 611 or 613, modification may be sought independently, in conjunction with registration and enforcement, or at a later date after the order has been registered and enforced if circumstances have changed.

SECTION 610. EFFECT OF REGISTRATION FOR MODIFICATION. A tribunal of this ~~State~~ state may enforce a child-support order of another ~~State~~ state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this ~~State~~ state, but the registered support order may be modified only if the requirements of Section 611 or, 613 ~~or 615~~ have been met.

1 **Comment**

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

6
7 **SECTION 611. MODIFICATION OF CHILD-SUPPORT ORDER OF ANOTHER**
8 **STATE.**

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

12 (1) the following requirements are met:

13 (A) neither the child, nor the obligee who is an individual, nor the obligor resides
14 in the issuing ~~State~~ state;

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

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

18 (2) this ~~State~~ state is the ~~State~~ of residence of the child, or a party who is an individual is
19 subject to the personal jurisdiction of the tribunal of this ~~State~~ state, and all of the parties who are
20 individuals have filed consents in a record in the issuing tribunal for a tribunal of this ~~State~~ state to
21 modify the support order and assume continuing, exclusive jurisdiction.

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

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

30 (d) In a proceeding to modify a child-support order, the law of the ~~State~~ state that is determined
31 to have issued the initial controlling order governs the duration of the obligation of support. The obligor's

1 fulfillment of the duty of support established by that order precludes imposition of a further obligation of
2 support by a tribunal of this ~~State~~ state.

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

6 **(f) Notwithstanding subsections (a) through (e) and Section 201(b), a tribunal of this state**
7 **retains jurisdiction to modify an order issued by a tribunal of this state if:**

8 **(1) one party resides in another state; and**

9 **(2) the other party resides outside the United States.**

11 **Comment**

12 As long as the issuing tribunal has continuing, exclusive jurisdiction over its child-
13 support order, see Section 205(a), *supra*, a responding tribunal is precluded from
14 modifying the controlling order. Without doubt, this is the most significant departure from
15 the multiple-order system established by the prior uniform acts. In UIFSA (1992) the
16 drafting committee made critical choices regarding modification of an existing child-
17 support order. First, the “one-order” rule was to be paramount. Second, the issuing
18 tribunal had continuing, exclusive jurisdiction to modify its order as long as a party or the
19 child continued to reside in the issuing state. The original order remained in force as the
20 controlling order until modified by another tribunal issuing a new controlling order. Third,
21 a separate procedure needed to be fashioned to resolve the procedure for modification
22 of an existing child-support order when all parties and the child left the issuing state and
23 acquired residences in different states (or countries). This was doubtless the most
24 difficult drafting challenge dealt with in the original iteration of UIFSA.

25 The deciding factor, determined after extended debate, centered on the curbing or
26 eliminating undesirable effect of “ambush jurisdiction.” The drafting committee objected

1 to the possibility that the parties would vie to strike first to obtain a home town
2 advantage. Arguably this could discourage continued contact between the child and the
3 obligor, or between parents for fear of a modification lawsuit in a distant forum. Thus,
4 the goal was to avoid situation in which modification was available in a forum having
5 long-arm personal jurisdiction over both parties issue based solely on the ground that
6 service of process was made in the would-be forum state. In addition, repeated
7 modification suits every time a party moved should also be avoided.

8 The requirements of this section prohibiting modification based solely on an
9 assertion of long-arm jurisdiction in the international context are more problematic. The
10 issue arises because the United States is wedded to personal jurisdiction over the
11 individual parties at a state level, rather than the child-based, national jurisdiction found
12 virtually everywhere else. A foreign country typically regards a support order to be of the
13 country, e.g., a French order, not an order from a political subdivision of France. In a
14 few recognized instances, however, a foreign support order is indeed made by a
15 political subdivision, e.g., an order from a Canadian province is from Ontario, not from
16 Canada; that order is also based on the obligee's residence. Although consideration
17 was given to labeling a support order of a state to be an order of the United States,
18 conforming modification of child support to the general principles of state law through
19 UIFSA is really the only practical choice.

