

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 623 Out-of-Country Foreign Money Judgments

**SPONSOR(S):** Byrd

**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 760

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	10 Y, 0 N	MacNamara	Bond
2) Judiciary Committee			

### SUMMARY ANALYSIS

Florida is not required to recognize or enforce an out-of-country foreign judgment. However, to encourage international trade and to encourage other countries to recognize Florida judgments, the state has elected to provide a limited framework for the recognition of foreign judgments. In general, all such judgments are recognized, although there are exceptions to such recognition. Some exceptions are mandatory, others are discretionary.

The bill adds two discretionary exceptions whereby a Florida court is not required to recognize or enforce a foreign judgment. Specifically, a Florida court is not required to recognize or enforce a foreign judgment if:

- The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering 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.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background: Foreign Judgments**

A person who holds a civil judgment against another person has certain legal rights pursuant to that judgment related to enforcement and collection of the judgment. The United States Constitution requires Florida courts to give full faith and credit to judgments of other state courts, but is silent as to whether a state must give any faith or credit to judgments from foreign countries. While Congress clearly could regulate whether and how states recognize a judgment from a foreign country under the federal treaty powers, there is currently no federal law or treaty that requires Florida to recognize any foreign judgment.

In 1962, the National Conference of Commissioners on Uniform State Laws (NCCUSL)<sup>1</sup> developed the Uniform Foreign Money-Judgments Recognition Act (UFMJRA), which recognized the general principles of comity with respect to foreign money judgments. In its prefatory note, the NCCUSL stated:

The Act states rules that have long been applied by the majority of courts in this country. In some respects the Act may not go as far as the decisions. The Act makes clear that a court is privileged to give the judgment of the court of a foreign country greater effect than is required to do by the provisions of the Act. . . . Because the Act is not selective and applies to judgments from any foreign court, the Act states that judgments rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law shall neither be recognized nor enforced.

The Act does not prescribe a uniform enforcement procedure. Instead, the Act provides that a judgment entitled to recognition will be enforceable in the same manner as the judgment of a court of a sister state which is entitled to full faith and credit.<sup>2</sup>

In order to encourage and regulate trade, and in order to encourage courts of other foreign countries to recognize Florida's judgments, Florida has adopted the Uniform Foreign Money-Judgments Recognition Act, at ss. 55.601-55.607, F.S. Section 55.604, F.S., provides that Florida will generally accept and enforce a judgment rendered in a foreign jurisdiction. Section 55.605, F.S., however, provides a number of grounds under which a Florida court either must or may refuse to recognize a judgment from a foreign country. A Florida court must refuse to recognize a foreign judgment:

- That was rendered under a system which does not provide impartial tribunals or does not provide due process of law;
- If the foreign court did not have personal jurisdiction over the defendant; or
- If foreign court did not have jurisdiction over the subject matter.<sup>3</sup>

A Florida court may refuse to recognize an out-of-country foreign judgment if:

- The defendant did not receive adequate notice of the foreign court proceedings;
- The judgment was obtained by fraud;

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<sup>1</sup> The NCCUSL is a non-profit organization comprised of state commissions on uniform laws from each state and certain U.S. territories.

<sup>2</sup> Nat'l Conference of Comm'rs on Uniform State Laws, *Uniform Foreign Money-Judgments Recognition Act*, 1 (1962), available at <http://www.uniformlaws.org/shared/docs/foreign%20money%20judgments%20recognition/ufmjra%20final%20act.pdf>, p. 1 (last accessed November 21, 2017).

<sup>3</sup> s. 55.605(1)(a-c), F.S.

