

# UNIFORM INTERSTATE FAMILY SUPPORT ACT

*(Last Amended or Revised in 2008)*

*2008 AMENDMENTS TO THE UNIFORM INTERSTATE FAMILY SUPPORT ACT  
ARE INDICATED BY UNDERSCORE AND STRIKEOUT*

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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Final Act with Revised Prefatory Note and Comments (amendments to statutory text indicated  
by strikeout and underscore)

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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# **UNIFORM INTERSTATE FAMILY SUPPORT ACT**

## **PREFATORY NOTE**

### **I. History of Uniform Family Support Acts**

#### **A. URESA and RURESA**

In 1950 the National Conference of Commissioners on Uniform State Laws (NCCUSL), now more commonly referred to as the Uniform Law Commission (ULC), began a series of uniform acts dealing with cases involving 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 (RURESA). 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 its subsequent development would not have been possible.

#### **B. UIFSA (1992) (1996)**

By 1988, however, problems had arisen regarding the application of RURESA in practice. After four iterations that lasted over four decades, revisiting the subject was deemed necessary. A drafting committee began to prepare amendments for RURESA, but the task proved more formidable than expected. The result was the promulgation of the Uniform Interstate Family Support Act, UIFSA (1992), which was designed to serve as a complete replacement for URESA and RURESA. In 1993 Arkansas and Texas were the first to enact the new act, and within three years thirty-five states had adopted it.

The year 1996 was an eventful one for UIFSA. First, a drafting committee was convened in spring 1996 in response to requests from representatives of employer groups for specific statutory directions regarding interstate child-support income withholding orders. Second, the child-support community (especially the state programs funded under title IV-D of the Social Security Act) requested a substantive and procedural review. As a result, the NCCUSL at its annual conference in July adopted significant amendments and promulgated UIFSA (1996). Less than one month later, the U.S. Congress assured that nationwide acceptance of the amended Act was virtually certain. In the “welfare reform” legislation passed in August 1996, officially known as the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the enactment of UIFSA, as amended, was mandated as a condition of state eligibility for the federal funding of child support enforcement and even under exigent circumstances to continued receipt of subsidies for TANF (Temporary Assistance for Needy Families), as follows:

Sec. 321. Adoption of Uniform State Laws (42 U.S.C. § 666) is amended by adding at the end the following new subsection:



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

Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), Pub. L. 104-193, 110 Stat. 2105 (1996), as amended by the Welfare Reform Technical Corrections Act of 1997.

In accordance with this “federal mandate,” all states enacted UIFSA (1996).

### **C. UIFSA (2001)**

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

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

When Congress mandated that UIFSA (1996) must be in place in all states by 1998, most interested parties viewed that action as an unalloyed benefit for the promulgation of the uniform act. Although all states promptly adopted UIFSA (1996), in retrospect, the federal action became a mixed blessing when it partially froze further development of the act. Through the development of consecutively promulgated versions of the act, *i.e.*, UIFSA (2001) and UIFSA (2008), UIFSA (1996) was withdrawn by NCCUSL as being no longer appropriate for enactment. The federal mandate, however, remains and as of January 1, 2015, UIFSA (1996) was in force in twenty five (25) states. The federal Office of Child Support Enforcement (OCSE) routinely granted waivers to any state requesting authority to enact UIFSA (2001), or, with a deferred effective date, UIFSA (2008). Using the waiver authority, as of January 1, 2015, seventeen states had enacted UIFSA (2001), and twelve states had approved UIFSA (2008), contingent upon the United States’ ratification of the 2007 Convention. The current expectation is that all states, or at least a substantial majority of the remaining states will enact this version, UIFSA (2008), by the end of 2015.

For comprehensive discussions of many of the events described above, *see* Uniform

Interstate Family Support Act, 9 Part IB U.L.A. 159, 291, 471 (2005); Symposium on International Enforcement of Child Support, 43 FAM. L.Q. No. 1, Spring 2009 (1-160 pp., John J. Sampson issue editor); John J. Sampson and Barry J. Brooks, Uniform Interstate Family Support Act (2001) with Prefatory Note and Comments (with Still More Unofficial Annotations), 36 FAM. L.Q. 329 (2002); John J. Sampson, Uniform Interstate Family Support Act (1996), Statutory Text, Prefatory Note, and Commissioners Comments (with More Unofficial Annotations), 32 FAM. L.Q. 385 (1998); John J. Sampson, Uniform Interstate Family Support Act with Unofficial Annotations, 27 FAM. L.Q. 91 (1993).

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

In sum, the original act, UIFSA (1992), was followed by two sets of amendments in 1996, and 2001. Throughout, the basic principles have remained constant, while the details have been refined by experience in the field. This version is the third set of significant amendments to the act, referred to in these comments as UIFSA (2008).

## **II. International Maintenance Orders**

### **A. URESA and RURESA; Minimal Attention to International Orders**

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

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

### **B. UIFSA (1992) (1996); Minor Changes in Treatment of International Orders**

The basic approach of UIFSA (1992) was to maintain the RURESА provision quoted above with the following minor modification: “State . . . includes a foreign jurisdiction that has established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this [Act].” UIFSA (1996) continued the basic provisions by adding that the foreign jurisdiction might have enacted a law that was also “substantially similar” to URESA or RURESА. Further, an amendment to Section 304 recognized that courts in Canadian provinces entered provisional orders for support to accompany their outgoing requests

for establishment and enforcement, and required a provisional order from a state of the United States in order to establish a support order in Canada.

### **C. UIFSA (2001); Bilateral Agreements Recognized**

In August 1996 PRWORA was enacted just three weeks after the promulgation of UIFSA (1996), which continued the approach of RURESA and UIFSA (1992), i.e., define “state” as including a foreign country with a “substantially similar” law to UIFSA. Indeed, this approach remains the law on the statute books of those U.S. jurisdictions that continue UIFSA (1996) in effect. UIFSA (2001) deleted the reference to a foreign country having a “substantially similar law” to URESA or RURESA. Although the revised act did specifically recognize the existence of bilateral agreements between the United States and foreign countries or their political subdivisions, UIFSA (2008) is specifically designed to accommodate U.S. domestic law to international family support orders, especially those resulting under the new Hague Convention of November 23, 2007.

In short, the attention paid in the uniform support acts to issues involving foreign support orders initially was relatively limited until the advent of UIFSA (2001). Previously, in 1996 PRWORA tied the significant federal subsidy for child-support enforcement to the universal enactment of UIFSA (1996), and also laid the groundwork for greatly increased federal activity for reaching bilateral agreements on child support enforcement with foreign countries. The federal act authorized the Secretary of State, with the concurrence of the Secretary of Health and Human Services, to enter into international agreements with foreign reciprocating countries with support enforcement procedures substantially in conformity with such procedures in the United States. Individual U.S. states were also encouraged to enter into reciprocal arrangements with the foreign jurisdictions with which they had the greatest number of international cases.

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

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

### **D. The New Hague Maintenance Convention**

As of June 1, 2003, there were several child support enforcement agreements among countries. One widely accepted agreement, which is largely hortatory and without practical effect, was sponsored by the United Nations in 1956 and referred to as the New York Convention. In addition, there are four agreements promulgated by The Hague Conference on Private International Law (HccH), two covering enforcement of child-support orders in 1958 and

maintenance orders in 1973, and two dealing with applicable law in 1956 and 1973 (a civil law concept). These conventions operate primarily between European nations, and came to be viewed by HccH as out-of-date and relatively ineffective. In addition, there are a welter of regional agreements regarding enforcement of family maintenance orders. The United States is not a party to any of these multilateral agreements.

Beginning in June 2003, and continuing through November 2007, more than 70 countries met in The Hague, Netherlands, in five separate negotiating sessions to forge a new Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

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

As a first step, the Convention was signed by the United States at The Hague, Netherlands, on November 23, 2007. In context, this initial signature represents a commitment by the executive branch of the federal government to make a good faith effort to bring the Convention into force. The Senate has given its advice and consent to the Convention. When it is signed by the President, and the appropriate documents are filed in The Hague, the federal preemption of the issue via the treaty clause will be sufficient to make the Convention “the law of the land.” *See* U.S. Const. art. VI. cl. 2. However, because this multilateral treaty is not self-executing, additional federal or state statutory enactments are necessary to enable the treaty and make it readily accessible to bench and bar. Because establishment, enforcement, and modification of family support are basically matters of state law, from the perspective of the Uniform Law Commission the vehicle for the acceptance into force of the new Convention is a revision of UIFSA (2001), hereafter called UIFSA (2008). In time, it is anticipated the new Hague Maintenance Convention will achieve a high level of integration with many other countries.

### **III. Drafting Principles for UIFSA (2008)**

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

Similarly, a significant portion of the language of the Convention need not be included in state law because that text speaks to the “Contracting States,” that is, to the countries in which the Convention will come into force. A substantial percentage of the articles in the Convention

are directed to the agreement between nation states or their political subdivisions, which do not implicate state tribunals. A majority of the provisions, however, do speak to the “competent authorities,” which means to those tribunals charged with the obligation of applying the Convention to actual support orders. In sum, with relatively minimal amendments, the text of UIFSA (2008) combines the principles of UIFSA and the Convention with the required actions of a state tribunal to put the Convention into effect.

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

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

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

- (1) integrate the requirements of the Convention into the current text of UIFSA articles 1 through 6 by adding “or a foreign country” when the desired actions and goals of both acts are congruent;
- (2) adapt the language of the Convention to the current text of UIFSA articles 1 through 6 in order to make that language more comprehensible to the American bench and bar;
- (3) draft a stand-alone article in UIFSA to direct a “tribunal of this state” on do’s and don’ts unique to the Convention support orders containing issues only applicable under the Convention; and,
- (4) omit the Convention text that need not be included in state law because it speaks only to “Contracting States,” i.e., the United States and the other Convention countries.

The function of the comments to the act is not to serve as an annotated version of UIFSA

(2008), but rather to provide the history and process involved in the drafting of the four iterations of a uniform act, one of which is in force in every jurisdiction of the United States. Other than key constitutional cases, most of the citations found in previous comments to earlier iterations of the act have been omitted.

#### **IV. Federal Action Implicating UIFSA (2008)**

The usual course for treaties entered into by the United States pursuant to the treaty power, U.S. CONST. art. II, § 2, cl. 2, and which are not “self-executing,” is for the treaty to be implemented through federal legislation. The states are, of course, required to comply with the treaty and the federal legislation, but, as noted above, the establishment, enforcement, and modification of family support orders are basically matters of state law. As UIFSA is the familiar and widely used tool for support determinations in cross-border situations, the Uniform Law Commission (ULC), in close consultation with the Department of State and the Department of Health and Human Service’s Office of Child Support Enforcement (OCSE), incorporated applicable provisions of the Hague Maintenance Convention of November 23, 2007 into state law through amendments to UIFSA, now UIFSA (2008). In fact, the United States’ negotiations team at The Hague included ULC representatives, and the 2007 treaty, in many important respects, parallels the UIFSA model of inter-jurisdictional cooperation.

While it includes specific new features for international case processing, UIFSA (2008) incorporates substantial provisions of state law which will already be familiar to attorneys, courts, support enforcement agencies, and litigants. Congress, which funds state child support programs through title IV-D of the Social Security Act has, since 1996, deemed it appropriate to require all states to adopt UIFSA as a condition for the continued receipt of federal funds. Adoption of UIFSA (2008) by the states, will ensure uniformity in implementation of the treaty throughout the country and will enable the United States to be in compliance with the Convention.

Obviously, federal action is also required, both to ratify the treaty and bring it into force. With respect to the Convention, federal legislation was necessary to implement parts of the Convention which do not directly implicate state tribunals, such as the provisions of Convention Chs. II and III dealing with Central Authorities, use of the Federal Parent Locator Service, and collection of past-due support in international cases by offset of federal tax refunds.

The United States signed the treaty on November 23, 2007, signifying its intention to make good faith efforts to have the treaty adopted and implemented in this country. On September 29, 2010 the United States Senate gave its advice and consent to ratification of the treaty. Federal legislation which included provisions pertaining to the treaty was passed by both the House and Senate and was signed by the President on September 29, 2014, as Public Law 113-183. This legislation requires all states to adopt UIFSA (2008). The law further requires that UIFSA (2008) be in effect in each state no later “than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.” If a state has a 2-year legislative session, “each year of the session shall be deemed to be a separate regular session of the State legislature.” All states have regular legislative sessions during 2015 and, thus, all states must enact UIFSA (2008) in 2015.

Immediately following enactment of P.L. 113-183, the Commissioner of OCSE signed a policy Action Transmittal directed to all State Agencies Administering Child Support Plans under Title IV-D of the Social Security Act. This transmittal reiterates the legislative requirement that each state must have in effect the Uniform Interstate Family Support Act, “including any amendments adopted as of September 30, 2008.” The transmittal is set forth in full below.

Adoption of UIFSA(2008) by the states is not only essential to the continued federal funding of state child support programs but is key to the United States’ showing of good faith implementation of the Convention and the entry into force of the Convention in this country. That implementation will help assure that American support orders are fully and expeditiously accepted and enforced in other countries. At the beginning of 2015, thirty-two countries had already ratified, acceded to the Convention, or were bound by a Regional Economic Integration Organization mandate (i.e. the European Union’s means of implementation of the Convention).

## UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES

### OFFICE OF CHILD SUPPORT ENFORCEMENT

#### ACTION TRANSMITTAL

AT-14-11

DATE: October 9, 2014

TO: State Agencies Administering Child Support Plans under Title IV-D of the Social Security Act and Other Interested Individuals

SUBJECT: P.L. 113-183 UIFSA 2008 Enactment

On September 29, 2014 President Obama signed Public Law (P.L.) 113-183, the Preventing Sex Trafficking and Strengthening Families Act. This law amends section 466(f) of the Social Security Act, requiring all states to enact any amendments to the Uniform Interstate Family Support Act “officially adopted as of September 30, 2008 by the National Conference of Commissioners on Uniform State Laws” (referred to as UIFSA 2008). Among other changes, the UIFSA 2008 amendments integrate the appropriate provisions of The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, which was adopted at the Hague Conference on Private International Law on November 23, 2007, referred to as the 2007 Family Maintenance Convention.

Section 301(f)(3)(A) of P.L. 113-183 requires that UIFSA 2008 must be in effect in every state “no later than the effective date of laws enacted by the legislature of the State implementing such paragraph, but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.” If a state has a 2-year legislative session, “each year of the session shall be deemed to be a separate regular session of the State legislature.”

In 2008, after the National Conference of Commissioners on Uniform State Laws adopted the UIFSA 2008 amendments, several states asked OCSE if their state legislatures could enact

UIFSA 2008. At that time, section 466(f) of the Social Security Act required states to adopt UIFSA 1996, a previous version to UIFSA 2008. OCSE issued DCL-08-41, which permitted states to enact UIFSA 2008 verbatim with a provision that the effective date of its enactment be delayed until the 2007 Family Maintenance Convention is ratified and the United States deposits its instrument of ratification. States that chose to follow this process did not need to request an exemption from OCSE. Eight states passed UIFSA 2008 using the effective date language described in DCL-08-41.

Due to the specific requirement in P.L. 113-183 that states enact UIFSA 2008 in their next state legislative session, OCSE rescinds DCL-08-41. The eight states that enacted UIFSA 2008 with a delayed implementation date must take the necessary legislative or administrative steps for UIFSA 2008 to be effective as directed in P.L. 113-183.

Now that the President has signed P.L. 113-183, the following steps must occur before the 2007 Family Maintenance convention can enter into force for the United States.

- All states must enact UIFSA 2008 verbatim by the effective date noted in P.L. 113-183. Where UIFSA 2008 has bracketed language, states may use terminology appropriate under state law. In addition, P.L. 113-183 requires states to make minor revisions to the state plan which OCSE will address in forthcoming guidance.
- The President must sign the instrument of ratification.
- Once these activities are completed, the United States will be able to deposit its instrument of ratification with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, which is the depositary for the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

It is important to note that, once UIFSA 2008 is in effect in your state, international cases will not be processed under Article 7 of UIFSA 2008 until the 2007 Family Maintenance Convention enters into force for the United States. Once this occurs, Article 7 of UIFSA 2008 will be in effect for all cases transmitted and received under the 2007 Family Maintenance Convention.

OCSE expresses our sincere thanks to the entire child support community for the collaborative and monumental effort taken to reach this important milestone. We look forward to working together to enact UIFSA 2008 in all states, and to implement the 2007 Family Maintenance Convention in the United States.

Vicki Turetsky  
Commissioner, Office of Child Support Enforcement



# UNIFORM INTERSTATE FAMILY SUPPORT ACT

## 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 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007.

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

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

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

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

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

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

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

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

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

~~(12)~~ (16) “Obligee” means:

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

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

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

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

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

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

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

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

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

(18) “Outside this state” means a location in another state or a country other than the United States, whether or not the country is a foreign country.

