

Department of Legislative Services
 Maryland General Assembly
 2008 Session

FISCAL AND POLICY NOTE

House Bill 786

(Delegate Dumais)

Judiciary

Judicial Proceedings

Maryland Uniform Interstate Family Support Act - Revision

This bill revises the Uniform Interstate Family Support Act (UIFSA) to include revisions proposed in 2001 by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

Fiscal Summary

State Effect: Potential minimal increase in special fund revenues to the extent child support collections increase. Expenditures increase by \$72,100 in FY 2009 only for computer programming changes.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
SF Revenue	-	-	-	-	-
GF Expenditure	24,500	0	0	0	0
FF Expenditure	47,600	0	0	0	0
Net Effect	(\$72,100)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The proposed revisions are intended to clarify jurisdictional rules that limit the ability of parties to seek modifications of orders in states other than the state that

issued the original support order, but also to allow parties to voluntarily seek to have an order issued or modified in a state where they do not reside.

The bill provides greater detail about how a controlling support order is to be determined and reconciled if multiple support orders have been issued and clarifies the procedures the Child Support Enforcement Administration must follow under those circumstances. Also clarified is that UIFSA is not the exclusive method for establishing or enforcing a support order in a participating state. A nonresident may voluntarily submit to the jurisdiction of a state for a divorce or child support determination and seek issuance of an original support order at that tribunal. However, the jurisdictional basis for the issuance of support orders and child custody jurisdiction remains separate. A party submitting to a court's jurisdiction for a support determination does not automatically submit to the jurisdiction in that state for purposes of child custody or visitation. Additional clarification is provided to CSEA regarding the redirection of support payments to an obligee's current state of residence. Also the duration of a child support order is based on the law of the issuing state so that a second state cannot modify an order to extend or limit payment of child support.

The bill also acknowledges the use of electronic communications and requires their use for depositions of nonresidents and under other circumstances and incorporates current prevailing federal and state practices regarding the sealing of certain records relating to child custody actions. The revisions are also intended to expand UIFSA to include coverage of support orders from foreign countries, through the principle of comity, but also in compliance with federal law. If a party establishes that a foreign jurisdiction is prohibited from or declines to exercise its jurisdiction to modify its own order, the State tribunal is authorized under these revisions to modify the support order.

Current Law:

Extended Tribunal Jurisdiction: In a proceeding to establish, enforce, or modify a support order or to determine parentage, a State tribunal may exercise jurisdiction over a nonresident individual if the individual is personally served in the State or other conditions as specified in the law are met. A State tribunal exercising personal jurisdiction over a nonresident to receive evidence and obtain discovery from another state may apply special rules of evidence and discovery, as specified in the law. Otherwise, the State tribunal must apply the procedural and substantive law of this State, including rules on choice of law.

Proceedings Involving Two or More States: A State tribunal issuing a lawful support order has continuing, exclusive jurisdiction over a child support order as long as Maryland remains the residence of the obligor, the individual obligee, or the child who is

the subject of the support order. Continuing exclusive jurisdiction attaches until all of the parties who are individuals have filed written consents with the State tribunal for another state to modify the support order and assume continuing, exclusive jurisdiction. A State tribunal issuing a lawful child support order may not exercise its continuing jurisdiction to modify the order if it has been modified by a tribunal of another state pursuant to these or substantially similar provisions. If a child support order of Maryland is modified by another state tribunal, the Maryland tribunal loses its continuing, exclusive jurisdiction for prospective enforcement of the order and may only enforce the modified order pursuant to amounts accruing before the modification, enforce the nonmodifiable aspects of the order, and provide other appropriate relief for violations occurring before the effective date of the modification. A temporary order issued *ex parte* or *pendente lite* does not create continuing, exclusive jurisdiction in the issuing tribunal. A Maryland tribunal issuing a lawful support order has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A Maryland tribunal is prohibited from modifying a spousal support order issued by another state tribunal with continuing, exclusive jurisdiction over that order. A State tribunal with continuing, exclusive jurisdiction over a spousal support order may act as a responding tribunal to enforce or modify the child support order. A State tribunal which does not have continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

