Approved: 5/12/97
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 9:10 a.m.. on April 4, 1997 in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee: Jamie Corkhill, SRS

Others attending: See attached list

The Chair called the meeting to order at 9:10 a.m. in room 519-S.

SB 140: Enforcement of child support uniform interstate family support act.

The Chair discussed with Jamie Corkhill, attorney with SRS the Federal Full Faith and Credit for Child Support Orders Act (FFCCSOA). A description of the act by Margaret Campbell Haynes, J.D. was distributed to the Committee members. (Attachment 1) Ms Corkhill provided the Committee members with a balloon (dated April 2) revising New Section 1 of **SB 140** and language for a new section. (Attachment 2)

The Chair referred to Section 39 on page 43 of the bill. Ms Corkhill stated that Section 39 is a rewrite of current law to bring Kansas in compliance.

The Committee members discussed with Ms Corkhill the issues of tribunal, and foreign agencies. The Committee members discussed with Ms Corkhill technical changes in Section 40. Ms Corkhill stated that Section 41 governs transition of the Uniform Reciprocal Enforcement Support Act (URESA) to the Uniform Interstate Family Support Act (UISFSA). Ms Corkhill pointed out the changes on line 12 of Section 42 and stated that the rest of that Section is current law. The Committee members discussed with the conferee service provisions for serving of petitions from other stated and jurisdiction of foreign states. The Chair stated that Section 43 and Section 44 drops the reference to first class mail. The Chair stated that the changes in Section 45 were technical clean-up. The Chair stated that the changes in Section 46 were technical and were current law, however, the Committee might consider some changes to clean up the current law. The Chair stated that the changes in Section 47 were technical and that this section describes tribunals in Kansas as being district courts. The Chair stated that Section 48 is a reorganization of language and places it in Section 49. The Chair discussed the phrase, "appears regular on its face," in Section 49 concerning income withholding orders. The Committee members discussed with the conferee whether there was a procedure for the employer to contest the order if there is suspicion that the withholding order is not legal, or mistaken identity or incorrect amount. It was suggested that the Committee needs to discuss employer immunity. The Committee members and the conferee discussed issues concerning multi-state employers and multi orders.

The conferee stated that Section 50 adds language, "with respect to that employer." Ms Corkhill stated that Section 51 contains the phrase, "regular on its face." The conferee stated that Section 53 provides provision for contest order. Ms Corkhill stated that Section 54 contains the Uniform Registration of Foreign Judgment.

The Chair recessed the meeting at 9:55 a.m. until adjournment of the House Session.

The Chair reconvened the meeting at 11 a.m. The Committee members discussed with Ms Corkhill Sections 55 through Section 83. Some of the issues discussed by the Committee members concerned consistency in serving time to respond by obligor. The Committee discussed conforming to the Code of Civil Procedure. In Section 61 the conferee offered that the "a" at the end of line 40 could be changed to "any." After discussion of Section 72, Committee members suggested that the words "as required by title IV-D" be added on line 26. The Committee members discussed with the conferee subsections (b) and (c) of Section 73 and several changes were offered. The Committee members discussed with the conferee the pass through fee. Ms Corkhill offered to provide a balloon for Section 74 that would cover the termination of employment. The Committee members discussed with the conferee several options for Section 83 of the bill.

The Chair offered several options that could be considered for **SB 140**. The Chair stated that the next meeting will convene at 11 a.m. on Wednesday, April 9, 1997 to further consider **SB 140**. The Chair adjourned the meeting at 1:00 p.m.

The next meeting is scheduled for April 9, 1997.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-4-97

NAME	REPRESENTING
Jamie Corkhill	SRS (CSE)
Paul Johnson	PACK
Bill Layes	Ks. Dept. Human Resources
Rochelle Chronister	SRS
Jason Oldham	OJA

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Federal Full Faith and Credit for Child Support Orders Act (FFCCSOA)*

by Margaret Campbell Haynes, J.D.
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On October 20, 1994, President Clinton signed into law the Full Faith and Credit for Child Support Orders Act (FFCCSOA). Pub. Law No. 103-383, 108 Stat. 4063, codified at 28 U.S.C. § 1738B In order to improve interstate enforcement of child support orders and to clarify jurisdictional rules, it requires States to recognize and enforce valid ongoing child support orders. It also limits a State's jurisdiction to modify another State's order unless certain conditions are present. The FFCCSOA is federal law and does not require state enabling legislation. It therefore has been effective in every State since October 20, 1994. In 1996, the FFCCSOA was amended by the Personal Responsibility and Work Opportunity Act of 1996. The amendments make the Act consistent with UIFSA.