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

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

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

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

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

(19) (24) “Responding tribunal” means the authorized tribunal in a responding ~~State~~ state or foreign country.

(20) (25) “Spousal-support order” means a support order for a spouse or former spouse of the obligor.

(21) (26) “State” means a ~~State~~ state of the United States, the District of Columbia,

Puerto Rico, the United States Virgin Islands, or any territory or insular possession ~~subject to~~ under the jurisdiction of the United States. The term includes: ~~(A)~~ an Indian nation or tribe; ~~and~~

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

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

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

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

~~(22)~~ (27) “Support enforcement agency” means a public official, governmental entity, or private agency authorized to seek:

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

(B) seek establishment or modification of child support;

(C) request determination of parentage of a child;

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

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

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

~~(24)~~ (29) “Tribunal” means a court, administrative agency, or quasi-judicial entity

authorized to establish, enforce, or modify support orders or to determine parentage of a child.

### **Comment**

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

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

There is a divergence of opinion among the several states regarding the appropriate age for termination of child support. The overwhelming number of states set ages 18 (legal adulthood for most purposes), or 19, or one of those two ages and high-school graduation, whichever comes later. Relatively few states have retained the formerly popular age of 21. And, some states extend the support obligation past age 21 if the person to be supported is engaged in higher education. Allegedly some support enforcement agencies and some tribunals have been reluctant to enforce an ongoing child support obligation past age 21, but under UIFSA it is the law of the issuing state or foreign country that makes the determination of the appropriate age for termination of support from an obligor. Because the order has been established with personal jurisdiction over the parties, it is fully enforceable under the terms of the act.

Under the terms of the Convention, the standard obligation of a responding tribunal to enforce a child-support order is for a person “under the age of 21 years.” *See* Convention art. 2. Scope. However, a contracting nation may make a reservation to limit enforcement of a child-support order to “persons who have not attained the age of 18 years.” *Id.* This possibility will not affect this act domestically because the United States does not intend to make such a reservation. Currently states will enforce another jurisdiction’s order even if such an order could not have been obtained in the responding state because the child was over 18. There is no requirement to establish an order for a child over the age of 18 if that cannot be done under the local jurisdiction’s law.

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

Subsection (4) “Duty of support,” means the legal obligation to provide support, whether

or not that duty has been the subject of an order by a tribunal. This broad definition includes both prospective and retrospective obligations to the extent they are imposed by the relevant state law.

The definitions in subsections (5) “foreign country,” (6) “foreign support order,” and (7) “foreign tribunal,” are all new to UIFSA, and must be read in conjunction with the prior and the new definition of “state,” now in subsection (26). Formerly, under certain circumstances a foreign country or political subdivision was declared to be a “state.” Defining a foreign country or a political subdivision thereof, e.g., a Canadian province, as a “state” may be traced back to 1968, where this approach first appeared in the Revised Uniform Reciprocal Enforcement of Support Act (RURESA). That fiction created confusion because a foreign support order is not entitled to full faith and credit. Indeed, such orders of the sister states of the United States were only relatively recently accorded that treatment after congressional action in 1994 with the advent of the Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C. § 1738 B. Thus, constitutional analysis is not required for enforcement of foreign support orders; only state statutory issues are involved.

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

Subsection (5) requires additional careful reading; under the act “foreign country” by no means includes all foreign nations. *See* Section 102(5)(A)-(D). Countries identified by three of the four subdivisions are reasonably ascertainable. The list of reciprocating countries that have negotiated an executive agreement with the United States as described in subdivision (5)(A), known as bilateral agreements, is found on the website of the federal Office of Child Support Enforcement (OCSE) at <http://www.acf.hhs.gov/programs/cse/international/index.html>.

The countries described in Section 102(5)(B) have entered into an agreement with the forum state, which presumptively is known to officials of that state. A combined list of all such agreements of all states is not readily available.

Countries subject to Section 102(5)(C) theoretically could require individualized determinations on a case-by-case basis. An alternative might be for each state to create an efficient method for identifying foreign countries whose laws are “substantially similar” to UIFSA. On the other hand, the “substantially similar” test to measure the laws of foreign nations has been around since 1968 without eliciting much controversy.

In the future, assuming that there will be a number of countries with the Convention in force with the United States under Section 102(5)(D), the list of those countries will be well publicized.

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

## Section 104.

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

Subsection (17) “obligor,” and subsection (16) “obligee,” are denominated in the Convention as “debtor” and “creditor.” The terms inherently contain the legal obligation to pay or receive support, and implicitly refer to the individuals with a duty to support a child. “Obligor” includes an individual who is alleged to owe a duty of support as well as a person whose obligation has previously been determined. The one-order system of UIFSA can succeed only if the respective obligations of support are adjusted as the physical possession of a child changes between parents or involves a third-party caretaker. This must be accomplished in the context of modification, and not by the creation of multiple orders attempting to reflect each changing custody scenario. Obviously this issue is of concern not only to interstate and international child-support orders, but applies to intrastate orders as well.

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

The definitions in subsections (23) “responding state,” and (24) “responding tribunal,” accommodate the direct filing of a petition under UIFSA without the intervention of an initiating tribunal. Both definitions acknowledge the possibility that there may be a responding state and a responding tribunal in a situation where there is no initiating tribunal. Under current practice, the initial application for services most often will be generated by a support enforcement agency or a central authority of a foreign country and sent to the appropriate support enforcement agency in the responding state.

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

The vast bulk of child support establishment, enforcement, and modification in the United States is performed by the state Title IV-D agencies. *See* Part IV-D, Social Security Act, 42 U.S.C. § 651 et seq. Subsection (27) “support enforcement agency,” includes not only those entities, but also any other state or local governmental entities, or private agencies acting under contract with such agencies, charged with establishing or enforcing child support. A private agency falls within the definition of a support enforcement agency only as an outsource of a Title IV-D agency or specifically identified as such under Section 103.



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

Subsection (29) “tribunal,” takes into account that a number of states have delegated various aspects of child-support establishment and enforcement to quasi-judicial bodies and administrative agencies. The term accounts for the breadth of state variations in 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.

### **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, federal law and regulations require that each state designate a “single and separate organizational unit” as the state agency that is charged with administration of the state plan and is authorized, and funded under Title IV-D of the Social Security Act. Known throughout the United States as the as the “IV-D agency,” it may delegate any of its functions to another state or local agency or may purchase services from any person or private agency. The IV-D agency, however, retains responsibility for ensuring compliance with the Title IV-D state plan. Moreover, by virtue of the receipt of a federal subsidy, the agency is subject to federal regulations. The legislature may also decide to provide services unrelated to, or not funded by the Title IV-D system. For example, the state legislature could identify (and fund) a private agency authorized to enforce a spousal-support order not involving child support, or could fund a public defender system to provide counsel for indigent defendants in IV-D cases.

## SECTION 104. REMEDIES CUMULATIVE.

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

(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].

*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

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 facilitates the recognition and enforcement of a support order from a nation state that is entitled to have its orders recognized by comity, but is not a "foreign country" under Section 102(5). The insertion of the term "foreign support order" to replace "support order of a foreign country or political subdivision" in subsection (a) helps clarify application of "comity" for support enforcement cases. In UIFSA, four types of nation states are defined as "foreign countries": (1) Convention countries; (2) countries with bilateral agreements with the federal government; (3) countries with bilateral agreements with particular states; and (4) countries with similar support laws. However, orders of countries that do not fall within this definition may nevertheless be enforced under "comity". Applying comity to enforce a support order of a tribunal of another nation state intends courtesy and good will, and extends due regard for the legislative, executive, and judicial acts of another nation which is not a "foreign country" as defined in Section 102.

Although the determination by the United States Department of State that a foreign nation is a reciprocating country is binding on all states, recognition of a support order through comity is dependent on the law of each state. The reference to “remedies under other law” is intended to recognize the principle of comity as developed in the forum state by statutory or common law, rather than to create a substantive right independent of that law.

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

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

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

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

(1) a foreign support order;

(2) a foreign tribunal; or

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

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

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

### **Comment**

Four distinct entities are defined as a “foreign country” with tribunals that enter a “foreign support order.” *See* Section 102(5). With regard to the three types of proceedings identified in subsection (a), all of the provisions in this act in Articles 1 through 6 apply. Note, however, that under subsection (c), only one of these, a country “in which the Convention is in force with respect to the United States,” *see* Section 102 (5)(D), will be subject to Article 7 as well as to Articles 1 through 6. Thus, a support order from one of these countries may require special attention. After the Convention comes into force in the United States, a body of case law may develop if it becomes necessary to resolve unanticipated differences between this act and the Convention. As this extensive commentary and the many cross references to provisions of the Convention indicate, significant efforts have been made to avoid any such conflicts.

Under subsection (b) a tribunal of this state may apply principles of comity if appropriate to recognize a support order from a foreign nation state that does not fit the definition of a “foreign country,” *see* Section 102(5)(A)-(D), *supra*.

Subsection (c) resolves that if 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 through 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.

## **ARTICLE 2**

### **JURISDICTION**

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

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

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

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

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

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

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

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

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

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

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

### **Comment**

***General Jurisdictional Principle:*** Sections 201 and 202 contain what is commonly described as long-arm jurisdiction over a nonresident respondent for purposes of establishing a support order or determining parentage. Read together, subsections (a) and (b) provide the basic jurisdictional

rules established by the act for interstate application of a support order, and are designed to be as broad as is constitutionally permissible. To sustain enforceability of a family support order in the United States the tribunal must be able to assert personal jurisdiction over the parties. *See* Estin v. Estin, 334 U.S. 541, 68 S. Ct. 1213, 92 L. Ed. 1561 (1948), and Vanderbilt v. Vanderbilt, 354 U.S. 416, 77 S. Ct. 1360, 1 L. Ed. 2d 1456 (1957) (spousal support); Kulko v. Superior Court, 436 U.S. 84, 98 S. Ct. 1690, 56 L. Ed. 2d 132 (1978) (child support).

***Long-arm Provisions:*** Inclusion of this long-arm provision in this interstate act is justified because residents of two separate states are involved in the litigation, both of whom must be subject to the personal jurisdiction of the forum. Thus, the case has a clear interstate aspect, despite the fact that the substantive and procedural law of the forum state is applicable to a lawsuit in what is a one-state case. This rationale is sufficient to invoke additional UIFSA provisions in an otherwise intrastate proceeding. *See* Sections 202, 316, and 318, as pertaining to special rules of evidence and discovery for UIFSA cases. The intent is to ensure that every enacting state has a long-arm statute that is as broad as constitutionally permitted.

In situations in which the long-arm statute can be satisfied, the petitioner (either the obligor or the obligee) has two options: (1) utilize the long-arm statute to obtain personal jurisdiction over the respondent, or, (2) initiate a two-state proceeding under the succeeding provisions of UIFSA seeking to establish a support order in the respondent's state of residence. Of course, a third option is also available that does not implicate UIFSA; a petitioner may initiate a proceeding in the respondent's state of residence by filing a proceeding to settle all issues between the parties in a single proceeding.

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

***Subsection by subsection analyses:*** Subsections (1) through (8) are derived from a variety of sources, including the Uniform Parentage Act (1973) § 8, Texas Family Code § 102.011, and New York Family Court Act § 154.

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

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

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

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

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

Finally, subsection (8) tracks the broad, catch-all provisions found in many state statutes, including Cal. Civ. Proc. Code § 410.10 (1973), and Tex. Family Code § 102.011. Note, however, that the California provision, standing alone, was found to be inadequate to sustain a child-support order under the facts presented in *Kulko v. Superior Court*, 436 U.S. 84 (1978).

***Limit on Asserting Long-arm Jurisdiction to Modify Child-Support Order:*** Subsection (b) elaborates on the principle by providing that modification of an existing child-support order goes beyond the usual rules of personal jurisdiction over the parties. Amended in UIFSA (2001), subsection (b) makes clear long-arm personal jurisdiction over a respondent, standing alone, is not sufficient to grant subject matter jurisdiction to a responding tribunal of the state of residence of the petitioner for that tribunal to modify an existing child-support order. *See* the extended commentaries to Sections 609 through 616. The limitations on modification of a child-support order provided by Section 611 must be observed irrespective of the existence of personal jurisdiction over the parties.

For tribunals of the United States, these sections integrate the concepts of personal jurisdiction and its progeny, continuing jurisdiction, and controlling orders. Note that the long-arm provisions of UIFSA (1992) were originally written with only domestic cases in mind. If the

tribunal of a state has personal jurisdiction over an individual residing in another state (or, by implication, a foreign country), the application of local law is entitled to recognition and enforcement. *See* Full Faith and Credit for Child Support Orders Act, a.k.a. FFCCSOA, 28 U.S.C. § 1738B. Integrating this federal law based on the Constitution with the statutory rule of subject matter jurisdiction for modification of an existing child-support order is a major accomplishment of UIFSA. Obviously, the federal act is applicable to a child-support order issued by a state tribunal, but is not applicable to a foreign support order. Nor does FFCCSOA in any way affect a foreign country, which will apply its local law of recognition, enforcement, and modification to a child-support order originating from a state of the United States. When the Convention enters into force, the integration of UIFSA and the law of some foreign countries will be international in scope. At that time the jurisdictional rules of all concerned become significantly more complex. *See* Section 708. Nonetheless, it seems likely the complexity will be more theoretical than actually troublesome.

***Applicability of Long-Arm Jurisdiction to Spousal Support:*** Although this long-arm statute applies to a spousal-support order, almost all of the specific provisions of this section relate to a child-support order or a determination of parentage. This derives from the fact that the focus of UIFSA is primarily on child support. Only subsections (1), (2), and (8) are applicable to an action for spousal support asserting long-arm jurisdiction over a nonresident. The first two subsections are wholly noncontroversial insofar as an assertion of personal jurisdiction is concerned. Moreover, as a practical matter, an assertion of personal jurisdiction under UIFSA will almost always also yield jurisdiction over all matters to be decided between the spouses, including division of property on divorce. Thus, the most obvious possible basis for asserting long-arm jurisdiction over spousal support, i.e., “last matrimonial domicile,” is not included in Section 201 to avoid the potential problem of another instance of bifurcated jurisdiction. This restraint avoids a situation in which UIFSA would arguably grant long-arm jurisdiction for a spousal-support order when the forum state has no correlative statute for property division in divorce.

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

For example, a challenge to a request for enforcement of a foreign support order may be made by a respondent based on an allegation that the foreign issuing tribunal lacked personal jurisdiction over the respondent. A respondent may acknowledge that the obligee or the child resides in France, and that a French tribunal issued a support order. But, in the *Kulko* decision the Court accepted the respondent’s allegation that under the state law then available there was no nexus between himself and California and therefore no personal jurisdiction over him as required by the opinion. From the perspective of the French tribunal under the facts above, an asserted lack of personal jurisdiction is of no consequence. Under the law of France, like the law of virtually all other foreign nations, the child-based jurisdiction stemming from the residence of the obligee or child is sufficient to sustain a child-support order against the noncustodial parent.



But, meshing the world-wide system of child-based jurisdiction with the U.S. requirement of *in personam* jurisdiction presented an easily resolved challenge to the drafters of the new Hague Maintenance Convention.

Thus, under the Convention, a state tribunal may be called upon to determine whether the facts underlying the support order would have provided the issuing foreign tribunal with personal jurisdiction over the respondent under the standards of this section. In effect, the question is whether the foreign tribunal would have been able to exercise jurisdiction in accordance with Section 201. The foregoing fact situation illustrates that it is for the state tribunal to determine if the order of the French tribunal would have complied with UIFSA Section 201 on the facts of the case. If so, the foreign support order is entitled to recognition and enforcement. For example, the facts of the case may show that the father lived with the child in France, supported the mother or child in France, or perhaps was responsible for, or agreed to the movement of the child to France.

On the other hand, if the issuing French tribunal would have lacked personal jurisdiction over the respondent if Section 201 had been applicable, the support order cannot be enforced because there was no nexus between France and the respondent. The United States will make a reservation to Convention article 20, declining to recognize or enforce a foreign support order on child-based jurisdiction founded solely on the location or residence of the obligee or the child in the foreign country.

Interestingly, if the responding state tribunal finds the French tribunal lacked personal jurisdiction over the respondent, additional action may be taken. In a Convention case, the responding state tribunal may establish a child-support order if it has personal jurisdiction over the respondent without requesting a separate application for establishment of a new order.

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

**SECTION 202. DURATION OF PERSONAL JURISDICTION.** Personal jurisdiction acquired by a tribunal of this ~~State~~ state in a proceeding under this ~~{Act}~~ [act] or other law of this ~~State~~ state relating to a support order continues as long as a tribunal of this ~~State~~ state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by Sections 205, 206, and 211.

