

Concerns with the Uniform Interstate Family Support Act

To: Idaho state lawmakers and other interested parties

From: Idaho Freedom Foundation

Date: Monday, May 11, 2015

Subject: SB 1067 and its replacement



Background: The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded in 2007. This convention's stated purpose was to "ensure the effective international recovery of child support and other forms of family maintenance." Originally introduced and passed through the US House as [H.R.1896](#) (2013), the "International Child Support Recovery Improvement Act of 2013" was eventually folded into the "Preventing Sex Trafficking and Strengthening Families Act" which passed both the US House and Senate as [H.R.4980](#). It became law on Sep. 29, 2014. Included in this federal law was a "requirement" that individual states adopt certain specified language in their respective statutes.

Problems and Concerns: The list of concerns with this proposal—and with the general concept of subjecting Idahoans to foreign law in any context—is long. The underlying violation of state and national sovereignty is quite troubling as is the potential for compromising data security. Additionally, under the adoption of this proposal, Idahoans could potentially be subject to judgments issued by foreign courts which do not respect or adhere to the same standards of jurisprudence to which the US and Idaho Constitutions entitle all residents of this state. Finally, the coercive measures undertaken by the federal government to induce the state to adopt this law set a very dangerous precedent; Idaho yielding to this coercion virtually ensures that such tactics will be used again.

Potential Ameliorating Measures: Short of flatly refusing to yield to the blandishments of the federal government on this issue, the state of Idaho could still take a number of steps to limit the damage that adopting this proposal could do to Idahoans and to jurisprudence within the state. Among these possible mitigating factors are the following concepts:

- Compel the Department of Health and Welfare to supply lawmakers with annual reports on the implementation and application of this law thereby maintaining continuous legislative oversight.
- Include a sunset clause with the proposal to allow the state of Idaho a clean exit should the treaty's implementation prove problematic.
- Require a mandatory review of all incoming foreign support orders and require that any impacted person in the state have 90 days to challenge the validity of the order before enforcement commences.
- Implement real and robust data security measures. The draft bill includes language which mandates that "the director shall develop safeguards necessary to ensure the security of non-public personal information in the department's possession and to prevent undue disclosure of such information." This language is insufficient. No foreign orders should be enforced unless the security of all relevant data can be absolutely guaranteed.
- Expand and clarify the denunciation process referenced in Section 69 of the draft bill. Article 64 of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance allows that "certain territorial units of a multi-unit State to which the Convention applies" may denounce the treaty. It appears that it is possible for an individual state to exempt itself from this treaty even if the nation is a party to it.

Summary: The state of Idaho is under pressure to adopt language which will compromise its sovereignty and endanger its residents. If the state's government is unwilling to endure the wrath of the federal government to prevent these harms, it must—at a minimum—adopt measures to limit the damage implementing this law can do to Idaho's residents. Preserving the flow of federal dollars to the state is not as important as protecting individuals from questionable judgments issued by unaccountable foreign courts. The state's first duty is to protect its residents, not to serve as an administrative unit of the federal government.