20 Under subsection (a)(1), before a responding tribunal may modify the existing
21 controlling order, three specific criteria must be satisfied. First, the individual parties
22 affected by the controlling order and the child must no longer reside in the issuing state.
23 Second, the party seeking modification, usually the obligee, must register the order in a

1 new forum, almost always the state of residence of the other party, usually the obligor.
2 A colloquial (but easily understood) description of this requirement is that the
3 modification movant must “play an away game on the other party’s home field.” This
4 rule applies to either obligor or obligee, depending on which party seeks to modify.
5 Third, the forum must have personal jurisdiction over the parties. This is supplied by the
6 movant submitting to the personal jurisdiction of the forum by seeking affirmative relief,
7 almost always coupled with the fact that the respondent resides in the forum. On rare
8 occasion, the personal jurisdiction over the respondent may be supplied by other
9 factors, see Section 201 and the comment thereto, *supra*.

10 The policies underlying the change affected by subsection (a)(1) contemplate that
11 the issuing tribunal no longer has an interest in exercising its continuing, exclusive
12 jurisdiction to modify its order, nor information readily available to it to do so. This
13 restriction attempts to achieve a rough justice between the parties in the majority of
14 cases by preventing a litigant from choosing to seek modification in a local tribunal to
15 the marked disadvantage of the other party. Thus, an obligor visiting the children at the
16 residence of the obligee cannot be validly served with citation accompanied by a motion
17 to modify the support order.

18 Even though personal service of the obligor in the obligee's home state is consistent
19 with the constitutional jurisdictional requisites of *Burnham v. Superior Court*, 495 U.S.
20 604 (1990), the motion to modify does not fulfill the requirement of the subsection that
21 the petitioner seeking modification be “a nonresident of this state.” Assertion of long-arm
22 jurisdiction to establish a support order under Section 201, *supra*, is unaffected. But,
23 restraint on the exercise of long-arm jurisdiction by a state tribunal to modify a child-

1 support order under this section, or a spousal-support order under Section 211, *supra*,
2 is a policy decision well within the authority of the legislative branch. Further, fairness
3 requires that an obligee seeking to modify or modify and enforce the existing child-
4 support order in the state of residence of the obligor will not be subject to a cross-
5 motion to modify custody or visitation merely because the issuing tribunal has lost its
6 continuing, exclusive jurisdiction over the support order. The same is true of the obligor,
7 who also is required to make a motion to modify support in a state other than that of his
8 or her residence.

9 Yet another benefit is supplied by the procedure mandated in this section. The most
10 typical case is a motion to increase child support by the obligee, the enforcement of
11 which ultimately will primarily, if not exclusively, take place in the obligor's state of
12 residence. Modification and enforcement in the same forum promotes efficiency.

13 There are two exceptions to the rule of subsection (a)(1) requiring the petitioner to
14 be a nonresident of the forum in which modification is sought. First, under subsection
15 (a)(2) the parties may agree that a particular forum may serve to modify the order.
16 Second, Section 613, *infra*, applies if all parties have left the original issuing state and
17 now reside in the same new forum state. Subsection (a)(2), which authorizes the parties
18 to terminate the continuing, exclusive jurisdiction of the issuing tribunal by agreement, is
19 based on several implicit assumptions. First, the subsection applies even if the issuing
20 tribunal has continuing, exclusive jurisdiction because one of the parties or the child
21 continues to reside in that state. Subsection (a)(2) also is applicable if the individual
22 parties and the child no longer reside in the issuing state, but agree to submit the
23 modification issue to a tribunal in the petitioner's state of residence. Also implicit in a

1 shift of jurisdiction over the child-support order is that the agreed-upon tribunal must
2 have subject matter jurisdiction and personal jurisdiction over at least one of the parties
3 or the child, and that the other party submits to the personal jurisdiction of that forum. In
4 short, UIFSA does not contemplate that absent parties can agree to confer jurisdiction
5 on a tribunal without a nexus to the parties or the child. But if the other party agrees,
6 either the obligor or the obligee may seek assertion of jurisdiction to modify by a tribunal
7 of the state of residence of either party.

