

SUBJECT: Amending standards for recognizing foreign-country money judgments

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Smithee, Farrar, Gutierrez, Murr, Neave, Rinaldi, Schofield

0 nays

2 absent — Hernandez, Laubenberg

SENATE VOTE: On final passage, April 10 — 31-0

WITNESSES: *On House companion bill, HB 2122:*

For — Craig Enoch, John Paul DeJoria; (*Registered, but did not testify:*
George Christian, Texas Civil Justice League; Amanda Martin, Texas
Association of Business; Lee Parsley, Texans for Lawsuit Reform;
Stephanie Simpson, Texas Association of Manufacturers)

Against — John Lahad, Maghreb Petroleum Exploration & Mideast Fund
for Morocco

BACKGROUND: Civil Practice and Remedies Code, ch. 36, or the Uniform Foreign
Country Money-Judgment Recognition Act of 1962, specifies when a
court may or must enforce the final and conclusive judgment of a court in
a foreign country.

DIGEST: CSSB 944 would repeal the uniform act of 1962 and enact the Uniform
Foreign-Country Money Judgments Recognition Act (UFCMJRA) of
2005, which contains broadly similar provisions, with certain exceptions.

Standards for recognition. CSSB 944 would add two conditions for
court recognition of foreign-country judgments. A Texas court would not
be required to recognize a judgment if:

- it was rendered in circumstances that raised substantial doubt about
the integrity of the foreign court with respect to the judgment; or

- the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

In repealing the uniform act of 1962, the bill also would remove a provision that currently creates grounds for non-recognition of a foreign-country judgment rendered in a country that does not recognize judgments rendered in Texas that otherwise conform to the definition of "foreign country judgment."

Statute of limitations. The bill would apply the UFCMJRA only to actions brought within the earlier of the time during which the foreign-country judgment was effective in the foreign country or 15 years from the judgment's original effective date.

Procedures. The bill specifies actions that would have to be taken to seek enforcement of a foreign-country judgment. If recognition was sought as an original matter, the party seeking recognition would file an action. If recognition was sought in a pending action, it could be raised as a counter-claim, cross-claim, or affirmative defense.

Burdens of proof. The bill specifies that the party seeking recognition of a foreign-country judgment would have the burden of establishing that this chapter applied to the foreign-country judgment. It also specifies that the party resisting recognition of a foreign-country judgment would have the burden of proof when establishing grounds for non-recognition.

Applicability. The bill would apply to certain foreign-country judgments, defined as a judgment of a court of a foreign country. In defining "foreign country," the bill would exclude a government with respect to which the decision in Texas as to whether to recognize a judgment rendered by that government's court was initially subject to determination under the full faith and credit clause of the U.S. Constitution (Sec. 1, Art. 4). The court judgments of such a government would not be subject to the act.

CSSB 944 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take

effect September 1, 2017, and would apply to actions commenced on or after that date.

SUPPORTERS
SAY:

CSSB 944 would clarify current law, specify procedures, and establish burdens that are not clearly set, all to protect the fundamental rights of Texans.

Standards for recognition. The bill would expand the grounds on which a court could decline to recognize a foreign-country judgment to include a finding that the specific proceeding in the foreign court was not compatible with the requirements of due process. Current law has been interpreted by courts to merely relate to the general fairness of the system as a whole, not whether the specific matter was handled properly. Courts in this state should not be required to recognize decisions that violate the basic fundamental rights that Texans hold dear.

The broadness of one of the new standards is not a fault of the bill. In fact, increasing courts' discretion over proceedings would allow it more ability to evaluate the fairness and due process of a specific hearing, thus increasing the assurance UFCMJRA would provide in protecting the rights of Texans.

Applicability. CSHB 944 should not apply to currently pending matters, as it could set a precedent for defendants to pursue legislative action if they did not like the initial outcome of a case before the conclusion of the appeals process. None of the other 21 states that have updated the UFCMJRA apply the changes to pending litigation, and the Legislature should not be in the business of changing the outcomes of cases.

OPPONENTS
SAY:

Standards for recognition. The bill would introduce vagueness, allowing non-recognition if there were "circumstances that raise substantial doubt about the integrity of the rendering court." This is a vague and unhelpful standard and would leave the question of recognition almost entirely to the court's discretion.

OTHER

Applicability. As it is a clarification of existing law, CSSB 944 should

OPPONENTS
SAY:

apply to currently pending matters. Texas is uniquely situated in that one of its courts has chosen to recognize a foreign-country judgment without first finding that the specific defendant received due process of law. Instead, the court, contrary to all other cases that are pending or litigated, concluded that the judgment could be recognized because the foreign country's system as a whole was not unfair. Because the fundamental right to due process is at risk, this bill, like many others previously enacted by the Legislature, should apply to currently pending matters.

NOTES:

CSSB 944 differs from the Senate-passed bill in that the committee substitute would apply only to actions commenced on or after the effective date. The committee substitute also would remove a provision that would allow a court to decline to recognize a foreign country judgment if it was established that the foreign country did not recognize judgments rendered in Texas that, but for the fact they were rendered in Texas, would constitute foreign-country judgments to which the law applied.

A companion bill, HB 2122 by Clardy, was approved by the House on May 9.