

D R A F T

FOR DISCUSSION ONLY

**UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS
RECOGNITION ACT (200_)**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

INTERIM DRAFT
NOVEMBER, 2004

Without Reporter's Notes

Copyright ©2004
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

December 17, 2004

UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT (200_)

The Committee acting for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Foreign-Country Money Judgments Recognition Act (200_) is as follows:

ROBERT H. CORNELL, 573 Arkansas, San Francisco, CA 94107, *Chair*
K. KING BURNETT, P.O. Box 910, Salisbury, MD 21803-0910
JOHN P. BURTON, P.O. Box 1357, 315 Paseo de Peralta, Santa Fe, NM 87501
JOHN A. CHANIN, 5901 Mount Eagle Dr., Apt. 1115, Alexandria, VA 22303, *Enactment Plan Coordinator*
FRANK W. DAYKIN, 2180 Thomas Jefferson Dr., Reno, NV 89509
W. MICHAEL DUNN, P.O. Box 3701, 1000 Elm St., Manchester, NH 03105
HENRY DEEB GABRIEL, JR., Loyola University School of Law, 526 Pine St., New Orleans, LA 70118
CURTIS R. REITZ, University of Pennsylvania School of Law, 3400 Chestnut St., Philadelphia, PA 19104
H. KATHLEEN PATCHEL, Indiana University, School of Law, 530 W. New York St., Indianapolis, IN 46202-3225, *National Conference Reporter*

EX OFFICIO

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Rd., Room 3056, Norman, OK 73019, *President*
REX BLACKBURN, 1673 W. Shoreline Dr., Suite 200, P.O. Box 7808, Boise, ID 83707, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

ELIZABETH M. BOHN, 777 Brickell Ave., Ste. 500, Miami, FL 33131-2803, *American Bar Association Advisor*

EXECUTIVE DIRECTOR

WILLIAM H. HENNING, University of Alabama School of Law, Box 870382, Tuscaloosa, AL 35487-0382, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
312/915-0195
www.nccusl.org

UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT (200_)

TABLE OF CONTENTS

SECTION 1. SHORT TITLE 1
SECTION 2. DEFINITIONS 1
SECTION 3. SCOPE OF THE ACT 1
SECTION 4. STANDARDS FOR RECOGNITION OF A FOREIGN COUNTRY
 JUDGMENT 2
SECTION 5. PERSONAL JURISDICTION 3
SECTION 6. PROCEDURE FOR RECOGNITION OF A FOREIGN COUNTRY
 JUDGMENT 4
SECTION 7. EFFECT OF RECOGNITION OF A FOREIGN COUNTRY JUDGMENT
 UNDER THIS ACT 5
SECTION 8. STAY OF PROCEEDINGS PENDING APPEAL OF FOREIGN COUNTRY
 JUDGMENT 5
SECTION 9. PERIOD OF TIME IN WHICH TO COMMENCE AN ACTION 5
SECTION 10. SAVING CLAUSE 6
SECTION 11. UNIFORMITY OF INTERPRETATION 6
SECTION 12. REPEAL 6
SECTION 13. EFFECTIVE DATE 6
[SECTION 14. RECIPROCITY] 6

1 **UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT (200_)**

2
3 **SECTION 1. SHORT TITLE.** This Act may be cited as the Uniform Foreign-Country
4 Money Judgments Recognition Act (200_).

5 **SECTION 2. DEFINITIONS.** As used in this Act:

6 (a) “Foreign country” means any governmental unit other than

7 (i) the United States;

8 (ii) a state, district, commonwealth, territory or insular possession of the
9 United States; or

10 (iii) any other governmental unit with regard to which the decision in this
11 State as to whether to recognize the judgments of that governmental unit’s courts is initially
12 subject to determination under the Full Faith and Credit Clause of the United States Constitution.

13 (b) “Foreign country judgment” means a judgment of a court of a foreign country.

14 **SECTION 3. SCOPE OF THE ACT.**

15 (a) Except as provided in subsection (b), this Act applies to any foreign country
16 judgment to the extent that the foreign country judgment

17 (1) grants or denies recovery of a sum of money; and

18 (2) is under the law of the foreign country where rendered final,
19 conclusive, and enforceable, even though an appeal from the foreign country judgment is
20 pending or the foreign country judgment is subject to appeal in the foreign country where the
21 foreign country judgment was rendered.

22 (b) This Act does not apply to a foreign country judgment, even though the
23 foreign country judgment grants or denies recovery of a sum of money, to the extent that the

1 foreign country judgment is

2 (i) a judgment for taxes;

3 (ii) a fine or other penalty; or

4 (iii) a judgment for divorce, support, or maintenance, or other judgment
5 rendered in connection with domestic relations matters.

6 (c) The party seeking recognition of a foreign country judgment has the burden of
7 establishing that the foreign country judgment meets the requirements of this section.

