

UNIFORM INTERSTATE FAMILY SUPPORT ACT

(Last Amended or Revised in 2008)

*2008 AMENDMENTS TO THE UNIFORM INTERSTATE FAMILY SUPPORT ACT
ARE INDICATED BY UNDERSCORE AND STRIKEOUT*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-SEVENTEENTH YEAR
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WITH PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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Comment

The procedure for registration and enforcement set forth in sections 601 through 608 is applicable to a child-support order from a non-Convention country. This section provides coverage for modification in that situation. Presumptively, the general law of the state regarding modification of a child-support order will apply because, by their terms, sections 609 through 614 apply only to modification of a child-support order by a state tribunal. The rationale is that modification is available because the foreign order is not founded on the principles of continuing, exclusive jurisdiction and a controlling order. *See* sections 205 through 207.

ARTICLE 7

~~DETERMINATION OF PARENTAGE~~

SUPPORT PROCEEDING UNDER CONVENTION

Introductory Comment

This article contains provisions adapted from the Convention that could not be readily integrated into the existing body of Articles 1 through 6. For the most part, extending the coverage of UIFSA (2008) to foreign countries was a satisfactory solution to merge the appropriate Convention terms into this act. In understanding this process, it must be clearly stated that the terms of the Convention are not substantive law. When the Senate has given its advice and consent, the Convention has been ratified by the President, and certain formal procedures have been completed, the Convention will become a multilateral treaty between the United States and the other Convention countries. As such, it will be the law of the land; but the treaty is not self-executing. *See, Medellín v. Texas*, 552 U.S. ___, 128 S.Ct. 1346, 170 L.Ed.2d 190 (2008). Thus, the ultimate enforcement of the treaty in the United States will be dependent on the enactment of both federal and state legislation. This act is predicated on the principle that the enactment of UIFSA (2008) will effectively implement the Convention through state law by amending Articles 1 through 6, plus the addition of this article. This will encourage international cooperation by emulating the interstate effect of UIFSA for international cases, especially those affected by the Convention.

In relatively few instances, the provisions of the Convention are sufficiently specific that a choice was made between amending UIFSA accordingly, with a disproportionate effect on all support orders enforced under state law, or accommodating potential conflicts by creating a separate article to apply only to Convention support orders. The choice was to draft this article as state law to minimize disruption to interstate support orders, which constitute the vast majority of orders processed by under UIFSA. Note that this act is the substantive and procedural state law for: (1) responding to an application for establishment, recognition and enforcement, or modification of a Convention support order; and, (2) initiating an application to a Convention country for similar action.

The four Hague maintenance conventions that preceded the 2007 Convention, and the three prior versions of UIFSA, have common goals. The distinctions between the jurisdictional rules in the common-law tradition in the United States, and the civil law systems in most of the countries that were parties to the earlier maintenance conventions, were obstacles to participation of the United States in any of the multilateral maintenance treaties (until recently). As the world has grown smaller and globalization has become the order of the day, reconciling the differences has become more and more important. Understanding the necessity for accommodation has made the task easier. This is not to say easy, as evidenced by the fact that the formal negotiations leading to the final text of the Convention spanned from May, 2003, to November, 2007. As of this writing, it remains unclear when the Convention will enter into force in the United States. Nonetheless, signing the Convention by the executive branch of the federal government on

November 23, 2007, and approval of the UIFSA (2008) by the annual conference of the Uniform Law Commission in July 2008, marked important milestones toward eventual adoption of both the Convention and UIFSA (2008).

This act and the 2007 Convention have far more in common than did former uniform acts and maintenance conventions, and, in fact, many provisions of the Convention are modeled on UIFSA principles. The negotiations demonstrated that it is possible to draft an international convention, which incorporates core UIFSA principles into a system for the establishment and enforcement of child support and spousal-support orders across international borders, and creates an efficient, economical, and expeditious procedure to accomplish these goals. Matters in common, however, go far beyond identical goals. The negotiations provided an opportunity for an extended interchange of ideas about how to adapt legal mechanisms to facilitate child support enforcement between otherwise disparate legal systems.

International cross-border enforcement has been far more important in Western Europe, and more recently, throughout the countries of the European Union than has been the case in the United States. On the other hand, experience with establishment and enforcement of interstate child support orders in the United States has been building since 1950, and accelerated rapidly with enactment of Title IV-D of the Social Security Act in 1975. Clearly, the issues are far easier to deal with nationally because of the common language, currency, and legal system, and, since 1996, with the Title IV-D requirement that all states enact the same version of UIFSA. In fact, since the advent of UIFSA and Title IV-D, millions of interstate cases have been processed through the child support enforcement system and integration of a few thousand foreign support orders has been less of a challenge in the United States. The entry into force of the Convention is designed to further improve the process and may lead in a few years to a substantial increase in international cases, both incoming and outgoing.

To create UIFSA (2008), it was necessary to integrate the texts of UIFSA (2001) and the Convention. This did not present a significant drafting challenge for the most part. By far the most common amendment in Articles 1 through 6 is to substitute "state or foreign country" for the term "state." These simple amendments expanded a majority of this act to cover foreign support orders. In this article statutory directions are given to "a tribunal of this state," and also to a "governmental entity, individual petitioner, support enforcement agency, or a party."

~~SECTION 701. PROCEEDING TO DETERMINE PARENTAGE. A court of this State authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage brought under this [Act] or a law or procedure substantially similar to this [Act].~~

SECTION 701. DEFINITIONS. In this [article]:

(1) "Application" means a request under the Convention by an obligee or obligor, or on