

Article 7.

Support Proceeding Under Convention.

**§ 52C-7-701. Definitions.**

As used in this Article:

- (1) "Application" means a request under the Convention by an obligee or obligor, or on behalf of a child, made through a central authority for assistance from another central authority.
- (2) "Central authority" means the entity designated by the United States or a foreign country described in G.S. 52C-1-101(3a)d. to perform the functions specified in the Convention.
- (3) "Convention support order" means a support order of a tribunal of a foreign country described in G.S. 52C-1-101(3a)d.
- (4) "Direct request" means a petition filed by an individual in a tribunal of this State in a proceeding involving an obligee, obligor, or child residing outside the United States.
- (5) "Foreign central authority" means the entity designated by a foreign country described in G.S. 52C-1-101(3a)d. to perform the functions specified in the Convention.
- (6) "Foreign support agreement" means an agreement for support in a record that:
  - a. Is enforceable as a support order in the country of origin;
  - b. Has been (i) formally drawn up or registered as an authentic instrument by a foreign tribunal or (ii) authenticated by or concluded, registered, or filed with a foreign tribunal; and
  - c. May be reviewed and modified by a foreign tribunal.The term includes a maintenance arrangement or authentic instrument under the Convention.
- (7) "United States central authority" means the Secretary of the United States Department of Health and Human Services. (1995, c. 538, s. 7(c); 2015-117, s. 1.)

**§ 52C-7-702. Applicability.**

This Article applies only to a support proceeding under the Convention. In such a proceeding, if a provision of this Article is inconsistent with Articles 1 through 6 of this Chapter, this Article controls. (2015-117, s. 1.)

**§ 52C-7-703. Relationship of Department to United States central authority.**

The Department is recognized as the agency designated by the United States central authority to perform specific functions under the Convention. (2015-117, s. 1.)

**§ 52C-7-704. Initiation by Department of support proceeding under Convention.**

- (a) In a support proceeding under this Article, the Department shall do the following:
  - (1) Transmit and receive applications.
  - (2) Initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this State.

- (b) The following support proceedings are available to an obligee under the Convention:
  - (1) Recognition or recognition and enforcement of a foreign support order.
  - (2) Enforcement of a support order issued or recognized in this State.
  - (3) Establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child.
  - (4) Establishment of a support order if recognition of a foreign support order is refused under G.S. 52C-7-708(b)(2), (4), or (9).
  - (5) Modification of a support order of a tribunal of this State.
  - (6) Modification of a support order of a tribunal of another state or foreign country.
- (c) The following support proceedings are available under the Convention to an obligor against which there is an existing support order:
  - (1) Recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this State.
  - (2) Modification of a support order of a tribunal of this State.
  - (3) Modification of a support order of a tribunal of another state or a foreign country.
- (d) 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. (2015-117, s. 1.)

**§ 52C-7-705. Direct request.**

- (a) A petitioner may file a direct request seeking establishment or modification of a support order or determination of parentage of a child. In the proceeding, the law of this State applies.
- (b) A petitioner may file a direct request seeking recognition and enforcement of a support order or support agreement. In the proceeding, G.S. 52C-7-706 through G.S. 52C-7-713 apply.
- (c) In a direct request for recognition and enforcement of a Convention support order or foreign support agreement:
  - (1) A security, bond, or deposit is not required to guarantee the payment of costs and expenses; and
  - (2) An obligee or obligor that in the issuing country has benefited from free legal assistance is entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this State under the same circumstances.
- (d) A petitioner filing a direct request is not entitled to assistance from the Department or the county child support agency.
- (e) This Article does not prevent the application of laws of this State that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or foreign support agreement. (2015-117, s. 1.)

**§ 52C-7-706. Registration of Convention support order.**

- (a) Except as otherwise provided in this Article, a party who is an individual or a support enforcement agency seeking recognition of a Convention support order shall register the order in this State as provided in Article 6 of this Chapter.
- (b) Notwithstanding G.S. 52C-3-310 and G.S. 52C-6-602(a), a request for registration of a Convention support order must be accompanied by:

- (1) A complete text of the support order or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by the Hague Conference on Private International Law;
- (2) A record stating that the support order is enforceable in the issuing country;
- (3) If the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;
- (4) A record showing the amount of arrears, if any, and the date the amount was calculated;
- (5) A record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and
- (6) If necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.