### **Comment**

It is a useful legal truism after a tribunal of a state issues a support order binding on the parties, which must be based on personal jurisdiction by virtue of *Kulko v. Superior Court*, 436 U.S. 84 (1978) and *Vanderbilt v. Vanderbilt*, 354 U.S. 416 (1957), jurisdiction in personam continues for the duration of the support obligation absent the statutorily specified reasons to terminate the order. The rule established by UIFSA is that the personal jurisdiction necessary to sustain enforcement or modification of an order of child support or spousal support persists as

long as the order is in force and effect, even as to arrears, *see* Sections 205-207, 211, *infra*. This is true irrespective of the context in which the support order arose, e.g., divorce, UIFSA support establishment, parentage establishment, modification of prior controlling order, etc. Insofar as a child-support order is concerned, depending on specific factual circumstances a distinction is made between retaining continuing, exclusive jurisdiction to modify an order and having continuing jurisdiction to enforce an order, *see* Sections 205 and 206, *infra*. Authority to modify a spousal-support order is permanently reserved to the issuing tribunal, Section 211, *infra*.

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

#### **Comment**

This section identifies the two roles a tribunal of the forum may serve: acting as either an initiating or a responding tribunal. *See* Sections 304 and 305 for the duties and powers of the tribunal in each of these capacities. Under UIFSA, a tribunal may serve as a responding tribunal even when there is no initiating tribunal. This accommodates the direct filing of a proceeding in a responding tribunal by a nonresident of the forum, whether residing in a state or anywhere else in the world. Note, however, that the section does not deal with whether an initiating tribunal of a state may forward a proceeding to a tribunal in a foreign country, which may be left to the individual support enforcement agency.

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

#### **SECTION 204. SIMULTANEOUS PROCEEDINGS.**

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

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

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

~~State~~ state or the foreign country; and

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

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

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

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

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

### **Comment**

Under the one-order system established by UIFSA, it was necessary to provide a procedure to eliminate the multiple orders so common under RURESA and URESA. This requires cooperation between, and deference by, state tribunals in order to avoid issuance of competing support orders. To this end, tribunals are expected to take an active role in seeking out information about support proceedings in another state or foreign country concerning the same child. Depending on the circumstances, one of the two tribunals considering the same support obligation should decide to defer to the other. The inclusion of a foreign country in this investigation facilitates the goal of a “one-order world” for a support obligation.

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

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

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

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

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

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

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

(2) its order is not the controlling order.

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

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

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

### **Comment**

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

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

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

From the beginning of the implementation of the CEJ principle, questions have been

raised about why a tribunal may not modify its own order if the parties agree that it should do so even after the parties have left the state. The move of the parties and the child from the state may have been of a very short distance and, although the parties no longer reside in the issuing state, they may prefer to continue to have the child-support order be governed by the same issuing tribunal because they continue to have a strong affiliation with it. For example, the child-support order may have been issued by a tribunal of Washington, D.C. Subsequently the obligee and child have moved to Virginia, the obligor now resides in Maryland, and perhaps one or both parties continue to be employed in Washington. Subsection (a)(2) authorizes retention of CEJ by the issuing state when the parties reasonably may prefer to continue to deal with the issuing tribunal even though the state is “not the residence” of the parties or child as an exception to the general rules of CEJ for modifications of a support order.

The other side of the coin follows logically. Just as subsection (a) defines the retention of continuing, exclusive jurisdiction, by clear implication the subsection also identifies how jurisdiction to modify may be lost. That is, if all the relevant persons—the obligor, the individual obligee, and the child—have permanently left the issuing state, absent an agreement the issuing tribunal no longer has an appropriate nexus with the parties or child to justify the exercise of jurisdiction to modify its child-support order. Further, the issuing tribunal will have no current evidence readily available to it about the factual circumstances of anyone involved, and the taxpayers of that state will have no reason to expend public funds on the process. Note, however, that the original order of the issuing tribunal remains valid and enforceable. That order is in effect not only in the issuing state, but also in those states in which the order has been registered. The order also may be registered and enforced in additional states even after the issuing tribunal has lost its power to modify its order, *see* Sections 601-604, *infra*. In sum, the original order remains in effect until it is properly modified in accordance with the narrow terms of Sections 609-612, *infra*.

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

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

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

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

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

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

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

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

### **Comment**

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

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

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

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

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

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

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

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

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

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

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

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

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



or may be filed as a separate proceeding.

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

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

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

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

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

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

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

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

## Comment

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

The combination of FFCCSOA becoming effective on October 20, 1994 and the adoption of UIFSA (1996) being mandated for all states by January 1, 1998, has made this section almost never used. The existence of multiple, valid orders for ongoing support have all but disappeared.

Sections 209-210, and especially Section 207, are designed to span the gulf between the one-order system created by UIFSA and the multiple-order system previously in place under RURESAs and URESAs. These transitional procedures necessarily must provide for the eventual elimination of existing multiple support orders in an expeditious and efficient manner. Although FFCCSOA was effective October 20, 1994 and all U.S. jurisdictions enacted UIFSA by 1998, considerable time is required to pass before its one-order system could be completely in place. For example, multiple 21-year child-support orders issued for an infant in 1996 and 1997 would, by their terms, not end the conflict until the first expires 2017—absent resolution of the conflict by a tribunal under this section. Nonetheless, at least on the appellate level, the problem of multiple orders is fast disappearing. This section provides a relatively simple procedure to identify a single viable order that will be entitled to prospective enforcement in every state.

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

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

and fixes the support obligation and its nonmodifiable aspects, primarily duration of support, *see* Sections 604 and 611(c), *infra*. The rationale for creating a new order to replace existing multiple orders is that there is no valid reason to prefer the terms of any one of the multiple orders over another in the absence of a fact situation described in subsections (b)(1) or (b)(2).

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

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

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

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

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

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

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

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

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

#### **SECTION 208. CHILD-SUPPORT ORDERS FOR TWO OR MORE OBLIGEEES.**

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

#### **Comment**

This section is concerned with those multiple orders that 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. § 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 law limitations on wage garnishment, Consumer Credit Protection Act of 1968, 15 U.S.C. § 1673(b). In order to allocate resources between competing families, UIFSA refers to state law. The basic principle is that one or more 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~~ state, or a foreign country.

#### **Comment**

The issuing tribunal is ultimately responsible for the overall control of the enforcement methods employed and for accounting for the payments made on its order from multiple sources. Until that scheme is fully in place, however, it will be necessary to continue to mandate pro tanto credit for actual payments made against all existing orders. The addition to include a foreign support order in the calculation should assure all payments of support are properly credited. This section does not attempt to impact the way support paid in an individual case is apportioned or distributed between the obligee and one or more states asserting a claim to the monies.

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

#### **Comment**

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

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

This section makes clear that the special rules of evidence and procedure identified in Sections 316, 317, and 318 are applicable in a case involving a nonresident of the forum state. Section 316 facilitates decision-making when a party or a child resides “outside this state” by providing special rules to recognize the impediments to presenting evidence caused by nonresident status. Note the terminology has the broadest possible application, i.e., worldwide. The improved interstate and international exchange of information enables the nonresident to participate as fully as possible in the proceedings without the necessity of personally appearing in the forum state. The same considerations account for authorizing interstate and international communications between tribunals as per Section 317. Finally, the discovery procedures of Section 318 are made applicable in a one-state proceeding when another tribunal may assist in that process. Of course, “may assist” is entirely at the discretion of the other tribunal. Note, a foreign tribunal may be completely unfamiliar with discovery procedures as known in the United States.

Generally, however, the ordinary substantive and procedural law of the forum state applies in a one-state proceeding. In sum, the parties and the tribunal in a one-state case may utilize those procedures that contribute to economy, efficiency, and fair play.

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

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

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

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

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

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

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

### **Comment**

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

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

## **ARTICLE 3**

### **CIVIL PROVISIONS OF GENERAL APPLICATION**

#### **Introductory Comment**

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

#### **SECTION 301. PROCEEDINGS UNDER [ACT].**

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

(b) An individual [petitioner] or a support enforcement agency may initiate a proceeding authorized under this ~~[Act]~~ [act] by filing a [petition] in an initiating tribunal for forwarding to a

responding tribunal or by filing a [petition] or a comparable pleading directly in a tribunal of another ~~State~~ state or a foreign country which has or can obtain personal jurisdiction over the [respondent].

### **Comment**

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

The statement in subsection (b) is axiomatic that the tribunal in which a petition is filed for establishment or enforcement of a support order, or for modification of a child-support order, must be able to assert personal jurisdiction over the respondent. It is also axiomatic that an individual petitioner requesting affirmative relief under this act submits to the personal jurisdiction of the tribunal. Subsection (b) also continues reference to the basic two-state procedure long employed by the former reciprocal acts to establish a support order in the interstate context, but expands it to recognize foreign countries. Direct filing of a petition in a state tribunal by an individual or a support enforcement agency without reference to an initiating tribunal in another state was introduced by UIFSA (1992). UIFSA (2008) extends the direct filing capability to foreign countries as well.

Although the filing of a petition in an initiating tribunal to be forwarded to a responding tribunal is still recognized as an available procedure, the direct filing procedure has proven to be one of the most significant improvements in efficient interstate case management. The promulgation and use of the federally mandated, or substantially conforming, forms, Section 311(b), further serves to eliminate any role for the initiating tribunal. Incidentally, the Convention contains approved forms for use in Convention cases processed through a Central Authority.

***Related to Convention:*** art. 2. Scope; art. 10. Available applications; art. 19. Scope of the chapter; art. 20. Bases for recognition and enforcement; art. 32. Enforcement under internal law; art. 33. Non-discrimination; art. 34. Enforcement measures; art.37. Direct requests to competent authorities; Annex 1. Transmittal form under Article 12(2); Annex 2. Acknowledgement form under Article 12(3).

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

### **Comment**

A minor parent may maintain a proceeding under UIFSA without the appointment of a guardian ad litem, even if the law of the forum jurisdiction requires a guardian for an in-state



case. If a guardian or legal representative has been appointed, he or she may act on behalf of the minor's child in seeking support.

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

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

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

### **Comment**

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

### **SECTION 304. DUTIES OF INITIATING TRIBUNAL.**

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

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

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

(b) If requested by the responding tribunal, a tribunal of this ~~State~~ state shall issue a

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

### **Comment**

Subsection (a) was designed primarily to facilitate interstate enforcement between UIFSA states and URESA and RURESAs, with some applicability to cases involving foreign jurisdictions. Since 1998, by which time UIFSA had been enacted nationwide, the procedure described has gradually become an anachronism. Note, however, that the last RURESA child-support order may not expire until 2017 or 2018. *See* Prefatory Note.

Subsection (b), however, retains its utility with regard to a support order of a foreign nation. Supplying documentation required by a foreign jurisdiction, which is not otherwise required by UIFSA procedure, is appropriate in the international context. For example, a venerable process in British Commonwealth countries is known as provisional and confirming orders. A “provisional order” is a statement of the nonbinding amount of support being requested by a Canadian tribunal for establishment of a support order by a state responding tribunal. A state responding tribunal will receive information about 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 initiating state’s tribunal, 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 from an initiating tribunal or directly pursuant to Section 301(b), it shall cause the [petition] or pleading to be filed and notify the [petitioner] where and when it was filed.

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

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

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

(3) order income withholding;

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

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

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

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

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

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

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

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

(12) grant any other available remedy.

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

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

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

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

### **Comment**

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

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

Subsection (b) lists duties that, if possessed under state law in connection with intrastate cases, are extended to the responding tribunal in UIFSA cases. Thus, each subdivision

purposefully avoids mention of substantive rules. For example, subsection (b)(7) does not identify the type, nature, or priority of liens that may be issued under UIFSA. As is generally true under the act, those details will be determined by applicable state law concerning support enforcement remedies of local orders.

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

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

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

Subsection (f) is designed to facilitate enforcement of a foreign support order. Note that the language directing a conversion to a monetary equivalence in dollars is intended to make clear the equivalence is not a modification of the original order to an absolute dollar figure; rather, satisfaction of the obligation is to be determined by the order-issuing tribunal based on the present dollar value of the currency in which the order is denominated.

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

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

### **Comment**

If a [petition] or comparable pleading is received by an inappropriate tribunal of this state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal of this state or another state and notify the [petitioner] where and when the pleading was sent. A tribunal receiving UIFSA documents in error is to forward the original documents to their proper destination without undue delay. This section was originally intended to apply both to initiating and responding tribunals receiving such documents, but the practical elimination of the role of initiating tribunals under modern practice now limits the notice requirement to the

petitioner, i.e., the individual party or support enforcement agency, that filed (or misfiled) the document directly. For example, if a tribunal is inappropriately designated as the responding tribunal, it shall forward the petition to the appropriate responding tribunal wherever located, if known, and notify the petitioner of its action. Such a procedure is much to be preferred to returning the documents to the petitioner to begin the process anew.

Cooperation of this sort will facilitate the ultimate goals of the act. Although by its terms this section applies only to a tribunal of this state, it can be anticipated that the support enforcement agency will also assist in transferring documents to the appropriate tribunal. Note the section does not contemplate that a state tribunal will forward documents to a tribunal in a foreign country.

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

### **Alternative A**

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

### **Alternative B**

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

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

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

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

### **End of Alternatives**

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

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

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

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

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

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

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

agency of another ~~State~~ state pursuant to Section 319 of the ~~Uniform Interstate Family Support Act~~.

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

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

*Legislative Note: The state legislature may adopt Alternative A at any time in order to maintain the practice under current law, or it may adopt Alternative B and opt to limit processing of international cases by the support enforcement agency to those received from the Central Authority of either a foreign reciprocating country or a foreign treaty country.*

### Comment

Federal legislation signed on Sept. 29, 2014 (P.L. 113-183) authorizes states to enact Alternative A or Alternative B of subsection (a). The focus of subsection (a) is on providing services to a petitioner. Either the obligee or the obligor may request services, and that request may be in the context of the establishment of an initial child-support order, enforcement or review and adjustment of an existing child-support order, or a modification of that order (upward or downward). Note that the section does not distinguish between child support and spousal support for purposes of providing services. Note also, the services available may differ significantly; for example, modification of spousal support is limited to the issuing tribunal. *See* Section 205(f).

Alternative A continues the longstanding rule that this state's support enforcement agency shall provide services upon request to a petitioner seeking relief under this act. Under Alternative B, the support agency may exercise discretion to provide or not provide assistance to an applicant: (1) from a reciprocating country or Convention country who does not apply through the Central Authority of his or her own country, but rather applies directly to the support enforcement agency; and (2) residing overseas in a country other than a reciprocating country or Convention country. The lack of services, of course, may impact the means by which an individual is able to obtain assistance in pursuing an action in the appropriate tribunal.

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

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



and cases with multiple orders.

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

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

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

***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.

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

#### **Comment**

Subsection (b) makes clear that a state has a variety of options in determining the international scope of its IV-D support enforcement program. Of course, a federal declaration that a foreign jurisdiction is a reciprocating country or political subdivision is controlling. *See* Section 102(5)(A). However, each state may designate an official with authority to make a statewide, binding determination recognizing a foreign country, foreign nation state, or political subdivision as having a reciprocal arrangement with that state. *See* Section 102(5)(B).

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

## Comment

The right of a party to retain private counsel in a proceeding brought under UIFSA is explicitly recognized. The failure to clearly recognize that power under the prior uniform acts led to confusion and inconsistent decisions. The Convention implicitly recognizes that the right to employ an attorney is to be available in every Convention country, but does not explicitly mention retaining private counsel. A “competent authority” in Convention terminology is equivalent to a tribunal.

***Related to Convention:*** art. 37. Direct requests to competent authorities.

### **SECTION 310. DUTIES OF [STATE INFORMATION AGENCY].**

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

(b) The state information agency shall:

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

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

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

(4) obtain information concerning the location of the obligor and the obligor’s property within this ~~State~~ state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor’s address from employers, and examination of governmental records, including, to the

extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

### **Comment**

Subsection (a) identifies the state information agency.

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

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

(a) In a proceeding under this ~~[Act]~~ [act], a [petitioner] seeking to establish a support order, to determine parentage of a child, or to register and modify a support order of a tribunal of another ~~State~~ state or a foreign country must file a [petition]. Unless otherwise ordered under Section 312, the [petition] or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, residential address, social security number, and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the [petition] must be accompanied by a copy of any support order known to have been issued by another tribunal. The [petition] may include any other information that may assist in locating or identifying the [respondent].

