

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 1622

INTRODUCER: Senator Flores

SUBJECT: Family Support

DATE: March 21, 2011

REVISED: 03/21/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Connor	Maclure	JU	Pre-meeting
2.			CF	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill seeks to conform Florida's Uniform Interstate Family Support Act (UIFSA) under ch. 88, F.S., to the current version of UIFSA, which was amended in 2008 and for which implementing legislation is pending approval by Congress, to be eventually adopted in each state. The 2008 UIFSA amendments were made to fully incorporate the provisions promulgated by the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Maintenance Convention) that impact existing state laws, including guidelines for the registration, recognition, enforcement, and modification of foreign support orders from other countries that are parties to the Maintenance Convention. Florida law currently has uniform standards for interstate enforcement of support orders, but not international enforcement.

This bill substantially amends the following sections of the Florida Statutes: 61.13, 88.1011, 88.1021, 88.1031, 88.2011, 88.2021, 88.2031, 88.2041, 88.2051, 88.2061, 88.2071, 88.2081, 88.2091, 88.3011, 88.3021, 88.3031, 88.3041, 88.3051, 88.3061, 88.3071, 88.3081, 88.3101, 88.3111, 88.3121, 88.3131, 88.3141, 88.3161, 88.3171, 88.3181, 88.3191, 88.4011, 88.5011, 88.5031, 88.5041, 88.5051, 88.5061, 88.5071, 88.6011, 88.6021, 88.6031, 88.6041, 88.6051, 88.6061, 88.6071, 88.6081, 88.6101, 88.6111, 88.6121, 88.9011, and 827.06.

This bill creates the following sections of the Florida Statutes: 88.1041, 88.2101, 88.2111, 88.6151, 88.6161, 88.7021, 88.7031, 88.7041, 88.7051, 88.7061, 88.7071, 88.7081, 88.7091, 88.7101, 88.7111, 88.7112, and 88.9021.

This bill repeals section 88.7011, Florida Statutes.

II. Present Situation:

Hague Convention¹

With the rise of globalization, many families form and extend across national boundaries. In the United States, family law has traditionally been a subject of local or state concern, generating significant conflict of laws problems between states. Global movement further complicates the regulation of family relationships. The United States has a large and mobile population, with an estimated 6.6 million private citizens living abroad, and many of these Americans will face challenging international family law problems. National and local laws are inadequate to manage transnational family issues, especially in cases of international adoption or parental abduction but also in ordinary custody, child support or child protection matters. As the scale and frequency of global movement has increased, family and children's issues have also taken on a new relevance in foreign relations. The Hague Conference on Private International Law (the Conference) has responded to the new realities of globalized families with a series of treaties that foster international cooperation in cases involving children. The Conference is an intergovernmental organization, funded and governed by its members.² Its traditional purpose has been to work for the progressive unification of the rules of private international law, including family and children's law. The United States signed the 2007 Convention on the International Recovery of Child Support and Other Family Maintenance (Convention), and implementing legislation is proceeding toward adoption.³

Uniform Interstate Family Support Act

The Uniform Interstate Family Support Act (UIFSA) was originally enacted in 1996 (and amended subsequently) to address complications in enforcing child support orders across state lines.⁴ In response to a congressional mandate,⁵ all states enacted the original 1996 version of UIFSA. After the United States signed the 2007 Convention establishing numerous provisions of uniform procedure for the processing international child support cases, the National Conference of Commissioners on Uniform State Laws (NCCUSL) amended the 2001 version of UIFSA, which serves as the implementing language for the Maintenance Convention throughout the states.⁶ The UIFSA provides universal and uniform rules for the enforcement of family support orders by:

¹ Background on the Hague Convention was taken from the article by Ann Laquer Estin, *Families Across Borders: The Hague Children's Conventions and the Case for International Family Law in the United States*, 62 Fla. L. Rev. 47 (2010).

