

UPDATED
SESSION OF 2015

SUPPLEMENTAL NOTE ON SENATE BILL NO. 105

As Recommended by Senate Committee on
Judiciary

Brief*

SB 105 would amend and enact new law within the Uniform Interstate Family Support Act (UIFSA), as follows.

Certain sections and provisions would be rearranged within UIFSA, including the short title, definitions, and cumulative remedy provision.

The bill would add definitions for “convention,” “foreign country,” “foreign support order,” “foreign tribunal,” “issuing foreign county,” “outside this state,” “person,” and “record.” The definition of “initiating state” would be removed. Other definitions would be amended to incorporate UIFSA’s application to foreign countries or to clarify the definition.

Kansas courts would be designated as the tribunals of this state and the Department for Children and Families (DCF) would be designated the support enforcement agency for this state.

The bill would clarify that remedies provided by UIFSA do not affect recognition of a foreign support order on the basis of comity and that UIFSA does not provide the exclusive method of establishing or enforcing a support order in Kansas or give Kansas courts jurisdiction to render judgment or issue orders relating to child custody, parenting time, or visitation.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill creates new law applying UIFSA to support proceedings involving foreign support orders, tribunals, or residents.

Provisions regarding personal jurisdiction under UIFSA would be amended to clarify such jurisdiction may not be obtained unless certain requirements are met, and such jurisdiction continues as long as a Kansas court has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided elsewhere in UIFSA.

Various sections would be amended to incorporate UIFSA's application to foreign countries or to clarify language without making substantive changes.

The section governing continuing jurisdiction to modify a child support order would be amended to clarify the time at which jurisdiction is determined and how jurisdiction may be lost, and to specify jurisdiction may continue with consent of the parties even when no party is a resident. A Kansas court without jurisdiction to modify a child support order may initiate a request to another state's tribunal to modify a support order issued in that state. A provision allowing continuing jurisdiction over a spousal support order would be removed from this section, updated, and placed in a new section.

The bill would specify when a Kansas court may request a tribunal of another state to enforce a child support order issued in Kansas.

The procedure to determine which order controls where two or more child support orders have been issued would be amended to add a personal jurisdiction requirement, require a tribunal to provide additional information in a new controlling order or an order determining the controlling order, update and clarify the procedure, and specify that orders made pursuant to this procedure must be recognized in proceedings under this Act.

Language regarding the crediting of payments would be clarified.

Provisions regarding receiving evidence, communicating with a tribunal outside the state, obtaining evidence through a tribunal outside the state, and which law the Kansas courts are to apply would be updated and moved.

Provisions relating to the duties and abilities of initiating and responding tribunals would be clarified, including the responsibility for converting foreign currency amounts.

Requirements for specific methods of service would be removed from multiple sections.

The duties of the state enforcement agency would be clarified, and the agency would be required to make reasonable efforts when requesting registration of a child support order to ensure the order is the controlling order or that a request for determination of a controlling order, when necessary, is made in a tribunal with jurisdiction. The agency would be required to convert foreign currency amounts in a support order, arrears, or judgment when requesting registration and enforcement. The agency would be required to request a Kansas court issue a child support order and an income withholding order redirecting payment of current support, arrears, and interest if requested to do so by another state's support enforcement agency pursuant to UIFSA.

The duties of the Attorney General under UIFSA would be amended to allow the Attorney General to determine that a foreign country has established a reciprocal agreement for child support with Kansas and provide notification of this determination.

Pleading requirements would be updated and clarified and a verification requirement would be removed.

Provisions for nondisclosure would be amended to seal specific identifying information that a party alleges under oath

would jeopardize the health, safety, or liberty of a party or child. A tribunal may order disclosure of such information in the interest of justice after a hearing in which the health, safety, or liberty concerns are considered.

An order for payment of costs and reasonable attorney fees would be made mandatory where a hearing is requested primarily for delay, and the bill would create a presumption of intent to delay if a registered support order is confirmed or enforced without change.

Special evidentiary and procedural rules would be amended with technical and clarifying changes, and a provision would be added making a voluntary acknowledgment of paternity, certified as a true copy, admissible to establish parentage.

E-mail would be added as a means of communication between Kansas courts and tribunals in other states.

A provision regarding the disbursement of payments would be amended to direct the Kansas support enforcement agency or the courts, when none of the parties are Kansas residents, to direct that the support payment be made to the support enforcement agency in the state where the obligee is receiving service and to provide notice to the obligor's employer of the redirected payments. When the Kansas support enforcement agency receives redirected payments under this provision, it would be required to provide to a requesting party or out-of-state tribunal a certified statement of the amount and dates of payments received.

The section allowing a Kansas court to issue a support order where an order entitled to recognition has not yet been issued would be amended to clarify its provisions and provide further specificity regarding personal jurisdiction and the circumstances under which a temporary child support order may be issued.

A provision allowing a state tribunal authorized to determine parentage to serve as a responding tribunal in a proceeding to determine parentage brought under this Act or a similar law would be modified and moved to a new section.

The bill would amend the requirements for an obligor to contest the validity or enforcement of an income withholding order issued in another state and received by a Kansas employer to require registration of the order and filing of a contest as provided in UIFSA or otherwise contesting the order as if it had been issued by a Kansas court.