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

### **Comment**

This section establishes the basic requirements for drafting and filing interstate pleadings. Subsection (a) should be read in conjunction with Section 312, which provides for the

confidentiality of certain information if disclosure is likely to result in harm to a party or a child. The goal of this section is to improve efficiency of the process by attaching all known support orders to the petition, coupled with the elimination of the requirement that such copies be certified. If a dispute arises over the authenticity of a purported order, the tribunal must, of necessity, sort out conflicting claims at that time. Another improvement is the deletion of the requirement for verified pleadings originated in URESA and carried forward in the original version of UIFSA. Note, however, that a request for registration of a foreign support order for which the Convention is in force is subject to Section 706. This is due to the fact that the list of documents comprising the required record in subsection (a) differs in a measurable degree with Convention articles 11 and 25.

Subsection (b) provides authorization for the use of the federally authorized forms to be used in interstate cases in connection with the IV-D child-support enforcement program and mandates substantial compliance with those forms. Although the use of other forms is not prohibited, standardized documents have resulted in substantial improvement in the efficient processing of UIFSA proceedings. The Convention also contains annexed forms for international use.

***Related to Convention:*** art. 10. Available applications; art. 11. Application contents; art. 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 a party or child at risk if domestic violence was involved in the past. This section is a substantial revision of the statutory formulation originally developed in UIFSA (1992). It conforms to the comparable provision in the 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 risk of domestic violence or child abduction. Section 712, *infra*, incorporates language from the Convention to

restrict dissemination of personal jurisdiction to protect victims of domestic violence.

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 light of the intractable problems associated with interstate parental kidnapping, *see* the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 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**

Subsection (a) permits either party, i.e., as petitioner, to file without payment of a filing fee or other costs. This provision dates back to UIFSA (1992) when the term "unfunded mandate" was basically unknown.

Subsection (b), however, provides that only the support obligor may be assessed the

authorized costs and fees by a tribunal. Federal law permits a state support enforcement agency to charge limited fees and to recover administrative costs from applicants for Title IV-D services, but many states have opted not to do so, or only to seek recovery from the obligor.

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.

#### **SECTION 314. LIMITED IMMUNITY OF [PETITIONER].**

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

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

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

#### **Comment**

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

Subsection (b) grants a litigant a variety of limited immunity from service of process during the time that party is physically present in a state for a UIFSA proceeding. The immunity

provided is in no way comparable to diplomatic immunity, however, which should be clear from reading subsection (c) in conjunction with the other subsections.

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

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

#### **Comment**

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

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

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

## SECTION 316. SPECIAL RULES OF EVIDENCE AND PROCEDURE.

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

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

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

(d) Copies of bills for testing for parentage of a child, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ~~[ten]~~ [10] days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

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

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



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

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

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

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

### **Comment**

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

Subsection (a) ensures that a nonresident petitioner or a nonresident respondent may fully participate in a proceeding under the act without being required to appear personally. Subsection (b) recognizes the pervasive effect of the federal forms promulgated by the Office of Child Support Enforcement, which replace the necessity of swearing to a document “under oath” with the simpler requirement that the document be provided “under penalty of perjury,” as has long been required by federal income tax Form 1040.

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

Subsection (d) provides a simplified means for proving health-care expenses related to

the birth of a child. Because ordinarily the amount of these charges is not in dispute, this is designed to obviate the cost of having health-care providers appear in person or of obtaining affidavits of business records from each provider.

Subsections (e) and (f) encourage tribunals and litigants to take advantage of modern methods of communication in interstate support litigation; most dramatically, the out-of-state party is authorized to testify by the full panoply of audio and audiovisual technologies currently available for direct personal communication and to supply documents by fax, email, or direct transfer between computers or other electronic devices. One of the most useful applications of these subsections is to provide an enforcing tribunal with up-to-date information concerning the amount of arrears.

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

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

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

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

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

### Comment

This section explicitly authorizes a state tribunal to communicate with a tribunal of another state, foreign country, or in a foreign nation state not defined as a foreign country. It was derived from UCCJA § 110 authorizing such communications to facilitate a fully informed decision. The amendment in UIFSA (2008) not only expands the authorization to worldwide scope, i.e., “outside this state,” but specifically adds email to the select modes of communication. Broad cooperation by tribunals is strongly encouraged in order to expedite establishment and enforcement of a support order. American judges are very familiar with this procedure. It remains to be seen whether overseas communication between judges will be received with similar cooperation.

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

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

### Comment

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

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

- (a) A support enforcement agency or tribunal of this ~~State~~ state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another ~~State~~ state or a foreign country a certified statement by the custodian of the record of the amounts and dates of all payments received.
- (b) If neither the obligor, nor the obligee who is an individual, nor the child resides in this ~~State~~ state, upon request from the support enforcement agency of this ~~State~~ state or another ~~State~~ state, [the support enforcement agency of this ~~State~~ state or] a tribunal of this ~~State~~ state shall:

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

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

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

### **Comment**

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

As an exception to the usual provisions in Article 3, subsections (b) and (c) are applicable only to interstate cases. The procedure described was inspired by the Office of Child Support Enforcement (OCSE), U.S. Department of Health and Human Services, and is designed to speed up receipt of support payments. Support enforcement agencies are directed to cooperate in the efficient and expeditious collection and transfer of child support from obligor to obligee. Over two-thirds of all child support payments currently are made through direct income withholding actions, whereby an out-of-state IV-D agency sends direct notice to an employer in the obligor's state to withhold funds to satisfy the support obligation. Nonetheless, this section remains viable for those situation in which the direct withholding encounters a glitch. Further, there are ongoing problems in states not having income withholding payments go to the state disbursement unit. This section is intended to solve the problem by directing the payments to the most logical disbursement unit, i.e., the state with continuing exclusive jurisdiction.

## **ARTICLE 4**

### **ESTABLISHMENT OF SUPPORT ORDER OR DETERMINATION OF PARENTAGE**

### **Comment**

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

**SECTION 401. ~~[PETITION] TO ESTABLISH~~ ESTABLISHMENT OF 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

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

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

**Comment**

This section authorizes a responding tribunal of this state to issue temporary and

permanent support orders binding on an obligor over whom the tribunal has personal jurisdiction when the person or entity requesting the order is “outside this state,” i.e., anywhere else in the world. UIFSA does not permit such orders to be issued when another support order entitled to recognition exists, thereby prohibiting a second tribunal from establishing another support order and the accompanying continuing, exclusive jurisdiction over the matter. *See* Sections 205 and 206.

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

### **Comment**

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

In a departure from the rest of this act, in UIFSA (2001) the term “tribunal” was replaced by “court” in this section. The several states have a variety of combinations of judicial or administrative entities that are authorized to establish, enforce, and modify a child-support order. Because the Uniform Parentage Act (UPA) (2000) § 104 restricts parentage determinations to “a court,” *see* UPA (2000) § 104, the drafters took the view that only a judicial officer should determine parentage as a matter of public policy. This conclusion was in error insofar as some states are concerned and is reversed in this iteration of the act.

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

## ARTICLE 5

### ENFORCEMENT OF SUPPORT ORDER OF ANOTHER STATE

#### WITHOUT REGISTRATION

##### Introductory Comment

This article governs direct filing of an income withholding order from one state to an employer in another state. Except as provided in Section 507, the provisions of this article only apply to an interstate case and do not apply to an income-withholding order from a foreign country. While U.S. employers routinely enforce sister state income-withholding orders, enforcement of the wide variety of possible foreign support orders would provide too many complexities and challenges to justify requiring an employer to interpret and enforce an ostensible foreign income-withholding order. Indeed, income-withholding orders from a foreign country are quite rare at this time, although instances of that enforcement remedy probably will increase in the future.

#### SECTION 501. EMPLOYER'S RECEIPT OF INCOME-WITHHOLDING

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

##### Comment

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

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

short, the formality of “service” defeats the whole purpose of direct income withholding across state lines.

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

Except as provided in Section 507, Administrative Enforcement of Orders, none of the sections in Article 5 are intended to apply to foreign support orders. While it is appropriate for U.S. employers to enforce sister state income-withholding orders routinely, enforcement of the wide variety of possible foreign support orders provides too many complexities and challenges to require an employer to interpret and enforce ostensible foreign income-withholding orders.

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

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

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

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

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

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

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



policy available through the obligor's employment;

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

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

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

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

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

(3) the times within which the employer must implement the withholding order

and forward the child-support payment.

### **Comment**

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

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

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

Subsection (b) directs an employer of the enacting state to recognize a withholding order

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

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

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

Subsection (c)(2) states the obvious: information necessary for compliance must be clearly stated. For example, the destination of the payments must correspond to the destination originally designated or subsequently authorized by the issuing tribunal, such as by the redirection of payments pursuant to Section 319, *supra*.

Subsection (c)(3) provides that medical support for the child must be stated either by a periodic cash payment or, alternatively, by an order directing the employee-obligor to provide health insurance coverage from his employment. In the absence of an order for payment of a sum certain, issuance of an order for medical support as child support is required to ensure the employer enrolls the obligor's child for coverage if medical insurance is available through the obligor's employment. Failure to enroll the child should elicit, at the least, registration of an order for enforcement in the responding state, to be implemented by an order of a tribunal

directing either the employee or the employer to comply to furnish insurance coverage for the child. If the employer is so directed by a medical support order, enrollment of the child in the health care plan at the employee-obligor's expense is not dependent on the obligor's consent, any more than withholding a sum certain from the obligor's income is subject to a veto. It is up to the employee-obligor to assert any defense to prevent the employer from abiding by the medical support order.

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

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

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

### **SECTION 503. EMPLOYER'S COMPLIANCE WITH TWO OR MORE**

**INCOME-WITHHOLDING ORDERS.** If an obligor's employer receives two or more income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the orders if the employer complies with the law of the ~~State~~ state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for two or more child-support obligees.

### Comment

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

In addition to income withholding orders issued by tribunals of other states, state support enforcement agencies may also issue income withholding orders to enforce foreign child-support orders.

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

### Comment

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

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

### Comment

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

### **SECTION 506. CONTEST BY OBLIGOR.**

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

issued by a tribunal of this ~~State~~ state.

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

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

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

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

### **Comment**

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

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

As noted frequently above, instances of multiple orders have become increasingly rare over the past two decades plus. Situations do arise, however, in which an employer has received multiple withholding notices regarding the obligor-employee and the same obligee. The notices may even allege conflicting amounts due, especially for payments on arrears. Additionally, many employees claim to have only learned of default orders when the withholding notice is delivered to the employer. This claim often is based on an assertion that the order being enforced through income withholding was entered without personal jurisdiction over the obligor-employee. A variety of similar fundamental defenses may be asserted, such as mistaken identity, full payment, another order controlling, etc.

Subsection (a) provides for a simple, efficient, and cost-effective method for an employee-alleged obligor to assert a defense. For example, if the existence of a support obligation is acknowledged but the details are at issue, the obligor may register the underlying "controlling" support order with a local tribunal and seek temporary protection pending resolution of the contest. This may be accomplished pro se, employment of private counsel, or by

a request for services from the child support enforcement agency of the responding state. Some states provide administrative procedures for challenging the income withholding that may provide quicker resolution of a dispute than a judicially-based registration and hearing process. In the absence of expeditious action by the employee to assert a defense and contest the direct filing of a notice for withholding, however, the employer must begin income withholding in a timely fashion.

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

The one order system initiated by UIFSA effectively has eliminated the multiple-order system of RURESA, which primarily involved multiple orders by different courts for the same child. At present most “duplicate income withholding orders” involve one state seeking state assigned arrears and another state also seeking arrears, and possibly ongoing support as well. Clearly the employer is in no position to make a decision on how to proceed to resolve such conflicting claims. When multiple orders involve the same employee-obligor and child, or multiple children (including those with other mothers), as a practical matter resort to a responding tribunal to resolve the resulting dispute almost certainly will be necessary.

#### **SECTION 507. ADMINISTRATIVE ENFORCEMENT OF ORDERS.**

(a) A party or support enforcement agency seeking to enforce a support order or an income-withholding order, or both, issued ~~in by a tribunal of another State~~ state or a foreign support order may send the documents required for registering the order to a support enforcement agency of this ~~State~~ state.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this ~~State~~ 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].

#### **Comment**

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 is inapplicable if a support enforcement agency is involved. The procedural safeguards built into the Title IV-D system of processing requests between Central Authorities provide reasonable assurance that the income withholding order to be enforced is genuine.

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

Subsection (b) directs the support enforcement agency in the responding state to consider and, if appropriate, to use that state’s regular administrative procedures to process an out-of-state order. Thus, a local employer accustomed to dealing with the local agency need not change its procedure to comply with an out-of-state order. Similarly, the administrative agency is authorized to apply its ordinary rules equally to both intrastate and interstate orders. For example, if the administrative hearing procedure must be exhausted for an intrastate order before a contesting party may seek relief in a tribunal, the same rule applies to an interstate order received for administrative enforcement. This subsection also makes it clear that filing liens or submitting claims in legal actions do not require the initial registration of the order.

## **ARTICLE 6**

### **REGISTRATION, ENFORCEMENT, AND MODIFICATION OF SUPPORT ORDER**

#### **Introductory Comment**

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 through 207 the one-order system allows only one existing order to be enforced prospectively.

Sections 605 through 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.

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 suffice to direct international support orders into the proper channels.

## PART 1.

### REGISTRATION FOR ENFORCEMENT OF SUPPORT ORDER

**SECTION 601. REGISTRATION OF ORDER FOR ENFORCEMENT.** A support order or income-withholding order issued ~~in by a tribunal of another State~~ state or a foreign support order may be registered in this state for enforcement.

#### Comment

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

Although registration that is not accompanied by a request for the affirmative relief of enforcement is not prohibited, the act does not contemplate registration as serving a purpose in itself. In that regard, registration is a process, and the failure to register does not deprive an otherwise appropriate forum of subject matter jurisdiction. Note that either or both a state support order or a state income-withholding order may be registered. However, although a foreign support order also may be registered, this section does not contemplate recognition of a foreign income-withholding order.

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

### SECTION 602. PROCEDURE TO REGISTER ORDER FOR ENFORCEMENT.

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

- (1) a letter of transmittal to the tribunal requesting registration and enforcement;
- (2) two copies, including one certified copy, of the order to be registered, including any modification of the order;



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

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

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

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

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

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

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

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

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

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

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

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

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

affected by the determination.

### Comment

Subsection (a) outlines the mechanics for registration of an interstate or foreign support order. Substantial compliance with the requirements is expected. The procedure for registration and enforcement set forth in this section is basically unchanged for a foreign support order; indeed, all of Sections 601 through 608 apply. The requirement that the order be “issued by a tribunal” has been subtly modified. Although the vast majority of enforceable support orders will be from a tribunal, in relatively rare instances an enforceable “foreign support order” from a Convention country will not have been issued by a tribunal, *see e.g.*, Section 710, *infra*. Note, however, that a request for registration of a foreign support order for which the Convention is in force is subject to Section 706. This is because the list of documents comprising the required record in subsection (a) differs in a measurable degree with Convention art. 11 and 25.

Millions of interstate domestic cases have been, and will continue to be, processed under the procedure specified in this section. It has been estimated that only approximately one-tenth of one percent (0.1%) of the Title IV-D caseload involve a foreign support order. Thus, the documentation specified by this section is the same for interstate and non-Convention foreign support orders. A support order from a Convention country is covered by the separate list of specifications in Section 706 to accommodate the differences between this act and the Convention. Because child-support enforcement agencies have successfully dealt with foreign support orders with increasing frequency during the UIFSA era, this may well prove to be a distinction without much difference.

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

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

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

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

### **SECTION 603. EFFECT OF REGISTRATION FOR ENFORCEMENT.**

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

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

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

### **Comment**

Initially the text of the registration procedure under UIFSA (1992) was nearly identical to that set forth in RURESA. But, the intent of UIFSA registration was always radically different. Under UIFSA, registration of a support order of State A continues to be an order of that state, which is to be enforced by a tribunal of State B. The ordinary rules of evidence and procedure of State B apply to hearings, except as local law may be supplemented or specifically superseded by other local law, i.e., UIFSA. The purpose of the registration procedure in sections 601 through 604 is that the order being registered remains a State A order until modified.

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

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

Subsection (c) mandates enforcement of the registered order, but forbids modification unless the terms of Sections 609 through 614 are met. Under UIFSA there will be only one order in existence at any one time. That order is enforceable in a responding state irrespective of whether the order may be modified. In most instances, a child-support order will be subject to the continuing, exclusive jurisdiction of the issuing tribunal. Sometimes the issuing tribunal will not be able to exercise its authority to modify the order because neither the child nor the parties reside in the issuing state. Nonetheless, the order may be registered and is fully enforceable in a responding state until the potential for modification actually occurs in accordance with the strict terms for such a proceeding. *See* Section 611. Thus, the registering tribunal always must bear in mind that the enforcement procedures taken, whether to enforce current support or to assist collecting current and future arrears and interest, are made on behalf of the issuing tribunal, and are not a modification of the controlling order.