² The Conference was founded as a permanent organization in 1955. Statute of the Hague Conference on Private International Law, July 15, 1955, T.I.A.S. No. 5710, 2997 U.N.T.S. 123.

³ *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance*, reprinted in 47 I.L.M. (2008).

⁴ National Conference of Commissioners of Uniform State Laws, *2008 Amendments to the Uniform Interstate Family Support Act*, 2 (2008).

⁵ 42 U.S.C. s. 666.

⁶ National Conference of Commissioners of Uniform State Laws, *Interstate Family Support Act Amendments (2008) Summary*, available at [http://www.nccusl.org/ActSummary.aspx?title=Interstate Family Support Act Amendments \(2008\)](http://www.nccusl.org/ActSummary.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20(2008)) (last visited Mar. 16, 2011).

- Setting jurisdictional standards for state courts;
- Determining the basis for a state to exercise continuing exclusive jurisdiction over child support proceedings;
- Establishing rules to determine which state will issue the controlling order if there are proceedings in multiple jurisdictions; and
- Providing rules to modify or refuse to modify another state's child support order.⁷

The 2008 UIFSA amendments were made to fully incorporate the provisions of the Convention that impact existing state laws, including guidelines for the registration, recognition, enforcement, and modification of foreign support orders from other countries that are parties to the Convention.⁸

State Adoption of Amended UIFSA

Federal implementing legislation pending approval by Congress will require that the 2008 amended version of UIFSA be enacted in every jurisdiction as a condition for federal funds for state child support programs.⁹ To date, Maine, Tennessee, Wisconsin, North Dakota and Nevada are the only states that have enacted the current version of UIFSA.¹⁰ In addition to Florida, several states have introduced UIFSA enacting legislation this year. Those states are: Hawaii, Missouri, New Mexico, Utah, and Washington.¹¹

Florida's UIFSA Statute

Along with the rest of the states, Florida enacted the original 1996 version of the Uniform Interstate Family Support Act (UIFSA), which was codified in ch. 88, F.S., and remains current law. Its provisions provide the infrastructure to enforce child support laws uniformly among states to prevent parents from crossing state lines to avoid their support obligations. Some of the main concepts of UIFSA as codified under Florida law are outlined below.

Jurisdiction

Personal jurisdiction is the power of a court over the person of a defendant in contrast to the jurisdiction of a court over a person's property or property interest.¹² Under UIFSA, when a Florida tribunal is exercising personal jurisdiction over a nonresident, that tribunal may apply special rules of evidence to receive evidence from another state and assistance with discovery to obtain discovery through a tribunal of another state.¹³ There are also provisions for Florida courts to exercise jurisdiction to issue a support order during simultaneous proceedings in another

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*; see also Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, Treaty Doc. 110-21, Exec. Rept. 111-2, 111th Congress 2d. Session (Jan. 22, 2010).

¹⁰ Uniform Law Commission, *Interstate Family Support Act Amendments (2008): Enactment Status Map*, available at [http://www.nccusl.org/Act.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20\(2008\)](http://www.nccusl.org/Act.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20(2008)) (last visited Mar. 16, 2011).

¹¹ *Id.*

¹² BLACK'S LAW DICTIONARY 1144 (7th ed. 1990).

¹³ Sections 88.2011, 88.2021, 88.3161, and 88.3181, F.S.

state.¹⁴ If support orders are issued by more than one state, there is process to determine which one controls.¹⁵

General Application

Initiating tribunals have the duty to forward copies of the petition to establish a support order and its accompanying documents to the responding tribunal.¹⁶ When acting as a responding tribunal, courts are directed to apply the procedural and substantive law generally applicable to similar proceedings originating in that state¹⁷ and determine the duty of support and the amount payable in accordance with the law and support guidelines of that state.¹⁸

Establishment of Support Order

If a support order entitled to recognition under UIFSA has not been issued, a responding tribunal may issue a support order under certain conditions.¹⁹