- The cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state;
- The judgment conflicts with another final and conclusive order;
- The parties had an agreement to litigate the matter in a court other than the one that rendered the judgment;
- The foreign court was a seriously inconvenient forum for the trial of the action;
- The foreign jurisdiction where the judgment was rendered would not give recognition to a similar judgment rendered in this state; or
- The cause of action resulted in a defamation judgment obtained in a jurisdiction outside the United States, unless the court sitting in this state first determines that the defamation law applied in the foreign court's adjudication provided at least as much protection for freedom of speech and press in that case as would be provided by the United States Constitution and the State Constitution.<sup>4</sup>

### **Effect of Proposed Changes**

The bill adds two exceptions whereby a Florida court may refuse to recognize or enforce a foreign judgment; one related to the integrity of the rendering court and the other related to due process of law. These two additional exceptions are newly adopted provisions of the Uniform Foreign Money-Judgements Recognition Act.<sup>5</sup> Moreover, these new exceptions may be contrasted with s. 55.605(1), F.S., which provides that a Florida court may not enforce a foreign judgment if:

The judgment was rendered under a system which does not provide impartial tribunals or procedures incompatible with the requirements of due process of law.

### Integrity of the Rendering Court

The bill allows, but does not require, a Florida court to not enforce a foreign judgment where the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court. In adopting this provision as part of the Uniform Act, the NCCUSL provided the following comment:

This provision may be contrasted with [s. 55.605(1), F.S.] which requires that the forum court refuse recognition to the foreign-country judgment if it was rendered under a *judicial system* that does not provide impartial tribunals...

On the other hand, [the newly created exception] allows the court to deny recognition to the foreign-country judgment if it finds a lack of impartiality and fairness in the *individual proceeding* leading to the foreign country judgment. Thus, the difference is that between showing, for example, that corruption and bribery is so prevalent throughout the judicial system of the foreign country as to make that entire judicial system one that does not provide impartial tribunals versus showing that bribery of the judge in the proceeding that resulted in the particular foreign-country judgment under consideration had a sufficient impact on the ultimate judgment as to call it into question.<sup>6</sup>

Consequently, the exception provided for in the bill would allow a Florida court to not enforce a judgment where the integrity of the specific proceeding is called in to question, despite the fact that the foreign system may generally be impartial.

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<sup>4</sup> s. 55.605(2)(a-h), F.S.

<sup>5</sup>[http://www.uniformlaws.org/shared/docs/foreign%20country%20money%20judgments%20recognition/ufcmjra\\_am05\\_bin\\_der.pdf](http://www.uniformlaws.org/shared/docs/foreign%20country%20money%20judgments%20recognition/ufcmjra_am05_bin_der.pdf), p. 12-14 (last visited November 21, 2017).

<sup>6</sup> Id. at p. 13, lines 12-19.

## Due Process of Law

The United States Constitution and the Florida Constitution provide that no person may be deprived of life, liberty, or property without due process of law. Although there is no precise definition of “due process,” the term embodies a fundamental conception of fairness.<sup>7</sup> The federal and state Due Process clauses are intended to protect individuals from arbitrary and unreasonable governmental interference with a person's right to life, liberty, and property.<sup>8</sup>

The bill allows, but does not require, a Florida court to not enforce a foreign judgment where the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law. This is in contrast to s. 55.605(1), F.S., which focuses on the judicial system in its entirety, as opposed to a single proceeding. The NCCUSL provided the following comment on this distinction:

Thus, the difference is that between showing, for example, that there has been such a breakdown of law and order in the particular foreign country that judgments are rendered on the basis of political decisions rather than the rule of law throughout the judicial system versus a showing that for political reasons the particular party against whom the foreign country judgment was entered was denied fundamental fairness in the particular proceedings leading to the foreign country judgment.<sup>9</sup>

Similar to the other exception provided for in the bill, this exception would allow a Florida court to not enforce a judgment where the fundamental fairness of a specific proceeding is called in to question, despite the fact that the foreign system may generally be fair.

### B. SECTION DIRECTORY:

**Section 1:** Amends s. 55.605, F.S., related to grounds for nonrecognition.

**Section 2:** Provides the bill is effective upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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<sup>7</sup> See *Scull v. State*, 569 So.2d 1251 (Fla. 1990); see also *School Bd. Of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d 1220 (Fla. 2009) (Due process calls for such procedural protections as the particular situation demands.).

<sup>8</sup> See *Noel v. State*, 191 So.3d 370 (Fla. 2016) (“This clause protects the individual against the arbitrary and unreasonable exercise of governmental power.”) (internal citations omitted).

<sup>9</sup> See FN. 2, supra, p. 13, lines 30-35.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**