



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011**

ON THE FOLLOWING MEASURE:

H.B. No. 871, H.D. 1, RELATING TO THE UNIFORM INTERSTATE FAMILY SUPPORT ACT.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 17, 2011 TIME: 2:00 p.m.

LOCATION: Conference Room 325

TESTIFIER(S): David M Louie, Attorney General, or
Garry L. Kemp, Administrator, Child Support
Enforcement Agency

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General opposes this bill.

The provisions of this bill seek to update the Uniform Interstate Family Support Act (UIFSA) to reflect the changes made to the Act by the National Conference of Commissioners on Uniform State Laws and to also include the requirements of the Hague Convention of the International Recovery of Child Support and Other Forms of Family Maintenance.

Currently, the State of Hawaii is in compliance with section 466(f) of the Social Security Act (42 U.S.C. § 666(f)) that specifically requires states to adopt the 1996 version of UIFSA. If this bill is passed, the State will be out of compliance with existing federal law and will be required to apply for and be granted an exemption by the United States Secretary of the Department of Health and Human Services. As such, we believe that this bill is premature and should only be enacted when federal law is changed to require all states to adopt this version of UIFSA. If legislation before Congress requiring the adoption of this version of UIFSA is passed, the

State will have two years after the enactment to make the necessary changes to comply with federal law.

For your information, only five states, Maine, Nevada, North Dakota, Tennessee, and Wisconsin have enacted this version of UIFSA according to the Uniform Law Commission Reference Book. These states are out of compliance with federal law and are required to apply for and be granted an exemption.

In addition, there are inconsistencies in the wording of the bill as currently drafted and it does not reflect how processing of interstate requests actually takes place in this State. If the committee decides not to hold this bill, we respectfully request that the committee adopt the following amendments.

The definition of "initiating state" beginning on page 3, line 18 (amending section 576B-102, Hawaii Revised Statutes), is being stricken, but the reference to "initiating state" in section 576B-313(b), Hawaii Revised Statutes (page 38, line 19), remains. The definition of "initiating state" should not be stricken but amended to include additional language consistent with the uniform act. If the definition of "initiating state" is not stricken, it should be amended to read as follows:

"Initiating state" means a state from which a [proceeding] petition or comparable pleading is forwarded or in which a [proceeding] petition or comparable pleading is filed for forwarding to [a responding state under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act] another state or foreign country."

Alternatively, section 576B-313(b), Hawaii Revised Statutes (beginning on page 38, line 13), should be amended to read as follows:

"(b) If an obligee prevails, a responding tribunal of this State may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the ~~[initiating or]~~ state from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or foreign country, the responding state, or foreign country, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses."

Because of the changes made to the definitions of "register" and "registering tribunal" in section 576B-102, Hawaii Revised Statutes (page 6, beginning from line 12), and the new sections dealing with the Hague Convention requirements in section 576B-701, Hawaii Revised Statutes (article 7, beginning on page 67), section 576B-103(a), Hawaii Revised Statutes (page 9, lines 13 through 17), does not accurately describe the responsibilities of the Child Support Enforcement Agency, the Family Court, and the Office of Child Support Hearings as tribunals of this State.

This section should be amended to indicate that the Family Court is the tribunal for registering a support order issued in another state or foreign country. It should also state that the Child Support Enforcement Agency is the registering tribunal for the receipt and processing of all registration requested by another state's support enforcement agency operating under Title IV-D, by a foreign country, or by an individual who has applied for child support enforcement agency services. The Family Court is the registering tribunal for all other requests.

Section 576B-103, Hawaii Revised Statutes (beginning on page 9, line 12) should be amended to read as follows:

~~"[~~§576B-102~~ Tribunals of State.] The family court, the child support enforcement agency as defined by the registering tribunal in section 576B-101, and the office of child support hearings are the tribunals of this State.]~~

§576B-103 State tribunal and support enforcement agency.

(a) The family court is the tribunal in which all support orders issued in another state or a foreign country are filed for the purposes of registering the order in this State.

(b) The child support enforcement agency established by section 576D-2 is the registering tribunal for the receipt and processing of all registration requests received from another state's support enforcement agency operating under Title IV-D of the federal Social Security Act, a foreign country, or an individual who has applied for Title IV-D services. The family court is the registering tribunal for all other requests.

(c) For all other purposes, the family court, the child support enforcement agency established by section 576D-2, and the office of child support hearings are the tribunals of this State.

(d) The child support enforcement agency established by section 576D-2 is the support enforcement agency of this State."