Direct Enforcement of Income Withholding

An obligor is an individual who owes a duty of support and is liable under a support order.²⁰ An obligor may have his or her income withheld in order to make up for unpaid support. Employers are required to treat income-withholding orders from another state as if it had been issued by the state where he or she lives.²¹

Modification

After a child support order has been issued in one state, another state has the ability to modify the order if certain conditions are met.²²

Determination of Parentage

A state court may serve as an initiating or responding tribunal in a proceeding to determine whether a petitioner or a respondent is the parent of a particular child.²³

Grounds for Rendition

The Governor of this state has the ability to demand that the Governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to pay child support.²⁴

¹⁴ Section 8.2041, F.S.

¹⁵ Section 88.2071, F.S.

¹⁶ Section 88.3041, F.S.

¹⁷ Section 88.3031(1), F.S.

¹⁸ Section 88.3031(2), F.S.

¹⁹ Section 88.4011, F.S.

²⁰ Section 88.1011(13)(a)-(c), F.S.

²¹ Section 88.50211, F.S.

²² Section 88.6111, F.S.

²³ Section 88.7011, F.S.

III. Effect of Proposed Changes:

This bill seeks to conform Florida's Uniform Interstate Family Support Act (UIFSA) under ch. 88, F.S., to the current version of UIFSA, which was amended in 2008 and is pending ratification in Congress to be adopted by each state. The 2008 UIFSA amendments were made to fully incorporate the provisions promulgated by the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Convention) that impact existing state laws, including guidelines for the registration, recognition, enforcement, and modification of foreign support orders from other countries that are parties to the Convention. Florida law accounts for interstate enforcement of support orders, but not international enforcement. Following is a section-by-section analysis of the bill.

General Provisions

Section 1 amends s. 88.1011, F.S., containing definitions, to redefine or delete a number existing terms to conform to the most current version of UIFSA and to include foreign countries in addition to states and also define the following new terms: "Application"; "Central authority"; "Convention"; "Direct request"; "Foreign central authority"; "Foreign country"; "Foreign support agreement"; "Foreign support order"; "Foreign tribunal"; "Issuing foreign country"; "Outside this state"; "Person"; "Record"; and "United States Central Authority."

Section 2 amends s. 88.1021, F.S., to designate the Department of Revenue as the support enforcement agency of the state.

Section 3 amends s. 88.1031, F.S., to specify that the act does not provide the exclusive method of establishing or enforcing a support order or grant authority to render judgment relating to child custody.

Section 4 creates s. 88.1041, F.S., to apply the act to foreign proceedings.

Jurisdiction

Section 5 amends s. 88.2011, F.S., relating to bases for jurisdiction over a nonresident, to state that personal jurisdiction under the section does not extend to the modification of child support orders unless specified conditions are met. Sections 5 and 6 both assert what is commonly described as long-arm jurisdiction over a nonresident respondent for purposes of establishing a support order or determining parentage. To sustain a support order, the tribunal must be able to assert personal jurisdiction over the parties.²⁵

Section 6 amends s. 88.2021, F.S., relating to jurisdiction over a nonresident, to specify that personal jurisdiction under the act continues as long a tribunal has continuing jurisdiction to enforce its order.

²⁴ Section 88.8011, F.S.

²⁵ National Conference of Commissioners of Uniform State Laws, *2008 Amendments to the Uniform Interstate Family Support Act*, 20 (2008).

Section 7 amends s. 88.2031, F.S., relating to forwarding proceedings between initiating and responding tribunals, to also refer to proceedings initiated in foreign countries.

Section 8 amends s. 88.2041, F.S., relating to simultaneous proceedings in another state, to include foreign countries.

