

Uniform Interstate Family Support Act 2008 (in 2016)

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In the next hour we will provide....

- An overview of changes in interstate practice due to passage of UIFSA 2008 – and UIFSA 2001

UIFSA 2008 Passed in MN What does it do?

Builds on prior Uniform Law Commission's updates to UIFSA versions plus provides new Article 7 to implement Hague Convention provisions for "International Recovery of Child Support and Other Forms of Family Maintenance." (11/23/2007)

- Article I – General Provisions
- Article II – Jurisdiction
- Article III – Civil Provisions of General Application
- Article IV – Establishment of Support Order or Determination of Parentage
- Article V – Enforcement of Support Order without Registration
- Article VI – Registration, Enforcement & Modification of Support Order

- **The above articles were updated under UIFSA versions 1996, 2001 and 2008.**
- **UIFSA 1996 and 2001 updates were NOT previously passed in MN.**

UIFSA 2008 : Article VII Support Proceeding Under Convention added to comport with obligations of the U.S. under the Hague Convention.

- Non-Hague orders: Articles I through VI
- Hague orders: Article VII



INTER-STATE PROCESSING UIFSA 2008 CHANGES

NON-HAGUE CONVENTION SITUATIONS
UIFSA ARTICLES 1 – 6



CIVIL PROVISIONS OF GENERAL APPLICATION Minn. Stat. §§ 518C.301 to 319



518C.312: Nondisclosure order no longer provided for. Use affidavit or declaration of the party.

- If party alleges in an affidavit or pleading **under oath** that the health, safety or liberty of a part or child would be jeopardized by disclosure of specific identifying information, the information must be sealed and not disclosed to the other party or public.
 - Under oath = penalty of perjury.
 - Information can still be disclosed after hearing, after considering the health, safety or liberty of a party or child if in the interest of justice.



- New UIFSA forms – Personal Identifiable Information (PII) form (See Handout)

518C.319: Receipt and Disbursement of Payments

- 2008 change to section 319 impacts income withholding processes *in some* cases.
- Section 319 will be addressed in the income withholding section.



ENFORCEMENT OF ORDER OF ANOTHER STATE

WITHOUT REGISTRATION

Minn. Stat. §§ 518C.501-507



Plus impact of
Minn. Stat. § 518C.319

Relevant Factors for IW in Interstate Situations

- Under both prior law and UIFSA 2008 several factors to consider, including:
 - Where support order issued. MN or other state?
 - If issued in another state, was it registered in MN?
 - Does obligor have sufficient contacts with MN to meet due process standards for taking obligor's property?
 - Where do the parties and child(ren) reside?
 - When/how can an agency **change the payee**.
 - **Change in payee not to be confused with redirection under Minn. Stat. 518A.46, subd. 7.**
 - Change in payee = which Central Payment Center payments to go to.
 - MN order: Minn. Stat. § 518A.46, subd. 5 (4).
 - Other state's order: Minn. Stat. 518C.319(b)

Relevant Factors for IW in Interstate Situations, cont.

The Income Withholding Form can constitute *either* an **ORDER** or a **NOTICE**

- Form is an income withholding **ORDER** when issued by an authorized IV-D **agency with jurisdiction and authority** to issue an Income Withholding Order.
 - MN authority: Minn. Stat. §§ 518A.46 subd. 2(b)(3) and 518A.53, subd. 7.
- Form is an income withholding **NOTICE** when sent by an individual party, attorney, or agency **without jurisdiction or authority** to issue an Income Withholding Order.
 - *Copy of the support order authorizing withholding must be attached.*

Minn. Stat. §§ 518C.501, 518C.502, 518C.5025, and 518C.507.

Income withholding to other states:

- **New:** 518C.501 – 507: addresses income withholding between **states**, not foreign countries.
- **New:** employers are not mandated to honor DIW from **foreign countries** and are not subject to same penalties for noncompliance.

Minn. Stat. §§ 518C.501, 518C.502, 518C.5025, and 518C.507 and 518C.508.

