

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 760

INTRODUCER: Senator Bean

SUBJECT: Grounds for Nonrecognition of Out-of-country Foreign Judgments

DATE: January 31, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	<u>Tulloch</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

I. Summary:

SB 760 amends the Uniform Out-of-country Foreign Money-Judgment Recognition Act (act), codified in ch. 55, F.S., to add two additional permissive grounds for nonrecognition of a foreign money judgment by a Florida court. The act currently provides three mandatory grounds for nonrecognition and eight permissive grounds for nonrecognition of a foreign judgment.

The additional permissive grounds allow a Florida court to decline to recognize a foreign judgment if:

- There is substantial doubt about the integrity of the particular 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.

The bill takes effect upon becoming law.

II. Present Situation:

Recognition and Enforcement of Foreign Judgments

Florida law codifies the common law principle of comity for recognizing and enforcing final money judgments rendered by a foreign, out-of-country court.

Common Law Comity Principles

Under the full faith and credit clause of the United States Constitution, judgments of any state or federal court within the United States are automatically enforceable in any other state or federal court.¹ However, the enforcement of a foreign judgment obtained in another country is not

¹ U.S. CONST. art. IV, s. 1.

subject to the full faith and credit clause. Instead, the recognition of foreign judgments is generally governed by the principles of international comity.

“Comity is ‘the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.’”² The purpose of granting comity is similar to the application of *res judicata* in that “once the parties have had an opportunity to present their cases fully and fairly before a court of competent jurisdiction, the results of the litigation process should be final” and given conclusive effect.³

However, there is no absolute obligation by a U.S. court to extend comity to a foreign judgment.⁴ Rather, comity is an affirmative defense that the party seeking recognition of a foreign judgment has the burden of proving.⁵

The principles governing comity analysis were first set forth by the United States Supreme Court in *Hilton v. Guyot* in 1895, when the Court considered the enforceability of a French judgment in the United States.⁶ These governing principles have since been summarized as follows:

Under principles of international comity, a foreign court’s judgment on a matter is conclusive in a federal court when (1) the foreign judgment was rendered by a court of competent jurisdiction, which had jurisdiction over the cause and the parties, (2) the judgment is supported by due allegations and proof, (3) the relevant parties had an opportunity to be heard, (4) the foreign court follows procedural rules, and (5) the foreign proceedings are stated in a clear and formal record. . . .

Under the law of the United States, a foreign judgment cannot be enforced in a U.S. court unless it was obtained under a system with procedures compatible with the requirements of due process of law.⁷

The principles of comity are now regarded as common law in the United States.⁸

² *Int’l Transactions, LTD. v. Embotelladora Agral Regiomontana*, 347 F.3d 589, 593-94 (5th Cir. 2003) (quoting and citing *Hilton v. Guyot*, 159 U.S. 113, 163-64, 205-06 (1895)).

³ *Id.* (citing *Cunard S.S. Co. v. Salen Reefer Services AB*, 773 F.2d 452, 457 (2d Cir.1985)).

⁴ *Hilton*, 159 U.S. at 163-64.

⁵ *Int’l Transactions, LTD.*, 347 F.3d at 594 (citing *Allstate Life Ins. Co. v. Linter Group Ltd.*, 994 F.2d 996, 999 (2d Cir. 1993)).

⁶ *Hilton*, 159 U.S. at 163-64.

⁷ *Int’l Transactions, LTD.*, 347 F.3d at 594 (citing *Hilton* at 159).

⁸ *Mujica v. AirScan Inc.*, 771 F.3d 580, 597 (9th Cir. 2014) (“The federal common law doctrine of international comity is applicable to these state law claims notwithstanding the general rule that federal courts apply California’s substantive law when sitting in diversity.”); 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> (last visited Jan. 5, 2018).