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

#### **SECTION 604. CHOICE OF LAW.**

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

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

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

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

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

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

(d) After a tribunal of this state or another ~~State~~ state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this ~~State~~ state shall

prospectively apply the law of the ~~State~~ state or foreign country issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.

### **Comment**

Subsection (a) is intended to clarify the wide range of subjects that are governed by the choice-of-law rules established in this section. The task is to identify those aspects of the case for which local law is inapplicable. A basic principle of UIFSA is that throughout the process the controlling order remains the order of the tribunal of the issuing state or foreign country until a valid modification. The responding tribunal only assists in the enforcement of that order. Absent a loss of continuing, exclusive jurisdiction by the issuing tribunal and a subsequent modification of the order, the order never becomes an order of a responding tribunal.

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

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

Under subsection (a), if the initial issuing tribunal sets the age for termination of child support at 18, a responding state must recognize and enforce that child-support order. If the responding state sets its child support to age 21, the responding tribunal may not apply that time duration to require additional support to that age. The converse is also true. If the controlling order of another state ends the support obligation at 21, the responding tribunal in a state with 18 as the maximum duration for child support must enforce the controlling order until age 21. The dissent on this policy decision in UIFSA has abated over time. Interestingly, the Convention establishes age 21 as the hallmark. At the same time, under Convention art. 2(2), a country may reserve the right to limit the application of the Convention with regard to child support to persons who have not reached the age of 18. The United States does not intend to make such a reservation.

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

Note that as soon as a general proposition is identified, an exception may well be presented. Subsection (b) contains a choice-of-law provision that often diverges from other local law. In situations in which the statutes of limitation differ from state to state, the statute with the longer term is to be applied. In interstate cases, arrearages often will have accumulated over a considerable period of time before enforcement is perfected. The rationale for this exception to the general rule of "local law applies" is that the obligor should not gain an undue benefit from his or her choice of residence if the forum state, as the obligor's state of residence, has a shorter statute of limitations for arrearages than does the controlling order state. On the other side of the coin, i.e., if the forum has a longer statute of limitations, the obligor will be treated in an identical manner as all other obligors in that state. This choice of limitations also applies to the time period after the accrual of the arrears in which to bring an enforcement action.

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

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

***Related to Convention:*** art. 2. Scope; art. 11. Application contents; art. 20. Bases for recognition and enforcement; art. 21. Severability and partial recognition and enforcement; art. 22. Grounds for refusing recognition and enforcement; art. 23. Procedure on an application for recognition and enforcement; art. 25. Documents.

## **PART 2.**

### **CONTEST OF VALIDITY OR ENFORCEMENT**

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

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

documents and relevant information accompanying the order.

(b) A notice must inform the nonregistering party:

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

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

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

(4) of the amount of any alleged arrearages.

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

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

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

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

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

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

## 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(6). This difference between UIFSA and the Convention is accommodated in Section 707. The time frame for notice of registration for an interstate support order and a foreign support order not subject to the Convention will be established by local law.

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

Subsection (d) states the obvious; i.e., the obligor’s employer also must be notified if income is to be withheld. Often this will not be necessary if the employer has already been notified by the responding state’s enforcement agency via the administrative process established in Section 507.

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

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

(a) A nonregistering party seeking to contest the validity or enforcement of a registered support order in this ~~State~~ state shall request a hearing within ~~[20] days after notice of the~~



~~registration~~ the time required by Section 605. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to Section 607.

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

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

### **Comment**

Subsection (a) directs the “nonregistering party” to contest the registration of an interstate support order or a foreign support order not subject to the Convention within a short period of time or forfeit the opportunity to contest. As noted in Section 605, that time frame is extended for cases subject to the Convention.

Notice of registration is the first step for enforcement or modification of another state’s child-support order. Once the nonregistering party is put on notice of the registration, if an error allegedly has been made, the second step is crucial. The nonregistering party is required to assert any existing defense to the alleged controlling order, or forfeit the opportunity to contest the allegations. Note that either the obligor or the obligee may have objections to the registered order, although in the vast majority of cases the obligor is the nonregistering party.

On the other hand, there is a possibility that in multiple-order situations either party may register the order most favorable to that party rather than register the likely controlling order, thus triggering a contest. Deliberately furnishing misinformation regarding the controlling order doubtless constitutes chicanery, which is contrary to Section 605(c). When a support enforcement agency requests registration, Section 307(c) requires reasonable efforts to ensure registration of the proper controlling order. Nonetheless, there may be an honest difference of opinion as to which order controls. The nonregistering obligor has a significant stake in assuring that both the order and the arrears are correctly stated.

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

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

Subsection (c) directs that a hearing be scheduled when the nonregistering party contests some aspect of the registration.

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

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

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

(1) the issuing tribunal lacked personal jurisdiction over the contesting party;

(2) the order was obtained by fraud;

(3) the order has been vacated, suspended, or modified by a later order;

(4) the issuing tribunal has stayed the order pending appeal;

(5) there is a defense under the law of this ~~State~~ state to the remedy sought;

(6) full or partial payment has been made;

(7) the statute of limitation under Section 604 precludes enforcement of some or all of the alleged arrearages; or

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

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

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

confirming the order.

### Comment

Subsection (a) places the burden on the nonregistering party to assert narrowly defined defenses to registration of a support order. The first of the listed defenses, lack of personal jurisdiction over the nonregistering party in the original proceeding, is undoubtedly the most widely discussed topic. It appears that at the appellate level, several of the other listed defenses are more commonly asserted. The decision in *Kulko v. Superior Court*, 436 U.S. 84 (1978) was somewhat controversial when delivered, and has remained so, at least in the international context. As a practical matter, however, the requirement that a support order be based on personal jurisdiction over both parties—but primarily the obligor—is a well-established fixture in the jurisprudence of the United States; relatively few appellate cases on this subject have been reported.

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

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

In the absence of a valid defense, if the obligor is found to be liable for current support, the registering tribunal must enter an order to enforce that obligation. Additional proof of arrearages must also result in enforcement under the Bradley Amendment, 42 U.S.C. Section 666(a)(10), which requires all states to treat child-support payments as final judgments as they come due (or lose federal funding). Therefore, federal law precludes arrearages from being subject to retroactive modification. Future modification of a child support order from another state is governed by Sections 609-614, and Sections 615-616 regulate modification of foreign child support orders.

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

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

**SECTION 608. CONFIRMED ORDER.** Confirmation of a registered support order, whether by operation of law or after notice and hearing, precludes further contest of the order

with respect to any matter that could have been asserted at the time of registration.

### **Comment**

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

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

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

## **PART 3.**

### **REGISTRATION AND MODIFICATION OF CHILD-SUPPORT ORDER OF ANOTHER STATE**

#### **Introductory Comment**

Authority to modify a child-support order of another state depends on the interaction of these sections with the continuing, exclusive jurisdiction of the issuing tribunal. *See* Sections 205 through 206. This also might involve the determination of the controlling order in a situation involving multiple child-support orders. These concepts are not present in the international context. *See* Sections 615, 616, and 711. Thus, modification of a support order from a foreign country other than a Convention country is not governed by Sections 609-614, but is subject to Sections 615-616, *infra*.

Sections 609 through 614 apply only to modification of an interstate child-support order. Most of the act applies to “a support order,” which includes both child-support and spousal support. Both categories are generally subject to interstate enforcement under UIFSA. But, as a practical matter, the actual process of that enforcement is quite different. Child support is enforced almost exclusively by governmentally sponsored Title IV-D agencies, which also may enforce spousal support if it is included in the same order. In some states, local funds are appropriated for enforcement of spousal support as well. Only occasionally will a private attorney be involved in a child-support case, but spousal support not issued in conjunction with a child-support order generally requires representation *pro se* or by private counsel. More importantly, a tribunal of a responding state may enforce spousal support, but it does not have authority to modify a spousal-support order of another state or foreign country unless the law of

that jurisdiction does not assert continuing, 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.

#### **Comment**

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

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

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

(1) the following requirements are met:

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

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

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

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

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

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

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

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

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

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

(1) one party resides in another state; and

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

### **Comment**

**The Play-away Rule.** As long as the issuing tribunal has continuing, exclusive jurisdiction over its child-support order, a responding tribunal is precluded from modifying the controlling order. *See* Sections 205 through 207. UIFSA (1992) made critical choices regarding modification of an existing child-support order. First, the “one-order” rule was to be paramount. Second, the issuing tribunal had continuing, exclusive jurisdiction to modify its order as long as a party or the child continued to reside in the issuing state. The original order remained in force as the controlling order until modified by another tribunal. Third, a separate procedure was created for modification of an existing child-support order when all parties and the child moved from the issuing state and acquired new residences. The key was that the movant seeking modification be “a nonresident of this state.” The deciding factor, determined after extended debate, centered on curbing or eliminating the undesirable effect of “ambush or tag” jurisdiction, e.g., the likelihood that the parties would vie to strike first to obtain a home-town advantage. Although constitutional under *Burnham v. Superior Court*, 495 U.S. 604 (1990), such lawsuits would discourage continued contact between the child and the obligor, or between the parties for fear of a lawsuit in a distant forum. Thus, the goal was to avoid the situation in which modification would be available in a forum having personal jurisdiction over both parties based solely on the ground that service of process was made in the would-be forum state.

Under subsection (a)(1), before a responding tribunal may modify the existing controlling

order, three specific criteria must be satisfied. First, the individual parties and the child must no longer reside in the issuing state. Second, the party seeking modification, usually the obligee, must register the order as a nonresident of the forum. That forum is almost always the state of residence of the other party, usually the obligor. A colloquial (but easily understood) description is that the nonresident movant for modification must “play an away game on the other party’s home field.” Third, the forum must have personal jurisdiction over the parties. By registering the support order, the movant submits to the personal jurisdiction of the forum through seeking affirmative relief. On rare occasion, personal jurisdiction over the respondent may be supplied by long-arm jurisdiction. *See* Section 201.

The underlying policies of this procedure contemplate that the issuing tribunal no longer has an interest in exercising its continuing, exclusive jurisdiction to modify its order, nor information readily available to it to do so. The play-away rule achieves rough justice between the parties in the majority of cases by preventing ambush in a local tribunal. Moreover, it takes into account the factual realities of the situation. In the overwhelming majority of cases the movant is the obligee who is receiving legal assistance in the issuing and responding states from Title IV-D support enforcement agencies. Further, evidence about the obligor’s ability to pay child support and enforcement of the support order is best accomplished in the obligor’s state of residence.

Fairness requires that an obligee seeking to modify the existing child-support order in the state of residence of the obligor will not be subject to a cross-motion to modify custody merely because the issuing tribunal has lost its continuing, exclusive jurisdiction over the support order. The same restriction applies to an obligor who moves to modify the support order in a state other than that of his or her residence.

There are exceptions to the play-away rule. Under subsection (a)(2), the parties may agree that a particular forum may serve to modify the order, even if the issuing tribunal has continuing, exclusive jurisdiction. Subsection (a)(2) also applies if the individual parties agree to submit the modification issue to a tribunal in the petitioner’s state of residence. Implicit in this shift of jurisdiction is that the agreed tribunal has subject matter jurisdiction and personal jurisdiction over at least one of the parties or the child, and that the other party submits to the personal jurisdiction of that forum. UIFSA does not contemplate that parties may agree to confer jurisdiction on a tribunal without a nexus to the parties or the child.

Proof that neither individual party nor the child continues to reside in the issuing state is made directly in the responding tribunal. No purpose is served by requiring the movant to return to the original issuing tribunal for a hearing to elicit confirmation of fact that none of the relevant persons still lives in the issuing state. Thus, the issuing tribunal is not called upon to transfer or surrender its continuing, exclusive jurisdiction or otherwise participate in the process, nor does it have discretion to refuse to yield jurisdiction.

There is a distinction between the processes involved under subsection (a). Once the requirements of subsection (a)(1) are met for assumption of jurisdiction, the responding tribunal acts on the modification and then notifies the issuing tribunal that the prior controlling order has been replaced by a new controlling order. In contrast, for another tribunal to assume modification jurisdiction by agreement under subsection (a)(2), the individual parties first must agree in a



record to modification in the responding tribunal and file the record with the issuing tribunal. Thereafter they may proceed in the responding tribunal.

A similar exception is found in Section 205(a)(2), which enables the parties to agree in a record of the original issuing tribunal that it may retain jurisdiction over the order even if all parties have left that state. Note that such an agreement can be incorporated in the initial order of the issuing tribunal.

Section 613 also is an exception to subsection (a)(1): it supplants the play-away rule if all parties have left the original issuing state and now reside in the same state, whether by chance or design.

Subsection (b) provides that when a responding tribunal assumes modification jurisdiction because the issuing tribunal has lost continuing, exclusive jurisdiction, the proceedings will generally follow local law with regard to modification of a child-support order, except as provided in subsections (c) and (d).

**Duration of the Child Support Obligation.** Prior to 1993 American case law was thoroughly in chaos over modification of the duration of a child-support obligation when an obligor or obligee moved from one state to another state and the states had different ages for the duration of child support. The existing duration usually was ignored by the issuance of a new order applying local law, which elicited a variety of appellate court opinions. UIFSA (1992) determined that a uniform rule should be proposed, to wit, duration of the child-support obligation would be fixed by the initial controlling order. Subsection (c) provides the original time frame for support is not modifiable unless the law of the issuing state provides for its modification. After UIFSA (1996) was universally enacted, some tribunals sought to subvert this policy by holding that completion of the obligation to support a child through age 18 established by a now-completed controlling order did not preclude the imposition of a new obligation to support the child through age 21, or beyond.

Subsection (d) prohibits imposition of multiple, albeit successive, support obligations. The initial controlling order may be modified and replaced by a new controlling order in accordance with the terms of Sections 609 through 614. But, the duration of the child support obligation remains constant, even though other aspects of the original order may be changed.

Sometimes a domestic-violence protective order includes a provision for child support that will be in force for a specific time. The duration of the protective order often is less than the general law of the state for duration of the child-support obligation. Under these facts the general law of the issuing state regarding duration controls a subsequent child-support order.

Subsection (e) provides that on modification the new child-support order becomes the controlling order to be recognized by all UIFSA states. Good practice mandates that the responding tribunal should explicitly state in its order that it is assuming responsibility for the controlling child-support order. Neither the parties nor other tribunals should be required to speculate about the effect of the action.

**International Effect.** Prohibiting modification based on the play-away principle in the

international context is problematic. The issue arises because the United States is wedded to personal jurisdiction over the individual parties at a state level, rather than the child-based, national jurisdiction found virtually everywhere else. For example, a foreign country typically regards a support order to be of the country, not an order from a political subdivision, e.g., an order from Germany. In some important instances, however, a foreign support order is indeed made in a political subdivision, e.g., a support order from a Canadian province. Although consideration was given to labeling a support order issued in a state to be an order of the United States, conforming modification of child support to the general principles of state law through UIFSA is the only practical choice.

Subsection (f) creates a necessary exception to the play-away concept when the parties and the child no longer reside in the issuing state and one party resides outside the United States. The play-away principle makes sense when the tribunals involved have identical laws regarding continuing, exclusive jurisdiction to modify a child-support order. *See* Sections 205 through 207. If one party resides in a foreign country, a pure play-away rule would deny modification in a forum subject to UIFSA rules to the party or child who has moved from the issuing state, but continues to reside in the United States. This result does not occur under Convention art.18, which places restrictions on modification of a support order in another Convention country if the obligee remains in the issuing Convention country. That article does not mention an effect when only the obligor remains in the issuing country, perhaps because the Convention makes clear that under a child-based system modification jurisdiction will follow the obligee and the child.

Subsection (f) identifies the tribunal that issued the controlling order as the logical choice for an available forum in which UIFSA will apply. This exception to the play-away rule provides assured personal jurisdiction over the parties, which in turn enables the issuing tribunal to retain continuing jurisdiction to modify its order. Of course, the party residing outside the United States has the option to pursue a modification in the state where the other party or child currently reside.

In sum, under this section personal service on either the custodial or noncustodial party found within the state borders, by itself, does not yield jurisdiction to modify. A party seeking to exercise rights of visitation, delivering or picking-up the child for such visitation, or engaging in unrelated business activity in the state, will not be involuntarily subjected to protracted litigation in an inconvenient forum. The play-away rule avoids the possible chilling effect on the exercise of parental contact with the child that the possibility of such litigation might have. The vast majority of disputes about whether a tribunal has jurisdiction will be eliminated. Moreover, submission by the petitioner to the state of residence of the respondent obviates this issue. Finally, because there is an existing order, the primary focus will shift to enforcement, thereby curtailing unnecessary modification efforts.