Multiple Orders – Reconciliation: The Maryland enactment of UIFSA specifies the procedures to be followed if multiple child support orders have been issued by a Maryland tribunal and one or more other state tribunals. For example, if only one of the tribunals would have continuing, exclusive jurisdiction, the order of that tribunal controls and must be recognized by other states. If more than one of the tribunals would have continuing, exclusive jurisdiction, an order issued by the current home state of the child is controlling. If none of the tribunals would have continuing, exclusive jurisdiction, then the Maryland tribunal having jurisdiction over the parties must issue a child support order which is controlling and must be recognized. Other provisions govern how to determine the controlling support order and the tribunal with continuing, exclusive jurisdiction depending on the circumstances of the parties and the child who is the subject of the support order.

UIFSA also establishes the procedures tribunals must follow for • establishment of a spousal or child support order; • enforcement of a support order and an income withholding order of another state without registration; • registration of a spousal or child support order for another state for enforcement; • modification of a child or spousal support order issued by a Maryland tribunal; • registration of a child support order for another state for modification; • determination of parentage; and • assertion of jurisdiction over nonresidents. Except as otherwise provided, a responding tribunal of

Maryland must apply the procedural and substantive law, including rules on choice of law generally applicable to similar proceedings originating in Maryland and determine the duty of support and the amount payable in accordance with the law and child support guidelines of Maryland.

Civil Proceedings – Generally: CSEA must, upon request, provide services to a plaintiff in a proceeding under the UIFSA provisions. CSEA must take all steps necessary to enable an appropriate tribunal in this State or another state to obtain jurisdiction over the defendant and undertake other specified duties to facilitate disposition of support order issues, including maintaining a register of information about other tribunals in this State and taking specified steps to forward required information to the appropriate tribunal and obtain information concerning the location of the obligor and the obligor's property which is not exempt from execution.

Upon finding that the health, safety, or liberty of a party or child would be put at unreasonable risk by disclosure of identifying information, or if an existing order requires it, a tribunal must order that identifying information not be disclosed in a pleading or other document filed pursuant to UIFSA. A State tribunal is authorized to order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily to delay payment of support. A Maryland tribunal may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual, or other electronic means. A Maryland tribunal may also communicate with a tribunal of another state in writing, by telephone, or other means to obtain information about the laws of that state or the legal effect of any proceedings in the other state. CSEA or a State tribunal must disburse any amounts received pursuant to a support order promptly.

Enforcement of Another State's Order Without Registration: An employer is required to treat an income withholding order issued in another state as if it had been issued in Maryland. An employer must comply with the state law of the obligor's principal place of employment for withholding of income with respect to the employer's fee, the maximum amount that must be withheld from the obligor's income and the time periods within which the employer must implement the withholding order and forward the child support payment. If an employer receives multiple orders to withhold support from the earnings of the same obligor, the employer is deemed to have satisfied the terms of the multiple orders if the law of the state of the obligor's principal place of employment that establishes priorities for withholding and allocating withheld income for multiple child support obligees is followed. Procedures for an obligor to contest the validity or enforcement of an income withholding order are set forth as well as requirements for notice and documentation if a party or CSEA seek to enforce a support order and/or an income withholding order.

Enforcement and Modification of a Support Order After Registration: A support order or an income withholding order issued by a tribunal of another state may be registered in Maryland for enforcement. Procedures and the required documents for registration are set forth. The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support, and payment of arrearages. In a proceeding for arrearages, the statute of limitation of Maryland or the issuing state, whichever is longer, applies. Procedures for a nonregistering party seeking to contest the validity or enforcement of a registered order in Maryland are established. Defenses are specified and that the party contesting validity or enforcement of a registered order has the burden of proof.