Repeal and renumbering:

- “Prior” **518C.502** *Administrative Enforcement Of Orders* **repealed** as was a **duplicate** of 508.
- **Renumbered** 518C.5025 as “new” section **502:** *Employer’s Compliance with Income Withholding Order of Another State.*
- **Repealed and Renumbered 518C.508 to be new 518C.507** *Administrative Enforcement of Orders*
 - Prior law did not have a section 507.

Minn. Stat. § 518C.507 (formerly 508)
Administrative Enforcement of Orders

- **New:** 507: replaced “may” with “if appropriate”
 - Upon receipt of documents to required to register the order from a party or support agency, the MN agency...
 - “ without initially seeking to register the order shall consider and **may, if appropriate,** use any administrative procedures authorized by the laws of this state to enforce a support order...”
- Consider what administrative enforcement remedies are authorized under MN law prior to registration of an order in MN.
 - No registration = no MN court action/file or order.

UIFSA 2008 (2001): 518C.319 CHANGE IN PAYEE –
NEW paragraphs (b) and (c)

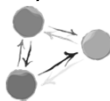
- The agency providing services to obligee can now request the agency in the **issuing state** change the payee to the **obligee’s state** Central Payment Center.
 - State that receives the payments must furnish upon request a certified statement of the amount and dates all payments received.
- **Limited only to cases in which obligor, obligee and child no longer live in the state that issued the support order.**



UNDERSTANDING “CHANGE IN PAYEE” IN INTER-STATE CASES.

Interaction of UIFSA sections 319, 507, and federal policy:

- **319:** Receipt/disbursement of payments, *including new change in payee provision.*
- **507:** Administrative enforcement of orders
- Federal Policy: OCSE Policy Interpretation Question PIQ-01-01



To help understand, consider differences in handling orders issued in MN vs. other state.

Example: DIW based on **MN court** order

- MN Agency can issue an administrative income withholding **Order based on the MN court order.**
 - If employer out of state = DIW.
- **Payee:** The MN court order either provides for payment to **MN Central Payment Center** or a MN IV-D agency administratively issues an IWO and changes the payee to the MN CPC, as authorized by Minnesota statutes.
 - Minn. Stat. § 518A.53, subd. 7 and
 - Minn. Stat. § 518A.46, subd. 2(3) and subd. 5(4).

Contrast: Other state's order being enforced by MN agency - and not registered in MN

Other state's order provides for payment to either that state's CPC, to Obligee, or is silent. MN agency wants payment to go to the MN CPC.

- **518C.507:** a MN IV-D agency "without initially seeking to register the order, shall consider, and if appropriate, use any administrative procedure authorized by the laws of this state to enforce..."

Question. Does Minn. Stat. § 518C.507 give the MN IV-D agency authority to issue an IWO and a change in payee, so that payments will go to the MN Central Payment Center?

Answer: **NO**, per federal policy, PIQ-01-01

Change of Payee: Federal and State Policy

PIQ-01-01, Use of the Federal Order/Notice to Withhold Income for Child Support, Q & A #3:

- IV-D staff *"is not authorized to administratively change the payee or the agency designated to receive payments from any destination in, or subsequently authorized in, an order issued in another state."* (See handout.)
- MN DHS-SIR: *DIW Policy* conforms with the PIQ.
 - MN order required before a MN agency can change the payment location to the MN CPC and proceed with DIW.

Options for a MN IV-D agency to enforce other state issued order in MN

1. Register the order in obligor's state - *which might be Minnesota.*

- Upon registration, order is enforceable in same manner as a Minnesota issued order. Minn. Stat. § 518C.603(b);

2. Request issuing state agency enforce their order.

- Issuing state sends IWO, receive payments, and then send the payments to MN CPC.

3. NEW: Seek change in payee under section 319 **if conditions met.**

- If obligee resides in MN and obligor & child no longer in issuing state: Issuing state can change payee to MN CPC. MN Agency sends an IW NOTICE (not Order) to employer with the other state's order and change in payee. Payments sent directly to MN CPC.