Definitions

The FFCCSOA applies to child support orders, which it defines to mean "a judgment, decree or order of a court requiring the payment of child support in periodic amounts or in a lump sum" -- regardless whether such order is permanent or temporary, the initial establishment of an award or the modification of an award. It includes orders for arrearage payments on children who are past the age of majority or orders for post-secondary support since a child includes "a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a State." The Act also broadly defines support: "a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child." Although the Act refers to court orders, "court" is defined to include quasi-judicial and administrative decision-making bodies.

Enforcement of a Sister State Order

The FFCCSOA requires a State to give full faith and credit to any order that was issued by a court (as defined by the Act), pursuant to the laws of the State in which the court is located; that has subject matter jurisdiction to hear and resolve the matter; and that has personal jurisdiction over the contestants; provided the contestants had reasonable notice and an opportunity to be heard. In other words, a court must give full faith and credit to valid child support orders.

Modification of a Sister State Order

The Act limits a State's jurisdiction to modify a sister State's support order. A court may modify a sister state child support order only if (1) the court has jurisdiction to issue such a child support order; and (2) the court of the other State no longer has continuing,

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exclusive jurisdiction of the order because that State is no longer the child's State (**not** the same thing as the child's "home state" under UIFSA) or the residence of any individual contestant, or each individual contestant has filed written consent to that court's making the modification and assuming continuing, exclusive jurisdiction over the order.

What is meant by the phrase "continuing, exclusive jurisdiction"? That is the key concept of both UIFSA and the FFCCSOA. Under both Acts, a State has continuing, exclusive jurisdiction over an order if it issued the order and one of the individual parties or child continues to reside there. As long as there is a CEJ State, no other State can modify the order unless the parties agree in writing for another State to assume jurisdiction.

If there is no CEJ state, both UIFSA and FFCCSOA allow another State to assume modification jurisdiction. Once a second State has issued a new order, that order becomes controlling between the parties. The original issuing State no longer has CEJ status. In fact, it no longer can prospectively enforce its old order. It may only enforce the old order with respect to "nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order" was made.

How does the FFCCSOA impact on URESA States? The simple answer is that as a federal statute, it supersedes any state law to the contrary. U.S. Const. Art. VI. *Accord Isabel M. v. Thomas M.*, 164 Misc. 2d 420, 624 N.Y.S.2d 356 (1995); *OCS ex rel Michele Degolier v. Crone*, 21 Fam. L. Rptr. 1422 (Vt. Fam. Ct. 1995). However, in reality the answer is a bit more complicated.

URESA provides for two enforcement routes: filing a petition and registering a foreign support order. Under the petition route, an obligee files a petition, seeking enforcement of an existing order. The petition is forwarded to the responding State, which is usually the State where the obligor resides. Although the petition may request the responding State to enforce the existing order, in most States URESA proceedings are considered *de novo* hearings. Therefore, the responding State will apply its support guidelines to the parties' current financial circumstances and enter an award that it considers appropriate. The award may be the same, higher, or lower than the obligee's existing order. The second enforcement route is through registration of a foreign support order. Under this procedure, the obligee registers the existing order in the responding State. The responding State files the order in a registry of foreign support orders. If there is no objection after notice to the obligor, the order is confirmed. A registered order is in effect a domesticated order. It can be enforced like a local order, and may also be reopened like a local order.

The FFCCSOA will significantly impact on the ability of a URESA registering court to modify a registered order. Although it is unclear from the wording of URESA, most practitioners and judges interpret the registration provisions of URESA to authorize the registering court to subsequently modify the order, if circumstances so warrant. In their opinion, any modification also modifies the underlying support order. Since enactment of FFCCSOA, courts in URESA states have refused to modify a registered order when a

tribunal in another State has continuing, exclusive jurisdiction as defined by the Act. *See, e.g., OCS ex rel. Michele Degolier v. Crone*, 21 Fam. L. Rptr. 1422 (Vt. 1995). In *Degolier,* the custodial parent registered a Florida support order and its subsequent modification by a Florida court in Vermont. The obligor did not challenge the URESA registration. Subsequent to the enactment of the FFCCSOA, the custodial parent sought modification of the registered order. The Vermont trial court ruled that it lacked jurisdiction to modify based on the jurisdiction rules of FFCCSOA. The court held that by registering the order in Vermont, the Florida court was not divested of its jurisdiction. Rather, the result was that both Florida and Vermont had concurrent jurisdiction. Since there was an issuing state (Florida) that continued to be a residence of a contestant or child, Vermont lacked jurisdiction under FFCCSOA to modify the registered order.