8 Proof of the fact that neither individual party nor the child continues to reside in the
9 issuing state is to be made directly in the responding tribunal. No purpose would be
10 served by requiring the petitioner to return to the original issuing tribunal for a hearing to
11 elicit a document confirming the fact that none of the relevant persons still lives in the
12 issuing state. The issuing tribunal is not called upon to transfer or surrender its
13 continuing, exclusive jurisdiction, or otherwise participate in the process, nor does it
14 have discretion to refuse to yield jurisdiction or to refuse to accept jurisdiction of the
15 responding tribunal. Note there is no specific *forum non conveniens* provision in UIFSA
16 to authorize one tribunal to transfer jurisdiction to another tribunal in another state. Local
17 law, however, applies for the application of that doctrine and to Intrastate transfers for
18 change of venue.

19 There is a distinction between the processes involved under subsection (a)(1) and
20 (a)(2). Once the requirements of (a)(1) or Section 613, *infra*, have been met for
21 assumption of jurisdiction, the responding tribunal acts on the modification and then
22 notifies the issuing tribunal that the prior controlling order has been replaced by the new
23 controlling order of the responding tribunal, see Section 614, *infra*. In contrast, for a

1 tribunal of another state to assume modification jurisdiction under subsection (a)(2), it is
2 necessary that the individual parties first agree in a record to submit modification of
3 child support to that responding tribunal and file their agreement with the issuing
4 tribunal. Thereafter they may proceed to petition the responding tribunal to take
5 jurisdiction.

6 Subsection (b) provides that when the forum has assumed modification jurisdiction
7 because the issuing tribunal has lost continuing, exclusive jurisdiction, the proceedings
8 will generally follow local law with regard to modification of a child-support order.

9 Subsection (c) and (d) are designed to eliminate scattered attempts to subvert a
10 significant policy decision made when UIFSA was first promulgated. Prior to 1993,
11 American case law was thoroughly in chaos regarding modification of the duration of a
12 child-support obligation when an obligor or obligee moved from one state to another
13 with different ages regarding the duration of the child-support obligation. In those
14 circumstances, whether the obligation ended, extended, or was curtailed was left almost
15 to chance.

16 From its original promulgation UIFSA determined that the duration of child-support
17 obligation should be fixed by the controlling order. Subsection (c) provides the original
18 time frame for support is not modifiable unless the law of the issuing state provides for
19 modification of its duration. Some courts had sought to subvert this policy by holding
20 that completion of the obligation to support a child through age 18 established by the
21 now-completed controlling order does not preclude the imposition of a new obligation
22 thereafter to support the child through age 21 or even to age 23 if the child is enrolled in
23 higher education.

1 Subsection (d) is designed to eliminate these attempts to create multiple, albeit
2 successive, support obligations. Consistent with this principle, if a domestic violence
3 protective order has been entered with a child-support provision that has a duration less
4 than the general child support law of the state that issues the controlling order, the law
5 of that state determines the maximum duration. In sum, absent tribunal error the first
6 child-support order issued under UIFSA will invariably be the initial controlling order.
7 The initial controlling order may be modified and replaced by a new controlling order in
8 accordance with the terms of Sections 609-614, but the duration of the child-support
9 obligation remains constant, even though virtually every other aspect of the original
10 order may be changed. This is also the standard in situations involving multiple valid
11 child-support orders—a problem that will progressively decrease over time as RURESA
12 multiple orders expire or a determination of the initial controlling order is made under
13 Section 207, *supra*. Once a controlling order is identified under these standards, the
14 duration of the support obligation is fixed.