**SECTION 319 CHANGE IN PAYEE EXAMPLE:
TX issued Order. Obligor resides and works in CA
Obligee resides and requests services from MN**

- **MN** cannot administratively change payee. PIQ -01-01
- **MN** asks **TX** issue change payee to **MN CPC**. § 319
- **MN** sends I/W notice (*not order*) with copy of **TX** order **and** TX change in payee to **CA** employer.
- Employer sends payments directly to **MN CPC**.
- Obligor can contest in **TX** or register the order in **CA**. 518C.506.

- **Note:** Registration in MN not required if only providing notice of TX order and change of payee. Unless obligor has sufficient contacts with MN, registration may serve no purpose. MN may not meet requirements to exercise jurisdiction over obligor so as to issue an order (court or administrative order).
- **Remember International Shoe!**

Minn. Stat. § 518C.506: Process for Obligor to contest DIW in other state clarified.

- UIFSA 2008 clarifies method to contest DIW in the employer's state. Obligor may register the order in the employer's state.

- Language change to paragraph (a):

"An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state...."

» **Old:** in the same manner as if the order had been issued by a tribunal of this state. Section 518C.604 applies to the contest. (518C.604 = Choice of Law)

» **New** ... by registering the order in a tribunal of this state and filing a contest to that order as provided in sections 518C.601 to 518C.606, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state.



New Intergovernmental Forms



- Under prior and existing law, must use federal forms. **New federal forms coming.**
 - 8/4/2015 DCL 15-12: *Notice of Open Comment Period – Standard Intergovernmental Forms.* See Handout.
 - Updates existing forms. **Adds 3 new forms:**
 1. *Personal Identifiable Information (PII)*
 2. *Transmittal #1 Acknowledgment* (formerly part of Transmittal #1 Initial request)
 3. *Child Support Agency Request for Change of Payment Location Only pursuant to UIFSA Section 319(b).*

ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER AFTER REGISTRATION PART A. REGISTRATION AND ENFORCEMENT OF SUPPORT ORDER 518C.601- 518C.604



Changes due to UIFSA 2008: Registration Minn. Stat. § 518C.602

- Changes word “document” to “record.”
- Record traditionally refers to “paper” records. Expanded the meaning so as to include electronic transmission of documents.
- Need only ONE certified copy of the order to be registered (not 3).



Changes due to 2008:

Minn. Stat. § 518C.604, Choice of law clarified.

- **Law of the issuing state/foreign country governs:**
 - (1) the nature, extent, amount, and duration of payments under a registered order;
 - (2) The computation and payment of arrears and accrual of interest on arrears; and
 - (3) The existence and satisfaction of other obligations under the order.
- **Longer of the 2 state's statute of limitations applies.**
- **Responding state's law applies to:** procedures/remedies for enforcement of current support and collection of arrears/interest due under another state's registered order.
- **If more than one state has order,** after either state has determined which order is controlling and issues an order consolidating arrears, the controlling order's state's law prospectively applies.

**ENFORCEMENT AND MODIFICATION
OF SUPPORT ORDER AFTER REGISTRATION
PART C. REGISTRATION AND MODIFICATION
OF CHILD SUPPORT ORDER
Minn. Stat. §§ 518C.609-518C.616**



**Changes due to UIFSA 2008: Minn. Stat. § 518C.611:
Modification of child support order of another state.**

Consent to retain jurisdiction to modify:

- Original 1996 version: parties could not consent to MN retaining jurisdiction to modify. MN had 1996 version until UIFSA 2008 enacted.
- UIFSA 2001 allowed issuing state to continue to have modification jurisdiction by joint consent of the parties even after all parties and child moved out of state. §205(a)(2) UIFSA (2001).
 - Wareham v. Wareham, 762 N.W.2d 562 (Minn. Ct. App. 2010.)
 - Legislative fix in 2012 to 518C.205 to permit parties to consent.



UIFSA 2008, which incorporates 2001 changes, permits the issuing state to modify when neither parent or child remains in issuing state, but files written consents. 518C.611(2).

