

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

FILED SENATE
Mar 26, 2015
S.B. 596
PRINCIPAL CLERK

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SENATE DRS35223-LR-99A (03/13)

Short Title: Protection Against Unconst. Foreign Judgmnts. (Public)

Sponsors: Senators Krawiec, Newton, and Wade (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY EXISTING LAW REGARDING THE ENFORCEMENT OF
3 FOREIGN-COUNTRY JUDGMENTS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 1C-1852(b) reads as rewritten:

6 "(b) This Article does not apply to a foreign-country judgment, even if the judgment
7 grants or denies recovery of a sum of money, to the extent that the judgment ~~is~~ is a judgment
8 for alimony, support, or maintenance in a matrimonial or family matter.

9 (1) ~~A judgment for taxes;~~

10 (2) ~~A fine or other penalty; or~~

11 (3) ~~A judgment for alimony, support, or maintenance in matrimonial or family~~
12 ~~matters."~~

13 SECTION 2. G.S. 1C-1853 reads as rewritten:

14 "§ 1C-1853. Standards for recognition and nonrecognition of foreign-country judgment.

15 (a) Except as otherwise provided in this section, a court of this State shall recognize a
16 foreign-country judgment to which this Article applies.

17 (b) A court of this State shall not recognize a foreign-country judgment if:

18 (1) The judgment was rendered under a judicial system that, taken as a whole,
19 does not provide impartial tribunals or procedures compatible with the
20 requirements of due process of law;

21 (2) The foreign court did not have personal jurisdiction over the defendant; ~~or~~

22 (3) The foreign court did not have jurisdiction over the subject ~~matter~~ matter; ~~or~~

23 (4) The judgment was for taxes, a fine, or other penalty obtained by a foreign
24 government entity to compensate for the expenditure of public funds for
25 government programs.

26 (c) If a court of this State finds that any of the following exist with respect to a
27 foreign-country judgment for which recognition is sought, recognition of the judgment shall be
28 denied unless the court determines, as a matter of law, that recognition would nevertheless be
29 reasonable under the circumstances:

30 (1) The defendant in the proceeding in the foreign court did not receive notice of
31 the proceeding in sufficient time to enable the defendant to defend.

32 (2) The judgment was obtained by fraud that deprived the losing party of an
33 adequate opportunity to present its case.

34 (3) The judgment, or the cause of action or claim for relief on which the
35 judgment is based, is repugnant to the public policy of this State or of the
36 United States.



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- 1 (4) Reserved for future codification.
2 (5) The proceeding in the foreign court was contrary to an agreement between
3 the parties under which the dispute in question was to be determined
4 otherwise than by proceedings in that foreign court.
5 (6) In the case of jurisdiction based only on personal service, the foreign court
6 was a seriously inconvenient forum for the trial of the action.
7 (7) The judgment was rendered in circumstances that raise substantial doubt
8 about the integrity of the rendering court with respect to the judgment.
9 (8) The specific proceeding in the foreign court leading to the judgment was
10 fundamentally unfair.
11 (9) The judgment is based on a foreign statute or rule of law which, as applied
12 by the foreign court, would have been contrary to either the United States
13 Constitution or the North Carolina Constitution had it been applied by a
14 court in North Carolina.

15 (d) If a foreign-country judgment for which recognition is sought is otherwise entitled
16 to recognition under this Article but conflicts with a prior final and conclusive judgment, a
17 court of this State shall recognize the judgment for which recognition is sought unless the court
18 determines that nonrecognition would nevertheless be reasonable under the circumstances.

19 (e) If a foreign-country judgment for which recognition is sought is otherwise entitled
20 to recognition under this Article but conflicts with a subsequent final and conclusive judgment,
21 a court of this State shall deny recognition of the judgment for which recognition is sought
22 unless the court determines that recognition would nevertheless be reasonable under the
23 circumstances.

24 (f) A party resisting recognition of a foreign-country judgment has the burden of
25 establishing that a ground for nonrecognition stated in subsection (b) of this section exists.

26 (g) A party resisting recognition of a foreign-country judgment has the burden of
27 establishing that a ground for nonrecognition stated in subsection (c) of this section exists. The
28 party seeking recognition of the judgment has the burden of establishing that, as a matter of
29 law, recognition would nevertheless be reasonable under the circumstances.

30 (h) A party resisting recognition of a foreign-country judgment under subsection (d) or
31 (e) of this section has the burden of establishing that another final and conclusive judgment
32 exists and that the other judgment conflicts with the judgment for which recognition is sought.
33 Under subsection (d) of this section, the party resisting recognition also has the burden of
34 establishing that nonrecognition of the judgment for which recognition is sought would be
35 reasonable under the circumstances. Under subsection (e) of this section, the party seeking
36 recognition of the foreign-country judgment has the burden of establishing that recognition
37 would be reasonable under the circumstances.

38 (i) When a court of this State rules on recognition of a foreign-country judgment, the
39 court shall state the facts specially and state separately its conclusions of law.

40 (j) A proceeding in a foreign court is fundamentally unfair and its judgment is
41 repugnant to the public policy of this State, if the action is brought by a foreign government
42 entity based upon rules of law adopted for the benefit of the foreign government entity that are
43 applied ex post facto to conduct of the defendant or if the action imposes liability for harms to
44 individuals without requiring individualized proof of each element of the claim for each such
45 individual."

46 **SECTION 3.** Article 20 of Chapter 1C of the General Statutes is amended by
47 adding a new section to read:

48 **"§ 1C-1860. Severability.**

49 The provisions of this Article are severable. If any part or application of this Article is
50 invalid, then other parts or applications remain valid."

1 **SECTION 4.** This act is effective when it becomes law and applies to recognition
2 of foreign-country judgments on or after that date regardless of when the judgment was
3 entered.