

Amendment No. 72

Assembly Amendment to Assembly Bill No. 13 (BDR 11-373)

Proposed by: Assembly Committee on Judiciary

Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

BJF/BAW



Date: 3/31/2015

A.B. No. 13—Revises provisions governing support enforcement to ensure compliance with federal law. (BDR 11-373)



ASSEMBLY BILL NO. 13—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE DIVISION OF WELFARE
AND SUPPORTIVE SERVICES)

PREFILED DECEMBER 20, 2014

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing support enforcement to ensure compliance with federal law. (BDR 11-373)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to support; revising provisions of the Uniform Interstate Family Support Act; revising the effective date of certain provisions of the Act relating to foreign support orders, foreign tribunals and certain persons residing in foreign countries; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

In 1997, Nevada enacted the Uniform Interstate Family Support Act to establish the procedures and jurisdictional requirements regarding the issuance, enforcement and modification of interstate child-support and spousal-support orders. (Chapter 489, Statutes of Nevada 1997, pp. 2311-29) In 2009, Nevada enacted certain amendments to the Act to provide that the provisions of the Act apply to foreign support orders, foreign tribunals, and obligees, obligors and children residing in foreign countries. (NRS 130.0902-130.802; chapter 47, Statutes of Nevada 2009, pp. 119-40) The effective date of these amendments is the date on which The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance is ratified by the President and the United States deposits its instrument of ratification. (Chapter 47, Statutes of Nevada 2009, p. 140) **Sections 3 and 4** of this bill make these amendments effective on July 1, 2015, to comply with the federal law requiring that the Act, as amended in 2008, be in effect in this State not later than that date as a condition for the receipt of certain federal funds for support enforcement efforts. (42 U.S.C. § 654(20)(A), 42 U.S.C. § 666(f); Pub. L. No. 113-183, 128 Stat. 1919) **Sections ~~1 and 2~~ 1-2.7** of this bill make certain amendments to existing law to match the language of the Act.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 130.10107 is hereby amended to read as follows:
2 130.10107 “Child-support order” means a support order for a child, including
3 a child who has attained the age of majority under the law of the issuing state ~~or~~ **or**
4 **foreign country.**

5 **Sec. 1.1. NRS 130.10127 is hereby amended to read as follows:**
6 130.10127 “Income-withholding order” means an order or other legal process
7 directed to an obligor’s employer ~~of an obligor~~, **as defined in NRS 130.10115**, to
8 withhold support from the income of the obligor.

9 **Sec. 1.2. NRS 130.103 is hereby amended to read as follows:**
10 130.103 1. Remedies provided by this chapter are cumulative and do not
11 affect the availability of remedies under other law or the recognition of a foreign
12 support order on the basis of comity.

13 2. This chapter does not:
14 (a) Provide the exclusive method of establishing or enforcing a support order
15 under the law of this State; or

16 (b) Grant a tribunal of this State jurisdiction to render judgment or issue an
17 order relating to child custody or visitation in a proceeding under this chapter.

18 **Sec. 1.3. NRS 130.2025 is hereby amended to read as follows:**
19 130.2025 A tribunal of this State exercising personal jurisdiction over a
20 nonresident in a proceeding under this chapter or under other law of this State
21 relating to a support order or in a proceeding recognizing a foreign support order
22 may receive evidence from outside this State pursuant to NRS 130.316,
23 communicate with a tribunal outside this State pursuant to NRS 130.317 and obtain
24 discovery through a tribunal outside this State pursuant to NRS 130.318. In all
25 other respects, NRS 130.301 to ~~130.712~~ **130.614**, inclusive, do not apply and the
26 tribunal shall apply the procedural and substantive law of this State.

27 **Sec. 1.4. NRS 130.304 is hereby amended to read as follows:**
28 130.304 1. Upon the filing of a petition authorized by this chapter, an
29 initiating tribunal of this State shall forward the petition and its accompanying
30 documents:

31 (a) To the responding tribunal or appropriate support-enforcement agency in
32 the responding state; or

33 (b) If the identity of the responding tribunal is unknown, to the state
34 information agency of the responding state with a request that they be forwarded to
35 the appropriate tribunal and that receipt be acknowledged.

36 2. If requested by the responding tribunal, a tribunal of this State shall issue a
37 certificate or other document and make findings required by the law of the
38 responding state. If the responding tribunal is in a foreign country, upon request the
39 tribunal of this State shall specify the amount of support sought, convert that
40 amount into the equivalent amount in the foreign currency under the applicable
41 official or market exchange rate as publicly reported and provide any other
42 documents necessary to satisfy the requirements of the responding foreign tribunal.

43 **Sec. 1.5. NRS 130.313 is hereby amended to read as follows:**
44 130.313 1. Except as otherwise required pursuant to Section 16 of Article 6
45 of the Nevada Constitution, a petitioner must not be required to pay a filing fee or
46 other costs.

