



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 819 (as passed by the Senate)
 Sponsor: Senator Gary Peters
 Committee: Judiciary

Date Completed: 9-26-96

RATIONALE

In 1964, the National Conference of Commissioners on Uniform State Laws adopted, and recommended for the states to enact, the Uniform Enforcement of Foreign Judgments Act. The uniform Act, which thus far has been adopted by 44 states, provides that any "foreign judgment" authenticated in accordance with an act of Congress or the statutes of a state that adopts the uniform Act must be treated in the same manner as a judgment of one of the state's courts. (The uniform Act defines "foreign judgment" as any judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in the state that adopts the uniform Act.)

This means, then, that if two states have adopted the uniform Act, a judgment rendered in one state must be treated in the other in the same manner as if it had been rendered in that state. On the other hand, if a state has not adopted the uniform Act, a judgment rendered in another jurisdiction cannot be enforced in the nonadopting state unless an action is brought on the judgment in that state. For instance, currently Michigan has not adopted the uniform Act but Illinois has adopted the Act. If a plaintiff won a judgment in an Illinois court, and the defendant had assets in Michigan, to collect from those assets the plaintiff would have to institute another lawsuit in Michigan. If Michigan adopted the uniform Act, however, then the Illinois judgment would be recognized by the Michigan court system. It has been suggested that Michigan adopt the Uniform Enforcement of Foreign Judgments Act.

CONTENT

The bill would create the "Uniform Enforcement of Foreign Judgments Act" to permit judgment creditors to file in Michigan courts judgments issued by a court outside of this State.

The bill provides that a copy of any foreign judgment authenticated in accordance with an act of Congress or the laws of this State could be filed with the clerk of the circuit court, the district court, or a municipal court of this State. ("Foreign judgment" would mean any judgment, decree, or order of a court of the United States or of any other court entitled to full faith and credit in this State.) The clerk would have to treat the foreign judgment in the same manner as a judgment of the circuit, district, or municipal court. A filed judgment would have the same effect and would be subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of the circuit, district, or municipal court, and could be enforced or satisfied in a like manner.

When a foreign judgment was filed, the judgment creditor or his or her attorney would have to make and file with the court clerk an affidavit setting forth the name and last known address of the judgment debtor and the judgment creditor. (The bill would not define "judgment creditor" but the term generally refers to a person who has an unsatisfied judgment against another, who is the judgment debtor.) The clerk would be required promptly to mail notice of the filing of the foreign judgment to the judgment debtor at the address provided by the judgment creditor or his or her attorney. The notice would have to include the name and address of the judgment creditor and his or her attorney, if any, in this State. The judgment creditor also could mail a notice of the filing to the judgment debtor and file proof of the mailing with the clerk. If proof of mailing by the judgment creditor had been filed, the clerk's failure to mail a notice of filing would not affect the enforcement proceedings.

A foreign judgment filed under the proposed Act could not be enforced until 20 days after the date the judgment was filed.

If the judgment debtor showed the court that an appeal from the foreign judgment was pending or would be taken, or that a stay of execution had been granted, the court would have to stay enforcement of the foreign judgment until the appeal was concluded, the time for appeal expired, or the stay of execution expired or was vacated, upon proof that the judgment debtor had furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

In addition, if the judgment debtor showed the court any ground upon which enforcement of a judgment of the circuit court, the district court, or a municipal court of this State would be stayed, the court would have to stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment required in this State.

A judgment creditor could bring an action to enforce his or her judgment instead of proceeding under the proposed Act.

The bill provides that it would have to be "so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it".

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Article IV, Section 1 of the United States Constitution requires each state to give "full faith and credit" to the judicial proceedings of every other state. Michigan, however, has no current procedures to comply with this requirement. When someone wants to enforce another state's judgment in Michigan (by garnishing wages or seizing assets, for example), he or she must file a new complaint in a Michigan court, and attach the out-of-state judgment as an exhibit. If the defendant does not object, the court will render a default judgment for the plaintiff. If the defendant does raise a defense, the matter must be relitigated, although considerable weight is given to the out-of-state judgment. Under the bill, a person simply would have to file an out-of-state judgment with a Michigan court, and the person or the court clerk would have to give notice of the filing to the defendant. The judgment could not be enforced until 20 days after it was filed, and the

defendant would have the opportunity to seek a stay of enforcement. This would reduce the number of cases brought before Michigan courts and bring Michigan into compliance with the U.S. Constitution's full faith and credit clause. As noted by the National Conference of Commissioners on Uniform State Laws, the uniform Act "... relieves creditors and debtors of the additional cost and harassment of further litigation which would otherwise be incident to the enforcement of [a] foreign judgment".

Supporting Argument

By facilitating the enforcement in Michigan of judgments issued by courts outside of this State--potentially including courts outside of the United States--the bill could promote international business activity and Michigan's relations with other countries.

Legislative Analyst: S. Margules

FISCAL IMPACT

The bill would have no significant fiscal impact on the courts since the procedures outlined in the bill are currently executed.

Fiscal Analyst: M. Ortiz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.