

2009 SENATE HUMAN SERVICES

SB 2072

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2072

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 1-12-2009

Recorder Job Number: 6797

Committee Clerk Signature

*Mary K. Monson*

Minutes:

**Senator J. Lee** opened the hearing on SB 2072 relating to the Uniform Interstate Family Support Act.

**Judge Gail Hagerty** – Uniform Law Commissioner – See attached testimony #1.

The old legislation defines state to include foreign countries. In order to make this all work there is now a definition for foreign countries.

**Senator J. Lee** asked if we have an agreement with Canada right now.

**Judge Hagerty** replied that we have a bilateral agreement and so are operating under different bilateral agreements. This is an effort to do it better but we are currently collecting child support in international situations.

**Senator Dever** asked if this is positive for ND.

**Judge Hagerty** said it is and it is helpful in that it will improve uniformity.

**Senator Heckaman** asked if she could give examples of holding some of our funding for other programs if we don't conform.

**Judge Hagerty** said she couldn't give example but this would be mandated by the Senate and that is the way they enforce those mandates.

**Senator J. Lee** then offered an example citing the Brady Bill a few years ago. (meter 07:50)

**Judge Hagerty** added that as a Uniform Law Commissioner they feel they are kind of state's rights people. What they are trying to do is identify areas where the states should have uniform laws and then have the state draft those laws, enact them, and tweak them as they might need to in order to fit their situation.

**Jim Fleming** – Deputy Director and Chief Legal Counsel of the Child Support Enforcement Program. He reported that they don't have any issues with the Uniform Law. He thinks this will cut down one less lengthy bill to look at next session if the Hague Convention is adopted. He went on to explain some history of the Uniform Law. He also talked about the difference between the 2001 version and the 2008 version which is how it treats foreign countries. The state continues to include an Indian nation. States are required to enact ERISA, tribes are not. When a tribal court in ND issues a child support order and makes an issue of income withholding order to the state, the state must honor it.

The Dept. is neutral on this bill. They see the benefit of enacting with a contingent effective date which is really the key.

**Senator Dever** wondered why it needed to be passed now instead of after the Congress passes it.

**Judge Hagerty** explained that they had worked with people from the state dept. and people from Canadian Provinces and Mexico over a period of time. They needed to have this language in place before they could recommend ratification of the Hague convention.

There was no opposing testimony.

**Senator J. Lee** asked Mr. Fleming to give an update on the change and efforts with the tribal child enforcement issues.

**Mr. Fleming** shared some information about working with the tribal nation . (meter 17:30).

**Senator J. Lee** closed the hearing on SB 2072.

**Senator Pomeroy** made a motion for a do pass on SB2072.

Seconded by **Senator Heckaman**.

**Senator Dever** said he would vote no on the bill. He felt it is immoral for Congress to hold our money.

**Senator J. Lee** said she did not like the whole hostage situation with funds. There is a benefit to child support enforcement to be able to have this reciprocity with foreign countries.

**Senator Heckaman** asked if this is to come up soon.

**Mr. Fleming** offered the information that it is under congressional review right now and is thinking that within the next year is very likely.

**Roll call vote 5-1-0. Motion passed.**

Carrier is **Senator Pomeroy**.

Date: 1-12-09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2072

Senate Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Sen. Pomeroy Seconded By Sen. Heckaman

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais	✓	
Senator Dick Dever		✓	Senator Jim Pomeroy	✓	

Total (Yes) 5 No 1

Absent 0

Floor Assignment Sen. Pomeroy

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2072: Human Services Committee (Sen. J. Lee, Chairman) recommends DO PASS**  
(5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2072 was placed on the  
Eleventh order on the calendar.

2009 HOUSE HUMAN SERVICES

SB 2072

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2072

House Human Services Committee

Check here for Conference Committee

Hearing Date: February 25, 2009

Recorder Job Number: 9693

Committee Clerk Signature

*Ticky Crabtree*

Minutes:

**Chairman Weisz called the hearing to order on SB 2072.**

**Judge Gail Hagerty testified in support of bill: See Testimony #1.**

**Chairman Weisz:** As far as I see, only if someone else signs the convention (drops sentence).

**Gail Hagerty:** Unless another country signs the convention, it will never take effect unless the convention is in effect. .

**Rep. Damschen:** Is there a compromise of our sovereignty in this?

**Gail Hagerty:** Don't believe so.

**NO OPPOSITION.**

**Rep. Porter:** I have a question for Jim Fleming. With this law, what happens to ND child support case that remains in ND?

**Jim Fleming:** If it stays in ND, it is not an interstate case and it won't be affected by that.

**Rep. Porter:** So all of our laws on a constant basis are not affected by this whatsoever?

**Jim Fleming:** That's correct.

**Rep. Porter:** What version of UIFSA are we (inaudible) as a state?



**Jim Fleming:** The mandate right now is for the 1996 version of UIFSA which is what ND adopted as part of welfare reform. They revised the UIFSA in 2001, but the feds did not mandate that all states to pass it. So, we have not proposed that to you because we would lose the benefit of uniformity. There is still a majority of states that use the 1996 version. If the 2008(?) legislation was mandated which is what we are forecasting this bill would come into effect and allow us to comply with that mandate.