**Changes due to UIFSA 2008: Minn. Stat. § 518C.611:
Modification of child support order of another state,
cont.**

- Clarifies that the duration of support is based on the state that issued the initial controlling order. Fulfillment of that duty of support precludes imposition of a further obligation of support. 518C.611(d).
- Adds new provision (f): Notwithstanding paragraphs (a) to (d) and section 518C.201, paragraph (b), a tribunal that issue an order retains jurisdiction to modify if:
 - (1) one party resides in another state; and
 - (2) **the other party resides outside the United States.**

INTERNATIONAL CASES

Under Sections I – VI
Under Section VII (Hague
Convention)

International Treaty

- The Preventing Sex Trafficking and Strengthening Families Act (2014) requires all states to enact any amendments to UIFSA 2008. Minnesota currently has adopted UIFSA 2008 into Minn. Stat. Ch. 518C.
- UIFSA 2008 incorporates the provisions of the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

International Treaty

- The treaty is not self-executing, and legislation was required to implement.
- All states enacted UIFSA 2008 by May 2016. Next: President to sign the instrument of ratification. Then instrument is deposited with the Hague. to become a party to the treaty.

International Treaty

- Why did the United States support this?
- Country by Country negotiations are difficult and time consuming and the US has only federal reciprocity agreements with 14 countries and 12 Canadian Provinces.
 - More US families will receive support with no legal fees.
 - US could ensure that the treaty would meet due process and legal requirements.

International Treaty

What countries have ratified the treaty?

Website:
<https://www.hcch.net/en/instruments/conventions/full-text/?cid=131>

International Treaty

What does this Treaty do?

- Requires the U.S. to recognize and enforce child support orders that are based on U.S. due process requirements.
- Before a country can ratify the treaty, the country must provide evidence that its laws and procedures meet the treaty requirements.
- Post treaty review and monitoring of countries performance.

International Treaty- 2008 changes

States already use UIFSA sections I – VI (518C.101 – 616) to process international cases.

UIFSA 2008 just adds Section VII to meet the treaty requirements.

International Treaty- 2008 changes Minn. Stat. § 518C.101

“State” now means a U.S. state, territory, or Indian nation or tribe.

- ❖Exception: in terms of the Convention, a “state” is a country

**International Treaty- 2008 changes
Minn. Stat. § 518C.101, cont.**

“Foreign country” means:

1. Bi-Lateral agreement for Federal reciprocity
2. State-level agreement for reciprocity
3. Enacted law or established procedures which are substantially similar to UIFSA; or
4. Convention Country

**International Treaty- 2008 changes
Minn. Stat. § 518C.105**

State agencies will no longer be able to provide child support services to anyone who applies from any country.

Section 105:

(a) A tribunal of this state shall apply sections 518C.101 to 518C.616 and, as applicable, sections 518C.701 to 518C.713, to a support proceeding involving:

- (1) a foreign support order;
- (2) a foreign tribunal; or
- (3) an obligee, obligor, or child residing in a foreign country.

**International Treaty- 2008 changes
Minn. Stat. § 518C.105, cont.**

(b) A tribunal of this state that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of sections 518C.101 to 518C.616.

(c) Sections 518C.701 to 518C.713 apply only to a support proceeding under the convention. In such a proceeding, if a provision of sections 518C.701 to 518C.713 is inconsistent with sections 518C.101 to 518C.616, sections 518C.701 to 518C.713 control.

International Treaty- 2008 changes
Minn. Stat. 518C § 201, 202 and 210

The treaty provides that if a tribunal does not recognize a support order because there was a lack of personal jurisdiction, and the debtor is a resident of the state, it will take all appropriate measures to establish an enforceable support order.

International Treaty- 2008 changes
Minn. Stat. § 518C.307

- **Under prior law** there was confusion regarding date to apply for converting the foreign country's order amount into a U.S. dollar amount (for example, the date the order was entered, the date request received, etc.)
- **Under UIFSA 2008** = Currency conversion at time of registration.

International Treaty- 2008 changes

Sample language for Affidavit of Arrears submitted with Registration documents:

"As of [date], the currency exchange rate is ____ [pesos] per U.S. Dollar. The exchange rate is based on the U.S. Department of Treasury, Bureau of Fiscal Service exchange rate information attached and incorporated to this Affidavit. The monthly basic (child support) obligation of ____ [pesos] converts to the equivalence of \$ ____ U.S. Dollars per month."

