

BILL ANALYSIS

C.S.H.B. 2318

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Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 1992, the National Conference of Commissioners on Uniform State Laws (NCCUSL) promulgated the Uniform Interstate Family Support Act (UIFSA) to replace two then-existing uniform interstate support acts, the Uniform Reciprocal Enforcement of Support Act (URESAs) and its revised version (RURESAs). In 1993, Texas was one of two states to enact UIFSA.

In 1996, significant changes were made to UIFSA in response requests from employer groups for more specific statutory directions regarding interstate child support withholding orders. Also, the child support enforcement community, primarily the government child support enforcement program sought review of the substantive and procedural provisions of the Act.

In 1996, as part of the reform of the nation's welfare system under the Personal Responsibility and Work Opportunity Reconciliation Act, Congress imposed a number of mandates to achieve greater uniformity and standardization of child support enforcement policies and procedures among the states. One of those mandates was that all states adopt verbatim the 1996 revision of UIFSA, in the form adopted by NCCUSL and ratified by the American Bar Association. The adoption of UIFSA was, then, made (along with other congressional mandates affecting child support enforcement) a condition of state eligibility for the federal funding of the child support enforcement program under Title IV-D of the Social Security Act. (In Texas, the Attorney General is the designated Title IV-D agency.) Unless a state has a child support enforcement program meeting the requirements of Title IV-D, it is ineligible, as well, to receive federal grants for its cash welfare assistance program ("Temporary Assistance for Needy Families" - TANF) under Title IV-A of the Social Security Act.

In 1997, the Texas Legislature enacted the authorized 1996 version of UIFSA, and by May 1, 1998, all states and the District of Columbia and the U.S. Territories had adopted it, thereby meeting the congressional mandate. In 2000, the child support enforcement community again asked for a review of UIFSA in light of the expanded experience of the states in using its provisions as a uniform Act. In March 2001, the drafting committee for UIFSA recommended certain changes to the Act, none of which fundamentally changes the character of the principles underlying UIFSA.

The purpose of C.S.H.B.2318, is to conform Chapter 159, Texas Family Code, to the 2001 version of UIFSA. Accordingly it makes changes to the 1996 UIFSA provisions, incorporated in Chapter 159, in a manner that keeps Texas in compliance with the congressional mandate. Although adoption of the 2001 version is itself not a congressional mandate, alterations of the provisions currently in Chapter 159, apart from those authorized by NCCUSL in 2001, would create compliance problems for Texas. Moreover, it would undercut the purpose of UIFSA as a uniform Act among the states in which sections in one state's code comport with those in the codes of all other states.

The adoption of the 2001 revisions to UIFSA is permitted by waiver issued by the federal Office of Child Support Enforcement, the regulatory agency for the Title IV-D program within the federal Department of Health and Human Services. It is expected that, in time, all states will adopt the 2001 revisions in order to maintain the intended uniformity of the provisions of the Act.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