**Chairman Weisz:** If there is a foreign order from a country now, how does the state go about enforcing that?

**Jim Fleming:** Tough question to answer. Have provinces in Canada where they are familiar with their laws and vice versa. They have similar concepts of due process so there is a mechanism in the US for those to be enforced and likewise we can ask them to enforce it.

There are some due process considerations for enforcing the foreign order.

**Chairman Weisz closed the hearing.**

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2072

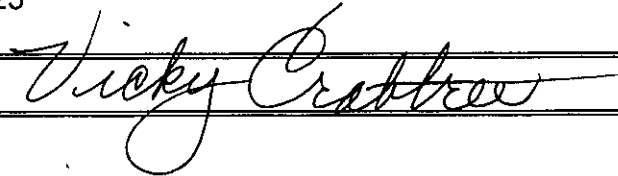
House Human Services Committee

Check here for Conference Committee

Hearing Date: March 9, 2009

Recorder Job Number: 10525

Committee Clerk Signature



Minutes:

**Chairman Weisz:** Let's look at 2072. We don't have to act on this now because there is no fiscal note. Do have any questions on this bill because it is lengthy and we need to get it addressed now. Don't need to do it now and there is a lot of stuff in here.

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2072

House Human Services Committee

Check here for Conference Committee

Hearing Date: March 23, 2009

Recorder Job Number: 11385 (3:30 on recorder)

Committee Clerk Signature

*Ticky Crabtree*

Minutes:

**Chairman Weisz:** Let's take up 2072 It has to do with the uniform state law.

**Rep. Porter:** Motion a Do Pass.

**Rep. Conrad:** Second.

**Roll Call Vote:** 10 yes, 3 no, 0 absent.

**MOTION CARRIED DO PASS.**

**BILL CARRIER:** Rep. Porter.

Date: 3-23-09

Roll Call Vote #:

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2072

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Rep. Porter Seconded By Rep. Conrad

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ		✓	REP. TOM CONKLIN	✓	
VICE-CHAIR VONNIE PIETSCH	✓		REP. KARI L CONRAD	✓	
REP. CHUCK DAMSCHEN		✓	REP. RICHARD HOLMAN	✓	
REP. ROBERT FRANTSVOG		✓	REP. ROBERT KILICHOWSKI	✓	
REP. CURT HOFSTAD	✓		REP. LOUISE POTTER	✓	
REP. MICHAEL R. NATHE	✓				
REP. TODD PORTER	✓				
REP. GERRY UGLEM	✓				

Total (Yes) 10 No 3

Absent 0

Bill Carrier Rep. Porter

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
March 23, 2009 12:42 p.m.

**Module No: HR-52-5547**  
**Carrier: Porter**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2072: Human Services Committee (Rep. Welsz, Chairman) recommends DO PASS**  
(10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2072 was placed on the  
Fourteenth order on the calendar.

2009 TESTIMONY

SB 2072

## Testimony in Support of Senate Bill 2072

Chair Lee, members of the Senate Human Services Committee:

I'm Gail Hagerty – a district judge in Bismarck and a Uniform Law Commissioner. I'm here today to speak in support of Senate Bill 2072, which amends the Uniform Interstate Family Support Act. I had the privilege of serving on the committee which drafted the amendments which are before you – we met three times over the period of a year and presented the amendments at the annual Conference of Commissioners on Uniform State Laws in Big Sky last summer. The amendments were approved by the Conference.

The most important thing for you to know about the draft before you now is that it is intended to accomplish only one purpose – it is intended to facility international child support enforcement if the Hague Convention on the International Recovery of child Support and Other Forms of Maintenance is ratified by the Senate and if the United States deposits its instrument of ratification.

If that occurs, the Senate will mandate that the States adopt these amendments using federal funding as a method of persuasion.

At the present time, child support is collected from some foreign countries under bilateral agreements between foreign countries and states. The Hague convention was drafted over a period of years, and representatives of the Uniform Law Conference were involved in the process. In drafting these amendments, we worked closely with representatives of the U.S. State Department.

As explained in comments to the Act, which I received in the mail last week, the goal of the drafting committee was to integrate the Convention into state law. In drafting, we used UIFSA 2001 as a starting point. Some of the language of the amendments seems awkward to those familiar with the language of family support legislation. Convention language had to be used in some instances to avoid conflict.

The language which begins on page 37 of Senate Bill 2072 is new language designed to direct courts of North Dakota about the limited special practices and handling deemed to be necessary for establishment or enforcement of a Convention support order.

I would urge you to adopt Senate Bill 2072, so that if the US ratifies the Hague Convention, we will be ready to make use of its provisions.