- Attach exchange rate printout from Bureau of the Fiscal Service, US Department of the Treasury, current rates website:
<https://fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/currentRates.htm>
- See attachment for sample form.

**International Treaty- 2008 changes
Minn. Stat. 518C §§ 605-607 and 707**

A parent continues to have 20 days to challenge recognition and enforcement in Sections 605, 606 and 607 for registrations between states

Section 707 (cases under the treaty) time frame increased to **60 days** to accommodate for the international residence of parties.

**International Treaty- 2008 changes
Minn. Stat. § 518C.706 Recognition and Enforcement**

New Legal Defenses to Registration under 605-607:

- Recognition and enforcement of order is manifestly incompatible with public policy, including failure of issuing tribunal to observe minimum standards of due process;
- Issuing tribunal lacked personal jurisdiction consistent with Section 201;
- Order is not enforceable in issuing country
- If default order, there was a lack of due process re: notice & opportunity to be heard.

**International Treaty- 2008
Miscellaneous changes**

- Support order from a country that has acceded to the convention must be registered immediately unless a tribunal in the state where registration sought determines the order goes against the policy of the state. Minn. Stat. § 518C.708
- Once registered, the non-registering party receives notice and has opportunity to challenge on limited grounds.

International Treaty- 2008 Miscellaneous changes

- Unless grounds for denying recognition are established, the order is enforced.
- Documents submitted must be in the original language, plus a translated version if the original language is not English. Minn. Stat. § 518C.713

International Cases- Tips and Trips

Tips:

- Use "one state process" (long arm) if possible.
- Use e-mail if possible
- See OCSE Caseworker's Guide to Processing Cases with Foreign Reciprocating Countries
- Websites with wage information (E.g. Norway.)
Use "translate this page" on Google.

Trip-ups:

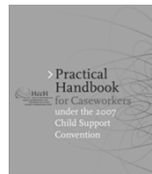
- Language barrier
- Time zone differences
- Format of dates
- Exchange rates

HELPFUL RESOURCES

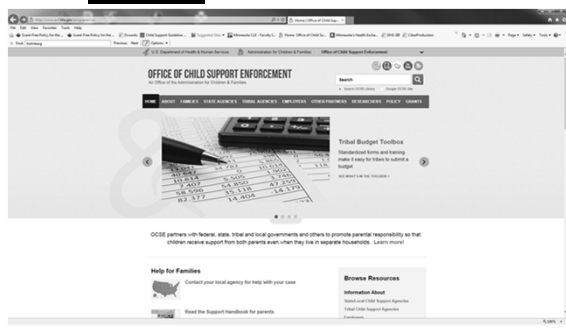


Handbook

- Handbook published by The Hague Conference on Private International Law (2013).
 - http://www.hcch.net/index_en.php?act=publications.details&pid=6095&dtid=3



OCSE website: <http://www.acf.hhs.gov/programs/css>



<http://www.acf.hhs.gov/programs/css/international>



<https://ocsp.acf.hhs.gov/irq/welcome.html>

OFFICE OF CHILD SUPPORT ENFORCEMENT
An Office of the Administration for Children & Families

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Intergovernmental Reference Guide (IRG): Policy Profiles and Contacts

American Samoa	Commonwealth of the Northern Mariana Islands	Federated States of Micronesia
Guam	Puerto Rico	Republic of Palau
		Republic of the Marshall Islands
		Virgin Islands

To view a federally funded child support program:

<http://www.loc.gov/law/help/guide/nations.php>



Other Helpful Website Tools:

- Hague Convention on the International Convention on Child Support:
http://hcch.e-vision.nl/index_en.php?act=progress.listing&cat=3
- United Nations International Law:
<http://www.un.org/en/globalissues/internationalaw/>
- US Department of State: <http://www.state.gov/s/l/c8183.htm>
- National Child Support Enforcement Association:
<http://www.ncsea.org/resources-info/international-child-support/>
- Minnesota Supreme Court – Certified Translators:
<http://www.mncourts.gov/Help-Topics/Court-Interpreter-Program.aspx>

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*Thank you for
listening*