(c) A request for registration of a Convention support order may seek recognition and partial enforcement of the order.

(d) A tribunal of this State may vacate the registration of a Convention support order without the filing of a contest under G.S. 52C-7-707 only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.

(e) The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a Convention support order. (2015-117, s. 1.)

**§ 52C-7-707. Contest of registered Convention support order.**

(a) Except as otherwise provided in this Article, G.S. 52C-6-605 through G.S. 52C-6-608 apply to a contest of a registered Convention support order.

(b) A party contesting a registered Convention support order shall file a contest not later than 30 days after notice of the registration, but if the contesting party does not reside in the United States, the contest must be filed not later than 60 days after notice of the registration.

(c) If the nonregistering party fails to contest the registered Convention support order by the time specified in subsection (b) of this section, the order is enforceable.

(d) A contest of a registered Convention support order may be based only on grounds set forth in G.S. 52C-7-708. The contesting party bears the burden of proof.

(e) In a contest of a registered Convention support order, a tribunal of this State:

- (1) Is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and
- (2) May not review the merits of the order.

(f) A tribunal of this State deciding a contest of a registered Convention support order shall promptly notify the parties of its decision.

(g) A challenge or appeal, if any, does not stay the enforcement of a Convention support order unless there are exceptional circumstances. (2015-117, s. 1.)

**§ 52C-7-708. Recognition and enforcement of registered Convention support order.**

(a) Except as otherwise provided in subsection (b) of this section, a tribunal of this State shall recognize and enforce a registered Convention support order.

(b) The following grounds are the only grounds on which a tribunal of this State may refuse recognition and enforcement of a registered Convention support order:

- (1) Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard.
- (2) The issuing tribunal lacked personal jurisdiction consistent with G.S. 52C-2-201.
- (3) The order is not enforceable in the issuing country.
- (4) The order was obtained by fraud in connection with a matter of procedure.
- (5) A record transmitted in accordance with G.S. 52C-7-706 lacks authenticity or integrity.
- (6) A proceeding between the same parties and having the same purpose is pending before a tribunal of this State and that proceeding was the first to be filed.
- (7) The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under this Chapter in this State.
- (8) Payment, to the extent alleged arrears have been paid in whole or in part.
- (9) In a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:
  - a. If the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or
  - b. If the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal.
- (10) The order was made in violation of G.S. 52C-7-711.

(c) If a tribunal of this State does not recognize a Convention support order under subdivision (b)(2), (4), or (9) of this section, then:

- (1) The tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new Convention support order; and
- (2) The Department and the county child support agency shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under G.S. 52C-7-704. (2015-117, s. 1.)

#### **§ 52C-7-709. Partial enforcement.**

If a tribunal of this State does not recognize and enforce a Convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a Convention support order. (2015-117, s. 1.)

#### **§ 52C-7-710. Foreign support agreement.**

(a) Except as otherwise provided in subsections (c) and (d) of this section, a tribunal of this State shall recognize and enforce a foreign support agreement registered in this State.

(b) An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by each of the following:

(1) A complete text of the foreign support agreement.

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

(c) 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.

(d) In a contest of a foreign support agreement, a tribunal of this State may refuse recognition and enforcement of the agreement if it finds any of the following:

(1) Recognition and enforcement of the agreement is manifestly incompatible with public policy.

(2) The agreement was obtained by fraud or falsification.

(3) 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.

(4) The record submitted under subsection (b) of this section lacks authenticity or integrity.

(e) 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. (2015-117, s. 1.)

#### **§ 52C-7-711. Modification of Convention child support order.**

(a) A tribunal of this State may not modify a Convention child support order if the obligee remains a resident of the foreign country where the support order was issued unless:

(1) The obligee submits to the jurisdiction of a tribunal of this State, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

(2) The foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

(b) If a tribunal of this State does not modify a Convention child support order because the order is not recognized in this State, G.S. 52C-7-708(c) applies. (2015-117, s. 1.)

#### **§ 52C-7-712. Personal information; limit on use.**

Personal information gathered or transmitted under this Article may be used only for the purposes for which it was gathered or transmitted. (2015-117, s. 1.)

#### **§ 52C-7-713. Record in original language; English translation.**

A record filed with a tribunal of this State under this Article must be in the original language and, if not in English, must be accompanied by an English translation. (2015-117, s. 1.)