8 **SECTION 4. STANDARDS FOR RECOGNITION OF A FOREIGN COUNTRY**
9 **JUDGMENT.**

10 (a) Except as provided in subsections (b) and (c), a court of this State shall
11 recognize a foreign country judgment within the scope of this Act.

12 (b) A court of this State may not recognize a foreign country judgment if

13 (1) the foreign country judgment was rendered under a judicial system that
14 does not provide impartial tribunals or procedures compatible with the requirements of due
15 process of law;

16 (2) the foreign court did not have personal jurisdiction over the defendant;

17 or

18 (3) the foreign court did not have jurisdiction over the subject matter.

19 (c) A court of this State need not recognize a foreign country judgment if

20 (1) the defendant in the proceedings in the foreign court did not receive
21 notice of the proceedings in sufficient time to enable the defendant to defend;

22 (2) the foreign country judgment was obtained by fraud that deprived the
23 losing party of an adequate opportunity to present its case;

1 (3) the judgment or the [cause of action] [claim for relief] on which the
2 judgment is based is repugnant to the public policy of this State or of the United States;

3 (4) the foreign country judgment conflicts with another final and
4 conclusive judgment;

5 (5) the proceeding in the foreign court was contrary to an agreement
6 between the parties under which the dispute in question was to be determined otherwise than by
7 proceedings in that foreign court;

8 (6) in the case of jurisdiction based only on personal service, the foreign
9 court was a seriously inconvenient forum for the trial of the action;

10 (7) the foreign country judgment was rendered in circumstances that raise
11 substantial doubt about the integrity of the rendering court with respect to the foreign country
12 judgment; or

13 (8) the specific proceeding in the foreign court leading to the foreign
14 country judgment was not compatible with the requirements of due process of law.

15 (d) The party resisting recognition of the foreign country judgment has the burden
16 of establishing that one of the grounds for nonrecognition stated in subsection (b) or (c) exists.

17 **SECTION 5. PERSONAL JURISDICTION.**

18 (a) A foreign country judgment shall not be refused recognition for lack of
19 personal jurisdiction if

20 (1) the defendant was served personally in the foreign country;

21 (2) the defendant voluntarily appeared in the proceedings, other than for
22 the purpose of protecting property seized or threatened with seizure in the proceedings or of
23 contesting the jurisdiction of the court over the defendant;

1 (3) the defendant, prior to the commencement of the proceedings, had
2 agreed to submit to the jurisdiction of the foreign court with respect to the subject matter
3 involved;

4 (4) the defendant was domiciled in the foreign country when the
5 proceedings were instituted or was a corporation or other form of business organization that had
6 its principal place of business in, or was organized under the laws of, the foreign country;

7 (5) the defendant had a business office in the foreign country and the
8 proceedings in the foreign court involved a [cause of action] [claim for relief] arising out of
9 business done by the defendant through that office in the foreign country; or

10 (6) the defendant operated a motor vehicle or airplane in the foreign
11 country and the proceedings involved a [cause of action] [claim for relief] arising out of such
12 operation.

13 (b) The list of bases for personal jurisdiction in subsection (a) is not exclusive,
14 and the courts of this State may recognize other bases of personal jurisdiction as sufficient to
15 support a foreign country judgment.

16 **SECTION 6. PROCEDURE FOR RECOGNITION OF A FOREIGN COUNTRY**
17 **JUDGMENT.**

18 (a) If recognition of a foreign country judgment is sought as an original matter,
19 the issue of recognition shall be raised by filing an action seeking recognition of the foreign
20 country judgment.

21 (b) If recognition of a foreign country judgment is sought in a pending action, the
22 issue of recognition may be raised by counterclaim, cross-claim or affirmative defense.

23 **SECTION 7. EFFECT OF RECOGNITION OF A FOREIGN COUNTRY**

1 **JUDGMENT UNDER THIS ACT.** If the court in a proceeding under Section 6 of this Act
2 finds that the foreign country judgment is entitled to recognition under this Act, then the foreign
3 country judgment

4 (a) is conclusive between the parties to the extent that it grants or denies recovery
5 of a sum of money; and

6 (b) is enforceable in the same manner and to the same extent as a judgment of this
7 State.

8 **SECTION 8. STAY OF PROCEEDINGS PENDING APPEAL OF FOREIGN**
9 **COUNTRY JUDGMENT.** If a party establishes that an appeal from the foreign country
10 judgment is pending or will be taken, the court may stay any proceedings with regard to
11 recognition or enforcement of the foreign country judgment until the appeal is concluded, the
12 time for appeal expires, or the party appealing has had a sufficient period of time to prosecute
13 the appeal and has failed to do so.

14 **SECTION 9. PERIOD OF TIME IN WHICH TO COMMENCE AN ACTION.**

15 (a) An action to recognize a foreign country judgment for purposes of having that
16 foreign country judgment enforced by this State must be commenced within the earlier of
17 the time period during which the foreign country judgment may be enforced in the foreign
18 country in which the judgment was rendered or fifteen years from the date that the foreign
19 country judgment was entered in the foreign country.