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

21 Subsection (f) creates a necessary exception to the “play away” concept when the
22 parties and the child no longer reside in the issuing state and one party resides outside
23 the United States. The “play away” principle makes sense when both forums involved

1 have identical laws regarding continuing, exclusive jurisdiction to modify a child-support
2 order. See Section 205, *supra*. If one party has moved to a foreign nation, a pure “play
3 away” rule would deny a forum subject to UIFSA rules to the other party who has moved
4 from the issuing state, but continues to reside in the United States. This result does not
5 occur under Convention art.18, which restricts modification in another Convention
6 country if the obligee remains in the country in which the order was issued. That article
7 does mention an effect when obligor remains in the country of issuance; of course, the
8 effect is obvious under a child-based system. In sum, subsection (f) identifies the
9 original issuing tribunal as the logical choice for available forum in which UIFSA will
10 apply. This exception to the “play away rule” provides assured personal jurisdiction over
11 the parties, which in turn enables the issuing tribunal to retain continuing jurisdiction to
12 modify its order. Of course, the party residing outside the United States has the option
13 to pursue a modification in the state where the other party or child currently resides.

14 Several arguments sustain the jurisdictional choice made by UIFSA. First,
15 “jurisdiction by ambush” will be avoided. That is, personal service on either the custodial
16 or noncustodial party found within the state borders will not yield jurisdiction to modify.
17 Thus, a parent seeking to exercise rights of visitation, delivering or picking-up the child
18 for such visitation, or engaging in unrelated business activity in the state, will not be
19 involuntarily subjected to protracted litigation in an inconvenient forum. The rule avoids
20 the possible chilling effect on the exercise of parental contact with the child that the
21 possibility of such litigation might have. Second, almost all disputes about whether the
22 tribunal has jurisdiction will be eliminated; submission by the petitioner to the state of
23 residence of the respondent alleviates this issue completely. Finally, because there is

1 an existing order, the primary focus will shift to enforcement, thereby curtailing to a
2 degree unnecessary, time-consuming modification efforts. The array of enforcement
3 procedures available administratively to support enforcement agencies may be invoked
4 without resort to action by a tribunal, which had constituted a bottleneck under RURESA
5 and URESA.

6 Modification of child support under Subsections (a)(1) and (a)(2) is distinct from
7 custody modification under the federal PARENTAL KIDNAPPING PREVENTION ACT, 42
8 U.S.C. Section 1738A, which provides that the court of continuing, exclusive jurisdiction
9 may "decline jurisdiction." Similar provisions are found in the UCCJA, Section 14, still in
10 effect in a small minority of states. Those statutes do not spell out the methodology for
11 the declination of jurisdiction, which rather is left to the discretion of possibly competing
12 courts for case-by-case determination. The UCCJEA Section 202 supplies greater
13 direction to courts. The privilege of declining jurisdiction, thereby creating the potential
14 for a vacuum, is not authorized under UIFSA. Once a controlling initial child-support
15 order is established under UIFSA, at all times thereafter there is an existing order in
16 effect to be enforced. Even if the issuing tribunal no longer has continuing, exclusive
17 jurisdiction, its order remains fully enforceable until a tribunal with modification
18 jurisdiction issues a new order in conformance with this article.

19 The degree to which the new standards of the one-order principle has been
20 accepted is illustrated by comparing UIFSA to the "exclusive, continuing jurisdiction"
21 propounded in the UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT
22 Sections 201-202. The UCCJEA provides general principles for the judicial
23 determination of an appropriate fact situation for subsequent modification of an existing

1 custody order by another court. Somewhat in contrast, UIFSA establishes a set of
2 "bright line" rules which must be met before a tribunal may modify an existing child-
3 support order. The intent of UIFSA is to eliminate multiple support orders to the
4 maximum extent possible consistent with the principle of "continuing, exclusive
5 jurisdiction" that pervades the act.