Comity and Due Process

At the center of the comity analysis is the constitutionally guaranteed right to due process of law. The Constitutions of the United States⁹ and Florida¹⁰ guarantee that no person shall be deprived of life, liberty, or property without due process of law. Due process has been described as envisioning

a court that hears before it condemns, proceeds upon inquiry, and renders judgment only after proper consideration of issues advanced by adversarial parties. In this respect the term ‘due process’ embodies a fundamental conception of fairness that derives ultimately from the natural rights of all individuals. Procedural due process, therefore, requires adequate notice and an opportunity to be heard at a meaningful time and in a meaningful manner.¹¹

Due process in the U.S. requires courts and judges to be neutral and impartial.¹²

Codification of Common Law Comity Principles in Uniform State Laws

Comity principles have not been codified at the federal level. With the exception of foreign defamation suits,¹³ there is no federal statute¹⁴ or treaty¹⁵ governing the recognition or enforcement of foreign judgments.¹⁶ Rather, recognition and enforcement of foreign judgments in the United States is governed either by common law principles of international comity as developed in case law following *Hinton* or by state law.¹⁷

Most states have adopted either the 1962 Uniform Foreign Money Judgments Recognition Act (1962 Act) or the 2005 Uniform Foreign-Country Money Judgments Recognition Act (2005 Act) drafted by the National Conference of Commissioners on Uniform State Laws (Uniform Law

⁹ U.S. CONST. amend. V; U.S. CONST. amend. XIV, § 1.

¹⁰ FLA. CONST. art. I, s. 9.

¹¹ *Luckey v. State*, 979 So. 2d 353, 355–56 (Fla. 5th DCA 2008) (quoting *Jones v. State*, 740 So.2d 520, 523 (Fla.1999), accord *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971); *Scull v. State*, 569 So.2d 1251, 1252 (Fla.1990)) (internal quotations and citations omitted).

¹² *Tumey v. State of Ohio*, 273 U.S. 510, 522 (1927) (“That officers acting in a judicial or quasi judicial capacity are disqualified by their interest in the controversy to be decided is of course the general rule.”).

¹³ 28 U.S.C. s. 4102 (2010).

¹⁴ The American Law Institute (ALI) has proposed a federal statute. See ALI, *Recognition and Enforcement of Foreign Judgments: Analysis and Proposed Federal Statute*, available at <https://www.ali.org/publications/show/recognition-and-enforcement-foreign-judgments-analysis-and-proposed-federal-statute/> (last visited Jan. 5, 2018).

¹⁵ Hague Convention On Choice Of Court Agreements, signed Jan. 19, 2009, 44 I.L.M. 1294 (2005). The Hague Convention Choice of Laws was signed by the United States in 2009 but does not appear to have been ratified to date. See HCCH, *Status Table 37: Convention of 30 June 2005 on Choice of Court Agreements*, available at <https://www.hcch.net/en/instruments/conventions/status-table/?cid=98> (last visited Jan. 5, 2018).

¹⁶ Violeta I. Balan, *Recognition and Enforcement of Foreign Judgments in the United States: The Need for Federal Legislation*, 37 J. MARSHALL L. REV. 229, 234-35 (2003).

¹⁷ *Id.*

Commission).¹⁸ The aim of these uniform laws is to codify the common law principles of comity and promote reciprocal recognition of money judgments in foreign countries.¹⁹

The 1962 Act

The prefatory comment to the 1962 Act indicates that, while the 1962 Act sets out rules that have been applied by a majority of U.S. courts, the 1962 Act contemplates a degree of flexibility among various jurisdictions. The prefatory comment notes that the 1962 Act does not necessarily “go as far” as some court decisions, and that courts are still privileged to give a foreign judgment greater effect than required by the 1962 Act.²⁰ The prefatory note also contemplates that some states would not wholesale adopt the 1962 Act as written, and that each state would have to provide a procedural mechanism for enforcement.²¹

Florida’s Version of the 1962 Act

In 1994, Florida adopted the 1962 Act and enacted it as the Uniform Out-of-country²² Foreign Money–Judgment Recognition Act (act).²³ The act, codified in ss. 55.601-55.607, F.S., applies “to any out-of-country foreign judgment²⁴ that is final and conclusive²⁵ and enforceable where rendered.”²⁶ “The Act effectively replaces the common law principles of comity for recognizing foreign judgments, at least to the extent of any differences between the Act and the common law.”²⁷

Under the act, “a foreign judgment is *prima facie* enforceable if it ‘is final, conclusive, and enforceable where rendered, even though an appeal therefrom is pending or is subject to appeal.’”²⁸ “Once the party seeking to enforce the judgment follows the filing and notice

¹⁸ The Uniform Law Commission is a non-profit organization comprised of state commissions on uniform laws from each state and certain U.S. territories. The purpose of the Uniform Law Commission is to “study and review the law of the states to determine which areas of law should be uniform. The commissioners promote the principle of uniformity by drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable.” Uniform Law Comm’n, Nat’l Conference of Comm’rs on Uniform State Laws, *Organization*, available at <http://www.uniformlaws.org/Narrative.aspx?title=About%20the%20ULC> (last visited Jan. 5, 2018).

