

SENATE BILL REPORT

ESSB 5498

As Passed Senate, March 4, 2015

Title: An act relating to revising the uniform interstate family support act.

Brief Description: Revising the uniform interstate family support act.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Pedersen and O'Ban; by request of Department of Social and Health Services and Uniform Law Commission).

Brief History:

Committee Activity: Law & Justice: 2/17/15, 2/19/15 [DPS].

Passed Senate: 3/04/15, 48-0.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5498 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Kohl-Welles, Pearson and Roach.

Staff: Melissa Burke-Cain (786-7755)

Background: Currently the Department of Social and Health Services (DSHS) administers the joint state and federal child support enforcement (CSE) program with state funds and matching federal funds. Federal laws require all states to apply uniform child support jurisdictional standards in a national model law, the Uniform Interstate Family Support Act (UIFSA), to qualify for federal matching funds. Many child support enforcement cases involve parents and children living in different states. UIFSA's standards prevent interstate legal conflicts and make child support enforcement administratively efficient and less expensive for the DSHS CSE program.

In addition to enforcing child support obligations, the UIFSA law standardizes the jurisdiction and substantive requirements for establishing, enforcing, or modifying child support court orders so that only one state at a time has jurisdiction. The law prevents competing and conflicting court orders in multiple states. Under UIFSA the state courts that do not have jurisdiction over the child support case recognize and refrain from taking action

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on the case. The law extends the requirement that states must give full faith and credit to a lawful court order from another state.

The uniform law commission updates UIFSA periodically. The most recent updates were approved in 2008. Washington uses the 2001 version of UIFSA. The 2008 UIFSA amendments address a nationally recognized problem. Parents living outside the U.S. may have past and current child support obligations that they do not pay.

For states that may mean that the parent abroad avoids the support obligation and the family here needs public assistance to meet basic living needs. In such situations, state and federally funded programs step in and provide financial support and medical coverage. Under federal and state laws, the DSHS CSE program pursues the parent for delinquent support and reimburses the state and federal public assistance costs.

For families that do not qualify for public assistance but still are owed child support, it is costly and often not feasible to try to collect unpaid support when the paying parent lives abroad. International child support enforcement is becoming a more common issue for the U.S. and for other countries when a parent living abroad doesn't pay the child support owed. The U.S. has made country-to-country agreements for collecting unpaid child support with some countries already – Australia, Canada, Czech Republic, El Salvador, Finland, Hungary, Ireland, Israel, Netherlands, Norway, Poland, Portugal, Slovak Republic, Switzerland, and the United Kingdom.

In 2007 the U.S. participated in a treaty convention, the Hague Convention on Recovery of International Child Support (Convention). The Convention follows the 2001 UIFSA law's structure. In effect the Convention adopts the UIFSA interstate jurisdiction concepts and applies them, by treaty, across international boundaries for the countries that sign onto the Convention. The U.S. signed on to the Convention, the U.S. Senate gave its advise and consent, and the President is expected to sign the treaty.

In September 2014, Congress passed a federal law requiring all states to update their UIFSA laws to incorporate the 2008 amendments so that the U.S. can apply the Convention treaty across all 50 states –P.L. 113-183, the Preventing Sex Trafficking and Strengthening Families Act. This law gives a limited amount of time for state legislatures to act by adopting the 2008 UIFSA amendments. The law authorizes the federal Office of Child Support Enforcement to withhold the federal match for the DSHS CSE program and the federal block grant money for the federal Temporary Assistance to Needy Families (TANF) program if Washington's law is not updated by June 30, 2015.

Summary of Engrossed Substitute Bill: The child support laws incorporate the 2008 UIFSA amendments with an effective date of July 1, 2015. The law provides guidelines and processes for child support orders when the child and one parent live in the U.S., but the parent ordered to pay child support lives in a country that agrees to the Commission treaty (participating country). The requirements apply to orders for establishing child support, modifying child support, and enforcing child support.

Washington's child custody and visitation laws, and parenting plans for custody and visitation do not change. Parentage determinations are only made if necessary to establish a support

obligation. The guidelines and processes for U.S. state-to-state or intrastate child support proceedings do not change.

For child support owed to a participating country or a family from the participating country, the DSHS CSE program must help locate the parent who is here and owes support. The participating countries must provide similar help to the family, or the DSHS CSE program when they try to locate the non-paying parent for the purpose of collecting child support that is owed.

The Washington courts must enforce a foreign child support court order from a participating country when it is properly registered in Washington. Courts in participating countries must reciprocate by enforcing U.S. child support orders when the paying parent lives in the participating country. A Washington court may refuse to register a foreign court order for the following reasons:

- recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing foreign tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;
- the issuing foreign tribunal lacked personal jurisdiction;
- the foreign order is not enforceable in the issuing country;
- the foreign order was obtained by fraud in connection with a matter of procedure;
- a record transmitted from the foreign CSE agency lacks authenticity or integrity;
- a proceeding between the same parties and with the same purpose is pending before a Washington court and that proceeding was the first to be filed;
- the foreign 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 under Washington law;
- the paying parent has already paid, i.e. the alleged arrears have been paid in whole or in part;
- the respondent neither appeared nor was represented in the proceeding in the issuing foreign country, if the law of that country (1) provides for prior notice of proceedings, and the respondent did not have proper notice of the proceedings and an opportunity to be heard; or (2) does not provide for prior notice of the proceedings.

Washington presumes any foreign law or foreign order that does not provide the parties with the same rights afforded under the U.S. and Washington Constitutions is manifestly incompatible with public policy. If the federal support enforcement office finds this section protecting constitutional rights violates federal law that is a condition to receiving federal matching funds, DSHS must submit a request to waive any federal law conflict to the federal Department of Health and Human Services (HHS). If HHS denies the waiver, then the section protecting constitutional rights is inoperable to the extent of the federal law conflict.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2015.

Staff Summary of Public Testimony on Original Bill: PRO: Washington's version of UIFSA does not include the 2008 Amendments which are required as a condition of receiving federal matching funds for the child support enforcement work at DSHS. If the 2008 Amendments are not adopted, federal block grants for the TANF program are also at risk.

Persons Testifying: PRO: Senator Pedersen, prime sponsor; Wally McClure, DSHS, Child Support Division.