**UIFSA Relationship to UCCJEA.** Jurisdiction for modification of child support under subsections (a)(1) and (a)(2) is distinct from modification of custody under the federal Parental Kidnapping Prevention Act (PKPA), 42 U.S.C. § 1738A, and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) §§ 201–202. These acts provide that the court of exclusive, continuing jurisdiction may “decline jurisdiction.” Declining jurisdiction, thereby creating a potential vacuum, is not authorized under UIFSA. Once a controlling child-support order is established under UIFSA, at all times thereafter there is an existing order in effect to be

enforced. Even if the issuing tribunal no longer has continuing, exclusive jurisdiction, its order remains fully enforceable until a tribunal with modification jurisdiction issues a new order in conformance with this article.

UIFSA and UCCJEA seek a world in which there is but one order at a time for child support and custody and visitation. Both have similar restrictions on the ability of a tribunal to modify the existing order. The major difference between the two acts is that the basic jurisdictional nexus of each is founded on different considerations. UIFSA has its focus on the personal jurisdiction necessary to bind the obligor to payment of a child-support order. UCCJEA places its focus on the factual circumstances of the child, primarily the “home state” of the child; personal jurisdiction to bind a party to the custody decree is not required. An example of the disparate consequences of this difference is the fact that a return to the decree state does not reestablish continuing, exclusive jurisdiction under the UCCJEA. *See* UCCJEA § 202. Under similar facts UIFSA grants the issuing tribunal continuing, exclusive jurisdiction to modify its child-support order if, at the time the proceeding is filed, the issuing tribunal “is the residence” of one of the individual parties or the child. *See* Section 205.

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

## **SECTION 612. RECOGNITION OF ORDER MODIFIED IN ANOTHER STATE.**

If a child-support order issued by a tribunal of this ~~State~~ state is modified by a tribunal of another ~~State~~ state which assumed jurisdiction pursuant to the Uniform Interstate Family Support Act, a tribunal of this ~~State~~ state:

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

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

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

### **Comment**

A key aspect of UIFSA is the deference to the controlling child-support order of a sister state demanded from a tribunal of the forum state. This applies not just to the original order, but also to a modified child-support order issued by a second state under the standards established by Sections 611 and 613. For the act to function properly, the original issuing tribunal must recognize and accept the modified order as controlling, and must regard its prior order as prospectively inoperative. Because the UIFSA system is based on an interlocking series of state

laws, it is fundamental that a modifying tribunal of one state lacks the authority to direct the original issuing tribunal to release its continuing, exclusive jurisdiction. That result is accomplished through the enactment of UIFSA by all states, which empowers a modifying tribunal to assume continuing, exclusive jurisdiction from the original issuing tribunal and requires an issuing tribunal to recognize such an assumption of jurisdiction. This explains why the U.S. Congress took the extraordinary measure in PRWORA of mandating universal passage of UIFSA (1996), as amended. *See* Prefatory Note.

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

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

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

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

#### **Comment**

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

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

**SECTION 614. NOTICE TO ISSUING TRIBUNAL OF MODIFICATION.** Within [30] days after issuance of a modified child-support order, the party obtaining the modification

shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

### **Comment**

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

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

## **PART 4.**

### **REGISTRATION AND MODIFICATION OF FOREIGN CHILD-SUPPORT ORDER**

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

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

individual seeking modification is a resident of this ~~State~~ state or of the foreign country ~~or~~ political subdivision.

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

### **Comment**

Subsection (a) provides that a state tribunal may modify a foreign child-support order, other than a Convention order, when the foreign issuing tribunal lacks or refuses to exercise jurisdiction to modify its order. The standard example cited for the necessity of this special rule involved the conundrum posed when an obligor has moved to the responding state from the issuing country and the law of that country requires both parties to be physically present at a hearing before the tribunal in order to sustain a modification of child support. In that circumstance, the foreign issuing tribunal is unable to exercise jurisdiction to modify under its law. Ordinarily, under Section 611 the responding state tribunal is not authorized to issue a new order, in effect modifying the foreign support order, because the child or the obligee continues to reside in the issuing country. To remedy the perceived inequity in such a fact situation, this section provides an exception to the rule of Section 611. If both parties are subject to the personal jurisdiction of a state by the obligee's submission and the obligor's residence, or other grounds under Section 201, the responding state tribunal may modify the foreign child-support order. Modification of a Convention order is governed by Section 711.

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

Subsection (b) states that if a new order is issued under subsection (a), it becomes the UIFSA controlling order insofar as other states are concerned. Obviously this act cannot dictate the same result to the issuing foreign tribunal, although it seems highly likely that either through child-based jurisdiction or an action filed by the obligee recognition by the foreign tribunal will occur.

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

**SECTION 616. PROCEDURE TO REGISTER CHILD-SUPPORT ORDER OF FOREIGN COUNTRY FOR MODIFICATION.** A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child-support order not under the Convention may register that order in this state under 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 at another time. The [petition] must specify the grounds for modification.

### **Comment**

The procedure for registration and enforcement set forth in Sections 601 through 608 is applicable to a child-support order from a non-Convention country. This section provides coverage for modification in that situation. Presumptively, the general law of the state regarding modification of a child-support order will apply because, by their terms, Sections 609 through 614 apply only to modification of a child-support order by a state tribunal. The rationale is that modification is available because the foreign order is not founded on the UIFSA principles of continuing, exclusive jurisdiction and a controlling order. *See* Sections 205 through 207.

## **ARTICLE 7**

### **DETERMINATION OF PARENTAGE**

### **SUPPORT PROCEEDING UNDER CONVENTION**

#### **Introductory Comment**

This article contains provisions adapted from the Convention that could not be readily integrated into the existing body of Articles 1 through 6. For the most part, extending the coverage of UIFSA (2008) to foreign countries was a satisfactory solution to merge the appropriate Convention terms into this act. In understanding this process, it must be clearly stated that the terms of the Convention are not substantive law.

The Convention is a multilateral treaty which binds the United States and the other Convention countries to assure compliance. As such, it will be the law of the land; but the treaty is not self-executing. *See, Medellin v. Texas*, 552 U.S. 491, 128 S.Ct. 1346, 170 L.Ed.2d 190 (2008). Thus, the ultimate enforcement of the treaty in the United States is dependent on the key implementing federal law and the enactment of both federal and state legislation which provide the mechanism for enforcing the requirements of the Convention. This act is predicated on the principle that the enactment of UIFSA (2008) in all States and federal jurisdictions will effectively implement the Convention through state law by amending Articles 1 through 6, plus the addition of this article. The treaty, in essence, establishes the framework for a system of international cooperation by emulating the interstate effect of UIFSA for international cases, especially those affected by the Convention.

In relatively few instances, the provisions of the Convention are sufficiently specific that a choice was made between amending UIFSA accordingly, with a disproportionate effect on all support orders enforced under state law, or accommodating potential conflicts by creating a separate article to apply only to Convention support orders. The choice was to draft this article as state law to minimize disruption to interstate support orders, which constitute the vast majority of orders processed under UIFSA. Note that this act is the substantive and procedural state law for: (1) responding to an application for establishment, recognition and enforcement, or modification of a Convention support order; and, (2) initiating an application to a Convention country for similar action.

The four Hague maintenance conventions that preceded the 2007 Convention, and the three prior versions of UIFSA, have common goals. The distinctions between the jurisdictional rules in the common-law tradition in the United States, and the civil law systems in most of the countries that were parties to the earlier maintenance conventions, were obstacles to participation of the United States in any of the multilateral maintenance treaties. As the world has grown smaller and globalization has become the order of the day, reconciling the differences has become more and more important. Understanding the necessity for accommodation has made the task easier. This is not to say easy, as evidenced by the fact that the formal negotiations leading to the final text of the Convention spanned from May, 2003, to November, 2007.

The United States signed the Convention on November 23, 2007 and the Senate gave its advice and consent to ratification in 2010. Enabling federal legislation was enacted on September 29, 2014 which requires all states to enact UIFSA (2008) by the end of 2015. At that point the United States will deposit its instrument of ratification and the Convention will enter into force in the United States.

UIFSA (2008) and the 2007 Convention have far more in common than did former uniform acts and maintenance conventions, and, in fact, many provisions of the Convention are modeled on UIFSA principles. The negotiations demonstrated that it is possible to draft an international convention, which incorporates core UIFSA principles into a system for the establishment and enforcement of child support and spousal-support orders across international borders, and creates an efficient, economical, and expeditious procedure to accomplish these goals. Matters in common, however, go far beyond identical goals. The negotiations provided an opportunity for an extended interchange of ideas about how to adapt legal mechanisms to facilitate child support enforcement between otherwise disparate legal systems.

International cross-border enforcement has been far more important in Western Europe, and more recently, throughout the countries of the European Union than has been the case in the United States. On the other hand, experience with establishment and enforcement of interstate child-support orders in the United States has been building since 1950, and accelerated rapidly with enactment of Title IV-D of the Social Security Act in 1975. Clearly, the issues are far easier to deal with nationally because of the common language, currency, and legal system, and, since 1996, with the Title IV-D requirement that all states enact the same version of UIFSA. In fact, since the advent of UIFSA and Title IV-D, millions of interstate cases have been processed through the child support enforcement system and thousands of support orders from other countries have also been registered and enforced in the United States because UIFSA treated such orders as if they had been entered by one of the states. In the future, in Convention countries, this country's orders will be entitled to similar treatment. The entry into force of the Convention is designed to further improve the process and will most certainly lead in a few years to a substantial increase in international cases, both incoming and outgoing.

To create UIFSA (2008), it was necessary to integrate the texts of UIFSA (2001) and the Convention. This did not present a significant drafting challenge for the most part. By far the most common amendment in Articles 1 through 6 is to substitute "state or foreign country" for the term "state." These simple amendments expanded a majority of this act to cover foreign support orders. In this article statutory directions are given to "a tribunal of this state," and also to a "governmental entity, individual petitioner, support enforcement agency, or a party."



~~**SECTION 701. PROCEEDING TO DETERMINE PARENTAGE.**~~ A court of this State authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage brought under this [Act] or a law or procedure substantially similar to this [Act].

#### Comment

This provision with appropriate rewording, has been transferred to Section 402, *supra*.

#### **SECTION 701. DEFINITIONS. In this [article]:**

(1) “Application” means a request under the Convention by an obligee or obligor, or on behalf of a child, made through a central authority for assistance from another central authority.

(2) “Central authority” means the entity designated by the United States or a foreign country described in Section 102(5)(D) to perform the functions specified in the Convention.

(3) “Convention support order” means a support order of a tribunal of a foreign country described in Section 102(5)(D).

(4) “Direct request” means a [petition] filed by an individual in a tribunal of this state in a proceeding involving an obligee, obligor, or child residing outside the United States.

(5) “Foreign central authority” means the entity designated by a foreign country described in Section 102(5)(D) to perform the functions specified in the Convention.

(6) “Foreign support agreement”:

(A) means an agreement for support in a record that:

(i) is enforceable as a support order in the country of origin;

(ii) has been:

(I) formally drawn up or registered as an authentic instrument by a foreign tribunal; or

(II) authenticated by, or concluded, registered, or filed with a

foreign tribunal; and

(iii) may be reviewed and modified by a foreign tribunal; and

(B) includes a maintenance arrangement or authentic instrument under the

Convention.

(7) “United States central authority” means the Secretary of the United States Department of Health and Human Services.

### **Comment**

A readily apparent difference between UIFSA (2008) and the Convention is the perceived need for definitions in the former, and the very limited number of definitions in the latter. This act contains twenty-nine definitions in Section 102, and an additional seven for this article. In contrast, the Convention contains only seven official definitions. Some of these are synonyms for definitions in UIFSA, i.e., “creditor and debtor” for “obligor and obligee,” and “agreement in writing” for “record.”

Subsection (1), “application” refers to the process for an individual obligor or obligee to request assistance from a central authority under the Convention.

Subsections (2) and (5) identify the governmental entities, i.e., central authority, in each contracting country or political subdivisions thereof, that will function as the operating agencies to facilitate contacts between Convention countries. The Convention is a treaty between the countries in which it is in force thus creating mutual obligations. The duties assigned in the Convention to the central authority of each country will be performed according to the choice of each country. It is crucial to recognize that in the United States it will be the Title IV-D agency of each state that will be designated by the U.S. central authority to perform most of the functions specified in the Convention. It appears likely that in many foreign countries the central authority will serve in the role of a clearinghouse, rather than as the operative enforcement entity, while some countries may assign all central authority functions to one agency.

Subsection (3), “Convention support order” narrows the term “foreign support order,” as employed in Articles 1 through 6. The provisions in those articles also apply to Convention support orders, but when this act is not congruent with the Convention, support orders under the Convention are subject to this article. This article has no application to a support order from a non-Convention foreign country, as defined in Section 102(5)(A) and (B) or a support order entitled to comity, Section 102(5)(C), except to the extent that a Convention country may request enforcement of a non-Convention support order that has been recognized in the United States under some other procedure, *see* Section 704.

Subsection (4) integrates the “direct request” authorized by the Convention with the provisions for filing a petition in Articles 1 through 6.

The definition in the Convention for “maintenance arrangement” has been rephrased in Subsection (6), and must be read together with Section 710 to understand the process authorized in the Convention.

***Convention source:*** art. 3. Definitions; art. 30. Maintenance arrangements.

***Related to Convention:*** art. 4. Designation of Central Authorities; art. 37. Direct requests to competent authorities.

**SECTION 702. APPLICABILITY.** This [article] applies only to a support proceeding under the Convention. In such a proceeding, if a provision of this [article] is inconsistent with [Articles] 1 through 6, this [article] controls.

#### **Comment**

The first sentence definitively states that this article applies only to a proceeding involving a Convention country, as defined in Section 102(5)(D). This article does not generally apply to a support order from a non-Convention foreign country as defined in Section 102(5)(A) and (B) or to a support order entitled to comity. The second sentence resolves a situation in which there is a conflict between a section in this article and a provision in Articles 1 through 6, in which case this article controls.

***Related to Convention:*** art. 1. Object; art. 2. Scope; art. 4. Designation of Central Authorities.

**SECTION 703. RELATIONSHIP OF [GOVERNMENTAL ENTITY] TO UNITED STATES CENTRAL AUTHORITY.** The [governmental entity] of this state is recognized as the agency designated by the United States central authority to perform specific functions under the Convention.

#### **Comment**

The Secretary of Health and Human Services has designated the state Title IV-D child support agencies as the governmental entities that will carry out many of the central authority’s functions under the Convention. Each state determines which public office or administrative agency will perform the Title IV-D services for child support enforcement. Because the federal government provides a significant subsidy for this effort, the actions of the agency must comply with federal statutes and regulations and the state legislature must enact certain mandatory laws. The relationship is symbiotic in that states choose to participate in the Title IV-D program, and do so by following their own state procedures and legislative enactments that recognize and authorize the state officer or agency to function under these conditions.

***Related to Convention:*** ch. II. Administrative co-operation, arts. 4-8; ch. III. Applications through central authorities, arts. 9-17.

**SECTION 704. INITIATION BY [GOVERNMENTAL ENTITY] OF SUPPORT PROCEEDING UNDER CONVENTION.**

(a) In a support proceeding under this [article], the [governmental entity] of this state shall:

(1) transmit and receive applications; and

(2) initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.

(b) The following support proceedings are available to an obligee under the Convention:

(1) recognition or recognition and enforcement of a foreign support order;

(2) enforcement of a support order issued or recognized in this state;

(3) establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child;

(4) establishment of a support order if recognition of a foreign support order is refused under Section 708(b)(2), (4), or (9);

(5) modification of a support order of a tribunal of this state; and

(6) modification of a support order of a tribunal of another state or a foreign country.

(c) The following support proceedings are available under the Convention to an obligor against which there is an existing support order:

(1) recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state;

(2) modification of a support order of a tribunal of this state; and

(3) modification of a support order of a tribunal of another state or a foreign country.

(d) A tribunal of this state may not require security, bond, or deposit, however described,

to guarantee the payment of costs and expenses in proceedings under the Convention.

### **Comment**

This section is designed to enable lawyers and non-lawyers to better understand proceedings under the Convention, which itself is written in terminology unfamiliar to legal proceedings in the United States.

Subsection (a) lists the rights and duties of a support enforcement agency.

Subsection (b) lists what rights and duties are available to an obligee, whether the proceeding is inbound from a Convention country or outbound to a Convention country.

In contrast to the general rule in UIFSA, which attempts to maintain something of parity between the obligor and obligee, subsection (c) limits the rights and duties available to an obligor under the Convention. This reflects the equal treatment ideal espoused by UIFSA in Articles 1 through 6, and the pro-obligee philosophy of the Convention. In actual practice, the results may not be that different. Recall that until replaced by UIFSA, an informal subtitle given to URESA by its leading proponents was “The Runaway Pappy Act.”