¹⁹ See 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> (last visited Jan. 5, 2018).

²⁰ See 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> (last visited Jan. 5, 2018).

²¹ *Id.*

²² “Out-of-country” is used to describe “foreign judgments” under sections 55.605-.607, F.S., to distinguish it from “foreign judgments” as that term is used in sections 55.501-.509, F.S. (“Florida Enforcement of Foreign Judgments Act”). Sections 55.501-.509, F.S., applies to judgments rendered in another state or court within the United States and its territories. See s. 55.502(1), F.S.

²³ Chapter 94-239, Laws of Fla.; Sections 55.601-.607, F.S.

²⁴ Section 55.602, F.S., defines an “out-of-country foreign judgment” as “any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine, or other penalty.”

²⁵ An out-of-country foreign judgment is conclusive if “it grants or denies recovery of a sum of money.” Section 55.604, F.S.

²⁶ Section 55.603, F.S.

²⁷ *Chabert v. Bacquie*, 694 So. 2d 805, 811 (Fla. 4th DCA 1997).

²⁸ *Osorio v. Dole Food Co.*, 665 F. Supp. 2d 1307, 1323–24 (S.D. Fla. 2009), *aff’d sub nom. Osorio v. Dow Chem. Co.*, 635 F.3d 1277 (11th Cir. 2011) (quoting s. 55.603, F.S.).

requirements of Fla. Stat § 55.604, the judgment will be enforced unless the judgment debtor objects within 30 days.”²⁹ Out-of-country foreign money judgments:

[C]an be recognized and enforced in this state by filing an authenticated copy of the judgment with the clerk of the court and recording it in the public records in the county where enforcement is sought. The clerk must give notice to the judgment debtor at the address provided by the judgment creditor, and the debtor has thirty days in which to file objections to recognition of the judgment. If no objections are filed, the clerk records a certificate to that effect.

Upon application by either party, the circuit court shall conduct a hearing and enter an appropriate order granting or denying recognition in accordance with the terms of the [1964 Act]. That is an appealable order. After the clerk files the certificate or the court enters an order, the judgment “shall be enforceable in the same manner as the judgment of a court of this state.”³⁰

The party seeking enforcement must prove that the foreign money judgment is final, conclusive, and enforceable in the jurisdiction where it was rendered.³¹ Once the creditor proves the judgment is enforceable, the burden of proof shifts to the debtor to establish grounds for nonrecognition as set out in section 55.605, F.S.³²

Section 55.605, F.S., which is based on section 4 of the 1962 Act, provides a number of grounds under which a Florida court may decline to recognize a foreign money judgment.

An out-of-country foreign judgment is not considered “conclusive” and must not be recognized if:

- The judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
- The foreign court did not have personal jurisdiction over the defendant; or
- The foreign court did not have jurisdiction over the subject matter.³³

A court *may* decline to recognize an out-of-country foreign judgment if:

- The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him or her to defend;
- The judgment was obtained by fraud;
- 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 proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court;

²⁹ *Id.*

³⁰ *Le Credit Lyonnais, S.A. v. Nadd*, 741 So. 2d 1165, 1166 (Fla. 5th DCA 1999).

³¹ *Osorio*, 665 F. Supp. 2d at 1324 (citing *Kramer v. von Mitschke–Collande*, 5 So.3d 689, 690 (Fla. 3d DCA 2008)).

³² *Id.*

³³ Section 55.605(1), F.S.

- In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;
- The foreign jurisdiction where judgment was rendered would not give recognition to a similar judgment rendered in this state; or
- The foreign judgment is a defamation judgment obtained outside the United States, unless the state court determines that the foreign court afforded at least as much protection for freedom of speech and press as the Constitutions of the United States and Florida would provide.³⁴

The 2005 Act

The 2005 Act is a revision of the 1962 Act. As the Uniform Law Commissioners explained in their prefatory note;

This Act continues the basic policies and approach of the 1962 Act. Its purpose is not to depart from the basic rules or approach of the 1962 Act, which have withstood well the test of time, but rather to update the 1962 Act, to clarify its provisions, and to correct problems created by the interpretation of the provisions of that Act by the courts over the years since its promulgation. Among the more significant issues that have arisen under the 1962 Act which are addressed in this Revised Act are . . . the need to clarify and, to a limited extent, expand upon the grounds for denying recognition in light of differing interpretations of those provisions in the current case law[.]³⁵