47 2. If an obligee prevails, a responding tribunal of this State may assess against
48 an obligor filing fees, reasonable attorney’s fees and other costs, expenses for
49 necessary travel and other reasonable expenses incurred by the obligee and the
50 witnesses of the obligee. The tribunal may not assess fees, costs or expenses against
51 the obligee or the support-enforcement agency of either the initiating or the
52 responding state or foreign country, except as otherwise provided by other law.
53 Attorney’s fees may be taxed as costs and may be ordered to be paid directly to the

attorney, who may enforce the order in his or her own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

3. The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding pursuant to NRS 130.601 to ~~NRS 130.712~~, 130.614, inclusive, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change. This presumption is subject to rebuttal.

4. All attorney's fees and other costs and expenses awarded to and collected by a district attorney pursuant to this section must be deposited in the general fund of the county and an equivalent amount must be allocated to augment the county's program for the enforcement of support obligations.

Sec. 1.6. NRS 130.316 is hereby amended to read as follows:

130.316 1. The physical presence of a nonresident party who is a natural person in a tribunal of this State is not required for the establishment, enforcement or modification of a support order or the rendition of a judgment determining parentage of a child.

2. An affidavit, a document substantially complying with federally mandated forms or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule in NRS 51.065 if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing outside this State.

3. A copy of the record of child-support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted therein and is admissible to show whether payments were made.

4. Copies of bills for testing for parentage of a child, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 20 days before trial are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary and customary.

5. Documentary evidence transmitted from outside this State to a tribunal of this State by telephone, telecopier or other electronic means that do not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

6. In a proceeding under this chapter, a tribunal of this State shall permit a party or witness residing outside this State to be deposed or to testify under penalty of perjury by telephone, audiovisual means or other electronic means at a designated tribunal or other location. A tribunal of this State shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony.

7. In a civil proceeding under this chapter, if a party called to testify refuses to answer a question on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

8. A privilege against the disclosure of communications between husband and wife does not apply in a proceeding under this chapter.

9. The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.

10. A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

Sec. 1.7. NRS 130.317 is hereby amended to read as follows:

130.317 A tribunal of this State may communicate with a tribunal outside this State in a record, or by telephone, electronic mail or other means, to obtain information concerning the laws ~~of that state or foreign country or political subdivision,~~ the legal effect of a judgment, decree or order of that tribunal, and the

status of a proceeding. A tribunal of this State may furnish similar information by similar means to a tribunal outside this State.

Sec. 1.8. NRS 130.501 is hereby amended to read as follows:

130.501 An income-withholding order issued in another state may be sent by or on behalf of the obligee or by a support-enforcement agency to ~~for~~ the person defined as the obligor's employer ~~for an obligor in this State~~ under NRS 130.10115 without first filing a petition or comparable pleading or registering the order with a tribunal of this State.

Sec. 1.9. NRS 130.506 is hereby amended to read as follows:

130.506 1. 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 by registering the order in a tribunal of this State and filing a contest to that order as provided in NRS 130.601 to ~~130.712,~~ 130.614, inclusive, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this State.

2. The obligor shall give notice of the contest to:

- (a) A support-enforcement agency providing services to the obligee;
- (b) Each employer that has directly received an income-withholding order relating to the obligor; and
- (c) The person designated to receive payments in the income-withholding order, or if no person is designated, to the obligee.

3. ~~The obligor has the burden of proving one or more of the following defenses:~~

- ~~(a) The tribunal that issued the order lacked personal jurisdiction over the obligor;~~
- ~~(b) The order was obtained by fraud;~~
- ~~(c) The order has been vacated, suspended, stayed or modified by a later order;~~
- ~~or~~
- ~~(d) There is a mistake of fact as to the amount of the order or the identity of the obligor.~~

4. ~~The provisions of NRS 130.604 apply to the contest. If the tribunal determines:~~

- ~~(a) Any of the defenses presented pursuant to subsection 3 in favor of the obligor, it shall issue an order to stay the withholding;~~
- ~~(b) None of the defenses presented pursuant to subsection 3 in favor of the obligor, it shall order the employer to proceed with the withholding, and may assess costs and attorney's fees against the obligor.~~

~~5.~~ The tribunal shall provide the parties and employer with notice of its decision within 45 days after the obligor received a copy of the order pursuant to NRS 130.502.

