HOUSE OF REPRESENTATIVES

SB 1313
uniform interstate family support act
Sponsors: Senators Driggs: Worsley

X Committee on Children and Family Affairs

Caucus and COW

House Engrossed

OVERVIEW

SB 1313 adds a new article to the Uniform Interstate Family Support Act (UIFSA) to incorporate amendments adopted to the UIFSA in 2008.

HISTORY

According to the National Conference for State Legislatures, Public Law (P.L.) 113-183, the Preventing Sex Trafficking and Strengthening Families Act was signed on September 24, 2014. This law includes amendments to section 466(f) of the Social Security Act, requiring all states to enact any amendments to the UIFSA officially adopted on September 30, 2008 by the National Conference of Commissioners on UIFSA referred to as UIFSA 2008.

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 in 2007. This contains procedures for processing international child support cases that are intended to be uniform, simple, efficient, accessible and cost-free to U.S. citizens seeking child support in other countries. The requirement to adopt the UISFA must be met in 2015 or a state's child support program could face financial penalties. Twelve 12 states have adopted the UISFA 2008 and 22 states have introduced legislation to do the same.

PROVISIONS

Support Proceeding under Convention (Article 7)

Definitions

1. Defines *application, central authority, convention support order, direct request, foreign central authority, foreign support agreement* and *United States Central Authority.*

Applicability

2. Asserts this Article applies only to a support proceeding under the Convention. In such a proceeding, if a provision of Article 7 is inconsistent with the other Articles (1-6) of the UIFSA Act, Article 7 controls.

Relationship of ADES to United State Central Authority

3. Recognizes the Arizona Department of Economic Security as the agency designated by the United States Central Authority to perform specific functions under the Convention.

Initiation by ADES of Support Proceeding under Convention

4. Requires ADES to do both of the following:
   a. Transmit and receive applications; and

b. Initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.

5. States the following support proceedings are available to an obligee under the Convention:
   a. Recognition or recognition and enforcement of a foreign support order;
   b. Enforcement of a support order issued or recognized in this state:
   c. Establishment of a support order if there is no existing order, including, if necessary, a determination of parentage of a child;
   d. Establishment of a support order if recognition of a foreign support order is refused;
   e. Modification of a support order of a tribunal of this state; and
   f. Modification of a support order of a tribunal of another state or a foreign country.

6. Specifies the following support proceedings are available under the Convention to an obligor against which there is an existing support order:
   a. Recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state;
   b. Modification of a support order of a tribunal of this state; and
   c. Modification of a support order of a tribunal of another state or a foreign country.

7. Provides that 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.

Direct Request

8. States 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.

9. Allows a petitioner to file a direct request seeking recognition and enforcement of a support order or support agreement and specifies that the provisions of the convention apply to such a proceeding.

10. Specifies that in a direct request for recognition and enforcement of a Convention support order or foreign support agreement:
    a. A security, bond or deposit is not required to guarantee the payment of costs and expenses; and
    b. 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.

11. Stipulates that a petitioner filing a direct request if not entitled to assistance from ADES.

12. Establishes that 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.

Registration of Convention Support Order

13. States, except as otherwise provided, a party who is an individual or that is a support enforcement agency seeking recognition of a convention support order must register the order in this state.

14. Requires a request for registration of a convention support order to be accompanied by all of the following:

a. A complete text of the support order or an abstract or extract of the support order drawn up by the issuing foreign tribunal, that may be in the form recommended by the Hauge Conference on Private International Law;
b. A record stating that the support order is enforceable in the issuing country;
c. 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;
d. A record showing the amount of arrears, if any, and the date the amount was calculated;
e. 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
f. If necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.

15. Provides that a request for registration of a convention support order may seek recognition and partial enforcement of the order.

16. Allows a tribunal of this state to 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.

17. Mandates that the tribunal promptly notify the parties of the registration or the order vacating the registration of a convention support order.

Contest of Registered Convention Support Order

18. Prescribes which statutes govern a contest of a registered convention support order.

19. States a party contesting a registered convention support order must file a contest not later than 30 days after the date of mailing or personal service of the notice of registration, but if the contesting party does not reside in the United States, the contesting party must file the contest not later than 60 days after the date of mailing or personal service of the notice of registration.

20. Specifies that if the non-registering party fails to contest the registered convention support order by the time specified, the order is enforceable.

21. Provides that a contest of a registered convention support order may be based only on grounds outlined in the following statute (A.R.S. § 25-1338). The contesting party bears the burden of proof.

22. States a tribunal of this state, in a contest of a registered convention support order,
    a. Is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and
    b. May not review the merits of the order.

23. Prescribes a tribunal of this state deciding a contest of a registered convention support order must promptly notify the parties of its decision.

24. Specifies a challenge or appeal, if any, does not stay the enforcement of a convention support order unless there are exceptional circumstances.

Recognition and Enforcement of Registered Convention Support Order

25. Requires a tribunal of this state to recognize and enforce a registered convention support order.

26. States the following grounds are the grounds on which a tribunal of this state may refuse recognition and enforcement of a registered support order:
    a. 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;
    b. The issuing tribunal lacked personal jurisdiction;
    c. The order is not enforceable in the issuing country;
    d. The order was obtained by fraud in connection with a matter of procedure;
    e. A transmitted record lacks authenticity or integrity;
    f. 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;
    g. 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;
    h. Payment, to the extent the alleged arrears have been paid in whole or in part;
    i. In a case in which the respondent did not appear or was not represented in the proceeding in the issuing foreign country;
        1. 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; and
        2. 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.
    j. The order was made in violation of a modification of convention support order.