The commentary to the 2005 Act cites several cases decided between 2000 and 2002 interpreting the first ground for nonrecognition (foreign court system fails to provide impartial courts or compatible due process) under the 1962 Act rather strictly.³⁶ Notably, two of these cases involve an English creditor, the Society of Lloyd's (Lloyd's). By 2008, Lloyd's withstood due process challenges and successfully received recognition for 25 foreign judgments in the United States.³⁷ In the 2010 appeal of one such case, *Tropp v. Corporation of Lloyd's*, Tropp sought to avoid recognition of a default judgment entered against him in England on due process grounds. Tropp argued that English law employs a sub-system for claims likes his (insurance underwriting realm) that denies due process of law.³⁸ In rejecting Tropp's argument on appeal, the court followed precedent holding that the "relevant inquiry" under the first ground for nonrecognition in the 1962 Act "is the overall fairness of England's legal system, *which is beyond dispute.*"³⁹

³⁴ Section 55.605(2), F.S. (2009).

³⁵ See Nat'l Conference of Comm'rs on Uniform State Laws, *Uniform Foreign-Country Money Judgments Recognition Act of 2005*, p. 1, available at http://www.uniformlaws.org/shared/docs/foreign%20country%20money%20judgments%20recognition/ufcmjra_final_05.pdf (last visited Jan. 5, 2018).

³⁶ *Id.* at p. 13, ¶ 11 (citing *The Society of Lloyd's v. Turner*, 303 F.3d 325, 330 (5th Cir. 2002); *CIBC Mellon Trust Co. v. Mora Hotel Corp.*, N.V., 743 N.Y.S.2d 408, 415 (N.Y. App. 2002); *Society of Lloyd's v. Ashenden*, 233 F.3d 473, 477 (7th Cir. 2000)).

³⁷ See *Tropp v. Corp. of Lloyd's*, 07 CIV. 414 (NRB), 2008 WL 5758763, at *1 (S.D.N.Y. Mar. 26, 2008), *aff'd*, 385 Fed. Appx. 36 (2d Cir. 2010) ("This case presents the latest episode in an epic saga between Names such as Tropp and Lloyd's. The story—Dickensian in length and complexity—has been retold countless times by American courts.") (citing *Soc'y of Lloyd's v. Siemon-Netto*, 457 F.3d 94, 96 (D.C.Cir.2006)).

³⁸ 385 Fed. Appx. 36, 38 (2d Cir. 2010) (quoting *See CIBC Mellon Trust Co. v. Mora Hotel Corp. N.V.*, 100 N.Y.2d 215, 762 N.Y.S.2d 5, 792 N.E.2d 155, 160 (2003))(internal quotations omitted).

³⁹ *Id.* (emphasis added).

Tropp alternatively (though unsuccessfully) argued that if the judgment was entitled to comity under the 1962 Act, then the 1962 Act violated his federal constitutional rights.⁴⁰

In response to the restrictive view of the 1962 Act expressed in *Tropp* and similar cases, the 2005 Act clarifies that the relevant due process inquiry is not limited only to the systematic analysis of a foreign court system, but also includes the individual fairness of the specific foreign court that rendered the judgment. In other words, rather than establish that the foreign country's entire court system is corrupt or lacking in due process protections, the 2005 Act provides that recognition and enforceability of a foreign judgment may be challenged by establishing that the particular proceeding involved was corrupt or lacking in due process protection.

III. Effect of Proposed Changes:

The bill amends s. 55.605(2), F.S., to add two additional grounds for when a court *may* decline to recognize a foreign judgment based on the specific fairness of the particular foreign court that rendered the particular judgment:

- There is substantial doubt about the integrity of the particular 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.

