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MEMORANDUM

TO: Senate Standing Committee on Judiciary
FROM: Kansas Judicial Council – Ronald W. Nelson
DATE: February 3, 2015
RE: Kansas Judicial Council Testimony on SB105

Senate Bill 105 incorporates the 2008 Uniform Interstate Family Support Act (UIFSA) into existing statute. Failure to pass this legislation during the 2015 legislative session may result in Kansas losing significant federal funding.

Summary

The Preventing Sex Trafficking and Strengthening Families Act was signed by the President of the United States in 2014. This act requires states to adopt the 2008 Uniform Interstate Family Support Act verbatim during the 2015 legislative session.¹ Timely passage of this legislation is a condition of continued eligibility for receipt for federal funds for state child support programs.² To this end, the Kansas Judicial Council's Family Law Advisory Committee incorporated the uniform law into existing statute as outlined in SB105. The majority of changes may be found in Sec. 57 through Sec. 69, which relate to foreign support orders.³ In addition to ensuring eligibility for federal funds, adoption of SB 105 will improve the enforcement of American child support orders abroad and will increase financial support of American children with parents outside of the country.⁴

¹ <https://www.congress.gov/bill/113th-congress/house-bill/4980>

² <http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20%282008%29>

³ <http://www.uniformlaws.org/shared/docs/interstate%20family%20support/UIFSA%20%282008%29%20Why%20States.pdf>

⁴ <http://www.uniformlaws.org/shared/docs/interstate%20family%20support/UIFSA%20%282008%29%20Why%20States.pdf>

History

The Uniform Interstate Family Support Act functions as a framework for the enforcement of family support orders. Senate Bill 105 incorporates two versions of UIFSA, because Kansas has yet to incorporate the 2001 uniform version of UIFSA. UIFSA 2001 encapsulated the early work of the new Hague Maintenance Convention. UIFSA 2001 also reinforced long standing principles. For instance, the 2001 amendments continue to explicitly recognize that tribunals may extend the principle of comity to foreign support orders.⁵ Additionally, the 2001 amendments strengthened the interrelationship between the assertion of jurisdiction over a nonresident and the continuing nature of personal jurisdiction for enforcement and modification of support orders.⁶ Long-arm jurisdiction and voluntary reciprocity are the general themes of UIFSA 2001.

UIFSA 2008

In 2008, the Uniform Law Commission incorporated provisions of the 2007 Hague Convention on the International Recovery of Child Support of Family Maintenance into state law.⁷ These new provisions established standardized processes for international child support cases. The Uniform Law Commission provided a draft with comments, and this version is available at http://www.uniformlaws.org/shared/docs/interstate%20family%20support/uifsa_final_08.pdf.

UIFSA 2008 built on the foundation provided by UIFSA 2001. The majority of these changes may be found in Sec. 57 through Sec. 69. There are many areas to highlight in these sections. For instance, each state determines the administrative agency to perform Title IV-D services for child support enforcement. The agency must comply with federal laws, and states must implement federal legislation in order to receive federal subsidies.⁸ Additionally, citizens may petition foreign tribunals without support enforcement agencies. Conversely, individuals living abroad may seek the establishment, recognition, and enforcement of child support or spousal support from courts in the United States.⁹ UIFSA 2008 also provides reasons child support orders could be refused such as being manifestly incompatible with public policy, unenforceable in the issuing country, and originally obtained through fraud.¹⁰ Finally, many foreign countries were concerned about long-arm jurisdiction, which was a predominant part of UIFSA 2001. In response, 2008 UIFSA adopts a rule of indirect jurisdiction. Indirect jurisdiction requires tribunals to register and enforce orders if certain basic jurisdictional requirements are met.¹¹

Conclusion

The Kansas Judicial Council recommends adoption of SB105 to comply with federal law and ensure continued eligibility to receive federal funding for child support enforcement.

⁵ http://www.uniformlaws.org/shared/docs/interstate%20family%20support/uifsa_2008_second%20draft_012009.pdf

⁶ http://www.uniformlaws.org/shared/docs/interstate%20family%20support/uifsa_2008_second%20draft_012009.pdf

⁷ <http://www.uniformlaws.org/shared/docs/interstate%20family%20support/UIFSA%20%282008%29%20Why%20States.pdf>

⁸ http://www.uniformlaws.org/shared/docs/interstate%20family%20support/uifsa_final_08.pdf

⁹ http://www.uniformlaws.org/shared/docs/interstate%20family%20support/uifsa_final_08.pdf

¹⁰ http://www.uniformlaws.org/shared/docs/interstate%20family%20support/uifsa_final_08.pdf

¹¹ http://www.uniformlaws.org/shared/docs/interstate%20family%20support/uifsa_final_08.pdf