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BILL ANALYSIS

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House Bill 4650 (as passed by the House)
Sponsor: Representative Paul Condino
House Committee: Judiciary
Senate Committee: Judiciary

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CONTENT

The bill would create the "Uniform Foreign-Country Money Judgments Recognition Act" to do all of the following:

- **Specify circumstances under which a Michigan court would have to, could, or could not recognize a foreign-country judgment granting or denying a sum of money.**
- **Provide that a foreign-country judgment could not be refused for lack of personal jurisdiction if certain conditions applied, but that Michigan courts could recognize other bases of personal jurisdiction.**
- **Provide that a foreign-country judgment entitled to recognition would be conclusive between the parties and enforceable in the manner of a judgment rendered in Michigan.**
- **Specify that a party seeking recognition of a foreign-country judgment would have the burden of proving that the Act applied.**
- **Establish the procedure for seeking enforcement of a foreign-country judgment.**
- **Allow a court to stay proceedings if an appeal from a foreign-country judgment were pending.**
- **Allow an action to recognize a foreign-country judgment within the time the judgment was effective in the foreign country or 15 years, whichever was shorter.**
- **Specify the circumstances under which the proposed Act would apply.**
- **Repeal the Uniform Foreign Money-Judgments Recognition Act (MCL 691.1151-691.1150).**

"Foreign-country judgment" would mean a judgment of a court of foreign country. "Foreign country" would mean a government other than any of the following:

- The United States.
- A state, district, commonwealth, territory, or insular possession of the United States.
- Any other government with regard to which the decision in Michigan as to whether to recognize a judgment of that government's courts is initially subject to determination under the full faith and credit clause of the U.S. Constitution.

Scope

Except as otherwise provided, the proposed Act would apply to a foreign-country judgment to the extent that both of the following applied:

- The judgment granted or denied recovery of a sum of money.
- Under the law of the foreign country where rendered, the judgment was final, conclusive, and enforceable.

The Act would not apply to a foreign-country judgment, even if it granted or denied recovery of a sum of money, to the extent that the judgment was any of the following:

- A judgment for taxes.
- A fine or other penalty.
- A judgment for divorce, support, or maintenance or other judgment rendered in connection with domestic relations.

A party seeking recognition of a foreign-country judgment would have the burden of establishing that the Act applied to that judgment.

In applying and construing the Act, a court would have to consider the need to promote uniformity of the law with respect to its subject matter among states that enacted it.

The Act would not prevent the recognition under principles of comity or otherwise of a foreign-country judgment that was not within the Act's scope.

The Act would apply to all actions commenced on or after its effective date in which the issue of recognition of a foreign-country judgment was raised.

Recognition of a Foreign-Country Judgment

Except as otherwise provided, a Michigan court would have to recognize a foreign-country judgment to which the proposed Act applied.

A Michigan court could not recognize a foreign-country judgment if any of the following applied:

- The judgment was rendered under a judicial system that did not provide impartial tribunals or procedures compatible with the requirement of due process of law.
- The foreign court did not have personal jurisdiction over the defendant.
- The foreign court did not have jurisdiction over the subject matter.

A Michigan court would be permitted, but not required, to recognize a foreign-country judgment, if any of the following applied:

- The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable him or her to defend.
- The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.
- The judgment, or the cause of action on which it was based, was repugnant to the public policy of Michigan or of the United States.
- The judgment conflicted with another final and conclusive judgment.
- The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined other than by proceeding in that foreign court.
- If jurisdiction were based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.
- The judgment was rendered in circumstances that raised substantial doubt about the integrity of the rendering court with respect to the judgment.
- The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

A party resisting recognition of a foreign-country judgment would have the burden of establishing that a ground for nonrecognition described above existed.

A foreign-country judgment could not be refused recognition for lack of personal jurisdiction if any of the following applied:

- The defendant was served with process personally in the foreign country.
- The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or contesting the court's jurisdiction over the defendant.
- Before the proceeding commenced, the defendant agreed to submit to the foreign court's jurisdiction with respect to the subject matter involved.
- The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country.
- The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action arising out of business done by the defendant through that office.
- The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action arising out of that operation.

This list of bases for personal jurisdiction would not be exclusive. Michigan courts could recognize bases of personal jurisdiction, other than those listed above, as sufficient to support a foreign-country judgment.

Procedures

If recognition of a foreign-country judgment were sought as an original matter, the issue of recognition would have to be raised by the filing of an action seeking recognition of that judgment. If recognition of a foreign-country judgment were sought in a pending action, the issue of recognition could be raised by counterclaim, cross-claim, or affirmative defense.

If the court found that the foreign-country judgment was entitled to recognition, then, to the extent that it granted or denied recovery of a sum of money, the judgment would be both of the following:

- Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in Michigan would be conclusive.
- Enforceable in the same manner and to the same extent as a judgment rendered in Michigan.

If a party established that an appeal from a foreign-country judgment was pending or would be taken, the court could stay any proceedings with regard to the foreign-country judgment until the appeal was concluded, the time for appeal expired, or the appellant had sufficient time to prosecute the appeal and failed to do so.

An action to recognize a foreign-country judgment would have to be commenced within the earlier of the time during which it was effective in the foreign country or 15 years from the date that it became effective in the foreign country.

BACKGROUND

In 1962, the Uniform Law Commissioners promulgated the Uniform Foreign Money-Judgments Recognition Act to provide for the enforcement of foreign country judgments in a state court in the United States. In 2005, the Uniform Law Commissioners promulgated the Uniform Foreign-Country Money Judgments Recognition Act to meet the increased need for

enforcement of foreign country money judgments resulting from greater international trade in the United States, and increased litigation.

According to the Uniform Law Commissioners, the principal differences between the 1962 and the 2005 Uniform Acts are as follows:

1. 2005 Act makes it clear that a judgment entitled to full faith and credit under the U.S. Constitution is not enforceable under the Act.
2. The 2005 Act provides that a party seeking recognition of a foreign judgment has the burden to prove that it is subject to the Uniform Act (an issue not addressed in the 1962 Act).
3. The 2005 Act imposes the burden of proof for establishing a specific ground for nonrecognition upon the party raising it (an issue not addressed in the 1962 Act).
4. Unlike the 1962 Act, the 2005 Act addresses the specific procedure for seeking enforcement: If recognition is sought as an original matter, the party seeking recognition must file an action in the court. If recognition is sought in a pending action, it may be filed as a counterclaim, cross-claim, or affirmative defense in that action.
5. The 2005 Act provides a statute of limitations on enforcement of a foreign-country judgment.

Michigan enacted the Uniform Foreign Money-Judgments Recognition Act in 1967. This Act defines "foreign judgment" as any judgment of a foreign state granting or denying recovery of a sum of money, including a judgment for support in matrimonial or family matters, but not including a judgment for taxes, a fine, or other penalty. "Foreign state" means any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama canal zone, the trust territory of the Pacific islands, or the Ryukyu islands.

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FISCAL IMPACT

The bill addresses court procedure and would have no fiscal impact on the judiciary.

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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.