To be consistent with the uniform act and with the reference in section 576B-307(b), Hawaii Revised Statutes (page 32, line 3), section 576B-307(a), Hawaii Revised Statutes (beginning on page 31, line 21), should be amended to read as follows:

"(a) [The child] A support enforcement agency of this State, upon request, shall provide services to a petitioner in a proceeding under this chapter."

To be consistent, the other references in the bill to the Child Support Enforcement Agency should be amended to specify "established by section 576D-2".

Section 576B-310(a), Hawaii Revised Statutes (beginning on page 35, line 7), should be amended to read as follows:

"(a) The child support enforcement agency established by section 576D-2 is the state information agency under this chapter."

Section 576B-704(a), Hawaii Revised Statutes (beginning on page 70, line 2), should be amended to read as follows:

"(a) In a support proceeding under this article, the child support enforcement agency established by section 576D-2 shall:

- (1) Transmit and receive applications; and
- (2) Initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this State."

Section 576B-705(d), Hawaii Revised Statutes (beginning on page 72, line 12), should be amended to read as follows:

"(d) A petitioner filing a direct request is not entitled to assistance from the child support enforcement agency established by section 576D-2."

Section 576B-708(c) (2), Hawaii Revised Statutes (beginning on page 78, line 4), should be amended to read as follows:

"(2) The child support enforcement agency established by section 576D-2 shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under section 576B-704."

We respectfully request that the members of the Committee hold this bill or consider the above proposed amendments if this bill is to be passed.

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

ON H.B. NO. 871, H.D. 1

RELATING TO THE UNIFORM INTERSTATE FAMILY SUPPORT ACT.

BEFORE THE HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 17, 2011, at 2:00 p.m.
Conference Room 325, State Capitol

PERSON(S) TESTIFYING: KEVIN SUMIDA or KEN TAKAYAMA, Commissioners
Commission to Promote Uniform Legislation

WEB: <http://www.capitol.hawaii.gov/emailtestimony>

To Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Committees:

My name is Kevin Sumida and I am testifying on behalf of the Commission to Promote Uniform Legislation, which supports passage of the **UNIFORM INTERSTATE FAMILY SUPPORT ACT (“UIFSA”)**.

Background. UIFSA, originally promulgated in 1996 and amended in 2001, 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. It limits child and family support orders to a single state, eliminating interstate jurisdictional disputes.

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 not 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 Present Legislation. Currently, Hawaii's version of UIFSA includes only the original 1996 version. **H.B. No. 871** incorporates amendments added in 2001 as well as the latest amendments made in 2008 which modify the current version of UIFSA's international provisions to comport with the obligations of the United States under the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, which was ratified by the United States Senate in 2010. The amendments give greater enforcement of U.S. orders abroad; also, foreign orders will be recognized and enforced like orders of other American states.

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 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 by two years after 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 will result in the loss of this important federal funding.

The federal government is poised to move forward with the implementing legislation but it has yet to be introduced. Of the other states that are actively pursuing enactment of UIFSA (Missouri, New Mexico, Washington, Utah, and Rhode Island) several are going forth with *conditional* implementation language. For example, New Mexico and Missouri are using the following:

Shall become effective upon the United States filing its instrument of ratification of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, adopted at the Hague Conference on Private International Law on November 23,2007.

This language has also been used in Nevada, North Dakota, Tennessee, and Wisconsin.

States that have already enacted UIFSA with the 2008 revisions include Maine, Nevada, North Dakota, Tennessee, and Wisconsin.



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**TESTIMONY OF THE FAMILY LAW SECTION, HAWAII STATE
BAR ASSOCIATION, IN SUPPORT OF HOUSE BILL 871,
RELATING TO THE UNIFORM INTERSTATE FAMILY SUPPORT
ACT**

Committee on Judiciary
Rep. Gilbert S.C. Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair
Conference Room 325, State Capitol
February 17, 2011, 2:30 p.m.

Good morning Representatives:

My name is Steven L. Hartley and I am the Vice Chair/Chair Elect of the Family Law Section of the Hawaii State Bar Association. I submit this written testimony on behalf of the Family Law Section.

The Family Law Section is comprised of over one hundred attorneys who practice law in the Family Court. The majority of us handle all types of family law matters, including divorce, paternity, domestic violence and guardianship cases. As a Section, our testimony represents the views of our members.

In this regard, we strongly support HB 871 as a necessary means to assist our clients in enforcing and collecting child support from obligors who travel abroad to escape their "state-side" obligations.

Thank you for allowing us to present our testimony.