Sec. 1.95. NRS 130.602 is hereby amended to read as follows:

130.602 1. Except as otherwise provided in NRS 130.706, a support order or income-withholding order of another state or a foreign support order may be registered in this State by sending the following records to the appropriate tribunal of this State:

- (a) A letter of transmittal requesting registration and enforcement;
- (b) Two copies, including one certified copy, of the order to be registered, including any modification of the order;
- (c) A sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;
- (d) The name of the obligor and, if known:
 - (1) The address and social security number of the obligor;

(2) The name and address of the employer of the obligor and any other source of income of the obligor; and

(3) A description and the location of property of the obligor in this State that is not exempt from execution; and

(e) Except as otherwise provided in NRS 130.312, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

2. On receipt of a request for registration, the registering tribunal shall cause the order to be filed as an order of a tribunal of another state or a foreign ~~country,~~ support order, together with one copy of the documents and information, regardless of their form.

3. A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this State may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

4. If two or more orders are in effect, the person requesting registration shall:

(a) Furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;

(b) Specify the order alleged to be the controlling order, if any; and

(c) Specify the amount of consolidated arrears, if any.

5. A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

Sec. 2. NRS 130.703 is hereby amended to read as follows:

130.703 The ~~governmental entity of this State~~ *Division of Welfare and Supportive Services of the Department of Health and Human Services* is recognized as the agency designated by the United States central authority ~~may~~ to perform specific functions under the Convention.

Sec. 2.3. NRS 130.704 is hereby amended to read as follows:

130.704 1. In a support proceeding under NRS 130.7011 to 130.713, inclusive, the ~~governmental entity of this State designated pursuant to NRS 130.703~~ *Division of Welfare and Supportive Services of the Department of Health and Human Services* shall:

(a) Transmit and receive applications; and

(b) Initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this State.

2. The following support proceedings are available to the obligee under the Convention:

(a) Recognition or recognition and enforcement of a foreign support order;

(b) Enforcement of a support order issued or recognized in this State;

(c) Establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child;

(d) Establishment of a support order if recognition of a foreign support order is refused under paragraphs (b), (d) or (i) of subsection 2 of NRS 130.708;

(e) Modification of a support order of a tribunal of this State; and

(f) Modification of a support order of a tribunal of another state or a foreign country.

3. The following support proceedings are available under the Convention to an obligor against which there is an existing support order:

(a) Recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this State;

(b) Modification of a support order of a tribunal of this State; and

(c) Modification of a support order of a tribunal of another state or a foreign country.

4. A tribunal of this State may not require security, bond or deposit, however described, to guarantee the payment of costs and expenses in proceedings under the Convention.

Sec. 2.7. NRS 130.710 is hereby amended to read as follows:

130.710 1. Except as otherwise provided in subsections 3 and 4, a tribunal of this State shall recognize and enforce a foreign support agreement registered in this State.

2. An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by:

(a) A complete text of the foreign support agreement; and

(b) A record stating that the foreign support agreement is enforceable as ~~a decision~~ an order of support in the issuing country.

3. A tribunal of this State may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.

4. In a contest of a foreign support agreement, a tribunal of this State may refuse recognition and enforcement of the agreement if it finds:

(a) Recognition and enforcement of the agreement is manifestly incompatible with public policy;

(b) The agreement was obtained by fraud or falsification;

(c) The agreement is incompatible with a support order involving the same parties and having the same purpose in this State, another state or a foreign country if the support order is entitled to recognition and enforcement under this chapter in this State; or

(d) The record submitted under subsection 2 lacks authenticity or integrity.

5. A proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or a foreign country.

Sec. 3. Section 90 of chapter 47, Statutes of Nevada 2009, as amended by chapter 28, Statutes of Nevada 2011, at page 90, is hereby amended to read as follows:

Sec. 90. The amendatory provisions of this act apply to proceedings to establish a support order to determine parentage of a child or to register, recognize, enforce or modify a prior support order, determination or agreement, whenever issued or entered, which are commenced on or after ~~the date that the provisions of The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance is ratified by the President and the United States deposits its instrument of ratification.~~ July 1, 2015.

Sec. 4. Section 91 of chapter 47, Statutes of Nevada 2009, at page 140, is hereby amended to read as follows:

Sec. 91. This act becomes effective on ~~the date that the provisions of The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance is ratified by the President and the United States deposits its instrument of ratification.~~ July 1, 2015.

Sec. 5. Section 5 of chapter 414, Statutes of Nevada 2013, at page 2271, is hereby amended to read as follows:

Sec. 5. 1. This section and sections 1, 2 and 3 of this act become effective on October 1, 2013.

2. ~~Section 3 of this act expires by limitation on the date that the provisions of The Hague Convention on the International Recovery of~~

~~Child Support and Other Forms of Family Maintenance are ratified by the President and the United States deposits its instrument of ratification.~~

~~—3—~~ Section 3.5 of this act becomes effective on ~~{the date that the provisions of The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance are ratified by the President and the United States deposits its instrument of ratification.}~~ July 1, 2015.

Sec. 6. 1. This section and sections 3, 4 and 5 of this act become effective upon passage and approval.

2. Sections 1 ~~and 2~~ to 2.7, inclusive, of this act become effective on July 1, 2015.