Section 9 amends s. 88.2051, F.S., relating to continuing exclusive jurisdiction, to specify that except in very narrowly defined circumstances, the issuing tribunal retains continuing, exclusive jurisdiction over a child support order.²⁶

Section 10 amends s. 88.2061, F.S., relating to continuing jurisdiction, to make adjustments that are the correlative of the continuing, exclusive jurisdiction described in the previous section. It makes the distinction between the jurisdiction “to modify a support order” established in the previous section and the “continuing jurisdiction to enforce” established in this section.²⁷

Section 11 amends s. 88.2071, F.S., relating to controlling child support orders, to provide a procedure to identify one order that will be enforced in every state. It declares that if only one child support order exists, it is to be denominated the controlling order, irrespective of when and where it was issued and whether any of the individual parties or the child continues to reside in the issuing state. It also establishes the priority scheme for recognition and prospective enforcement of a single order among existing multiple orders regarding the same obligor, obligee, and child.²⁸

Section 12 amends s. 88.2081, F.S., relating to child support orders for two or more obligees, to specify that it also applies to foreign countries.

Section 13 amends s. 88.2091, F.S., relating to credit for payments, to specify that the issuing tribunal is responsible for the overall control of the enforcement methods employed and for accounting for the payments made on its order from multiple sources.²⁹

Section 14 creates s. 88.2101, F.S., relating to the application to a nonresident subject to personal jurisdiction, to specify that upon obtaining personal jurisdiction the tribunal may receive evidence from outside the state, communicate with a tribunal outside the state, and obtain discovery outside the state. In other respects, the tribunal will apply the law of the forum.

Section 15 creates s. 88.2111, F.S., relating to jurisdiction to modify spousal orders, to specify that the restriction on modification of an out-of-state spousal support order extends to foreign countries. It also provides that the question of continuing, exclusive jurisdiction is to be resolved under the law of the issuing tribunal.³⁰

²⁶ *Id.* at 27.

²⁷ *Id.* at 29.

²⁸ *Id.* at 32.

²⁹ *Id.* at 35.

³⁰ *Id.* at 37.

Civil Provisions of General Application

Section 16 amends s. 88.3011, F.S., relating to proceedings under this act, to specify that all proceedings under this act also apply to foreign support orders.

Sections 17 and 18 amend ss. 88.3021 and 88.3031, F.S., to make technical changes.

Section 19 amends s. 88.3041, F.S., relating to the duties of the initiating tribunal, to facilitate enforcement even with states that have not implemented the updated version of UIFSA and with foreign countries.³¹

Section 20 amends s. 88.3051, F.S., relating to the duties and powers of the responding tribunal, to establish updated duties relating to responding tribunals.

Section 21 amends s. 88.3061, F.S., relating to inappropriate tribunals, to make a technical change.

Section 22 amends s. 88.3071, F.S., relating to the duties of the support enforcement agency, to specify that the obligee or the obligor may request services, and that request may be in the context of the establishment of an initial child support order, enforcement or review and adjustment of an existing child support order, or a modification of that order. It also directs the Department of Revenue, as the support enforcement agency, to make reasonable efforts to ensure that the order to be registered is the controlling one.³²

Section 23 amends s. 88.3081, F.S., relating to the duty of the Governor and Cabinet, to allow the Governor and Cabinet to make reciprocal child support determinations regarding foreign countries.

Section 24 amends s. 88.3101, F.S., relating to the duties of the state information agency, to make technical changes and add a reference to foreign countries.

Section 25 amends s. 88.3111, F.S., to establish the requirements for drafting and filing interstate pleadings.³³

Section 26 amends s. 88.3121, F.S., relating to pleadings and accompanying documents, to create an exception for providing certain information in the pleadings if its disclosure is likely to harm a party or child.

Sections 27 and 28 amend ss. 88.3131 and 88.3141, F.S., to make technical changes.

Section 29 amends s. 88.3161, F.S., relating to special rules of evidence, to make technical changes and specify that a voluntary acknowledgment of paternity is admissible to establish parentage.

³¹ *Id.* at 41.

³² *Id.* at 47.

³³ *Id.* at 51.

Sections 30 and 31 amend ss. 88.3171 and 88.3181, F.S., to make technical changes.