SECTION BY SECTION ANALYSIS

- SECTION 1:** Amends Section 154.004, Family Code, to remove a local registry and the Title IV-D agency as entities to which a court is required to order child support and to authorize the Title IV-D agency to order that income withheld for child support be paid to the state disbursement unit of this or another state. Makes conforming changes.
- SECTION 2:** Amends Section 158.502, Family Code, by adding Subsection (d) to authorize the Title IV-D agency to issue an administrative writ of withholding for child support in order to direct support payments to the state disbursement unit of another state in conformity with UIFSA provisions.
- SECTION 3:** Amends Subchapter B, Chapter 159, Family Code, as follows: to provide a "Short Title" for the chapter (the "Uniform Interstate Family Support Act") under new Section 159.101; to make certain changes to "definitions" under new Section 159.102 by defining "person" and "record" and by expanding the definition of "state" and of "support order;" to renumber current Sections 159.102 and 159.103 as 159.103 and 159.104, respectively; and to amend renumbered Section 159.104 to recognize the doctrine of comity as a legitimate function of state law that on proper showing provides for the recognition of a foreign support order.
- SECTION 4:** Amends Section 159.201, Family Code, as follows: to strike "or modify" from Subsection (a) in relation to a proceeding regarding a support order or order to determine parentage; and to clarify under new Subsection (b) that the bases of jurisdiction set forth in Subsection (a) are designed to preclude a tribunal from ignoring the requirements of Section 159.611 or 159.615 with respect to the modification child support orders established under the Act - viz., that a tribunal may not apply the long-arm provisions of Subsection (a) (or any other law) in order to assert that personal jurisdiction over both individual parties to a support order of another state is sufficient to modify that order.
- SECTION 5:** Amends Section 159.202, Family Code, to clarify the language of the section by providing a new heading - "Duration of Personal Jurisdiction" - and by providing that personal jurisdiction acquired by a tribunal of this state in a proceeding under this chapter or other law of this state relating to a support order continues as long as the tribunal has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order under Sections 159.205, 159.206, and 159.211. Deletes text relating to the receipt of evidence from another state and text relating to the application of Subchapters D-H and the requirement for the tribunal to apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this chapter..
- SECTION 6:** Amends Section 159.204, Family Code, to strike "IN ANOTHER STATE" in the heading of the section.
- SECTION 7:** Amends Section 159.205, Family Code, to add "TO MODIFY CHILD SUPPORT ORDER" in the heading of the section.
- SECTION 8:** Amends Sections 159.205(a), (b), (c), and (d), Family Code, to clarify the language and intent of the section by specifying the time within which, and the

conditions under which, the tribunal issuing an order retains continuing, exclusive jurisdiction to modify its order.

- SECTION 9:** Amends Section 159.206, Family Code, to provide a new heading for the section, “CONTINUING JURISDICTION TO ENFORCE CHILD SUPPORT ORDER,” and to authorize under subsection (a) the tribunal that issued an order to initiate a request for enforcement of that order by a tribunal of another state, if its order is controlling, or to request reconciliation of the arrears and interest due on its order, if another order is controlling. Makes conforming changes under subsection (b) and deletes subsection (c) prohibiting a tribunal of this state that lacks continuing, exclusive jurisdiction over a spousal support order from serving as a responding tribunal to modify a spousal support order of another state.
- SECTION 10:** Amends Section 159.207, Family Code, to substitute “determination” for “recognition” in the section heading.
- SECTION 11:** Amends Section 159.207, Family Code, by amending Subsections (b), (c), (d), (e), and (f) and adding Subsections (g) and (h), with respect to the controlling child support order and to clarify the priority scheme of UIFSA for determination and prospective enforcement of a single order among existing multiple orders regarding the same obligor, obligee, and child.
- SECTION 12:** Amends Section 159.208, Family Code, to strike “multiple” in the heading and text of the section. Amends Section 159.209, Family Code, to clarify the section with respect to the reconciliation of support payments by an obligor subject to orders in more than one state by requiring a tribunal of this state to credit amounts collected for a particular period under a support order against the amounts owed for the same period under any other child support order for the support of the same child issued by a tribunal of this or another state. Adds Section 159.210 to extend the evidentiary and discovery provisions of UIFSA to a case involving a foreign order recognized on the basis of comity. Further provides for Section 159.211 to create a separate provision under the Act for a provision formerly under Subsection 159.205(f) with respect to jurisdiction over a spousal support order.
- SECTION 13:** Amends Section 159.301(c), Family Code, to replace “commence” with “initiate” under Subsection (c).
- SECTION 14:** Amends the heading of Section 159.302, Family Code, to substitute “proceeding” for “action.”
- SECTION 15:** Amends Section 159.303, Family Code, to clarify the language of the section with respect to the choice of law rules of the forum state under UIFSA by deleting the reference to rules on choice of law relating to the application of law by a responding tribunal. Amends Section 159.304, Family Code, with respect to the duties of the initiating tribunal: to remove requirement to forward three copies of the petition and its accompanying documents to the responding tribunal; and, if requested by the responding tribunal and that tribunal is a foreign country or political subdivision, to require a tribunal of this state to specify the amount of foreign currency equivalent for the amount of support being requested.
- SECTION 16:** Amends Section 159.305, Family Code, to add the determination of the controlling child support order among the duties and powers of the responding tribunal and to require, upon request in an enforcement action, that the responding tribunal of this state convert an amount of foreign currency to the equivalent

amount in dollars.