Subsection (d) tracks Convention art. 14 (5).

***Convention source:*** art. 6. Specific functions of Central Authorities; art. 10. Available applications; art. 14. Effective access to procedures.

***Related to Convention:*** ch. II. Administrative co-operation, arts. 4-7; ch. III. Applications through central authorities, arts. 9-17.

### **SECTION 705. DIRECT REQUEST.**

(a) A [petitioner] may file a direct request seeking establishment or modification of a support order or determination of parentage of a child. In the proceeding, the law of this state applies.

(b) A [petitioner] may file a direct request seeking recognition and enforcement of a support order or support agreement. In the proceeding, Sections 706 through 713 apply.

(c) In a direct request for recognition and enforcement of a Convention support order or foreign support agreement:

(1) a security, bond, or deposit is not required to guarantee the payment of costs and expenses; and

(2) an obligee or obligor that in the issuing country has benefited from free legal assistance is entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this state under the same circumstances.

(d) A [petitioner] filing a direct request is not entitled to assistance from the [governmental entity].

(e) This [article] does not prevent the application of laws of this state that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or foreign support agreement.

### **Comment**

Given the long history of open courts in the United States, this section may seem axiomatic, redundant, or unnecessary. In fact, because this principle has not always been universal, it is important to recognize that the Convention confirms that an individual residing in a Convention country may file a petition directly in a tribunal of another Convention country without requesting the assistance of a central authority or a support enforcement agency. Given the variety of legal systems that may be involved under the Convention, this freedom of choice is explicitly protected. A person residing in a Convention country, whether a citizen or a noncitizen of the United States, may apply to a tribunal in the United States for establishment, recognition, and enforcement of a child-support order for enforcement of a spousal support order, for recognition and enforcement of a foreign support agreement, and in some situations, for modification of an existing support order. Of course, the freedom of an individual to petition for relief in a tribunal says nothing about the nature of legal representation, if any, implicit in the right of access to a tribunal, is that representation may be pro se or by private counsel. *See* Section 309.

Subsection (a) provides that an individual party may file a proceeding directly in a tribunal, thus submitting to the jurisdiction of the tribunal and to state law. The object of the proceeding may be establishment of a support order, determination of parentage of a child, or modification of an existing support order.

Subsection (b) recognizes that an individual party may file a proceeding in a tribunal requesting recognition and enforcement of a Convention support order, or a foreign support agreement as defined in Section 710. The party thereby chooses not to seek the services of a central authority or support enforcement agency. Nonetheless, the individual will be affected indirectly by the terms of the Convention because the proceeding is subject to Sections 706 through 713, which are drawn from the Convention. This effect applies to an individual residing in a Convention country and to an individual residing elsewhere who is seeking to enforce a Convention support order.

Subsection (c) contains two provisions drawn from the Convention specifically applicable to a petition for recognition and enforcement of a Convention support order. First, a guarantee of payment of costs may not be required. Second, if the individual has benefited from free legal assistance in a Convention country, that individual is entitled to free legal assistance if it is available in similar circumstances under the law of the responding state.

Under subsection (d) an individual party who files a direct request regarding a Convention support order in a tribunal is not entitled to assistance from the governmental entity, i.e. the support enforcement agency.

Subsection (e) echoes Article 52 of the Convention. An individual party who files a petition in a tribunal may take advantage of any “simplified, more expeditious procedures” which may be available in the requested state, so long as they are “compatible with the protection offered to the parties under articles 23 and 24” of the Convention.

**Convention source:** art. 14. Effective access to procedures; art. 17. Applications not qualifying under Article 15 or Article 16; art. 37. Direct requests to competent authorities; art. 52. Most effective rule.

**Related to Convention:** ch. II. Administrative co-operation, arts. 4-8; ch. III. Applications through central authorities, arts. 9-17; 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 706. REGISTRATION OF CONVENTION SUPPORT ORDER.**

(a) Except as otherwise provided in this [article], a party who is an individual or a support enforcement agency seeking recognition of a Convention support order shall register the order in this state as provided in [Article] 6.

(b) Notwithstanding Sections 311 and 602(a), a request for registration of a Convention support order must be accompanied by:

(1) a complete text of the support order [or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by the Hague Conference on Private International Law];

(2) a record stating that the support order is enforceable in the issuing country;

(3) if the [respondent] did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the [respondent] had proper

notice of the proceedings and an opportunity to be heard or that the [respondent] had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;

(4) a record showing the amount of arrears, if any, and the date the amount was calculated;

(5) a record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and

(6) if necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.

(c) A request for registration of a Convention support order may seek recognition and partial enforcement of the order.

(d) A tribunal of this state may vacate the registration of a Convention support order without the filing of a contest under Section 707 only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.

(e) The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a Convention support order.

### **Comment**

Subsection (a) integrates the Convention support order into the registration for enforcement procedure set forth in Sections 601 through 608. A state support enforcement agency and a tribunal will use basically the same procedures for a Convention order under this article as would be used in a non-Convention proceeding.

From inception, UIFSA contained detailed provisions for substantive procedures for interstate child-support orders. To facilitate expedited processing, detailed statutory instructions have encouraged uniformity of legal documents. The Convention follows this precedent. The list of documents to be provided, however, is somewhat different than the documents described in Sections 311 and 602. In order to ensure that a document satisfying the requirements of the Convention will be accepted by a support enforcement agency or tribunal, subsection (a)



identifies the documents required to accompany an application under the Convention.

Several of the required documents may be unfamiliar in the United States, e.g., the authority to provide an abstract or an extract of an order rather than the complete text of an order under paragraph (b)(1); the requirement for a statement of enforceability of the order under paragraph (b)(2); proof that the respondent had proper notice of the proceedings and an opportunity to be heard if the respondent did not appear and was not represented under (b)(3); and proof that the applicant received free legal assistance in the issuing country under paragraph (b)(6).

Subsection (c) provides that a petitioner may request only partial enforcement of a support order, *see* Section 709. *infra*, which speaks to partial enforcement by a tribunal.

Subsections (d) and (e) authorize action by a tribunal available under the Convention that may not be available under other state law. Subsection (d) permits the tribunal to vacate registration, acting on its own motion, under certain exceptional circumstances, and subsection (e) requires that notice be promptly provided of any such order vacating registration. Such *ex officio* review, if used to refuse recognition of an order, is in tension with the core UIFSA policy of requiring recognition. In any event, the subsections are not a vehicle for a review of the merits of the decision. An example would be useful here, but there is none in the Explanatory Report to the Convention, just the negative reference that a country could not use this to enforce a policy against ordering support for a child born out of wedlock. <http://www.hcch.net/upload/exp138.pdf>. Perhaps an example could be that the court might reject an application to establish support from a biological parent whose rights had been terminated and the child was subsequently adopted.

**Convention source:** art. 25. Documents; art. 21. Severability and partial recognition and enforcement; art. 22. Grounds for refusing recognition and enforcement; art. 23. Procedure on an application for recognition and enforcement; art. 25. Documents.

**Related to Convention:** art. 11. Application contents; art. 20. Bases for recognition and enforcement.

## **SECTION 707. CONTEST OF REGISTERED CONVENTION SUPPORT**

### **ORDER.**

(a) Except as otherwise provided in this [article], Sections 605 through 608 apply to a contest of a registered Convention support order.

(b) A party contesting a registered Convention support order shall file a contest not later than 30 days after notice of the registration, but if the contesting party does not reside in the United States, the contest must be filed not later than 60 days after notice of the registration.

(c) If the nonregistering party fails to contest the registered Convention support order by

the time specified in subsection (b), the order is enforceable.

(d) A contest of a registered Convention support order may be based only on grounds set forth in Section 708. The contesting party bears the burden of proof.

(e) In a contest of a registered Convention support order, a tribunal of this state:

(1) is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and

(2) may not review the merits of the order.

(f) A tribunal of this state deciding a contest of a registered Convention support order shall promptly notify the parties of its decision.

(g) A challenge or appeal, if any, does not stay the enforcement of a Convention support order unless there are exceptional circumstances.

### **Comment**

Subsection (a) states the general rule that a contest of a registration is generally governed by Sections 605 through 608, *supra*. Subsection (b), however, establishes separate, longer time frames to contest the registration of a Convention support order than for filing a contest as established in Section 605. If notice of contest is to be given in the United States, the time difference is relatively modest, i.e., 30 days instead of 20. A more significant difference is created for out-of-country notice, i.e., 60 days instead of 20. Arguably this takes into account that providing notice to a party in a foreign country may take longer than ordinarily expected. In any event, the longer time frames are specifically required in connection with a Convention order. Note that while the principle may always be true that notice to a party situated in a foreign country may take longer, the additional times for notice apply only to an order subject to the Convention.

Subsections (c)-(g) transform Convention language into UIFSA terminology. Subsection (g), which prohibits a stay in enforcement pending a challenge or appeal except in exceptional circumstances, is another substantive provision required by the Convention. It does not apply in non-Convention cases, in which domestic law determines whether a stay of enforcement should be granted pending an appeal or other challenge.

**Convention source:** art. 23. Procedure on an application for recognition and enforcement; art. 27. Findings of fact; art. 28. No review of the merits.

**Related to Convention:** art. 20. Bases for recognition and enforcement; art. 21. Severability and partial recognition and enforcement; art. 23. Procedure on an application for recognition and

enforcement; art. 27. Findings of fact; art. 28. No review of the merits.

**SECTION 708. RECOGNITION AND ENFORCEMENT OF REGISTERED  
CONVENTION SUPPORT ORDER.**

(a) Except as otherwise provided in subsection (b), a tribunal of this state shall recognize and enforce a registered Convention support order.

(b) The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered Convention support order:

(1) recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;

(2) the issuing tribunal lacked personal jurisdiction consistent with Section 201;

(3) the order is not enforceable in the issuing country;

(4) the order was obtained by fraud in connection with a matter of procedure;

(5) a record transmitted in accordance with Section 706 lacks authenticity or integrity;

(6) a proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;

(7) the order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under this [act] in this state;

(8) payment, to the extent alleged arrears have been paid in whole or in part;

(9) in a case in which the [respondent] neither appeared nor was represented in the proceeding in the issuing foreign country:

(A) if the law of that country provides for prior notice of proceedings, the

[respondent] did not have proper notice of the proceedings and an opportunity to be heard; or

(B) if the law of that country does not provide for prior notice of the proceedings, the [respondent] did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or

(10) the order was made in violation of Section 711.

(c) If a tribunal of this state does not recognize a Convention support order under subsection (b)(2), (4), or (9):

(1) the tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new Convention support order; and

(2) the [governmental entity] shall take all appropriate measures to request a child-support order for the obligee if the application for recognition and enforcement was received under Section 704.

### **Comment**

**Enforceability; the general rule, with exceptions.** Subsection (a) states the general proposition that if a child-support order is issued by a tribunal in a Convention country, except as otherwise provided in subsection (b), the order shall be recognized and enforced. In domestic cases UIFSA requires recognition of child-support order of a sister state, 28 U.S.C.A. § 1738B, Full Faith and Credit for Child Support Orders Act (FFCCSOA). Receipt of a child-support order from a sister state is routinely processed and enforced. Critical examination of the sister state order for defects is not called for; it is the responsibility of the respondent to assert any defenses available. Moreover, experience has shown that child-support orders are generally valid, for relatively modest amounts, and seldom subject to claims of fraud. The most common defect is one of mistake, rather than deliberate misconduct.

Subsection (b) combines provisions from four separate articles in the Convention. These articles provide an extensive number of specific reasons for a tribunal or support enforcement agency of one Convention country to refuse to recognize a child-support order from another Convention country. For this act to be consistent with the Convention, it is necessary to identify the potential defects of a support order from a Convention country in which a defendant might raise a challenge based on lack of jurisdiction, due process, or enforceability of an order for arrearages. The majority of these defects arguably are self-explanatory, and almost all are subject to factual dispute to be resolved by the tribunal, to wit: (b)(1) “manifestly incompatible” with public policy, including violation of minimum standards of due process; (b)(2) issued without personal jurisdiction over the individual party (*discussed at length below*); (b)(3) unenforceable

in the issuing country; (b)(4) obtained by fraud in connection with a matter of procedure; (b)(5) the record lacks authenticity or integrity, e.g., forged; (b)(6) a prior proceeding is pending; (b)(7) a more recent support order is controlling; (b)(8) full or partial payment; (b)(9)(A),(B), no appearance, notice, or opportunity to be heard (*discussed below*); and, (b)(10) exceeds limitations and restraints on modification. As with domestic cases, the norm will be to recognize and enforce a foreign order absent a challenge by the respondent. Three provisions most likely to trigger a tribunal to refuse to recognize and enforce a foreign support order require more attention, i.e., subsections (b)(2), (4) and (9)(A), (B).

Of particular note, subsection (c) applies to a refusal to recognize and enforce a Convention order under any of these grounds. From the perspective of the United States, subsection (b)(2) is likely to be the primary reason for a tribunal to refuse to recognize and enforce a registered Convention support order. Key to its participation in the negotiations leading to the Convention, the United States insisted that a support order may be refused recognition by a tribunal if the issuing foreign tribunal lacked personal jurisdiction over the respondent. The facts underlying the Convention support order must be measured by a tribunal as consistent with the long-arm jurisdictional provisions of UIFSA. *See* Sections 201-202. A potential problem occurs only if a Convention support order cannot be enforced by a tribunal because there was no appropriate nexus between the foreign country and the respondent,

Subsection (c) provides that any of the reasons enumerated for not recognizing and enforcing a registered Convention support order, i.e., (b)(2), (4) and (9), will trigger the obligation of the tribunal not to dismiss the proceeding before allowing a reasonable time for a party to seek the establishment of a new child-support order. Moreover, if the Title IV-D support enforcement agency is involved, it must “take all appropriate measures to request a child-support order;” i.e., file a petition seeking to establish an initial child-support order by the tribunal. In that case, the tribunal shall treat the request for recognition and enforcement as a petition for establishment of a new order.

**Two systems; direct and indirect jurisdiction.** In drafting the Convention, the subject of the requisite jurisdiction to issue a support order generated considerable discussion. The choice divided itself into two distinct categories; rules of direct and indirect jurisdiction. Direct jurisdiction provides explicit bases on which a tribunal is vested with the power to assert its authority and enter a support order. *See* Section 201.

The UIFSA long-arm provisions are paradigm rules of direct jurisdiction. Section 201 identifies the bases on which a tribunal may assert personal jurisdiction over a nonresident individual, obligor or obligee, without regard to the current residence of the individual or child. As discussed in the comment to Section 201, *supra*, these long-arm jurisdictional rules for child support and spousal support orders were fashioned case-by-case by the Supreme Court, *see Estin v. Estin*, 334 U.S. 541, 68 S. Ct. 1213, 92 L.Ed. 1561 (1948); *Vanderbilt v. Vanderbilt*, 354 U.S. 416, 77 S. Ct. 1360, 1 L.Ed.2d 1456 (1957) (spousal support); *Kulko v. Superior Court*, 436 U.S. 84, 98 S.Ct. 1690, 56 L.Ed.2d 132 (1978) (child support).

An initial difficulty arose because some authorities from foreign countries expressed concern about the UIFSA long-arm statute. This was especially true regarding Section 201(a)(1), i.e., service of legal process that creates personal jurisdiction, sometimes called “tag or ambush

jurisdiction." Some experts in civil law countries regard the claim that jurisdiction can be acquired merely by serving documents on an individual passing through, with no fundamental ties to the jurisdiction, as "exorbitant," and fundamentally unfair. Another provision eliciting criticism was Section 201(a)(6), which literally reads that an allegation of engaging in sexual intercourse in the state that "may have" resulted in conception will suffice to support a basis for issuing a child support-order.

Similarly, rules of jurisdiction recognized by civil law countries are contrary to the principles that apply to proceedings in the United States. The fact that residence of a child or an obligee in a forum is sufficient basis in most foreign countries to support a child-support order, even though the obligor has no personal nexus with the forum, is generally viewed as wholly inconsistent with notions of due process in the United States. Assuming the obligor has never been physically present in the forum and has not participated in any of the acts described in Section 201, an assertion of jurisdiction to establish a support order based solely on the residence of the obligee or child in that forum is widely regarded in the United States as unconstitutional.

