

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 1289
Judiciary

(Delegate Dumais)

Maryland Uniform Interstate Family Support Act - Revision

This bill revises the Uniform Interstate Family Support Act (UIFSA) to include revisions proposed in 2008 by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

The bill takes effect July 1, 2015.

Fiscal Summary

State Effect: The bill does not materially impact the workload of the Judiciary or the Department of Human Resources (DHR). The bill is intended to protect significant federal fund revenues by ensuring that the State is in compliance with federal law, as discussed below.

Local Effect: The bill does not materially impact the workload of the circuit courts.

Small Business Effect: None.

Analysis

Bill Summary: The bill expands UIFSA to establish uniform procedures for the processing of international child support cases. Specifically, the bill creates a new Part Seven of UIFSA, which applies only to support proceedings under the “convention.” “Convention” means the convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded at the Hague on November 23, 3007.

The bill establishes that a tribunal of this State (a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or determine parentage) must apply existing procedures under UIFSA, and as applicable, new provisions created by the bill to a support proceeding involving a foreign support order, a foreign tribunal, or an obligee, obligor, or child residing in a foreign country. In such proceedings, if a provision of the new part is inconsistent with the existing parts, the new part specific to support proceedings under the convention controls.

In a proceeding under UIFSA, a support enforcement agency of this State, on request (1) must provide services to a plaintiff residing in a state; (2) must provide services to a plaintiff requesting services through a central authority (an entity designated to perform specified child support functions pursuant to the convention) of a foreign country, as specified; and (3) may provide services to a plaintiff who is an individual not residing in a state.

A tribunal of this State retains jurisdiction to modify an order issued by a tribunal of this State if one party resides in another state and the other party resides outside of the United States. The bill alters the definition of “home state” to include a foreign country and makes numerous conforming changes to incorporate references to the bill’s implementation of procedures for international child support orders.

A party or support enforcement agency seeking to modify and/or enforce a foreign child support order not under the convention may register that order in this State under specified provisions if the order has not been registered. A complaint for modification may be filed at the same time as a request for registration and must specify the grounds for modification.

Support Proceedings under Convention

The bill substantially amends Part 7 of UIFSA to create a new part entitled “Support Proceedings Under Convention.” It establishes that an “application” is 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. The Child Support Enforcement Administration (CSEA) of this State is recognized as the agency designated by the “U.S. Central Authority” (the Secretary of the U.S. Department of Health and Human Services) to perform specified child support functions under the convention.

In a support proceeding under the convention, CSEA must transmit and receive applications and initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this State. The following support proceedings are available to an obligee under the convention: (1) recognition and/or 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 order is refused under specified provisions; and (5) modification of a support order of a tribunal of this State, another state, or a foreign country.

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; and (2) modification of a support order of a tribunal of this State, another state, or a foreign country. 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.

A plaintiff may file a direct request seeking establishment or modification of a support order or determination of parentage of a child. In such a proceeding, the law of this State applies.

A plaintiff may file a direct request seeking recognition and enforcement of a support order or support agreement, which is governed by provisions set forth within the new part. 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 benefitted 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. A plaintiff filing a direct request is not entitled to assistance from CSEA. These provisions do 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.

A party who is an individual or support enforcement agency seeking recognition of a convention support order must register the order in this State, as specified. A request for registration of a convention support order must be accompanied by (1) the complete text of the support order; (2) a record stating that the support order is enforceable in this issuing country; (3) if the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting to specified information regarding notice and an opportunity to be heard; (4) specified information regarding the amount of any arrears; (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. A request for registration of a convention support order may seek recognition and partial enforcement of the order.

A tribunal of this State may vacate the registration of a convention support order without the filing of a contest only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy. The tribunal must promptly notify the parties of the registration or the order vacating the registration of a convention support order. The bill also sets forth procedures regarding the contest of a registered convention support order, including establishing that 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.