27. States if a tribunal of this state does not recognize a specified convention support order:
    a. 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.
    b. ADES must take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received.

Partial Enforcement

28. Requires a tribunal of this state to enforce any severable part of the order, if the tribunal does not recognize and enforce a convention support order in its entirety. An application or direct request may seek recognition and partial enforcement of a convention support order.

Foreign Support Agreement

29. Mandates a tribunal of this state recognize and enforce a foreign support agreement registered in this state with exceptions.

30. Provides an applicant or direct request for recognition and enforcement of a foreign support agreement must be accompanied by both of the following:
    a. A complete text of the foreign support agreement; and
    b. A record stating that the foreign support agreement is enforceable as an order of support in the issuing country.

31. Stipulates that 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.

32. States, in a contest or a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds any of the following:

a. Recognition and enforcement of the agreement is manifestly incompatible with public policy;
b. The agreement was obtained by fraud or falsification;
c. 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 in this state; and
d. The record submitted lacks authenticity and integrity.

33. Requires 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 foreign country.

Modification of Convention Child Support Order

34. Prohibits a tribunal of this state from modifying a convention child support order if the obligee remains a resident of the foreign country where the support order was issued unless either of the following applies:
    a. 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; and
    b. The foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

35. States that if a tribunal of this state does not modify a convention child support order because the order is not recognized in this state, A.R.S. § 25-1338, subsection C (recognition and enforcement of registered convention support order) applies.

Personal Information; Limit on Use

36. Limits the use of personal information to only the original purpose for which it was gathered or transmitted.

Record in Original Language; English Translation

37. Provides that 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.

Miscellaneous

38. Asserts that the superior court is the tribunal of this state.

39. Asserts ADES is the support enforcement agency of this state.

40. Allows a tribunal of this state jurisdiction to render judgment or issue an order relating to legal decision making in addition to parenting time.

41. State a tribunal of this state must apply support proceedings that involves any of the following:
    a. A foreign support order;
    b. A foreign tribunal; and
    c. An obligee, an obligor or a child residing in a foreign county.

42. Prescribes that 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 as provided.

43. Specifies that Article 7 of this Chapter applies only to a support proceeding under the Convention, however if a provision of Article 7 is inconsistent with Articles 1-6, Article 7 governs.
44. States for a case involving a foreign support order, if a foreign county lacks or refuses to exercise jurisdiction to modify its child support order, a tribunal in this state may assume jurisdiction.
45. Provides that if two or more child support orders have been issued for the same obligor and the same child on request to determine which controls, the request may be filed with a registration for enforcement or registration for modification or may be filed as a separate action.
46. States a tribunal of this state that has continuing, exclusive jurisdiction over a spousal support order may service as either the initiating tribunal to quest a tribunal of another state to enforce the spousal support order issued in this state.
47. Permits a tribunal of this state, if not prohibited by another law, to order an obligor to keep the tribunal informed of the obligor's current e-mail address.
48. Requires that a support enforcement agency of this state, on request, provide services to a petitioner that request services through a central authority of a foreign country.
49. Allows a support enforcement agency of this state to provide services to a petitioner who is an individual not residing in the state.
50. Mandates that ADES maintain a registry of names and addresses of tribunals and support enforcement agencies received from other states.
51. Requires that a petition or accompanying documents must provide the name, residential address and social security number of the parent and alleged parent.
52. States a petitioner may not be required to pay a filing fee or other costs.
53. Provides that in a proceeding, a tribunal of this state must permit a party or witness residing outside of this state to be deposed or testify under penalty of perjury by telephone, audiovisual means or other electronic means at a designated tribunal or other location.
54. Allows e-mail communications between tribunals.
55. Includes the language *foreign countries* as applicable.
56. Changes an Article Heading from *Establishment of Support Order* to *Establishment of Support Order or Determination of Parentage.*
57. Specifies that if a support order entitled to recognition has not be issued, a responding tribunal of this state with personal jurisdiction over the parties may issue a support order if either:
    a. The individual seeking the support order resides outside this state; and
    b. The support enforcement agency seeking the order is located outside this state.
58. Permits a tribunal of this state authorized to determine parentage of a child to serve as a responding tribunal in a proceeding to determine the parentage of a child.
59. Changes the Article Heading *Enforcement of Order of Another State without Registration* to *Enforcement of Support order without Registration*.

60. States a petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.
61. Provides that a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after the date of mailing or personal service unless the registered order is under contest.
62. Requires, on registration of an income withholding order, the support enforcement agency to serve the obligor's employer with a wage assignment.
63. Specifies that a tribunal of this state retains jurisdiction to modify an order issued by a tribunal of this state if both of the following are true:
    a. One party resides in another state; and
    b. The other party resides outside the United States.
64. States that if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws, a tribunal of this state may assume jurisdiction and bind all individuals subject to the personal jurisdiction of the tribunal. An order issued by a tribunal of this state modifying a foreign child support order is the controlling order.
65. Stipulates that 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. A petition to modification may be filed at the same time as a request for registration or another time. The petition must specify the grounds for modification.
66. Repeals A.R.S. Title 25, Chapter 9, Article 7 relating to determination of parentage and renumbers A.R.S. § 25-1341 to § 25-1361 and A.R.S. § 25-1342 to § 25-1362.
67. Provides a uniformity of application and construction clause along with a severability clause.
68. Modifies and defines terms as required.