# 1

## Testimony in Support of Senate Bill 2072

Chair Weisz, members of the House Human Services Committee:

I'm Gail Hagerty – a district judge in Bismarck and a Uniform Law Commissioner. I'm here today to speak in support of Senate Bill 2072, which amends the Uniform Interstate Family Support Act. I had the privilege of serving on the committee which drafted the amendments which are before you – we met three times over the period of a year and presented the amendments at the annual Conference of Commissioners on Uniform State Laws in Big Sky last summer. The amendments were approved by the Conference.

Beginning in June 2003, and continuing through November 2007, more than 70 countries met in The Hague, Netherlands, in five separate negotiating sessions to forge a new Hague Convention of 23 November 2007 on the Enforcement of Child Support and Other Forms of Family Maintenance.

The United States was a crucial participant throughout the term of negotiations. The Convention was signed by the United States, the only nation to do so. This initial signature represents a commitment by the executive branch of the federal government to make a good faith effort to bring the Convention into force. If the Senate gives its advice and consent to the Convention, it is signed by the President, and the appropriate documents are filed in The Hague, the federal preemption of the issue will be sufficient to make the Convention the law concerning child support. However, additional federal or state statutory enactments will be necessary to enable the treaty and make it readily accessible to bench and bar. Because establishment, enforcement, and modification of family support are basically matters of state law, from the perspective of the Uniform Law Commission, the vehicle for the acceptance into force of the new Convention must be a revision of UIFSA 2001, which will be UIFSA (2008).

The most important thing for you to know about the draft before you now is that it is intended to accomplish only one purpose – it is intended to facilitate international child support enforcement when the Hague Convention on the International Recovery of child Support and Other Forms of Maintenance if it is ratified by the Senate and if the United States deposits its instrument of ratification.

When that occurs, the Senate will mandate that the States adopt these amendments using federal funding as a method of persuasion.

At the present time, child support is collected from some foreign countries under bilateral agreements between foreign countries and states. As explained in comments to the



Act, the goal of the drafting committee was to integrate the Convention into state law. In drafting, we used UIFSA 2001 as a starting point. (North Dakota is still operating under an earlier version of UIFSA, with a waiver from the federal government. Enactment of this legislation will mean that, at some point, all states will be operating under the same version of UIFSA – the 2008 version.) Some of the language of the amendments seems awkward to those familiar with the language of family support legislation. Convention language had to be used in some instances to avoid conflict.

Most frequently the amendments to the existing text was merely to add "or a foreign country" to the directions about how a "tribunal of this state" should deal with an order or another action of a "state." Correspondingly, the definition of "state" no longer contains the legal fiction that a foreign country is a state. With minimal amendments, the text of UIFSA (2008) combines the principles of the Convention with the required actions of a state tribunal to put the Convention into actual effect.

There are some instances in which the text of UIFSA (2008) and the Convention differ in a manner that cannot be reconciled. On these occasions it is necessary to accommodate the Convention language in order to avoid conflict between it and uniform state law. A choice had to be made; either substantially amend the text of UIFSA (2001), or create a new set of rules to accommodate the differences in UIFSA and the Convention. New rules were created in Article 7 (the language beginning on page 37 of SB 2072). It is a stand-alone portion of the act designed to direct a "tribunal of this state" about limited special practices and handling deemed to be necessary for establishment or enforcement of a Convention support order.

UIFSA (2008) also may supply answers to some of the questions that the Convention leaves unresolved. This is particularly true with regard to modification of existing orders when parties have moved from the issuing state or foreign country, or other factual circumstances have changed significantly. Regarding modification of orders, the Convention has only limited application, while UIFSA makes provides the procedure for modification – see Sections 14.1-12.2-43 through 14.1-12.2-46.4 (p. 33 - 37 of SB 2072) (UIFSA (2008) sections 609-616).

In sum, UIFSA (2008) is a limited, rather than comprehensive revision of the Act. It is designed to integrate the Convention into state law, and not to amend UIFSA (2001) in any significant manner. The drafting principles are relatively simple, i.e., the language of the Convention is categorized as follows: (1) integrate the principles of the Convention into the current text of UIFSA arts. 1-6 by adding the term "or a foreign country" when the principles of both are congruent; (2) adapt the language or the principle of the Convention to the current text of UIFSA arts. 1 through 6, in order to make that language or those principles more

comprehensible to the American bench and bar; (3) identify the text or principles in the Convention that relate only to international maintenance issues; (4) omit the Convention text that need not be included in state law because it speaks to the "Contracting States"; and, (5) draft a stand-alone article to be included in UIFSA to direct a "tribunal of this state" on the do's and don'ts unique to the Convention.

The language which begins on page 37 of Senate Bill 2072 is new language designed to direct courts of North Dakota about the limited special practices and handling deemed to be necessary for establishment or enforcement of a Convention support order.

I would urge you to adopt Senate Bill 2072, so that if the US ratifies the Hague Convention, we will be ready to make use of its provisions.