Generally, a tribunal of this State must recognize and enforce a registered convention support order. A tribunal of this State may refuse recognition and enforcement of a registered convention support order only on specified grounds as enumerated in the bill. If a tribunal does not recognize a convention support order on grounds related to personal jurisdiction, fraud, or a respondent's lack of appearance and representation in the proceeding in the issuing foreign country, as specified, 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. In such cases, CSEA must also take all appropriate measures to request a child support order for the obligee in specified circumstances.

If a tribunal of this State does not recognize and enforce a convention support order in its entirety, it must enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a convention support order.

A tribunal of this State must recognize and enforce a foreign support agreement registered in this State. 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. 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. 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 UIFSA in this State; or (4) the record submitted lacks authenticity or integrity.

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. 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 specified conditions are met. If a tribunal of this State does not modify a convention child support order because the order is not recognized in this State, 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 CSEA must take specified measures.

A record filed with a tribunal of this State must be in the original language and, if not in English, must be accompanied by an English translation. Personal information gathered or transmitted under these new provisions may be used only for the purposes for which it was gathered or transmitted.

Current Law/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. In 1950, the Uniform Reciprocal Enforcement of Support Act (URESA) was developed to allow participating states to enforce each other's support orders. 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. More than 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. These amendments were intended to clarify the issuance and enforcement of support orders across multiple jurisdictions, and were adopted by Maryland pursuant to Chapter 522 of 2008.

In November 2007, the United States signed the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (the convention). This convention contains numerous provisions that establish uniform procedures for the processing of international child support cases. NCCUSL amended UIFSA in July 2008 to incorporate changes required by the convention. These 2008 amendments serve as implementing language for the convention throughout the states. According to NCCUSL, these amendments will improve the enforcement of child support orders abroad and help

ensure that children residing in the United States will receive the financial support due from parents wherever the parents may reside.

In September 2014, Congress passed federal implementing legislation for the convention. The new law (the Preventing Sex Trafficking and Strengthening Families Act), requires that the 2008 UIFSA amendments be enacted in every jurisdiction as a condition for continued receipt of federal funds supporting state child support programs under Title IV-D of the Social Security Act. Failure to enact these amendments during the 2015 legislative session may result in a state's loss of federal funding.

State Fiscal Effect: The U.S. Department of Health and Human Services has advised DHR that if legislation revising UIFSA fails to be enacted during the 2015 session, it will bring the State out of compliance with federal law, and that disapproval of a State IV-D plan will result in immediate suspension of all federal payments for the State's child support enforcement program. The Governor's proposed fiscal 2016 budget assumes \$83.1 million in federal child support enforcement funds, in addition to \$7.1 million in federal funds from child support incentive payments. The fiscal 2015 budget includes \$79.7 million in child support enforcement funds and \$6.8 million in child support incentive payments.

In addition, a state must operate a child support program under an approved IV-D plan as a condition of receiving Temporary Assistance for Needy Family (TANF) funding. Accordingly, DHR has also been notified that these TANF funds might be at risk. The State receives \$229.1 million annually in TANF funds, in addition to potential contingency funds that are available to states in specified circumstances.

Special fund revenues may increase minimally to the extent that CSEA is able to increase child support collections. Temporary Cash Assistance (TCA) 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 share equally in any collection revenues. In addition, the Comptroller's Office, which operates a variety of interception programs, advises that the bill's provisions may also impact the amounts of child support due and arrearages enforceable, which may alter the amounts of income tax refunds and vendor payments that are intercepted. Any such impact cannot be quantified at this time, due to the unavailability of data, but is not anticipated to materially impact State or local finances.

Additional Information

Prior Introductions: None.

Cross File: SB 941 (Senator Raskin) – Judicial Proceedings.

Information Source(s): Department of Human Resources, Comptroller's Office, National Conference of Commissioners on Uniform State Laws, U.S. Department of Health and Human Services, Department of Legislative Services

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md/kdm

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