At least one State, however, has case law holding that once an order is registered pursuant to URESA in the State, the order no longer exists in the original, issuing State. *See, e.g., Allsup v. Allsup*, 88 N.C. App. 533, 363 S.E.2d 833, *aff'd*, 323 N.C. 603, 374 S.E.2d 237 (1988). In that State, according to a North Carolina author, it may be possible to argue that when the North Carolina court modifies a registered out-of-state order, it is modifying one of its own orders, rather than the child support order of another State. Under this argument, the FFCCSOA's prohibition against modification of a sister State's order would not apply. See John Saxon, The Federal Full Faith and Credit for Child Support Orders Act, Fam. L. Bull., No. 5 (Institute of Government, the University of North Carolina at Chapel Hill, 1995).

As noted earlier, the other enforcement route under URESA is the petition process. Prior to the FFCCSOA, courts in most URESA States considered URESA proceedings as *de novo* hearings in which they could issue a new order. Pursuant to URESA, that URESA order does not supersede any other court order, unless expressly so provided. The result is two conflicting support orders. Will the FFCCSOA allow a URESA court to conduct "business as usual" and issue a new, independent, conflicting order when the obligee had sought enforcement of an existing order? Some argue that the answer is "Yes." Since the URESA order does not nullify the existing support order in the sense of replacing "its amount, scope, or duration", it is not considered a modification and therefore there is no violation of the FFCCSOA. At least one URESA court has held to the contrary. *See Isabel M. v. Thomas M.*, 164 Misc. 2d 420, 624 N.Y.S.2d 356 (1995). Although the URESA order does not nullify the existing support order, the court noted that the reality is that the obligor's state has disregarded that existing order and will only enforce its new order. The result is a de facto modification that is contrary to the intent of the FFCCSOA.

Can a court that issued a URESA order through the regular petition process prior to FFCCSOA modify its URESA order, after the enactment of the FFCCSOA? Court decisions to date have faithfully followed the jurisdictional analysis of the Act and ruled accordingly. Therefore, in *Paton v. Brill*, 104 Ohio App. 3d 826, 663 N.E.2d 421 (1995), the Ohio trial court refused to modify downward an original Maryland divorce decree that was being enforced in Ohio pursuant to a URESA order, where Maryland had continuing, exclusive jurisdiction since it continued to be the residence of the custodial parent and

child.

Does the FFCCSOA significantly impact on UIFSA states? Now that the FFCCSOA has been amended by the Personal Responsibility Act of 1996 to be consistent with UIFSA, the answer is "No."

A third question is *"What constitutes written agreement between the parties so that jurisdiction to modify can be shifted from the CEJ state to another state?"* Two URESA trial courts have recently addressed this issue. In *Bednarsh v. Bednarsh*, 282 N.J. Super. 482, 660 A2d 575 (1995), there was a New Jersey support order. Subsequently, a Florida court entered an order, enforcing the New Jersey order by establishing a plan for payment of arrears. Without knowledge of the Florida order, in December 1994 the New Jersey court ordered a different arrearage payback plan. Prior to that order being finalized, the husband moved for reconsideration of the New Jersey's court order based on the FFCCSOA. One issue addressed by the court was whether the absence of any mention of the Florida order by the parties, including their failure to mention the order in motions filed with the court, constituted a "written consent" to the New Jersey court to exercise jurisdiction to modify. The court concluded "No." Although the New Jersey court stated that the parties' failure to mention the Florida order was inexcusable, it held that the parties' lack of diligence or candor could not overcome the jurisdiction problems: "In this court's view, consent to a subsequent court's modification of another state's child support order should be found only upon a clear showing that the parties knowingly and voluntarily desired that result. . . . Courts should view the 'written consent' requirement strictly . . . ." The court concluded that the parties' silence did not constitute a clear, knowing waiver of Florida's continuing, exclusive jurisdiction to modify.

