



ARIZONA STATE SENATE
Fifty-Second Legislature, First Regular Session

FACT SHEET FOR S.B. 1313

uniform interstate support act; conformity

Purpose

Enumerates requirements for a party who seeks to establish or modify a child support order if one of the parties resides outside of the U.S. Establishes requirements for the superior court and a party who wishes to register a convention support order or a foreign support agreement in Arizona, so that such an order or agreement is recognized and enforced in Arizona.

Background

The National Conference of Commissioners on Uniform State Laws, also known as the Uniform Law Commission (ULC), consisting of appointed commissioners from each state, drafts and proposes statutes for uniformity between the states in certain areas. According to the ULC, the 2008 Uniform Interstate Family Support Act (UIFSA) amendments modify the current version of the UIFSA's international provisions to comply with U.S. requirements under the 2007 Hague Convention on Maintenance. UIFSA 2008 has been enacted in 12 states and, this year, has been introduced by 5 other states.

The Preventing Sex Trafficking and Strengthening Families Act of 2014 requires states to enact UIFSA 2008. According to the Department of Economic Security (DES), failure to do so during the 2015 session may result in a state's loss of Temporary Assistance for Needy Families (TANF) grant funding (P.L. 113-183). The total TANF monies available in FY 2016 are estimated to be approximately \$219 million. The FY 2016 baseline allocation of TANF monies is approximately \$132 million to the Department of Child Safety and \$80.7 million to DES (Joint Legislative Budget Committee).

Provisions

Initiation by DES of Support Proceeding

1. Requires DES, in a convention support proceeding, to do both of the following:
 - a) transmit and receive applications;
 - b) initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.
2. Specifies 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 Arizona;
 - c) establishment of a support order if there is no existing order, including, if necessary, a determination of the child's parentage;

- d) establishment of a support order if recognition of a foreign support order is refused because the issuing tribunal lacked jurisdiction, the order was obtained by fraud or the respondent did not have proper notice and an opportunity to be heard in the proceedings; and
 - e) modification of support order of a tribunal of this state, another state or a foreign country.
3. Prohibits an Arizona tribunal from requiring security, bond or deposit, however described, to guarantee payment of costs and expenses in proceedings under the Convention.

Direct Request

4. Defines *direct request* as a petition filed by an individual in an Arizona tribunal in a proceeding involving an obligee, obligor or child residing outside of the U.S.
5. Defines *convention support order* as a support order of a tribunal of a foreign country in which the Convention is in force with respect to the U.S.
6. Defines *foreign support agreement* as:
- a) an agreement for support in a record that is enforceable as a support order in the country of origin, that has been formally drawn up or registered as an authentic instrument by a foreign tribunal or authenticated by, concluded, registered or filed with a foreign tribunal and that may be reviewed and modified by a foreign tribunal; and
 - b) includes a maintenance arrangement or authentic instrument under the convention.
7. Allows a petitioner to file a direct request seeking establishment or modification of a support order or determination of a child's parentage.
8. Specifies that Arizona law applies in the proceeding.
9. Permits a petitioner to file a direct request seeking recognition and enforcement of a support order or support agreement.
10. Stipulates in a proceeding for 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 has benefited from free legal assistance in the issuing country is entitled to benefit, at least to the same extent, from any free legal assistance provided for the Arizona law under the same circumstances.
11. Specifies a petitioner filing a direct request is not entitled to assistance from the governmental entity.
12. Specifies that these provisions do not prevent the application of Arizona law 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. Requires a party who is an individual or that is a support enforcement agency seeking recognition of a convention support order to register the order in this state pursuant to statutory requirements.
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, which may be in the form recommended by the Hague 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, 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. Permits a request for registration of a convention support order to seek recognition and partial enforcement of the order.
16. Allows an Arizona tribunal 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. Requires the tribunal to 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. Applies current statutory requirements to a contest of a registered convention support order.
19. Requires a party contesting such an order to file a contest:
 - a) not later than 30 days after the date of mailing or personal service of the registration notice; or
 - b) if the contesting party does not reside in the U.S., not later than 60 days after the date of mailing or personal service of the registration notice.
20. Specifies the order is enforceable if the nonregistering party fails to contest the registered convention support order within the above time limits.