Section 32 amends s. 88.3191, F.S., relating to receipt and disbursement of payments, to require that when all parties reside in this state, the Department of Revenue or a tribunal must direct support payments in another state if necessary and send an income-withholding order to the obligor's employer.

Establishment of Support Order

Section 33 amends s. 88.4011, F.S., relating to support order establishment, to authorize a responding tribunal of this state to issue temporary and permanent support orders binding on an obligor over whom the tribunal has personal jurisdiction when the person or entity requesting the order is "outside this state" (i.e., anywhere else in the world). It also specifies circumstances relating to parentage that make a support order appropriate.³⁴

Direct Enforcement

Sections 34 and 35 amend ss. 88.5011 and 88.5031, F.S., to add more specific language to provisions regarding income-withholding orders.

Sections 36 and 37 amend ss. 88.5041, and 88.5051 F.S., to make technical changes to apply the sections to foreign countries.

Section 38 amends s. 88.5061, F.S., relating to a contest by the obligor, to provide more specific instructions for a contest by the obligor.

Sections 39 and 40 amend ss. 88.5071 and 88.6011, F.S., to make technical changes to apply the sections to foreign countries.

Enforcement and Modification

Section 41 amends s. 88.6021, F.S., relating to procedure to register an order for enforcement, to provide cross references and specify a process to be followed by a person requesting registration when two or more orders are in effect.

Section 42 amends s. 88.6031, F.S., relating to effect of registration for enforcement, to apply the section to foreign countries.

Section 43 amends s. 88.6041, F.S., relating to choice of law, to modify the conditions under which the law of the issuing state governs.

Section 44 amends s. 88.6051, F.S., relating to notice of registration of an order, to make technical changes applying the section to foreign countries and specify notice requirements when two or more orders are in effect.

³⁴ *Id.* at 61.

Section 45 amends s. 88.6061, F.S., relating to the procedure to contest validity or enforcement of a registered order, to provide cross references and make technical changes.

Sections 46 and 47 amend ss. 88.6071 and 88.6081 F.S., to make technical changes.

Section 48 amends s. 88.6101, F.S., relating to effect of registration for modification, to provide a cross reference and make a technical change.

Section 49 amends s. 88.6111, F.S., relating to modification of a child support order of another state, to provide cross references and create an exception relating to jurisdiction to modify an order when the parties and the child no longer reside in the issuing state and one party resides outside the United States.

Section 50 amends s. 88.6121, F.S., relating to recognition of an order modified in another state, to make technical changes.

Section 51 creates s. 88.6151, F.S., to provide standards of jurisdiction to modify a child support order of a foreign country.

Section 52 creates s. 88.6161, F.S., to specify a procedure to register a child support order of a foreign country for modification.

Section 53 repeals s. 88.7011, F.S., relating to a proceeding to determine parentage.

Provisions Specific to Foreign Countries

Section 54 creates s. 88.7021, F.S., providing that the section applies only to a support proceeding involving a foreign country in which the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Convention) is in force with respect to the United States.

Section 55 creates s. 88.7031, F.S., to define the relationship between the Department of Children and Family Services (department) and the United States Central Authority. It recognizes the department as the agency designated by the United States Central Authority to perform specific functions under the Convention.

Section 56 creates s. 88.7041, F.S., relating to the initiation by a governmental entity of support proceedings subject to the Convention, to provide a list of requirements in such proceedings, and to list which support proceedings are available to an obligor under the Convention. It also lists which support proceedings are available to an obligor against whom there is an existing support order.

Section 57 creates s. 88.7051, F.S., to specify provisions for a petitioner to file a direct request in a tribunal in this state seeking the establishment or modification of a support order or determination of parentage. The law of the state will apply in these proceedings. In direct request for enforcement of foreign support orders, an obligee or obligor who has benefitted from free legal assistance is also entitled to any free legal assistance provided under state law.

Section 58 creates s. 88.7061, F.S., relating to the registration of a foreign support order subject to the Convention. It specifies that a party who is seeking recognition of a foreign support order is required to register the order with the state. The request for registration is required to be accompanied by an enumerated list of other documents.