Initially, the two additional grounds appear to cover the same general due process territory as in existing s. 55.605(1)(a), F.S., which specifies that foreign judgments rendered in a country where the court system fails to provide impartial tribunals and due process protections to ensure fundamental fairness, are not conclusive and will not be recognized. The key difference is that existing s. 55.605(1)(a), F.S., addresses “*systematic* unfairness” in a foreign country's court system, whereas the two additional grounds proposed by the bill address “*specific* unfairness” in the proceedings of or by a particular foreign court.⁴¹

The comments to the 2005 Uniform Foreign-Country Money Judgments Recognition Act (2005 Act) note that, to establish the new grounds of “substantial doubt” about a specific foreign court's “integrity,” the debtor trying to avoid the foreign judgment must show the specific foreign court that rendered the judgment is corrupt. If specific corruption is established, then the foreign judgment may not be recognized.⁴²

Likewise, to establish the new due process grounds, a debtor trying to avoid a foreign judgment must show that the particular proceeding in which the judgment was rendered was fundamentally unfair. If the specific trial or other proceedings leading to the judgment are shown to not be

⁴⁰ *Id.*

⁴¹ See Geoffrey C. Hazard, Jr. and Michael Traynor, *Foreign Judgments: Is “System Fairness” Sufficient or Is “Specific Fairness” Also Required for Recognition and Enforcement?*, PUBLICIST, Vol. 11, Spring 2012 (Apr. 17, 2012), available at <http://bjil.typepad.com/publicist/2012/04/foreign-judgments-is-system-fairness-sufficient-or-is-specific-fairness-also-required-for-recognition-and.html#end> (last visited Jan. 5, 2018); Nat'l Conference of Comm'rs on Uniform State Laws, *Uniform Foreign-Country Money Judgments Recognition Act of 2005, Comment to § 4. Standards for Recognition of Foreign-Country Judgment*, pp. 13-14, available at http://www.uniformlaws.org/shared/docs/foreign%20country%20money%20judgments%20recognition/ufcmjra_final_05.pdf (last visited Jan. 5, 2018).

⁴² *Id.*

compatible with the requirements of due process of law, the Florida court may decline to recognize the foreign judgment.⁴³

Immediate Effective Date

The bill takes effect upon becoming a law. An immediate effective date means that if the bill becomes law, it will apply to existing foreign judgments that have not yet been recognized.

In Florida, newly enacted statutes that impose a new obligation or duty that interferes with vested rights will not be applied retroactively. On the other hand, statutes that relate to procedure only or are remedial in nature are generally applied retroactively to pending cases.⁴⁴ In the 1997 case of *Chabert v. Bacquie*,⁴⁵ the Fourth District Court of Appeal held that Florida's then recently enacted Uniform Out-of-country Foreign Money–Judgment Recognition Act (Act) applied to cases already pending in Florida courts. The Court reasoned that the Act was remedial in nature, because it codified the already existing common law principles of comity⁴⁶ as opposed to announcing a new duty or obligation.⁴⁷

The bill appears to be remedial in nature, because the two additional permissive grounds for nonrecognition of foreign judgments codifies longstanding, individual due process principles. Although an argument could be made that it expands current common law comity principles to recognize “specific fairness” in addition to “systematic fairness,” it is more likely that the new grounds would be deemed remedial in Florida.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴³ *Id.*

⁴⁴ *Young v. Altenhaus*, 472 So. 2d 1152, 1154 (Fla. 1985). *See also City of Orlando v. Desjardins*, 493 So. 2d 1027, 1028 (Fla. 1986)); *Palm Beach County Sheriff's Office v. Sun-Sentinel Co., LLC*, 226 So. 3d 969, 975–76 (Fla. 4th DCA 2017) (following *City of Orlando v. Desjardins* in holding that newly enacted public records exemption was remedial and applied retroactively).

⁴⁵ *Bacquie*, 694 So. 2d at 811 (following retroactivity analysis in *City of Orlando v. Desjardins*).

⁴⁶ *Id.*

⁴⁷ *Altenhaus*, 472 So. 2d at 1154.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill offers greater protection against enforcement of foreign money judgments rendered in other countries by providing additional grounds for challenging enforcement in Florida. Rather than having to establish that the foreign country's entire court system is corrupt or lacking in due process protections, a defendant may challenge the recognition and enforceability of the judgment by establishing that the particular foreign court or proceeding involved was corrupt or lacking in due process protection.

These new provisions may also deter some creditors from filing for recognition of some foreign judgments. On the other hand, proving the new grounds for nonrecognition (corruption or lack of specific fairness and due process) could lead to additional litigation and associated costs.

C. Government Sector Impact:

The state court system has not provided information on the fiscal impact of the bill. However, the bill appears unlikely to add significantly to the workload of the courts because the additional bases for challenging a foreign judgment are similar to those grounds already codified in chapter 55, F.S., and recognized in case law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends Section 55.605 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