- SECTION 17:** Amends Section 159.307, Family Code, to clarify the duties of a responding tribunal with respect to the determination of the controlling order, where two or more orders exist, and to the facilitation of the redirection of child support payments to the support obligee.
- SECTION 18:** Amends Section 159.308, Family Code, to identify the governor of the state as the state official responsible for determining whether a foreign country or political subdivision has established a reciprocal arrangement for child support enforcement with this state.
- SECTION 19:** Amends Section 159.310(b), Family Code, to make non-substantive stylistic changes in wording of the subsection by including “names and addresses” of tribunals in the register required to be maintained by the state information agency and by replacing “place” with “country” in relation to forwarding documents..
- SECTION 20:** Amends Section 159.311(a), Family Code, to clarify and facilitate the process for drafting and filing interstate pleadings to ensure that all known support orders are attached to a petition for relief and to eliminate the requirement that all copies of orders be certified.
- SECTION 21:** Amends Section 159.312, Family Code, to restate the UIFSA requirements for the protection of confidential information so that certain identifying information that may affect the health, safety, or liberty of a party or child may be sealed and may be disclosed only on order of the court, after hearing, if the court determines disclosure to be in the interest of justice.
- SECTION 22:** Amends Section 159.314(a), Family Code, to insert “under this chapter” after a proceeding.”
- SECTION 23:** Amends Section 159.316, Family Code, to clarify the language of Subsections (a), (b), and (e) with respect to the gathering of evidence in interstate states and in Subsection (f) to substitute “shall” for “may” with respect to permitting telephonic or audiovisual testimony in depositions and in hearings in proceedings under the Act.
- SECTION 24:** Amends Section 159.317, Family Code, to insert “or foreign country or political subdivision” in referring to communications between tribunals to extend the provisions of the section to cases involving tribunals of foreign nations and to substitute “record” for “writing” and to strike “of that state” after “laws.”
- SECTION 25:** Amends Section 159.319, Family Code, to add Subsections (b) and (c) facilitate the collection and transfer of child support payments from an obligor to an obligee by authorizing a court or administrative agency to render an order redirecting support payments to the appropriate payment registry and by requiring the receiving state to furnish on request a certified statement of the amounts and dates of all payments received.
- SECTION 26:** Amends Section 159.401(b), Family Code, to conform the section to the provisions of the Uniform Parentage Act (Chapter 160, Family Code) with respect to the party who may be ordered to pay temporary child support (including a presumed, adjudicated, alleged, or acknowledged father or the mother or other person).

