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## FISCAL IMPACT REPORT

**SPONSOR** McSorley **ORIGINAL DATE** 02/14/11  
**LAST UPDATED** 03/11/11 **HB** \_\_\_\_\_

**SHORT TITLE** Amend Uniform Interstate Family Support Act **SB** 284/aSJC

**ANALYST** Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	NFI	\$.26-\$.78	\$.52-\$1.56	\$.78-\$2.34	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Children, Youth & Families Department (CYFD)  
Human Services Department (HSD)

### SUMMARY

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment makes changes that:

- Clarify a private “support enforcement agency” under the bill that is a private agency must be acting under contract with a public official or government entity;
- Specify the cost of translating any record filed with a court of this state, if not originally in English, must be paid by the state or foreign country issuing the record; and
- Revise the effective date to be 1) the date the United States deposits an instrument of ratification for the Convention which underlies the substance of this bill in the Hague Conference on private international law, as certified by the secretary of human services or 2) January 1, 2012, whichever is later.

#### Synopsis of Original Bill

Senate Bill 284 amends the Uniform Interstate Family Support Act (UIFSA), NMSA 1978, §§ 40-6A-100-903 to enact the model UIFSA 2008 amendments which are the result of the ratification by the U.S. Senate of The Hague Convention on the International Recovery of Child

Support and Other Forms of Family Maintenance (the Convention). These amendments clearly define the entities that have authority over international child support actions and set out certain requirements and procedures that govern those cases.

Section 32 recodifies existing NMSA 1978, section 40-6A-701, related to determination of parentage, as section 40-6A-402.

Sections 53 through 65 set forth for state tribunals the requirements necessary for registering, recognizing, enforcing and modifying foreign child support orders from countries that are parties to the Convention. In addition, Section 55 designates HSD as the recognized central authority to perform functions under the Convention.

This bill has a delayed effective date of January 1, 2012.

### **FISCAL IMPLICATIONS**

HSD reports no fiscal implications should this bill be enacted. The range of costs reflected in the table above is based on data provided by AOC and assumes two additional child support enforcement cases a year at a cost of \$263-783 per case in court and court staff time. The FY 12 number reflects the delayed effective date contained in this bill.

### **SIGNIFICANT ISSUES**

SB 284 reconciles current New Mexico law for international child support proceedings with laws adopted by other states and foreign nations. HSD advises that the adoption of these updates is mandatory for all U.S. states and territories.

AOC contributes this background information on the uniform act:

According to the National Conference of Commissioners on Uniform State laws, the 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.

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 or orders in states other than the issuing state (in particular, 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 the purpose of a support determination does not automatically submit to the jurisdiction of the responding state with regard to child custody or visitation.

Before the model act was initially created, parents living across state or international boundaries might face competing support orders from different states, confusion in modifying support orders across multiple states, reluctance by one state in enforcing another's orders, and general disrespect of orders by obligors. Congress stepped in through the major welfare reform act in 1996 to require states adopt the UIFSA or lose a portion of their federal funding to operate child support enforcement programs.

UIFSA also provides clearer guidance to state support agencies with regard to the redirection of support payments to a recipient'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 (e.g., a second state cannot modify an order to extend to age 21 if the issuing state limits support to age 18).

The AOC provides this information specifically as to the amendments contained in SB 284:

The Convention contains numerous provisions that establish uniform procedures for the processing of international child support cases. The updated model act as updated to comply with the Convention has been approved by the American Bar Association, and participants at The Hague conference understood that additional federal and state legislation would need to be enacted for the agreements to take effect.

The 2008 Convention amendments contained in SB 284 ensure that New Mexico's "long arm" extends to those foreign countries that have established reciprocal arrangements for child support with New Mexico, have enacted laws or procedures to issue and enforce support orders substantially similar to the procedures of the UIFSA, and have agreed to recognize Convention agreements. Such "long-arm" jurisdiction is critical when residents of two separate states or countries are involved in litigation involving child support or other family support. SB 284 sets out the "dos" and "don'ts" for New Mexico courts in such cases. The state's jurisdiction would be continuing and exclusive no matter where the parents reside, with few exceptions such as when the parties agree to transfer jurisdiction to another state, which assures that only one support order is in effect at any time.

The AOC further comments:

Enactment of the amendments to UIFSA will improve the enforcement of American child support orders abroad and will ensure that children residing in the US will receive the financial support due from parents wherever the parents reside.

Many people come to this country and this state to escape their financial difficulties, bringing those problems with them, be they unpaid child support, unsatisfied money judgments, or unhappy ex-spouses following them with foreign decrees they want our courts to enforce. On the other hand, many New Mexico residents are transferred overseas by their employer, making it difficult for them to obtain income support. Enforcement of support orders includes sending an income withholding order directly to an employer in another UIFSA state or nation.

By enacting SB 284, New Mexico courts will have continuing, exclusive jurisdiction over cases they have already adjudicated. Moreover, the courts would be able to enforce foreign orders, as several states already have done or are in the process of doing. SB 284 would also allow New Mexico courts and the HSD, as New Mexico's child support enforcement agency, to recognize administrative, quasi-judicial, and judicial orders of other countries. This latitude is much needed when those nations may have different legal systems than the U.S.

## **PERFORMANCE IMPLICATIONS**

HSD reports it will be able to process certain international child support enforcement cases more effectively and in accordance with the Convention. HSD will be able to provide services for more of these cases as over 70 countries now participate in Convention agreements.

## **TECHNICAL ISSUES**

HSD suggests:

1. Page 6, lines 10-12: Move “issued in another state or a foreign country” to follow “parentage” to clarify reference.
2. Page 7, line 19: Add “under contract to the support enforcement agency” following “private agency” to avoid conflict with agency regulation.
3. Page 71, line 13: Add as last sentence: “The cost of translation shall be borne by the issuing state or convention country.” to clarify which entity bears the cost burden.

## **ADMINISTRATIVE IMPLICATIONS**

HSD anticipates having to adopt procedural, processing and form changes for handling international cases.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

HSD advises that the state may lose federal funding in light of the federal government's mandate that all states enact these updates.

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