In *OCS ex rel Michele Degolier v. Crone, supra,* the Vermont court addressed whether the petitioner's registration of a support order under URESA and the respondent's failure to object to the registration constituted implied consent to Vermont's assuming jurisdiction to modify. It concluded that even if the court accepted the petitioner's argument that her registration constituted consent to Vermont's modification of the order, "it is less clear that respondent has, by telephoning his lack of objection to registration, satisfied the FFCCSOA's requirement that he file express written consent to Vermont's assumption of continuing, exclusive jurisdiction."

A fourth question is whether the FFCCSOA is constitutional. I could find only one court addressing the issue and it summarily held "Yes." See *Paton v. Brill, supra.* The court noted that the statute relies upon the Full Faith and Credit Clause of the U.S. Constitution. It found that the distinctions for interstate cases are directly related to the furtherance of solving a critical national problem of nonsupport. The court also concluded that there were no due process or equal protection problems, or any impermissible burden on the freedom of travel.

A fifth issue focuses on the *choice of law provision in FFCCSOA regarding interstate enforcement.* The Act provides that in an action to enforce a child support order, " a court

shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provides the longer period of limitation." In *In re Day v. State of Montana, Department of Social & Rehabilitation Services*, 272 Mont. 170, 900 P.2d 296 (1995), the court addressed enforcement of a 1982 Nevada divorce decree that was subsequently modified in 1983, by agreement of the parties, by the Tribal Court of the Fort Peck Indian Reservation in Montana. Thereafter, the custodial parent went on public assistance in Montana. In 1983 and 1986, the tribal court issued orders requiring the payment of past-due child support. In 1993, when Montana attempted to enforce the arrears through a withholding order, the obligor contested. He argued that enforcement of the 1983 and 99186 judgments were barred by the tribal code's five year statute of limitations. The child support enforcement agency in Montana argued that the applicable statute of limitations was Montana's ten year statute of limitations for collecting past-due child support.

The court ruled against the obligor, on the basis of the FFCCOSA.

The case is interesting for several reasons. It is the first reported decision since enactment of FFCCSOA to address the Act's application to Indian tribes. The court correctly notes that the Act defines "state" to include "Indian country." Second, it is the first reported decision to rule on the choice of law provision of FFCCSOA. Again, the court correctly holds that the longer statute of limitations applies; here, that means application of Montana's law. The case also involves the issue of arrears that are barred under the issuing state's statue of limitations and whether they can in essence be "revived" by application of the longer responding state's statute of limitation. Here, the court allowed enforcement of arrears past-due from 1983 to 1990, when AFDC benefits ceased. The case is noteworthy because the enforcement action was only for arrears, and all the children were emancipated. It will be interesting to see how a court rules, under similar facts, when the <u>only</u> arrears sought in the responding state are arrears that would have been foreclosed in the issuing state. For example, where the child is emancipated, can an obligee seek enforcement of a 15-year old judgment for support arrears that is barred by the statute of limitations of the issuing state if the responding state has no statute of limitations?

The biggest issue on which there is, as yet, no case law, is the effect of a support modification by a court that lacked modification jurisdiction under FFCCSOA. Is the modified order void, voidable, or res judicata if the parties do not appeal the decision? The answer largely depends on whether the modification jurisdiction rules under FFCCSOA are considered rules governing a court's subject matter jurisdiction. Stay tuned!

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New Section 1. (a) There is hereby created a state directory of new hires, which shall operate in accordance with section 453A of title IV-D of the federal social security act and shall include an automated directory containing information reported pursuant to subsection (e). ~~On or before July 15, 1997, the governor shall designate the secretary of human resources or the~~ ~~The secretary of social and rehabilitation services~~ *to shall* supervise operation of the directory and ~~to~~ assure compliance with federal requirements. ~~*The secretary shall contract with the secretary of revenue for data collection services related to the state directory of new hires.*~~ The secretary may adopt rules and regulations as needed to carry out the duties of this section. The directory ~~shall be implemented on or before October 1, 1997.~~

(b) As used in this section:

(1) "Employee" means an individual who is an employee within the meaning of chapter 24 of the internal revenue code of 1986, but does not include an employee of an agency of the state or a political subdivision performing intelligence or counterintelligence functions if the head of such agency has determined that reporting pursuant to subsection (e) could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(2) "Employer" has the meaning given such term in section 3401(d) of the internal revenue code of 1986 and includes any labor organization and any governmental entity except a department, agency or instrumentality of the United States that is permitted to report newly hired employees to the national directory of new hires. As used in this section, "labor organization" shall have the meaning given such term in section 152(5) of the national labor relations act and includes any entity, commonly known as a "hiring hall," that is used by the organization and an employer to carry out requirements described in section 8(f)(3) of the national labor relations act.