Section 59 creates s. 88.7071, F.S., relating to a contest of the validity of a foreign support order subject to the Convention. It provides that a contest to the recognition of a foreign support order must be filed within 30 days after the notice of the registration. If the contesting party lives outside the United States, he or she will have 60 days after the notice. It also lists possible bases for a contest, such as lack of basis for enforcement, questionable authenticity, etc.

Section 60 creates s. 88.7081, F.S., relating to the recognition and enforcement of a foreign support order subject to the Convention. It provides that this state is required to recognize a foreign support order if the issuing tribunal had personal jurisdiction and the order is enforceable in the issuing country. This section also provides a process for when a tribunal of this state does not recognize a foreign support order. If the order is not recognized as a whole, any severable portions are to be recognized.

Section 61 creates s. 88.7091, F.S., relating to refusal of recognition and enforcement of a foreign support order subject to the Convention. Grounds for refusal of a foreign support order include a determination that the order is incompatible with public policy, was obtained by fraud, etc.

Section 62 creates s. 88.7101, F.S., relating to foreign support orders subject to the Convention. This section states that a direct request for recognition and enforcement of a foreign support order must be accompanied by the complete text of the foreign order and a record stating that the order is an enforceable decision in the issuing country. Grounds for refusal to recognize foreign orders are also listed.

Section 63 creates s. 88.7111, F.S., relating to modification of a foreign child support order subject to the Convention. It provides that a tribunal in this state may not modify a foreign support order if the obligee remains a resident of the issuing country, except under specified circumstances.

Section 64 creates s. 88.7112, F.S., relating to jurisdiction to modify a spousal support order of a foreign country. This section provides that a tribunal of this state having personal jurisdiction over the parties may modify a spousal support order of a foreign tribunal under specified circumstances.

Section 65 amends s. 88.9011, F.S., to specify that in applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law among enacting states.

Section 66 creates s. 88.9021, F.S., to specify that the act applies to proceedings begun on or after the effective date, July 1, 2011.

Sections 67 and 68 amend ss. 61.13 and 827.06, F.S., relating to support of children, parenting and time-sharing, and nonsupport of dependents to provide cross references.

Section 69 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Pursuant to federal law, Florida adopted the 1996 version of the Uniform Interstate Family Support Act (UIFSA) in order to continue to receive federal funding for state child support programs.³⁵ There is currently similar legislation pending in Congress to require adoption of the 2008 UIFSA revision represented in the bill.³⁶ Congress has the authority to act only pursuant to express or implied legislative authority in the Constitution.³⁷ Under the Tenth Amendment, all other powers are reserved to the states and the people. The authority to make laws relating to family issues is not delegated in the Constitution and is thus something that has traditionally been left to the discretion of the states. However, the Supreme Court has held that under its broad taxing and spending powers, “Congress may attach conditions on the receipt of federal funds, and has repeatedly employed the power ‘to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory administrative objectives.’”³⁸ Therefore, it seems permissible for Congress to require the states to adopt this uniform act in the furtherance of the policy objective of international child support enforcement.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁵ 42 U.S.C. s. 666.

³⁶ Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, Treaty Doc. 110-21, Exec. Rept. 111-2, 111th Congress 2d. Session (Jan. 22, 2010).

³⁷ U.S. CONST. art. 1, s. 1. states that “All legislative Powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and a House of Representatives.”

³⁸ *South Dakota v. Dole*, 483 U.S. 203, 206 (1987) (holding that Congress had the authority to mandate a national minimum drinking age conditioned on federal funding).

B. Private Sector Impact:

Individuals owing support based on international orders will be more likely to have those orders enforced in Florida.

C. Government Sector Impact:

The Department of Revenue may bear some costs associated with the duties of enforcing child support enforcement orders originally issued in foreign countries. There may also be some additional workload for Florida courts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.