A Maryland tribunal may enforce a child support order of another state registered for the purpose of modification in the same manner as if the order had been issued by a Maryland tribunal, but the registered order may be modified only if specified requirements have been met. Except as otherwise provided, 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 Maryland tribunal and the order may be enforced and satisfied in the same manner.

Parentage: A Maryland tribunal may serve as an initiating or responding tribunal in a proceeding to determine that the plaintiff or defendant is a parent of a particular child. In a proceeding to determine parentage, a responding tribunal in Maryland must apply the procedural and substantive law of Maryland and Maryland rules on the choice of law.

Grounds for Rendition: Before making a demand that the governor of another state surrender an individual charged criminally in Maryland with having failed to provide for the support of an obligee, the Maryland Governor may require a State's Attorney to demonstrate that at least 60 days previously, the obligee had initiated proceedings for support or that initiating such a procedure would be of no avail. If the governor of another state makes a similar demand, the Maryland Governor may require a State's Attorney to investigate the demand and report whether a proceeding for support had been initiated or would be effective. If it appears that a proceeding would be effective, but has not been initiated, the Maryland Governor may delay honoring the demand for rendition for a reasonable time to permit a proceeding.

Background: Before 1950, a U.S. parent who wanted child support from another parent who lived in another state had to travel to that state to take legal action. As of 1950, a uniform act was developed that allows participating states to enforce each other's support orders. The Act established in 1950 was the Uniform Reciprocal Enforcement of Support Act. In 1968, URESA was revised. By 1992, all U.S. states and most American territories had adopted URESA or the Revised URESA. However, a U.S. General

Accounting Office report issued at that time concluded that up to 30% of child support cases involve interstate jurisdiction and children in these cases were less likely than children whose families resided in the same state to receive support payments. Over one-third of mothers in interstate support cases reported that they never received any support payments.

In 1996, NCCUSL sponsored substantial revisions to the Revised URESA and renamed the Act the Uniform Interstate Family Support Act or UIFSA. According to NCCUSL, in some respects, the adoption of UIFSA in all states tracked the development of welfare reform efforts in the 1990s. After the 1996 revisions creating UIFSA were established, the federal Personal Responsibility and Work Opportunity Reconciliation Act was enacted. In addition to welfare reform, the law contained major provisions regarding child support enforcement by states. Federal grants for child support enforcement also became partially dependent on adoption of UIFSA. After review and analysis as requested by state child support enforcement agencies and stakeholders, amendments to UIFSA were adopted by NCCUSL in 2001. The amendments are intended to clarify the issuance and enforcement of support orders across multiple jurisdictions. Generally, they do not radically change existing provisions. To date, 21 states (including the neighboring states of Delaware, Virginia and West Virginia) and the District of Columbia have adopted the 2001 amendments. In addition to Maryland, New Jersey is also considering adoption of these amendments during its 2008 legislative session.

State Revenues: Potential minimal increase in special fund revenues to the extent that CSEA is able to increase child support collections, due to greater efficiencies with dispositions, offset to some extent by those additional support payments that are collected by other states, due to those same efficiencies. Temporary Cash Assistance recipients must assign their support payments to the State and federal governments as partial reimbursement for TCA payments made on behalf of the children of the obligor; as a result, TCA child support collections are distributed 50% to the State and 50% to the federal government. Accordingly, the State and federal governments would share equally in collection revenues. Any such potential increase cannot be quantified at this time, due to the unavailability of data.

State Expenditures: Total State expenditures could increase by \$72,125 (\$47,602 federal funds/\$24,523 general funds) in fiscal 2009 only to provide computer programming modifications to track program participants and make other system changes to conform to the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), National Conference of Commissioners on Uniform State Laws, Alliance for Non-Custodial Parents Rights, Department of Legislative Services

Fiscal Note History: First Reader - March 4, 2008
mll/hlb

Analysis by: Karen D. Morgan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510