- SECTION 27:** Amends Section 159.501, Family Code, to specify that an income withholding order of another state may be sent to an employer in this state “by or on behalf of the obligee or by the support enforcement agency” in the other state.
- SECTION 28:** Amends Section 159.502(c), Family Code, to strike “or agency” in paragraph (2).
- SECTION 29:** Amends Section 159.503, Family Code, to add “EMPLOYER’S” to the section heading and to substitute “two or more” for “multiple” in the heading and text of the section.
- SECTION 30:** Amends Section 159.506, Family Code, to specify that procedures under Subchapter G, Chapter 159, and not the provisions of Section 159.604, apply to a contest by the obligor of an order for withholding.
- SECTION 31:** Amends Section 159.507(a), Family Code, to add “or support enforcement agency” after “party” with respect to the those who may seek administrative enforcement of orders under the Act.
- SECTION 32:** Amends the heading of Subchapter G, Chapter 159, Family Code, to add “registration” before “enforcement” at the beginning of the title and to strike “after registration” at the end of the title.
- SECTION 33:** Amends Section 159.602, Family Code, to make stylistic and clarifying changes to the wording of Subsection (a) and to add Subsections (d) and (e) to amplify the procedures to be followed then two or more child support orders exist and registration for enforcement or modification is sought so that under (d) the person requesting registration must provide the tribunal a copy of each support order and the documents specified in this section and state the amount of consolidated arrearages, if any, if two or more orders are in effect and under (e) to authorize a request for a determination of which order is the controlling order to be filed separately from or with a request for registration and enforcement or for registration and modification and to require the person requesting registration to give notice of the request to each party whose rights may be affected by the determination..
- SECTION 34:** Amends Section 159.604, Family Code, to clarify the application of the choice of law provisions of Subsections (a) and (b) and to add Subsections (c) and (d) to require a tribunal of this state to apply the procedures and remedies of this state in the enforcement of current support and support arrears and interest and to specify that the law of the state that issued the controlling order is superior with regard to the terms of the support order itself.
- SECTION 35:** Amends Section 159.605, Family Code, to substitute “a” for “the” before “notice” in Subsection (b) and to add new Subsection (c) to require a party registering an order for enforcement to notify the non-registering party of the existence of two or more support orders so that the non-registering may have the opportunity to contest the determination by the registering party of the controlling order.
- SECTION 36:** Amends Section 159.607(a), Family Code, to add paragraph (8) to include among the defenses to the registration of an order that may be advance by a non-registering party (in seeking to contest the validity or enforcement of the order or to have it vacated) the defense that “the alleged controlling order is not the controlling order.”

- SECTION 37:** Amends Section 159.610, Family Code, to add the requirements of Section 159.613 or 159.615 to those needed for modification of a registered order under the Act.
- SECTION 38:** Amends Section 159.611, Family Code, to clarify the provisions under Subsections (a) and (c) with respect to the procedures for the modification of a registered order and the circumstances under which a registering state may modify an order of a sister state and to add Subsection (d) to specify that the law of the state that issued the initial controlling order governs the duration of the support obligation.(e) In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor’s fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.
- SECTION 39:** Amends Section 159.612, Family Code, to make stylistic changes in the wording of the section to clarify the text with respect to the recognition of an order modified in another state.
- SECTION 40:** Amends Subchapter G, Chapter 159, Family Code, to add Section 159.615 to authorize a tribunal of a state to modify a support order of a foreign country when the tribunal of the foreign country will not, or does not choose to, exercise its jurisdiction for purposes of modification of the order.
- SECTION 41:** Amends Section 159.701, Family Code, to make certain stylistic changes to the text of the section by removing unnecessary and outdated language.
- SECTION 42:** Amends Section 159.801(b), Family Code, to substitute “of” for “by” in paragraph (2).
- SECTION 43:** Amends Section 159.802(b) to strike “the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act” from the text.
- SECTION 44:** Amends Section 159.901, Family Code, to make stylistic changes to the wording of the section.
- SECTION 45:** Amends Section 234.007, Family Code, by adding Subsection (f) to authorize the Title IV-D agency to redirect support payments from the state disbursement unit of this state to the state disbursements units of other states in conformity with the provisions of UIFSA for interstate enforcement of support obligations.
- SECTION 46:** Repeals Sections 159.205(f), 159.301(b) and 159.902, Family Code.
- SECTION 47:** Transition clause.
- SECTION 48:** This Act takes effect September 1, 2003.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B.2318 modifies the original H.B.2318 by making certain changes to the organization of the 2001 amendments to UIFSA under the sections of Chapter 159, Family Code. The purpose of the committee substitute is to conform the sections of Chapter 159, Family Code, amended by H.B. 2318, to the uniform numbering of sections and subsections under UIFSA in the form of the Act mandated by Congress in 1996 for adoption by all states. This will ensure that, as other states adopt the 2001 amendments to UIFSA - or that in the event Congress mandates the adoption of the 2001 amendments to the Act - the provisions of Chapter 159, Family Code, incorporating UIFSA, will accord with the uniform format and contents of the Act as incorporated in the codes of other states.