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NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association approves the 2008 Amendments to the
- 2 Uniform Interstate Family Support Act, promulgated by the National Conference of
- 3 Commissioners on Uniform State Laws in 2008, as an appropriate Act for those states desiring to
- 4 adopt the specific substantive law suggested therein.

REPORT

Amendments to the Uniform Interstate Family Support Act (2008)

UIFSA provides universal and uniform rules for the enforcement of family support orders by setting basic jurisdictional standards for state courts, by determining the basis for a state to exercise continuing exclusive jurisdiction over a child support proceeding, by establishing rules for determining which state issues the controlling order in the event proceedings are initiated in multiple jurisdictions, and by providing rules for modifying or refusing to modify another state's child support order. In July 2008, the Uniform Law Commission amended UIFSA to incorporate changes required by the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

One of the most important accomplishments of UIFSA is the establishment of bedrock jurisdictional rules under which a tribunal in one state has the ability to issue or modify a support order. Once issued, other states must enforce and not modify the order. Further, if more than one state tribunal issues an order pertaining to the same beneficiary, one of those would become *the* enforceable, controlling order. UIFSA clarifies jurisdictional rules limiting the ability of parties to seek modifications of orders in states other than the issuing state (in particular, that all parties and the child must have left the issuing state and the petitioner in such a situation must be a nonresident of the state where the modification is sought), but allows for situations where parties might voluntarily seek to have an order issued or modified in a state in which they do not reside. Under UIFSA, the jurisdictional basis for the issuance of support orders and child custody jurisdiction are separate, and a party submitting to a court's jurisdiction for purposes of a support determination does automatically submit to the jurisdiction of the responding state with regard to child custody or visitation.

UIFSA also provides clearer guidance to state support agencies with regard to the redirection of support payments to an obligee's current state of residence, clarifies that the local law of a responding state applies with regard to enforcement procedures and remedies, and fixes the duration of a child support order to that required under the law of the state originally issuing the order (i.e., a second state cannot modify an order to extend to age 21 if the issuing state limits support to age 18).

The 2008 Amendments

In November 2007, the United States signed the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. This Convention contains numerous provisions that establish uniform procedures for the processing of international child support cases. The 2008 UIFSA amendments serve as the implementing legislation for the Convention throughout the states.

In order for the United States to fully accede to the Convention it was necessary to modify UIFSA by incorporating provisions of the Convention that impact existing state law. Section 7 of the 2008 UIFSA provides for the guidelines and procedures for the registration, recognition, enforcement and modification of foreign support orders from countries that are parties to the Convention. Enactment of the amendments to UIFSA will improve the enforcement of American child support orders abroad and

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will ensure that children residing in the United States will receive the financial support due from parents, wherever the parents reside.

In conjunction with the ratification of the Convention, legislation before Congress will provide that the 2008 amended version of UIFSA must be enacted in every jurisdiction within two years following the enactment of federal implementing legislation, as a condition for continued receipt of federal funds for state child support programs. Failure to enact these amendments by that date may result in the loss of this important federal funding.

The work of the Drafting Committee is available at www.nccusl.org, the website of the Conference.

Respectfully submitted,

Martha Lee Walters
President
National Conference of Commissioners
On Uniform State Laws
February, 2009

GENERAL INFORMATION FORM

Submitting Entity: National Conference of Commissioners on Uniform State Laws

Submitted by: Michael Kerr, Legislative Director

1. Summary of Recommendation(s).

The National Conference of Commissioners on Uniform State Laws requests approval of the 2008 Amendments to the Uniform Interstate Family Support Act by the ABA House of Delegates. The Act was approved by the National Conference in 2008.

2. Approval by Submitting Entity.

The National Conference of Commissioners on Uniform State Laws approved it in July, 2008.

3. Has this or a similar recommendation been submitted to the House or Board previously?

Yes; the original UIFSA (1992) was approved by the House of Delegates in February 1993; amendments were subsequently approved by the House in February of 2002 (see Report 02M106C).

