

Legislative Analysis



UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT

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House Bill 4650 as introduced
Sponsor: Rep. Paul Condino
Committee: Judiciary

First Analysis (6-18-07)

BRIEF SUMMARY: The bill would rescind the Uniform Foreign Money-Judgments Recognition Act and replace it with an updated NCCUSL model act known as the Uniform Foreign-Country Money Judgments Recognition Act.

FISCAL IMPACT: House Bill 4650 would have a minimal fiscal impact on the judiciary system. Any fiscal impact would be related to increased administrative workload that might arise based upon the number of foreign-country money judgment cases brought under the bill.

THE APPARENT PROBLEM:

The Uniform Foreign Money-Judgments Recognition Act provides for recognition and enforcement in a state court in the United States of money judgments originating in a foreign country. The act was promulgated by the Uniform Law Commissioners (ULC) in 1962 and has since been adopted by 32 states. Michigan adopted the model law in 1967.

According to the ULC, increased international trade has led to increases in litigation, which means that more judgments are being enforced between foreign countries. As courts have interpreted provisions of the act over the past four decades, some problems have also become apparent and need to be addressed. In 2005, the National Conference of Commissioners on Uniform State Laws (NCCUSL) approved an updated version of the act and urged states to adopt it. To date, both Nevada and Idaho have adopted the 2005 version, with California and Michigan introducing legislation this year to do so.

THE CONTENT OF THE BILL:

House Bill 4650 would rescind the current act and replace it with the Uniform Foreign-Country Money Judgments Recognition Act. According to NCCUSL, the new act:

provides simple court procedures for the enforcement of foreign-country money judgments; updates and clarifies both the definitions and the scope section; sets out the procedure by which recognition of a foreign-country judgment must be sought under the act; revises the grounds for denying recognition of foreign-country money judgments; and establishes a statute of limitations for recognition actions.

Significant revisions included in the new act are as follows:

- Revise the definition of "foreign-country" to clarify that a judgment entitled to full faith and credit under the U.S. Constitution would not be enforceable under the act.

(The enforcement of a sister state judgment from within the U.S. is provided under a different act, the Uniform Enforcement of Foreign Judgments Act.)

- Clarify that the act would not apply to a foreign-country judgment that was related to taxes; a fine or other penalty; or domestic relations (e.g., divorce).
- Place the burden of establishing applicability of the act to a foreign-country judgment on the party seeking recognition of a foreign-country judgment. A party resisting recognition of a foreign-country judgment would bear the burden of establishing that a ground for nonrecognition exists.
- Clarify criteria under which a court of this state could not recognize a foreign-country judgment and add to the existing criteria a judgment rendered in circumstances that raise substantial doubt as to the integrity of the rendering court with respect to that judgment and a judgment for which the specific proceeding in the foreign court leading to that judgment was not compatible with the requirements of due process of law.
- Specify the procedure to follow to obtain recognition of a foreign-country judgment. For an original matter, the issue of recognition would have to be raised by filing an action seeking recognition. In a pending matter, the issue of recognition could be raised by counterclaim, cross-claim, or affirmative defense.
- Establish a time limit for filing an action to recognize a foreign-country judgment. The action would have to be commenced within the earlier of the time during which the foreign-country judgment was effective in the foreign country or 15 years from the date that the judgment had become effective in the foreign country.
- Apply the bill to all actions that commenced on or after the bill's effective date in which the issue of recognition of a foreign-country judgment had been raised.

BACKGROUND INFORMATION:

National Conference of Commissioners on Uniform State Laws. Commissioners are appointed by each state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. These Uniform Law Commissioners, as they are known, draft and promote enactment of model laws to address issues common to all the states. The Uniform Commercial Code and Uniform Probate Code are two well-known examples. Commissioners, of which there are over 350, have degrees in law and include practicing lawyers, government lawyers, judges, law professors, and legislators.

ARGUMENTS:

For:

The Uniform Foreign Money-Judgments Recognition Act (the current act) sets a framework for courts in Michigan to follow in determining if a judgment that grants or denies recovery of a sum of money that was issued by a court in a foreign country must be recognized in this state. If recognized by a Michigan court, the foreign-money judgment must then be enforced

in this state. The act only pertains to judgments awarded in cases decided in a foreign court and not to money-judgments rendered by courts in other states. Litigation involving international commerce is one example of cases that may result in a foreign money-judgment, but the act also applies to foreign-country judgments involving private parties as well as government entities. It does not apply to judgments for taxes or fines and penalties.

The act, however, is now outdated and needs to be revised. For example, the current act includes in the definition of "foreign judgment" a judgment for "support in matrimonial or family matters". However, courts have consistently interpreted the act to exclude judgments for domestic matters. Since divorce laws differ radically from country to country, the traditional approach has been for courts to recognize money judgments in domestic matters under the principle of comity – meaning the courts of one jurisdiction give effect to the laws and court decisions of another out of deference and respect rather than out of obligation. Furthermore, other statutes, such as the federal International Child Support Enforcement Act, address aspects of the recognition and enforcement of awards for child support.

House Bill 4650 would replace the current act with an updated and revised version promulgated by the National Conference of Commissioners on Uniform Law (NCCUSL). The new act is substantially the same but incorporates changes needed to comport with recent court decisions. It would also add several new provisions, such as a statute of limitations on when an action for recognition could be filed, and would also allow a court to exclude a judgment rendered by a court if the proceeding did not protect a party's due process rights or if the integrity of the rendering court was in question.

The strongest argument for approval by a single state is reciprocity: recognizing and enforcing money-judgments from foreign courts in an appropriate and uniform manner makes it more likely that money-judgments rendered by Michigan courts will be recognized and enforced abroad.

POSITIONS:

The National Conference of Commissioners on Uniform State Laws (NCCUSL) supports the bill. (6-13-07)

The American Bar Association adopted a resolution to support the NCCUSL model act. (2-13-06)

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