6 The UCCJEA borrows heavily, but not identically, from UIFSA. Both UIFSA and
7 UCCJEA seek a world in which there is but one-order-at-a-time for child support and
8 custody and visitation. Both have similar restrictions on the ability of a tribunal to modify
9 the existing order. The major difference between the two acts results from the fact that
10 the basic jurisdictional nexus of each is founded on different considerations. UIFSA has
11 its focus on the personal jurisdiction necessary to bind the obligor to payment of a child-
12 support order. UCCJEA places its focus on the factual circumstances of the child,
13 primarily the "home state" of the child; personal jurisdiction over a parent in order to bind
14 that parent to the custody decree is not required. An example of the disparate
15 consequences of this difference is the fact that a return to the decree state does not
16 reestablish "exclusive, continuing jurisdiction" under the custody jurisdiction act, see
17 comment to UCCJEA Section 202. But, under UIFSA similar facts permit the issuing
18 tribunal to exercise continuing, exclusive jurisdiction to modify its child-support order if
19 at the time the proceeding is filed the issuing tribunal "is the residence" of one of the
20 individual parties or the child, see Section 205(a), *supra*.

21 ***Related to Convention: art. 18. Limit on proceedings.***
22

23 **SECTION 612. RECOGNITION OF ORDER MODIFIED IN ANOTHER STATE.** If a
24 child-support order issued by a tribunal of this ~~State~~ state is modified by a tribunal of another ~~State~~ state
25 which assumed jurisdiction pursuant to the Uniform Interstate Family Support Act, a tribunal of this ~~State~~

1 state:

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

4 (2) may provide appropriate relief for violations of its order which occurred before the effective
5 date of the modification; and

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

8 **Comment**

9 A key aspect of UIFSA is the deference to the controlling child-support order of a
10 sister state demanded from a tribunal of the forum state. This applies not just to the
11 original order, but also to a modified child-support order issued by a second state under
12 the standards established by Section 611 and 613. For the act to function properly, the
13 original issuing tribunal must recognize and accept the modified order as controlling,
14 and must regard its prior order as prospectively inoperative. Because the UIFSA system
15 is based on an interlocking series of state laws, it is fundamental that a modifying
16 tribunal of one state lacks the authority to direct the original issuing tribunal to release
17 its continuing, exclusive jurisdiction. That result is accomplished through the enactment
18 of UIFSA by all states, which empowers a modifying tribunal to assume continuing,
19 exclusive jurisdiction from the original issuing tribunal and requires an issuing tribunal to
20 recognize such an assumption of jurisdiction. This explains why the U.S. Congress took
21 the extraordinary measure in PRWORA of mandating universal passage of UIFSA
22 (1996), as amended, see Prefatory Note.

23 The original issuing tribunal retains authority post-modification to take remedial
24 enforcement action directly connected to its now-modified order.

25 26 **SECTION 613. JURISDICTION TO MODIFY CHILD-SUPPORT ORDER OF**

1 **ANOTHER STATE WHEN INDIVIDUAL PARTIES RESIDE IN THIS STATE.**

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

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

8 **Comment**

9 It is not unusual for the parties and the child subject to a child-support order no
10 longer to reside in the issuing state, and for the individual parties to have moved to the
11 same new state. The result is that the child-support order remains enforceable, but the
12 issuing tribunal no longer has continuing, exclusive jurisdiction to modify its order. A
13 tribunal of the state of mutual residence of the individual parties has jurisdiction to
14 modify the child-support order and assume continuing, exclusive jurisdiction. Although
15 the individual parties must reside in the forum state, there is no requirement that the
16 child must also reside in the forum state (although the child must have moved from the
17 issuing state).

18 Finally, because modification of the child-support order when all parties reside in the
19 forum is essentially an intrastate matter, subsection (b) withdraws authority to apply
20 most of the substantive and procedural provisions of UIFSA, i.e., those found in the act
21 other than in Articles 1, 2, and 6. Note the duration of the support obligation is a
22 nonmodifiable aspect of the original controlling order, Section 611(c)-(d), *supra*.

23
24 **SECTION 614. NOTICE TO ISSUING TRIBUNAL OF MODIFICATION.** Within [30]
25 days after issuance of a modified child-support order, the party obtaining the modification shall file a
26 certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the
27 earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party

1 who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in
2 which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of
3 the modified order of the new tribunal having continuing, exclusive jurisdiction.

