

1969 Assembly Bill 5

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CHAPTER 40, LAWS OF 1969

AN ACT to repeal and recreate 52.10 of the statutes, relating to the revised uniform reciprocal enforcement of support act.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 52.10 of the statutes is repealed and recreated to read:

52.10 REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT (1968). (1) PURPOSES. The purposes of this section are to improve and extend by reciprocal legislation the enforcement of duties of support.

(2) DEFINITIONS. (a) "Court" means the family court branch of circuit or county court or, if there is none, the court having jurisdiction under s. 52.05 to enforce support and, when the context requires, means the court of any other state as defined in a substantially similar reciprocal law.

(b) "Duty of support" means a duty of support whether imposed or imposable by law or by order, decree or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(c) "Governor" includes any person performing the functions of governor or the executive authority of any state covered by this section.

(d) "Initiating state" means a state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "Initiating court" means the court in which a proceeding is commenced.

(e) "Law" includes both common and statutory law.

(f) "Obligee" means a person including a state or political subdivision to whom a duty of support is owed or a person including a state or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(g) "Obligor" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(i) "Register" means to file in the registry of foreign support orders.

(j) "Registering court" means any court of this state in which a support order of a rendering state is registered.

(k) "Rendering state" means a state in which the court has issued a support order for which registration is sought or granted in the court of another state.

(kz) "Responding state" means a state in which any responsive proceeding pursuant to the proceeding in the initiating state is commenced. "Responding court" means the court in which the responsive proceeding is commenced.

(m) "State" includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(n) "Support order" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

(3) REMEDIES ADDITIONAL TO THOSE NOW EXISTING. The remedies provided in this section are in addition to and not in substitution for any other remedies.

(4) EXTENT OF DUTIES OF SUPPORT. Duties of support arising under the law of this state, when applicable under sub. (7), bind the obligor present in this state regardless of the presence or residence of the obligee.

(5) INTERSTATE RENDITION. The governor of this state may:

(a) Demand of the governor of another state the surrender of a person found in that state who is charged criminally in this state with failing to provide for the support of any person; or

(b) Surrender on demand by the governor of another state a person found in this state who is charged criminally in that state with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this section apply to the demand even if the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and has not fled therefrom. The demand, the oath and any proceedings for extradition pursuant to this subsection need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding state.

(6) CONDITIONS OF INTERSTATE RENDITION. (a) Before making the demand upon the governor of another state for the surrender of a person charged criminally in this state with failing to provide for the support of a person, the governor of this state may require any district attorney of this state to satisfy him that at least 60 days prior thereto the obligee initiated proceedings for support under this section or that any proceeding would be of no avail.

(b) If, under a substantially similar law, the governor of another state makes a demand upon the governor of this state for the surrender of a person charged criminally in that state with failure to provide for the support of a person, the governor may require any district attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If proceedings have been initiated and the person demanded has prevailed therein the governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the governor may decline to honor the demand if the person demanded is complying with the support order.

(7) CHOICE OF LAW. Duties of support applicable under this section are those imposed under the laws of any state where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

(8) **REMEDIES OF STATE OR POLITICAL SUBDIVISION FURNISHING SUPPORT.** If a state or a political subdivision furnishes support to an individual obligee it has the same right to initiate a proceeding under this section as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

(9) **HOW DUTIES OF SUPPORT ENFORCED.** All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this section including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

(10) **JURISDICTION.** Jurisdiction of any proceeding under this section is vested in the court defined in sub. (2) (a).

(11) **CONTENTS AND FILING OF PETITION FOR SUPPORT; VENUE.** (a) The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints and his social security number.

(b) The petition may be filed in the appropriate court of any state in which the obligee resides. The court shall not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other state where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

(12) **OFFICIALS TO REPRESENT OBLIGEE.** If this state is acting as an initiating state the district attorney upon the request of the court or the person in charge of county welfare activities shall represent the obligee in any proceeding under this section. If the district attorney neglects or refuses to represent the obligee, the attorney general may undertake the representation.

(13) **PETITION FOR A MINOR.** A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

(14) **DUTY OF INITIATING COURT.** If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the obligor or his property it shall so certify and cause 3 copies of the petition and its certificate and one copy of this section to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating state. If the name and address of the responding court is unknown and the responding state has an information agency comparable to that established in the initiating state it shall cause the copies to be sent to the state information agency or other proper official of the responding state, with a request that the agency or official forward them to the proper court and that the court of the responding state acknowledge their receipt to the initiating court.

(15) **COSTS AND FEES.** An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect only those fees and costs from the obligor which are incurred in the responding state. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs incurred in this state when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service or other service

supplied to the obligor, be paid in whole or in part by the obligor or by the county. These costs or fees except for the receiving and disbursing fee authorized by s. 59.42 (10) (b) do not have priority over amounts due to the obligee.

(16) JURISDICTION BY ARREST. If the court of this state believes that the obligor may flee it may:

(a) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(b) As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

(17) STATE INFORMATION AGENCY. (a) The department of justice is designated as the state information agency under this section, and shall:

1. Compile a list of the courts and their addresses in this state having jurisdiction under this section and transmit it to the state information agency of every other state which has adopted this or a substantially similar law. Upon adjournment of each session of the legislature the agency shall distribute copies of any amendments to this section and a statement of their effective date to all other state information agencies;

2. Maintain a register of lists of courts received from other states and transmit copies thereof promptly to every court in this state having jurisdiction under this section; and

3. Forward to the court in this state which has jurisdiction over the obligor or his property petitions, certificates and copies of the laws it receives from courts or information agencies of other states.