20 (b) This section does not apply to recognition of a foreign country judgment
21 solely for the purpose of giving the foreign country judgment preclusive effect or when
22 recognition of the foreign country judgment is sought solely to use the foreign country judgment
23 as a setoff.

1 **SECTION 10. SAVING CLAUSE.** This Act does not prevent the recognition under
2 principles of comity or otherwise of a foreign country judgment not within the scope of this Act.

3 **SECTION 11. UNIFORMITY OF INTERPRETATION.** This Act shall be construed
4 in a manner that will effectuate its general purpose to make uniform the law of those states
5 which enact it.

6 **SECTION 12. REPEAL.** The following Acts are repealed:

7 (1) Uniform Foreign-Money Judgments Recognition Act of 1962

8 (2)

9 (3)

10 **SECTION 13. EFFECTIVE DATE.** This Act shall take effect on This Act shall
11 apply to all actions for recognition of a foreign country judgment filed on or after the effective
12 date of this Act.

13 **[SECTION 14. RECIPROCITY]**

14 *Note:* The Committee currently is considering whether the Uniform Foreign-Country Money
15 Judgments Recognition Act should contain a reciprocity requirement, either as a mandatory or
16 discretionary ground for denial of recognition of a foreign country judgment. The Committee
17 feels that this is an important issue, and one with regard to which it would like to receive as
18 much comment as possible. The draft of the Uniform Foreign-Country Money Judgments
19 Recognition Act currently does not contain a reciprocity provision. In order to facilitate
20 comment on the advisability of including such a provision in the Uniform Foreign-Country
21 Money Judgments Recognition Act, the reciprocity provision contained in Section 7 of the
22 American Law Institute International Jurisdiction and Judgments Project, Tentative Draft No.2
23 (April 13, 2004), is set out below. The ALI International Jurisdiction and Judgments Project
24 provision provides an example of what such a reciprocity provision would entail, and addresses a
25 number of the issues that a reciprocity requirement would raise.

26
27 **American Law Institute, International Jurisdiction and Judgments Project, Tentative**
28 **Draft No. 2 (April, 13, 2004)**

29
30 **§7 Reciprocal Recognition and Enforcement of Foreign Judgments**

31 (a) A foreign judgment shall not be recognized or enforced in a court in the
32

1 United States if the court finds that comparable judgments of courts in the United States would
2 not be recognized or enforced in the courts of the state of origin.
3

4 (b) A judgment debtor or other person resisting recognition or enforcement of a
5 foreign judgment in accordance with this section shall raise the defense of lack of reciprocity
6 with specificity as an affirmative defense. Once the defense of lack of reciprocity is raised, [the
7 judgment creditor or other person seeking to rely on the foreign judgment shall have the burden
8 to show that the courts of the state of origin would grant recognition and enforcement to
9 comparable judgments of courts in the United States] [the party resisting recognition or
10 enforcement shall have the burden to show that there is substantial doubt that the courts of the
11 state of origin would grant recognition or enforcement to comparable judgments of courts in the
12 United States.] Such showing may be made through expert testimony, or by judicial notice if the
13 law of the state of origin or decisions of its courts are clear.
14

15 (c) In making the determination required under subsections (a) and (b), the court
16 shall, as appropriate, inquire whether the courts of the state of origin deny enforcement to
17

18 (i) judgments against nationals of that state in favor of nationals of another
19 state;
20

21 (ii) judgments originating in the courts of the United States or of a state of
22 the United States;
23

24 (iii) judgments for compensatory damages rendered in actions for personal
25 injury or death;
26

27 (iv) judgments for statutory claims;
28

29 (v) particular types of judgments rendered by courts in the United States
30 similar to the foreign judgment for which recognition or enforcement is sought;
31

32 (vi) recognition practice of the state of origin with regard to judgments of
33 other states.
34

35 (d) Denial by courts of the state of origin of enforcement of judgments for
36 punitive, exemplary, or multiple damages shall not be regarded as denial of reciprocal
37 enforcement of judgments for the purposes of this section if the courts of the state of origin
38 would enforce the compensatory portion of such judgments.
39

40 (e) The Secretary of State is authorized to negotiate agreements with foreign
41 states or groups of states setting forth reciprocal practices concerning recognition and
42 enforcement of judgments rendered in the United States. The existence of such an agreement
43 between a foreign state or group of foreign states and the United States establishes that the
44 requirement of reciprocity has been met as to judgments within the agreement. The fact that no
45 such agreement between the state of origin and the United States is in effect, or that the

1 agreement is not applicable with respect to the judgment for which recognition or enforcement is
2 sought, does not of itself establish that the state fails to meet the reciprocity requirement of this
3 section.

4
5 (f) A party seeking to raise a defense under this section may, in appropriate cases,
6 be required to give security.