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

These amendments further several policies of the ABA. First, the 2008 amendments implement in state law the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, the final text of which was adopted by the Hague Conference on Private International Law on November 23, 2007. Report 106, approved by the House at the 2008 Annual Meeting, urges the Senate to ratify this convention and the Congress to pass implementing legislation. Further, endorsement of the underlying Convention is consistent with ABA's February 1981 endorsement of the 1980 Convention on the Civil Aspects of International Child Abduction, the ABA's February 1987 endorsement of the recommendations of the U.S. Commission on Interstate Child Support that were adopted by the U.S. Congress as the Uniform Interstate Family Support Act (UIFSA); the ABA's February 1994 endorsement of the 1993 Convention on Intercountry Adoption; and the ABA's August 1997 endorsement of the 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children (commonly referred to as the Protection of Children Convention).

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5. What urgency exists which requires action at this meeting of the House

The Administration submitted the Convention to the Senate for its advice and consent in the fall of 2008, along with related implementing legislation. Action by the House at this time is necessary to have an influence on Senate and Congressional action, and to encourage rapid state adoption of the necessary changes to UIFSA.

6. Status of Legislation. (If applicable.)

None. The amendments have not been introduced in any state legislature as of 11-01-2008.

7. Cost to the Association. (Both direct and indirect costs.)

None.

8. Disclosure of Interest. (If applicable.)

None.

9. Referrals

Pursuant to the agreement between the NCCUSL and the ABA, all members of the House of Delegates and Chairs of all ABA entities were advised of the drafting project and those that expressed interest were provided with tentative drafts, as well as the final Act and Report. The work of the Drafting Committee is available at www.nccusl.org, the website of the Conference.

The ABA Advisor for the 2008 UIFSA Amendments was Gloria F. Dehart of the Section of International Law. Joseph W. Booth was the ABA Family Law Section Advisor.

The Act was referred to the International Law Section and Family Law Section for comment and co-sponsorship, as well as to the ABA Center on Children and the Law and the ABA Commission on Youth at Risk.

10. Contact Person (Prior to the meeting.)

John A. Sebert, Executive Director, National Conference of Commissioners on Uniform State Laws, 111 North Wabash, Suite 1010, Chicago, IL. 60602, 312/450-6603

Michael R. Kerr, Legislative Director, National Conference of Commissioners on Uniform State Laws, 111 North Wabash, Suite 1010, Chicago, IL. 60602, 312/450-6620

11. Contact Person. (Who will present the report to the House.)

Martha Lee Walters, President, National Conference of Commissioners on Uniform State Laws, Oregon Supreme Court, 1163 State St., Salem, OR. 97301.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

That the ABA approves the 2008 Amendments to the Uniform Interstate Family Support Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2008 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the issue which the recommendation addresses

In November 2007, the United States signed the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. This Convention contains numerous provisions that establish uniform procedures for the processing of international child support cases. The 2008 UIFSA amendments, approved by the Uniform Law Commission, serve as the implementing legislation for the Convention within U.S. States and Territories.

In order for the United States to fully implement the Convention it was necessary to modify UIFSA by incorporating provisions of the Convention that impact existing state law. Section 7 of the 2008 UIFSA provides important guidelines and procedures for the registration, recognition, enforcement and modification of foreign support orders from countries that are parties to the Convention. Enactment of the amendments to UIFSA will improve the enforcement of American child support orders abroad and will help ensure that children residing in the United States will receive the financial support due from parents, wherever the parents reside.

In conjunction with the ratification of the Convention, legislation before Congress will provide that the 2008 amended version of UIFSA must be enacted in every jurisdiction within two years following the enactment of federal implementing legislation, as a condition for continued receipt of federal funds for state child support programs. Failure to enact these amendments by that date may result in the loss of this important federal funding.

3. Please explain how the proposed policy position will address the issue.

Approval of the 2008 Amendments to the Uniform Interstate Family Support Act by the House of Delegates would indicate to states that the amendments are an appropriate mechanism for addressing the issues described above.

4. Summary of any minority views or opposition which have been identified

The NCCUSL is not aware of any minority views or opposition to the Uniform Act.