The Convention adopts a rule of indirect jurisdiction which requires a tribunal to register and enforce the order of another tribunal if certain basic jurisdictional requirements have been satisfied. The Convention does not actually prescribe the bases on which the tribunal may assert jurisdiction, as UIFSA does in Section 201. Most commonly, in countries other than the United States if a child is a "habitual resident" of a country, a support order of a tribunal of that country will be recognized in another country. As a practical matter, although "habitual residence" of the obligee provides no basis for assertion of personal jurisdiction over the obligor in the United States, the home tribunal is almost always the preferred forum if the obligee has any basis under Section 201 to obtain long-arm jurisdiction over a non-resident obligor. That is, the actual custodian of the child is almost always the person who seeks to establish and enforce child support and, if possible, chooses to bring a proceeding in the state of residence of the obligee and the child. A tribunal that recognizes "habitual residence" as a basis for indirect jurisdiction would, accordingly, register and enforce an order from a tribunal in the "habitual residence" of the obligee or child without concern about whether the obligor has a nexus with that tribunal. Thus, most foreign concerns about the tenuous reaches of long-arm jurisdiction in the United States are obviated in practice.

The Convention eschews rules of direct jurisdiction, choosing instead to rely on half-a-dozen indirect rules of jurisdiction, "habitual residence" of any of the parties (respondent, creditor or child) being the most common. The focus of the Convention is to identify the bases on which a tribunal of one Convention country will be required to recognize the assertion of jurisdiction by a tribunal of another Convention country. When the Convention is in force in both countries, a support order issued by a tribunal of Country A will be enforced by a tribunal of Country B, provided that the order is enforceable in Country A, plus the host of other possible considerations discussed above. There are a limited number of exceptions, or "reservations," to such rules permitted under the Convention, which give rise to additional procedures noted below. Once recognition is accorded to a support order, the normal procedures available to enforce the order come into play. The routes to arrive at enforcement by way of direct or indirect jurisdiction are different, but the destination is the same.

Virtually all foreign countries recognize and enforce a child-support order based on the

residence of the obligee or the child. The U.S. requirement of personal jurisdiction over the obligor is often regarded abroad as idiosyncratic. Nonetheless, the new Convention requires recognition of U.S. orders based on long-arm jurisdiction asserted over the obligor, a.k.a. “debtor” if the forum state is also the state of residence of the obligee, a.k.a. “creditor.” From the perspective of a foreign tribunal, such an order should be considered valid, if only for creditor- or child-based jurisdictional reasons. The fact that the state tribunal requires a personal nexus between the parties and the tribunal is irrelevant to the foreign tribunal.

These distinct views of appropriate jurisdiction presented a genuine issue for resolution. The United States delegation took the position that, as a matter of constitutional law, its tribunals could not recognize and enforce creditor- or child-based support orders under certain factual circumstances accepted in other countries as providing appropriate jurisdiction. The conclusion of the delegation was that this approach conflicts with the *Kulko* decision, *supra*. The potential lack of nexus with the obligor, if jurisdiction was based solely on the “habitual residence” of the obligee, would present an impenetrable barrier to participation in the Convention by the United States.

Fairly early on in the Convention negotiations, a consensus developed that these different systems of jurisdiction could be accommodated. On the U.S. side, a challenge to a foreign child-support order will be rejected if the factual circumstances are sufficient to support an assertion of long-arm jurisdiction in the foreign tribunal. Rather obviously, the foreign tribunal need not, and almost certainly will not, consider whether there is a factual basis for establishing personal jurisdiction over the absent obligor based upon “minimum contacts” with the forum. This is not a part of the jurisprudence of the foreign tribunal. If a challenge to a support order is raised by the obligor when the order is sought for enforcement in a United States tribunal, however, that tribunal shall undertake a determination of whether the jurisdictional bases of Section 201 would have been applicable if that issue had been raised in the foreign tribunal. If so, the order is enforceable in this country, notwithstanding that the foreign tribunal based its decision on jurisdiction on the fact that the child or the obligee resided in that forum. *See* Convention art. 20(1)(c)-(d).

Asserting long-arm jurisdiction to establish a support order by a tribunal in a proceeding under UIFSA will be unaffected by the entry into force of the Convention. This will be true irrespective of whether the nonresident respondent resides in another state or in a foreign country, or even resides in a non-Convention foreign nation.

The term “habitually resident” is used in a number of private international law conventions, including the 2007 Maintenance Convention. The term is not defined in any of them. Rather, in common law countries its meaning is determined on a case-by-case basis by the practice and case law of each country. In the United States and elsewhere there is no consistent interpretation of the term by the courts considering it in the context of the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The negotiators of the Convention from the United States made it clear that case law on the meaning of “habitually resident” in the child abduction context should not automatically be applied to child support cases. That is because the effect of the use of “habitual residence” in the 1980 Child Abduction Convention is intended to restrict the ability of a person to obtain a new custody order shortly after arriving in another country. In fact, one of the objects of the 1980 Convention is to limit the

ability of a parent unhappy with the custody order of one court to “forum shop” by moving to another country and seeking a new order. In the 2007 Maintenance Convention, the object is to make it easier for an obligee to recover child support in an international case, not to restrict the ability of an obligee to apply for that support.

**Due process under the Convention.** Subsection (b) (9)(A) applies to a failure to give a party prior notice of the proceedings and an opportunity to be heard, which is the classic denial of due process in a proceeding in the United States.

Subsection (b)(9)(B) will be unfamiliar to practitioners in this country and requires some explanation. This provision recognizes the legitimacy of, and provides a method for challenge of, a support order which may be routinely entered in some administrative systems in an ex parte proceeding. The support order is issued without prior notice to the obligor or opportunity to be heard. The due process opportunity is provided after the ex parte decision. This system is currently in use in administrative proceedings in Australia and New Zealand. Because the respondent will not have participated in the original proceeding, the post facto due process allows the obligor an opportunity to challenge the decision on fact or law.

**Convention source:** art. 20. Bases for recognition and enforcement; art. 21. Severability and partial recognition and enforcement; art. 22. Grounds for refusing recognition and enforcement; art. 23. Procedure on an application for recognition and enforcement; art. 25. Documents.

**Related to Convention:** art. 11. Application contents.

**SECTION 709. PARTIAL ENFORCEMENT.** If a tribunal of this state does not recognize and enforce a Convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a Convention support order.

### **Comment**

This section transforms Convention language into UIFSA terminology. If a responding tribunal is unable to enforce the entirety of a Convention support order, it shall enforce a severable part of the order. For example, a mother of a child may have another woman as her registered partner in a Convention country. If a support order provides support for both the mother and child support for the child, that part of the order awarding support to the mother from the registered partner may not be enforceable in some states. Nonetheless, a tribunal is obligated to recognize and enforce that part of the order for support of the child. The second sentence authorizes the mother to request enforcement only of the child support portion, *see also* Section 706 (c), *supra*.

**Convention source:** art. 21. Severability and partial recognition and enforcement.



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

**SECTION 710. FOREIGN SUPPORT AGREEMENT.**

(a) Except as otherwise provided in subsections (c) and (d), a tribunal of this state shall recognize and enforce a foreign support agreement registered in this state.

(b) An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by:

(1) a complete text of the foreign support agreement; and

(2) a record stating that the foreign support agreement is enforceable as an order of support in the issuing country.

(c) A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.

(d) In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds:

(1) recognition and enforcement of the agreement is manifestly incompatible with public policy;

(2) the agreement was obtained by fraud or falsification;

(3) the agreement is incompatible with a support order involving the same parties and having the same purpose in this state, another state, or a foreign country if the support order is entitled to recognition and enforcement under this [act] in this state; or

(4) the record submitted under subsection (b) lacks authenticity or integrity.

(e) A proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or a foreign country.

## Comment

Section 701(6) provides an extensive definition of a “foreign support agreement,” which is UIFSA terminology to make more readily understandable for U.S. bench and bar a process that is denominated as a “maintenance arrangement” in the Convention. Subsection (a) requires a state tribunal to recognize and enforce a foreign support agreement if the terms of this section are met. Most crucially, such an agreement must be accompanied by a document stating that the foreign support agreement is as enforceable as a support order would be in the country of origin.

This section basically translates into common parlance the procedure identified in Convention art. 30, which was the result of a very extended discussions about “authentic instruments and private agreements” during the negotiations on the Convention. In many countries, such an agreement is unknown insofar as enforcement by a tribunal is concerned. In the United States, a purely private agreement is treated as a form of contract, rather than as an order of a tribunal. Under the Convention, however, a foreign support agreement meeting the standards established in this section, and as defined in Section 701(6), is entitled to enforcement by the tribunal. Advantages for enforcement of child support binding on the parties in the country of origin stem from the inclusion of a foreign support agreement because there is a growing tendency internationally to promote amicable solutions and avoid contentious procedures. In view of the movement towards alternative methods of dispute resolution in the United States, this mechanism provides for recognition and enforcement of a dispute resolution system in some of the likely Convention countries. The absence of this provision would have been a loss for the Convention, and limited its usefulness for support agreements, particularly in the Scandinavian countries. Although the possibility of a reservation is available, the United States has not indicated that it intends to make such a reservation.

To reiterate, the key to enforcement is that the foreign support agreement must be “enforceable as a decision” in the foreign country of its origin (quoting the Convention). If such an agreement is enforceable only as a contract, it will not fall within the scope of this section. Another key provision is that under subsection (e) the enforcement proceeding will be suspended if the respondent challenges the underlying agreement in a tribunal that has jurisdiction to hear challenges to the agreement.

***Convention source:*** art. 3. Definitions; art. 30. Maintenance arrangements.

## **SECTION 711. MODIFICATION OF CONVENTION CHILD-SUPPORT ORDER.**

(a) A tribunal of this state may not modify a Convention child-support order if the obligee remains a resident of the foreign country where the support order was issued unless:

(1) the obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the

first available opportunity; or

(2) the foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

(b) If a tribunal of this state does not modify a Convention child-support order because the order is not recognized in this state, Section 708(c) applies.

### **Comment**

One goal of the Convention was to limit the number of multiple foreign orders with respect to the same parties to the extent possible. But, given differing laws and jurisdictional bases, consensus on limiting modification was reached only on the fact patterns presented by Section 711(a).

First, this section transforms Convention language into UIFSA terminology. The restriction identified on modification of a child-support order in subsection (a) strikes a familiar note. Similar to Section 611, *supra*, a restriction is placed on modification of a support order if the obligee remains in the issuing Convention country. Subsection (a)(1) provides an exception if, by failure to object, the obligee submits to the jurisdiction of another tribunal. Subsection (a)(2) is similar to Section 615, *supra*. From the perspective of the obligee, the restriction has virtually the same effect as found in Sections 205 and 611. That is, in effect the issuing foreign tribunal has a form of continuing, exclusive jurisdiction that it maintains over modification of the order so long as the obligee remains a resident of the country. The difference is that the protection against modification is accorded only to the obligee, and not to the obligor. Thus, under the Convention the obligee may be free to seek a modification in another forum notwithstanding the fact that the obligor remains in the issuing country but the obligee moves to another country, with the implicit requirement that the issuing foreign tribunal must have personal jurisdiction over the obligor to sustain the enforcement of modification by a state tribunal.

Subsection (b) requires a state tribunal to issue a new child-support order if the Convention order was founded on child-based jurisdiction, the foreign tribunal lacked personal jurisdiction over the obligor, and there is a request to establish an order in accordance with Section 708.

**Convention source:** art. 18. Limit on proceedings; art. 21. Severability and partial recognition and enforcement.

**Related to Convention:** art. 18. Limit on proceedings; art. 20. Bases for recognition and enforcement.

**SECTION 712. PERSONAL INFORMATION; LIMIT ON USE.** Personal information gathered or transmitted under this [article] may be used only for the purposes for

which it was gathered or transmitted.

### **Comment**

This section is an almost word-for-word tracking of the Convention provision, rephrased in UIFSA terminology. This single sentence is illustrative of the different drafting rules for a uniform act and an international treaty. Although certainly not always adhered to, cardinal rules for drafting a uniform act include writing in the active voice, identifying the intended actor, and specifying the consequences for failure to follow the directive or ignore the proscription. Convention provisions, such as this one, are generally written in passive voice, the actor is not identified, and no penalty is specified for noncompliance. Insofar as the admirable goals of the provision are concerned, ambiguity in the statute, or an exception to the rule, must be resolved case-by-case.

Confidentiality is highly prized in the United States in many circumstances, e.g., the attorney-client privilege is protected to the maximum extent possible. Under other circumstances, the opposite is true, e.g., records of litigation are generally available, and a judicial decision is ordinarily in open court or public record. Neither goal is absolute. Section 312, *supra*, adds another exception, i.e., nondisclosure of information is sometimes required to protect the health, safety, or liberty of a party or a child. In a case in which there is a risk of domestic violence or parental kidnapping, nondisclosure may be crucial.

The anticipated breadth of application of this provision is to constrain individuals and entities subject to a Convention support order. Protection of personal information in this computerized world is increasingly important, whatever the medium or means of communication. Both the sender and recipient of personal information transmitted electronically are expected to take appropriate measures vis-à-vis their service providers to meet the requirements of this section. The exact meaning of the statutory phrase “for the purpose for which it was gathered or transmitted” will necessarily remain ambiguous until elaborated by statute, caselaw, or regulation.

***Convention source:*** art. 38. Protection of personal data.

### **SECTION 713. RECORD IN ORIGINAL LANGUAGE; ENGLISH**

**TRANSLATION.** A record filed with a tribunal of this state under this [article] must be in the original language and, if not in English, must be accompanied by an English translation.

### **Comment**

The United States will declare that English is the official language for transmittals to this country. Further, the United States will make a reservation objecting to the use of French, the other official language of the Convention, as a default translation. Of course, the original order may be in French. The cost of translation is borne by the issuing state or Convention country.

***Convention source:*** art. 44. Language requirements; art. 62. Reservations; art. 63.

*Declarations.*

***Related to Convention:*** art. 45. Means and costs of translation.

## ARTICLE 8

### INTERSTATE RENDITION

#### SECTION 801. GROUNDS FOR RENDITION.

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

(b) The governor of this ~~State~~ state may:

(1) demand that the governor of another ~~State~~ state surrender an individual found in the other ~~State~~ state who is charged criminally in this ~~State~~ state with having failed to provide for the support of an obligee; or

(2) on the demand of the governor of another ~~State~~ state, surrender an individual found in this ~~State~~ state who is charged criminally in the other ~~State~~ state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this ~~{Act}~~ [act] applies to the demand even if the individual whose surrender is demanded was not in the demanding ~~State~~ state when the crime was allegedly committed and has not fled therefrom.

#### Comment

This section has not been amended substantively since 1968. Virtually no controversy has been generated regarding this procedure. Arguably application of subsection (c) is problematic in situations in which the obligor neither was present in the demanding state at the time of the commission of the crime nor fled from the demanding state. The possibility that an individual may commit a crime in a state without ever being physically present there has elicited considerable discussion and some case law. *See* L. BRILMAYER, AN INTRODUCTION TO JURISDICTION IN THE AMERICAN FEDERAL SYSTEM,” 329-335 (1986) (discussing minimum contacts theory for criminal jurisdiction); Rotenberg, *Extraterritorial Legislative Jurisdiction and the State Criminal Law*, 38 TEX. L. REV. 763, 784-87 (1960) (due process requires that the behavior of the defendant must be predictably subject to state's criminal jurisdiction); *cf. Ex parte Boetscher*, 812 S.W.2d 600 (Tex. Crim. App. 1991) (Equal Protection Clause limits

disparate treatment of nonresident defendants); *In re King*, 3 Cal.3d 226, 90 Cal. Rptr. 15, 474 P.2d 983 (1970), cert. denied 403 U.S. 931 (enhanced offense for nonresidents impacts constitutional right to travel).

## **SECTION 802. CONDITIONS OF RENDITION.**

(a) Before making a demand that the governor of another ~~State~~ state surrender an individual charged criminally in this ~~State~~ state with having failed to provide for the support of an obligee, the governor of this ~~State~~ state may require a prosecutor of this ~~State~~ state to demonstrate that at least [60] days previously the obligee had initiated proceedings for support pursuant to this ~~[Act]~~ [act] or that the proceeding would be of no avail.

(b) If, under this ~~[Act]~~ [act] or a law substantially similar to this ~~[Act]~~ [act], the governor of another ~~State~~ state makes a demand that the governor of this ~~State~~ state surrender an individual charged criminally in that ~~State~~ state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the [petitioner] prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

### **Comment**

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

## ARTICLE 9

### MISCELLANEOUS PROVISIONS

**SECTION 901. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing this ~~Uniform Act~~ uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among ~~States~~ states that enact it.

**[SECTION 902. TRANSITIONAL PROVISION.** This [act] applies to proceedings begun on or after [the effective date of this act] to establish a support order or determine parentage of a child or to register, recognize, enforce, or modify a prior support order, determination, or agreement, whenever issued or entered.]

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

**[SECTION 905 904. REPEALS.** The following are repealed:

(1) . . . .

(2) . . . .

(3) . . . .]

**SECTION 903 905. EFFECTIVE DATE.** This [act] takes effect . . . .