BILL ANALYSIS

C.S.S.B. 944
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to interested parties, the increase in judgments being enforced from country to country as a result of international trade litigation has created a need for uniformity between states with respect to the law governing foreign-country judgments. C.S.S.B. 944 seeks to address this issue by setting out uniform standards for recognition of a foreign-country judgment, among other provisions that are part of a uniform act used by other states.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 944 repeals provisions of the Civil Practice and Remedies Code relating to the enforcement of judgments of other countries and amends the Civil Practice and Remedies Code to effectively replace those repealed provisions. The bill requires a court of Texas to recognize a foreign-country judgment to the extent that the judgment grants or denies recovery of a sum of money and is final, conclusive, and enforceable under the law of the foreign country in which the judgment is rendered. The bill expressly does not apply to a foreign-country judgment that grants or denies recovery of a sum of money to the extent that the judgment is a judgment for taxes, a final or other penalty, or a judgment for divorce, support, or maintenance or other judgment rendered in connection with domestic relations. The bill places the burden of establishing that the bill's provisions governing the enforcement of judgments of other countries apply to a foreign-country judgment on a party seeking recognition of the foreign-country judgment.

C.S.S.B. 944 prohibits a Texas court from recognizing a foreign-country judgment if the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law, if the foreign court did not have personal jurisdiction over the defendant, or if the foreign court did not have jurisdiction over the subject matter. The bill expressly does not require a Texas court to recognize a foreign-country judgment in any of the following circumstances:

- the defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;
- the judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present the party's case;
- the judgment or the cause of action on which the judgment is based is repugnant to the

public policy of the state or the United States;

- the judgment conflicts with another final and conclusive judgment;
- the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in the foreign court;
- jurisdiction was based only on personal service and the foreign court was a seriously inconvenient forum for the trial of the action;
- 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 places the burden of establishing that a ground for nonrecognition exists on a party resisting recognition of a foreign-country judgment.

C.S.S.B. 944 prohibits a foreign-country judgment from being refused recognition for lack of personal jurisdiction in any of the following circumstances:

- the defendant was served with process personally in the foreign country;
- the defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;
- the defendant, before commencement of the proceeding, agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;
- the defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization whose principal place of business was in, or that was organized under the laws of, the foreign country;
- the defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or
- the defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action arising out of that operation.

The bill establishes that this list of bases for personal jurisdiction is not exclusive and authorizes a Texas court to recognize other bases of personal jurisdiction as sufficient to support a foreign-country judgment.

C.S.S.B. 944 authorizes the issue of recognition of a foreign-country judgment to be raised by filing an action seeking recognition of the judgment if such recognition is sought as an original matter. The bill authorizes the issue of recognition to be raised by counterclaim, cross-claim, or affirmative defense if recognition is sought in a pending action. The bill establishes that, if the court in a proceeding for recognition of a foreign-country judgment finds that the foreign-country judgment is entitled to recognition under the bill, then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in Texas would be conclusive and is enforceable in the same manner and to the same extent as a judgment rendered in Texas.

C.S.S.B. 944 authorizes a court, if a party establishes that an appeal from a foreign-country judgment is pending or will be taken, to stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so. The bill requires an action to recognize a foreign-country judgment to be brought within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 15 years from the date that the

foreign-country judgment became effective in the foreign country. The bill requires consideration in applying and construing the bill's provisions governing the enforcement of judgments of other countries to be given to the need to promote uniformity of the law with respect to the subject matter of those provisions among states that enact a law based on the uniform act on which the provisions are based. The bill's provisions expressly do not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of the provisions.