21. Stipulates that the contesting party bears the burden of proof.
22. Specifies, in a contest of a registered convention support order, an Arizona tribunal:
 - 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. Requires an Arizona tribunal deciding a contest of a registered convention support order to promptly notify the parties of its decision.
24. Specifies that a challenge or appeal does not stay the enforcement of a convention support order unless there are exceptional circumstances.
25. Permits a contest of a registered convention support order to be based only on the grounds on which an Arizona tribunal may refuse to recognize and enforce a registered convention support order, below.

Recognition and Enforcement of a Registered Convention Support Order

26. Requires a tribunal of this state to recognize and enforce a registered convention support order.
27. Specifies the following grounds are the only grounds on which an Arizona tribunal may refuse to recognize and enforce a registered convention support order:
 - a) recognition and enforcement is manifestly incompatible with public policy, including 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 record as specified above lacks authenticity or integrity;
 - f) a proceeding between the same parties and having the same purpose is pending before an Arizona tribunal and that proceeding was the first 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) in a case in which the respondent did not appear or was not represented, the respondent did not have proper notice of the proceedings and an opportunity to be heard, or 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 the opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or
 - i) the order was made in violation of requirements related to modification of a convention support order.
28. Specifies if an Arizona tribunal does not recognize a convention support order for lack of jurisdiction, fraud or insufficient notice and opportunity to be heard:
 - 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; and

- b) DES must take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received as required.

Partial Enforcement

- 29. Requires an Arizona tribunal, if it does not recognize and enforce a convention support order in its entirety, to enforce any severable part of the order.
- 30. Permits an application or direct request to seek recognition and partial enforcement of a convention support order.

Foreign Support Agreement

- 31. Requires an Arizona tribunal to recognize and enforce a foreign support agreement registered in Arizona.
- 32. Requires an application or direct request for recognition and enforcement of a foreign support agreement to 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.
- 33. Permits an Arizona tribunal to 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.
- 34. Allows an Arizona tribunal of this state to refuse recognition and enforcement of the agreement, in a contest of a foreign support agreement, if the tribunal finds:
 - a) recognition and enforcement 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 pursuant to these requirements; or
 - d) the record submitted as requires lacks authenticity or integrity.
- 35. Requires a proceeding for recognition and enforcement of a foreign support agreement to 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 a Convention Support Order

- 36. Prohibits an Arizona tribunal from modifying a convention support order if the obligee remains a resident of the foreign country in which the support order was issued unless:
 - a) the obligee submits to the jurisdiction of an Arizona tribunal, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

- b) the foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

37. Specifies that if an Arizona tribunal does not modify a convention support order because the order is not recognized in this state:

- 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; and
- b) DES must take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received as required.

Miscellaneous

38. Specifies these provisions only apply to a support proceeding under the Convention.

39. Specifies, in a convention proceeding, if a provision of these requirements is inconsistent with other statutory requirements, these requirements control.

40. Recognizes DES as the agency designated by the U.S. Central Authority (the Secretary of the U.S. Department of Health and Human Services) to perform specific functions under the Convention.

41. Permits personal information gathered or transmitted under these provisions to only be used for the purposes for which it was gathered or transmitted.

42. Requires a record filed with an Arizona tribunal to be in the original language and, if not in English, be accompanied by an English translation.

43. Deems the Superior Court the Arizona tribunal.

44. Requires an Arizona tribunal to apply statutory requirements and, as applicable, these provisions, to a support proceeding that involves:

- a) a foreign support order;
- b) a foreign tribunal;
- c) an obligee, obligor or child residing in a foreign country.

45. Allows a petition or comparable pleading seeking a remedy that must be affirmatively sought under another Arizona law to be filed at the same time as or later than a registration request. Requires such a pleading to specify the grounds for the remedy.

46. Specifies an Arizona tribunal retains jurisdiction to modify an order issued by an Arizona tribunal if:

- a) one party resides in another state; and
- b) the other party resides outside the U.S.

47. Allows electronic communication in certain circumstances.

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48. Requires DES to provide services to a petitioner that requests services through a central authority of a foreign country that has been declared under U.S. law to be a foreign reciprocating country or in which the Convention is in force with respect to the U.S.
49. Permits DES to provide services to a petitioner who is an individual not residing in a state.
50. Requires, in applying and construing this uniform act, consideration to be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.
51. Defines *Convention* as the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at the Hague on November 23, 2007.
52. Defines additional terms and modifies definitions.
53. Makes technical and conforming changes.
54. Contains a severability clause.
55. Becomes effective on the general effective date.

Prepared by Senate Research

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AW/lr