The procedure to register an order in Kansas would be updated and clarified, and a person requesting registration would be required to do the following if two or more orders are in effect: furnish to the court a copy of every support order asserted to be in effect; specify the order alleged to be the controlling order; and specify the amount of consolidated arrears. A provision would be added stating that a request for the determination of the controlling order may be filed separately or with a request for registration and enforcement or modification, and that a person requesting registration must give notice to each party whose rights may be affected.

Choice of law provisions would be revised and clarified, including amendments to specifically apply Kansas law to enforce current support and collect arrears and interest due on a support order from another state or country when a Kansas court is a responding tribunal. Once a controlling order is determined and arrears are consolidated, Kansas courts shall prospectively apply the law of the jurisdiction issuing the controlling order on current and future support and on consolidated arrears.

Notice requirements to nonregistering parties would be clarified and specific notice requirements when a registering party asserts two or more orders are in effect would be added.

An additional defense would be provided to a party contesting the validity or enforcement of a registered order or seeking to vacate the registration: specifically, that the alleged controlling order is not the controlling order.

Provisions for the modification of a child support order issued in another state would be clarified, and the bill would specify that the law of the state that issued the initial controlling order shall govern the duration of the obligation of support in a proceeding to modify an order. An obligor's fulfillment of the duty of support under such order would preclude imposition of a further obligation by a Kansas court. The bill would specify that a Kansas court would retain jurisdiction to modify an order issued by a Kansas court if one party resides in another state and the other party resides outside the United States.

The duties and abilities of a Kansas court with regard to a child support order issued by a Kansas court and modified by an out-of-state tribunal would be clarified.

New law would be created allowing a Kansas court to assume jurisdiction to modify a child support order and bind individuals subject to the personal jurisdiction of Kansas courts where such order was issued by a foreign country that lacks or refuses to exercise jurisdiction to modify the order, subject to certain restrictions elsewhere in UIFSA. Any modification order would then become the controlling order.

One section would be amended and several new sections would be created that would apply only to a support proceeding under the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007, (Hague Convention). These provisions would:

- Define "application," "central authority," "convention support order," "direct request," "foreign central authority," "foreign support agreement," and "United States central authority";

- Recognize DCF as the agency designated by the U.S. central authority as the agency to perform Hague Convention functions;
- Set forth the duties of DCF in a support proceeding and specifying the support proceedings that are available to an obligee or obligor under the Hague Convention;
- Prohibit a Kansas court from requiring security, bond, or deposit to guarantee payment of costs and expenses in proceedings under the Hague Convention;
- Establish that a petitioner may file a direct request seeking establishment or modification of a support order or determination of parentage of a child, or recognition and enforcement of a support order or support agreement; specify the law that is to apply in these proceedings; establish when an obligee or obligor is entitled to free legal assistance; and state that a petitioner filing a direct request is not entitled to assistance from DCF;
- Establish procedures and requirements for registration of a convention support order and provide that a Kansas court may vacate the registration of such order if it would be manifestly incompatible with public policy;
- Establish procedures for contesting a registered convention support order;
- Require Kansas courts to recognize and enforce a registered convention order, except for certain grounds specified in UIFSA;
- Require Kansas courts to enforce any severable part of a convention support order, and allow an

application or direct request to seek recognition and partial enforcement of such order;

- Require Kansas courts to recognize and enforce foreign support agreements registered in the state, with certain exceptions;
- Prohibit a Kansas court from modifying a convention child support order if the obligee remains a resident of the country issuing the support order unless the obligee submits to the jurisdiction of the Kansas court or the foreign tribunal lacks or refuses to exercise jurisdiction;
- Limit the use of any personal information gathered or transmitted to the purposes for which it was gathered or transmitted; and
- Require any records filed to be in the original language and, if not in English, accompanied by an English translation.

The bill would allow a party or DCF to register a foreign child support order not under the Hague Convention for the purposes of modification or enforcement.

The bill would specify its provisions would apply to proceedings begun on or after its effective date to establish a support order, determine parentage, or register, recognize, enforce, or modify a prior support order, determination, or agreement, whenever issued or entered.

Background

The bill was introduced by the Senate Judiciary Committee at the request of the Kansas Judicial Council.

In the Senate Committee, representatives of the Judicial Council and DCF testified in support of the bill, stating the bill would incorporate the Uniform Law Commission's 2001 and

2008 changes to UIFSA. The 2001 changes addressed long-arm jurisdiction and voluntary reciprocity, and the 2008 changes incorporated provisions of the 2007 Hague Convention, establishing standardized processes for international child support cases. According to the conferees, Congress has passed legislation mandating these changes be adopted by the states, and failure to do so verbatim may result in the loss of IV-D child support federal funding and the Temporary Assistance for Needy Families (TANF) block grant. The Kansas Bar Association submitted written testimony supporting the bill. There was no opponent or neutral testimony.

According to the fiscal note prepared by the Division of the Budget, failure to enact the federally mandated changes contained in the bill would put at risk \$21.9 million in federal FY 2016 payments to the Kansas IV-D program and an estimated \$101.9 million in the federal TANF block grant for Kansas in FY 2016. Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor's Budget Report*.