4 **Comment**

5 For the act to function properly, the prevailing party in a proceeding that modifies a
6 controlling order must inform the original issuing tribunal about its loss of continuing,
7 exclusive jurisdiction over its child-support order. Thereafter, the original tribunal may
8 not modify, or review and adjust, the amount of child support. Notice to the issuing
9 tribunal and other affected tribunals that the continuing, exclusive jurisdiction of the
10 former controlling order has been modified is crucial to avoid the confusion and chaos of
11 the multiple-order system UIFSA replaced.

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

16 17 **PART 4. REGISTRATION AND MODIFICATION OF FOREIGN** 18 **CHILD-SUPPORT ORDER** 19

20 **SECTION 615. JURISDICTION TO MODIFY CHILD-SUPPORT ORDER OF FOREIGN** 21 **COUNTRY ~~OR POLITICAL SUBDIVISION~~.**

22 (a) ~~Except as otherwise provided in Section 711, If if a foreign country or political subdivision~~
23 ~~that is a State will not or may not modify its order~~ lacks or refuses to exercise jurisdiction to modify its
24 child-support order pursuant to its laws, a tribunal of this ~~State~~ state may assume jurisdiction to modify
25 the child-support order and bind all individuals subject to the personal jurisdiction of the tribunal whether
26 ~~or not~~ the consent to modification of a child-support order otherwise required of the individual pursuant to
27 Section 611 has been given or whether the individual seeking modification is a resident of this ~~State~~ state
28 or of the foreign country ~~or political subdivision~~.

1 (b) An order issued by a tribunal of this state modifying a foreign child-support order pursuant to
2 this section is the controlling order.

3 **Comment**

4 Subsection (a) provides that a state tribunal may modify a foreign child-support order
5 when the foreign issuing tribunal lacks or refuses to exercise jurisdiction to modify its
6 order. The standard example cited for the necessity of this special rule involved the
7 conundrum posed when an obligor has moved to the responding state from the issuing
8 country and the law of that country requires both parties to be physically present at a
9 hearing before the tribunal in order to sustain a modification of child support. In that
10 circumstance, the foreign issuing tribunal lacks jurisdiction to modify under its law.
11 Ordinarily, under Section 611, *supra*, the responding state tribunal is not authorized to
12 issue a new order, in effect modifying the foreign support order, because the child or the
13 obligee continue to reside in the issuing country. To remedy the perceived inequity in
14 such a fact situation, this section provides an exception to the rule of Section 611. If
15 both the parties are subject to the personal jurisdiction of a state by the obligee's
16 submission and the obligor's residence, or other grounds under Section 201, *supra*, the
17 responding state tribunal may modify the foreign child-support order.

18 The ability of a state tribunal to modify when the foreign country refuses to exercise
19 its jurisdiction should be invoked with circumspection, as there may be a cogent reason
20 for such refusal. Note, Section 317 empowers tribunals to communicate regarding this
21 issue, rather than rely upon representations of one or more of the parties.

22 ***Related to Convention:*** art. 18. Limit on proceedings.
23

24 **SECTION 616. PROCEDURE TO REGISTER CHILD-SUPPORT ORDER OF FOREIGN**
25 **COUNTRY FOR MODIFICATION.** A party or support enforcement agency seeking to modify, or to

1 modify and enforce, a foreign child-support order not under the Convention may register that order in this
2 state under Sections 601 through 608 if the order has not been registered. A [petition] for modification
3 may be filed at the same time as a request for registration, or at another time. The [petition] must specify
4 the grounds for modification.

5 **Comment**

6 Because UIFSA is applicable to foreign child-support orders from non-Convention
7 countries, this new section provides coverage for all those situations. See Sections 601-
8 608, *supra*, regarding registration and enforcement of a support order of a state or
9 foreign support order, and Sections 609-614, *supra*, regarding modification of a state
10 child-support order.

11 It is worth noting that the Convention employs the term “modify” four times (three of
12 which are in art. 18). Limit on proceedings, which is the source of Section 711, *infra*. In
13 addition, in the Convention uses the term “modified” is four times, and “modification”
14 eight times. Many questions regarding the modification of a Convention order are not
15 answered in its text.