(b) If the state information agency does not know the location of the obligor or his property in the state and no state location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both state and federal where such offices are able to cooperate, and requests made to the social security administration as permitted by the social security act, as amended.

(c) After the deposit of 3 copies of the petition and certificate and one copy of the law of the initiating state with the clerk of the appropriate court, if the state information agency knows or believes that the district attorney is not prosecuting the case diligently, the attorney general may undertake the representation.

(18) DUTY OF THE COURT AND OFFICIALS OF THIS STATE AS RESPONDING STATE. (a) After the responding court receives copies of the petition, certificate and law from the initiating court, the clerk of the court shall docket the case and notify the district attorney of his action.

(b) The district attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this state to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(c) If the district attorney neglects or refuses to represent the obligee, the attorney general may undertake the representation.

(19) FURTHER DUTIES OF COURTS AND OFFICIALS IN THE RESPONDING STATE. (a) The district attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction the district attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

(b) If the obligor or his property is not found in the county, and the district attorney discovers that the obligor or his property may be found in another county of this state or in another state he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating state to a court in the other county or to a court in the other state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. All powers and duties provided by this section apply to the recipient of the documents so forwarded. If the clerk of a court of this state forwards documents to another court he shall forthwith notify the initiating court.

(c) If the district attorney has no information as to the location of the obligor or his property he shall so inform the initiating court.

(20) HEARING AND CONTINUANCE. If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

(21) IMMUNITY FROM CRIMINAL PROSECUTION. If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

(22) EVIDENCE OF HUSBAND AND WIFE. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this section. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

(23) RULES OF EVIDENCE. In any hearing for the civil enforcement of this section the court is governed by the rules of evidence applicable in a civil court action. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity under sub. (27) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

(24) ORDER OF SUPPORT. If the responding court finds a duty of support it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this section shall require that payments be made to the clerk of the court of the responding state. The court and district attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the district attorney shall send a certified copy of the order to the district attorney of any county in which it appears that proceedings to enforce the order would be effective. The district attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order. The enforcement may proceed as provided in subs. (37) to (40).

(25) RESPONDING COURT TO TRANSMIT COPIES TO INITIATING COURT. The responding court shall cause a copy of all support orders to be sent to the initiating court.

(26) **ADDITIONAL POWERS OF RESPONDING COURT.** In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(a) Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(b) Require the obligor to report personally and to make payments at specified intervals to the clerk of the court; and

(c) Punish under the power of contempt the obligor who violates any order of the court.

(27) **PATERNITY.** If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

(28) **ADDITIONAL DUTIES OF RESPONDING COURT.** A responding court has the following duties which may be carried out through the clerk of the court:

(a) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(b) To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

(29) **ADDITIONAL DUTY OF INITIATING COURT.** An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court.

(30) **PROCEEDINGS NOT TO BE STAYED.** A responding court shall not stay the proceeding or refuse a hearing under this section because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption or custody in this or any other state. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

(31) **APPLICATION OF PAYMENTS.** A support order made by a court of this state pursuant to this section does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this state.

(32) **EFFECT OF PARTICIPATION IN PROCEEDING.** Participation in any proceeding under this section does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

(33) **INTRASTATE APPLICATION.** This section applies if both the obligee and the obligor are in this state but in different counties. If the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this state may obtain jurisdiction over the obligor or his property, the clerk of the court shall

send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the district attorney of their receipt. The district attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this state as a responding state.

(34) **APPEALS.** If the attorney general is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(a) Perfect an appeal to the proper appellate court if the support order was issued by a court of this state; or

(b) If the support order was issued in another state, cause the appeal to be taken in the other state. In either case expenses of appeal may be paid on his order from funds appropriated for the department of justice.

(35) **ADDITIONAL REMEDIES.** If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in subs. (36) to (40).

(36) **REGISTRATION.** The obligee may register the foreign support order in a court of this state in the manner, with the effect and for the purposes herein provided.

(37) **REGISTRY OF FOREIGN SUPPORT ORDERS.** The clerk of the court shall maintain a registry of foreign support orders in which he shall file foreign support orders.

(38) **OFFICIAL TO REPRESENT OBLIGEE.** (a) If this state is acting either as a rendering or a registering state the district attorney upon the request of the court shall represent the obligee in proceedings under sub. (36) to (40).

(b) If the district attorney neglects or refuses to represent the obligee, the attorney general may undertake the representation.

(39) **REGISTRATION PROCEDURE; NOTICE.** (a) An obligee seeking to register a foreign support order in a court of this state shall transmit to the clerk of the court 1) 3 certified copies of the order with all modifications thereof, 2) one copy of the reciprocal enforcement of support act of the state in which the order was made and 3) a statement verified and signed by the obligee, showing the post-office address of the obligee, the last known place of residence and post-office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution and a list of the states in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this section.

(b) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post-office address of the obligee. He shall also docket the case and notify the district attorney of his action. The district attorney shall proceed diligently to enforce the order.

(40) **EFFECT OF REGISTRATION; ENFORCEMENT PROCEDURE.** (a) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a support order of this state and may be enforced and satisfied in like manner.

(b) The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

(c) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If he shows to the court any ground upon which enforcement of a support order of this state may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.

(41) UNIFORMITY OF INTERPRETATION. This section shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(42) SHORT TITLE. This section may be cited as the revised uniform reciprocal enforcement of support act (1968).

SECTION 2. CROSS REFERENCE CHANGES. (1) Wherever the reference to section "52.10 (1) to (31)" appears in section 49.19 (4) (d) 5 of the statutes, the reference "52.10" is substituted.

(2) Wherever the reference to section "52.10 (16)" appears in section 15.251 (intro.) of the statutes, the reference "52.10" is substituted.

Approved May 15, 1969.
