

LEGAL SERVICES

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MEMORANDUM

March 2, 2015

SUBJECT: Committee substitute for governor's bill relating to Uniform Interstate Family Support Act
CSHB 106(STA); (Work Order No. 29-GH1897\W)

TO: Representative Bob Lynn
Chair of the House State and Regional Affairs Committee
Attn: Nancy Manly

FROM: Kate S. Glover
Legislative Counsel

Enclosed is a draft committee substitute for HB 106 that includes revisions to conform the bill to the *Manual of Legislative Drafting* as well as revisions that the Department of Law has told me they were asked to make by the federal uniform code committee. I understand that Cori Mills provided a copy of the Department of Law's revisions, in amendment form, to your office in an e-mail to Ms. Manly. I have incorporated all of those revisions in the enclosed draft, but will not discuss those revisions in this memo.

In addition to those changes, this draft reflects a number of revisions summarized below. Because some of these revisions require renumbering bill sections, I will use the statutory section numbers to make it easier to follow the changes. Some of the revisions were simply formatting changes. There are also a few changes to the lead-in phrases (i.e. "AS __ is amended by adding a new section to read," might be changed to "AS __ is amended by adding a new section to article _ to read"). I do not specifically discuss those changes in this memo. If you would like me to provide a line by line summary of the changes, please let me know.

AS 25.25.101: This section contains amendments to existing definitions and adds new definitions. For definitions, the *Manual of Legislative Drafting* explains that only the definitions being amended should be included in the bill, and new definitions should be added to the end of the existing definition list. If the bill is enacted, the revisor will alphabetize and renumber the definitions.¹ For that reason, this section has been rearranged and renumbered. Only two changes were made to the language of a definition. The first is in the definition of "support order" (sec. 14 of this draft). Version A of the bill read "a state or a foreign country" (p. 6, l. 2 of version A). Version W (the enclosed draft) eliminates the second "to" and reads "a state or foreign country." The

¹ Pages 16 - 17, *Manual of Legislative Drafting*.

Uniform Code is identical in this regard. Version A also read "the term support order" (p. 6, l. 5). Version W deletes "the term," because it is not needed. The Uniform Code uses only "the term." The second was in the definition of "register" which placed "issued in another state or foreign country" following "judgment." This change was discussed by the Revisor of Statutes with Susan Pollard and Stacy Steinberg.

AS 25.25.102(b): Page 6, line 12 of version A read "agency under AS 25.27.010." Version W reads "agency created in AS 25.27.010." This was changed to be consistent with drafting style.

AS 25.25.205(a): Sec. 26 of version W deletes a semicolon that followed "order" in Version A. Adds a comma after "and" on the same line.

AS 25.25.205(b)(2): Sec. 27 of version W changes "its" from version A to "the tribunal's" for clarity and to conform with style.

AS 25.25.207(b): Sec. 32 of version W reads "shall determine, by order." Sec. 17 of version A (p. 10, l. 29) read "by order shall determine." This was changed for clarity.

AS 25.25.207(e): Sec. 35 of version W includes a grammatical change. A comma was added following "determines."

AS 25.25.280: Sec. 40 of version W makes a grammatical change. A comma was added following "apply."

AS 25.25.304(b): Sec. 43 of version W, adds "the" following "under."

AS 25.25.307(b): Version A reads "within five days of receipt." Version W reads "within five days after receipt." This is consistent with the style of both the state statutes and the Uniform Code.

AS 25.25.307(d): Version A, p. 17, l. 3, read "for enforcement or for modification." Version W does not include the second "for."

AS 25.25.310: Version W adds "the" before "names and addresses."

AS 25.25.605(d): Version A, p. 27, l. 15, read: "two or more orders and the order." Version W reads: "the orders, the order." In addition, version W includes a comma after "order."

AS 25.25.611(a): Version W deletes a comma following "pleading" that was not included in version A and deletes a comma that was included in version A.

AS 25.25.615(a): Version A, p. 31, line 13 read: "jurisdiction of the tribunal whether." Version W reads "jurisdiction of the tribunal, regardless of." Version A, p. 31, l. 14, read

"given or whether the." Version W reads "given or the." This change was made to clarify the language.

AS 25.25.701: Version W includes changes to the statutory section numbers for the new sections related to child support orders. In Version A, AS 25.25.701 is repealed and reenacted. In current law, however, AS 25.25.701 is not a definitions section. The *Manual of Legislative Drafting* explains that, where the amendments are extensive, the existing section should simply be repealed and a new section added, with a different section number. Version W follows this convention. AS 25.25.701 is repealed in sec. 101 of version W. The sections that were added in sec. 80 and 81 of version A of the bill are renumbered accordingly as AS 25.25.702 - 25.25.714. All references in the bill to these new sections have been revised, and the remainder of the bill renumbered accordingly.

AS 25.25.702(7): P. 32, l. 21 - 22 of version A read "Secretary of the United States Department." Version W reads "United States Secretary of." This was changed to be consistent with other state statutes.

AS 25.25.705: Version A, p. 33, l. 12 read "no existing." Version W reads "not an existing." Version A, p. 33, l. 20 read "against which." Version W reads "against whom."

AS 25.25.706: Version A, p. 34, l. 8 - 9 read "that in the issuing country has benefited from free legal assistance." Version W reads "who has benefited from free legal assistance in the issuing country." This change was made for easier reading.

Additional Comments

1. We are also concerned with the definition of "outside this state" which is defined as "a location in another state or a country other than the United States...". Shouldn't this read "a location in another state or *in* a country other than the United States"? Without the second "in" it appears that a state also cannot be part of the United States.

2. In addition to the changes and concern outlined above, I have discussed with the attorneys at the Department of Law other potentially ambiguous language used in the uniform act incorporated into HB 106. For example, at page 24, lines 2 through 12 and page 25, lines 2, 16, and 17 the new language seems to make an unnecessary distinction between a "support order", an "income withholding order", and a "foreign support order." The definition of "support order" for purposes throughout the act, (including for purposes of this state, another state, or a foreign country), expressly includes income withholding. It is unclear therefore, and creates some ambiguity, why the provisions above refer to both a support order and an income withholding order for an order issued in "another state" but refer only to a "foreign support order" for orders issued by another country. A court may consider these distinctions relevant when trying to interpret those provisions and resolve the ambiguity in a way unintended by the drafters of the uniform act. In my opinion, better drafting technique would be to eliminate the separate reference to an

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income withholding order altogether in these sections to avoid the ambiguity.

If I may be of further assistance, please advise.

KSG:lnd

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Enclosure