C.S.S.B. 944 repeals Chapter 36, Civil Practice and Remedies Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 944 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Subtitle C, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 36A to read as follows: CHAPTER 36A. ENFORCEMENT OF JUDGMENTS OF OTHER COUNTRIES	SECTION 1. Subtitle C, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 36A to read as follows: CHAPTER 36A. ENFORCEMENT OF JUDGMENTS OF OTHER COUNTRIES
Sec. 36A.001. SHORT TITLE.	Sec. 36A.001. SHORT TITLE.
Sec. 36A.002. DEFINITIONS.	Sec. 36A.002. DEFINITIONS.
Sec. 36A.003. APPLICABILITY.	Sec. 36A.003. APPLICABILITY.
Sec. 36A.004. STANDARDS FOR RECOGNITION OF FOREIGN-COUNTRY JUDGMENT. (a) Except as otherwise provided in Subsections (b) and (c), a court of this state shall recognize a foreign-country judgment to which this chapter applies. (b) A court of this state may not recognize a foreign-country judgment if: (1) the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law; (2) the foreign court did not have personal jurisdiction over the defendant; or (3) the foreign court did not have jurisdiction over the subject matter. (c) A court of this state is not required to recognize a foreign-country judgment if: (1) the defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the	Sec. 36A.004. STANDARDS FOR RECOGNITION OF FOREIGN-COUNTRY JUDGMENT. (a) Except as otherwise provided in Subsections (b) and (c), a court of this state shall recognize a foreign-country judgment to which this chapter applies. (b) A court of this state may not recognize a foreign-country judgment if: (1) the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law; (2) the foreign court did not have personal jurisdiction over the defendant; or (3) the foreign court did not have jurisdiction over the subject matter. (c) A court of this state is not required to recognize a foreign-country judgment if: (1) the defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the

defendant to defend;	defendant to defend;
(2) the judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present the party's case;	(2) the judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present the party's case;
(3) the judgment or the cause of action on which the judgment is based is repugnant to the public policy of this state or the United States;	(3) the judgment or the cause of action on which the judgment is based is repugnant to the public policy of this state or the United States;
(4) the judgment conflicts with another final and conclusive judgment;	(4) the judgment conflicts with another final and conclusive judgment;
(5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in the foreign court;	(5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in the foreign court;
(6) jurisdiction was based only on personal service and the foreign court was a seriously inconvenient forum for the trial of the action;	(6) jurisdiction was based only on personal service and the foreign court was a seriously inconvenient forum for the trial of the action;
(7) the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment;	(7) the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or
(8) the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law; or	(8) the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.
(9) it is established that the foreign country in which the judgment was rendered does not recognize judgments rendered in this state that, but for the fact that they are rendered in this state, would constitute foreign-country judgments to which this chapter would apply under Section 36A.003.	
(d) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in Subsection (b) or (c) exists.	(d) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in Subsection (b) or (c) exists.
Sec. 36A.005. PERSONAL JURISDICTION.	Sec. 36A.005. PERSONAL JURISDICTION.
Sec. 36A.006. PROCEDURE FOR RECOGNITION OF FOREIGN-COUNTRY JUDGMENT.	Sec. 36A.006. PROCEDURE FOR RECOGNITION OF FOREIGN-COUNTRY JUDGMENT.
Sec. 36A.007. EFFECT OF RECOGNITION OF FOREIGN-COUNTRY JUDGMENT.	Sec. 36A.007. EFFECT OF RECOGNITION OF FOREIGN-COUNTRY JUDGMENT.
Sec. 36A.008. STAY OF PROCEEDINGS PENDING APPEAL OF FOREIGN-COUNTRY JUDGMENT.	Sec. 36A.008. STAY OF PROCEEDINGS PENDING APPEAL OF FOREIGN-COUNTRY JUDGMENT.
Sec. 36A.009. STATUTE OF	Sec. 36A.009. STATUTE OF

LIMITATIONS.	LIMITATIONS.
Sec. 36A.010. UNIFORMITY OF INTERPRETATION.	Sec. 36A.010. UNIFORMITY OF INTERPRETATION.
Sec. 36A.011. SAVING CLAUSE.	Sec. 36A.011. SAVING CLAUSE.
SECTION 2. Chapter 36, Civil Practice and Remedies Code, is repealed.	SECTION 2. Same as engrossed version.
SECTION 3. This Act applies to a pending suit in which the issue of recognition of a foreign-country money judgment is or has been raised without regard to whether the suit was commenced before, on, or after the effective date of this Act.	SECTION 3. Chapter 36A, Civil Practice and Remedies Code, as added by this Act, applies to all actions commenced on or after the effective date of this Act in which the issue of recognition of a foreign-country judgment is raised.
SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.	SECTION 4. Same as engrossed version.