(3) "Secretary" ~~means the secretary designated pursuant to subsection (a) to supervise the operation of the state directory of new hires~~ *of social and rehabilitation services.*

The provisions of this section shall be subject to the provisions of section _____.

The secretary of human resources

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shall conform to the requirements of section 453A of title IV-D of the federal social security act on or before October 1, 1998. The requirements of subsection (d) shall be implemented on or before October 1, 1998, except that the state directory of new hires shall make information available to the national directory of new hires beginning October 1, 1997. The provisions of subsections (e) and (f) shall apply only to employees newly hired on or after October 1, 1998.

means the secretary of human resources.

(4) "Title IV-D" means part D of title IV of the federal social security act (42 U.S.C. § 651 *et seq.*) and amendments thereto.

(c) The state directory of new hires shall receive, retain and, to the extent permitted by federal law, make information reported to the directory available pursuant to subsection (d). Nothing in this section shall be construed to prohibit the publication of statistics which are so classified as to prevent the identification of individuals or individual employers without their consent. Except as otherwise required by federal law, the secretary may authorize disposal of reported information at any time after the end of the first calendar quarter beginning after the information was received by the directory.

(d) Except as otherwise permitted by federal law, any agency receiving information from the state directory of new hires shall handle the information as confidential information for use in administering the programs for which it was received. The state directory of new hires shall make information available:

(1) Upon implementation of the national directory of new hires, to the national directory;

(2) to the secretary of social and rehabilitation services for uses ~~including but not limited to~~ administration of an eligibility verification system ~~and, not later than May 1, 1998,~~ the title IV-D program; and

(3) to the secretary of human resources, for uses ~~including but not limited to~~ administration of employment security and workers compensation programs.

(e) Except as provided in subsection (h), the employer of any newly hired employee in this state shall submit a report ~~to the state directory of new hires *in accordance with the contract entered into between the secretary of social and rehabilitation services and the secretary of revenue as provided in subsection (a),*~~ within 20 days of the date of hiring or, if the employer periodically transmits reports magnetically or

consistent with

or

consistent with

to the state directory of new hires

electronically, by the second report following the date of hiring. Periodic magnetic or electronic reports shall be transmitted no more than 16 days apart. Except as provided in subsection (g), the report shall be transmitted by first class mail.

(f) The report shall be made using the employee's W-4 form or, at the option of the employer, an equivalent form. The report shall contain:

(1) The employee's name, address, and social security number; and

(2) the employer's name, address, and federal employer identification number (EIN).

(g) The employer may transmit reports required by this section electronically or magnetically, including but not limited to electronic facsimiles. Any report transmitted electronically or magnetically to the state directory of new hires of this state shall be made in a manner and format approved by the secretary. The secretary shall take appropriate steps to encourage voluntary use of electronic or magnetic transmission.

(h) Any employer who reports electronically or magnetically and is required to report newly hired employees to more than one state may elect to transmit all such reports to one state by complying with the requirements of title IV-D.

New Section ___. The secretary of social and rehabilitation services is hereby directed to seek a determination from the United State department of health and human services that Kansas law requiring employment information to be reported pursuant to chapter 44 of the Kansas Statutes Annotated qualifies as a new hire reporting law under section 453A(a)(1)(B) of the federal social security act. If the department of health and human services determines that Kansas law does not qualify as a new hire reporting law, the secretary of social and rehabilitation services shall notify the secretary of human resources of the adverse determination. Upon receiving such notice, the secretary of human resources shall accelerate implementation of the provisions of section 1 and amendments thereto as follows:

(a) To the extent that such conformity is required as of October 1, 1997, the state directory of new hires shall conform to the requirements of section 453A of title IV-D of the federal social security act on or before October 1, 1997;

(b) Except with respect to the title IV-D program, the requirements of subsection (d) of section 1 and amendments thereto shall be implemented on or before October 1, 1997. The state directory of new hires shall make information available to the title IV-D program, in conformity with the requirements of section 453A of title IV-D of the federal social security act, on or before May 1, 1998; and

(c) The provisions of subsections (e) and (f) of section 1 and amendments thereto shall apply to all employees newly hired on and after October 1, 1997.