

By: Flynn, Leach, Burkett, Parker,
Laubenberg, et al.

H.B. No. 45

Substitute the following for H.B. No. 45:

By: Smithee

C.S.H.B. No. 45

A BILL TO BE ENTITLED

AN ACT

1
2 relating to requiring the Texas Supreme Court to adopt rules and
3 provide judicial instruction regarding the application of foreign
4 laws in certain family law cases.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. The legislature finds that:

7 (1) litigants in actions under the Family Code
8 involving a marriage relationship or a parent-child relationship
9 are protected against violations of constitutional rights and
10 public policy in the application of foreign law and the recognition
11 and enforcement of foreign judgments and arbitration awards by
12 courts of this state by a well-established body of law, described by
13 Tex. Att'y Gen. Op. No. KP-0094 (2016), which includes protections
14 provided under:

15 (A) the United States Constitution and the Texas
16 Constitution;

17 (B) federal law, treaties, and conventions to
18 which the United States is a signatory;

19 (C) federal and state judicial precedent; and

20 (D) the Family Code and other laws of this state;

21 (2) the legislature has enacted statutes, including
22 the Uniform Child Custody Jurisdiction and Enforcement Act
23 (UCCJEA), that address comity regarding foreign judgments and
24 arbitration awards;

1 (3) as recognized by courts and commentators, the
2 UCCJEA does not define the aspects of a foreign law that violate
3 fundamental principles of human rights or certain terminology used
4 by that Act;

5 (4) the Family Code allows parties to a suit involving
6 the marriage relationship or affecting the parent-child
7 relationship to engage in arbitration and authorizes the court to
8 render an order reflecting the arbitrator's award;

9 (5) the Family Code should not be applied to enforce a
10 judgment or arbitrator's award affecting a marriage relationship or
11 a parent-child relationship based on foreign law if the foreign law
12 applied to render the judgment or award does not:

13 (A) grant constitutional rights guaranteed by
14 the United States Constitution and the Texas Constitution;

15 (B) consider the best interest of the child;

16 (C) consider whether domestic violence or child
17 abuse has occurred and is likely to continue in the future; or

18 (D) consider whether the foreign judgment or
19 arbitrator's award affecting the parent-child relationship may
20 place the child in substantial risk of harm; and

21 (6) the rules of procedure and evidence adopted by the
22 Texas Supreme Court and judicial education required by the Texas
23 Supreme Court can ensure the full implementation and uniform
24 application by the courts of this state of the well-established
25 body of law described by Subdivision (1) of this section in order to
26 protect litigants in actions under the Family Code involving a
27 marriage relationship or a parent-child relationship against

1 violations of constitutional rights and public policy.

2 SECTION 2. Subchapter A, Chapter 22, Government Code, is
3 amended by adding Sections 22.0041 and 22.022 to read as follows:

4 Sec. 22.0041. RULES REGARDING FOREIGN LAW AND FOREIGN
5 JUDGMENTS IN CERTAIN FAMILY LAW ACTIONS. (a) In this section:

6 (1) "Comity" means the recognition by a court of one
7 jurisdiction of the laws and judicial decisions of a court of
8 another jurisdiction.

9 (2) "Foreign judgment" means a judgment of a court,
10 tribunal, or administrative adjudicator of a jurisdiction outside
11 of the states and territories of the United States.

12 (3) "Foreign law" means a law, rule, or code of a
13 jurisdiction outside of the states and territories of the United
14 States.

15 (b) The supreme court shall adopt rules of evidence and
16 procedure to implement the limitations on the granting of comity to
17 a foreign judgment or an arbitration award involving a marriage
18 relationship or a parent-child relationship under the Family Code
19 to protect against violations of constitutional rights and public
20 policy.

21 (c) The rules adopted under Subsection (b) must:

22 (1) require that any party who intends to seek
23 enforcement of a judgment or an arbitration award based on foreign
24 law that involves a marriage relationship or a parent-child
25 relationship shall provide timely notice to the court and to each
26 other party, including by providing information required by Rule
27 203, Texas Rules of Evidence, and by describing the court's

1 authority to enforce or decide to enforce the judgment or award;

2 (2) require that any party who intends to oppose the
3 enforcement of a judgment or an arbitration award based on foreign
4 law that involves a marriage relationship or a parent-child
5 relationship shall provide timely notice to the court and to each
6 other party and include with the notice an explanation of the
7 party's basis for opposition, including by stating whether the
8 party asserts that the judgment or award violates constitutional
9 rights or public policy;

10 (3) require a hearing on the record, after notice to
11 the parties, to determine whether the proposed enforcement of a
12 judgment or an arbitration award based on foreign law that involves
13 a marriage relationship or a parent-child relationship violates
14 constitutional rights or public policy;

15 (4) to facilitate appellate review, require that a
16 court state its findings of fact and conclusions of law in a written
17 order determining whether to enforce a foreign judgment or an
18 arbitration award based on foreign law that involves a marriage
19 relationship or a parent-child relationship;

20 (5) require that a court's determination under
21 Subdivision (3) or (4) be made promptly so that the action may
22 proceed expeditiously; and

23 (6) provide that a court may issue any orders the court
24 considers necessary to preserve principles of comity or the freedom
25 to contract for arbitration while protecting against violations of
26 constitutional rights and public policy in the application of
27 foreign law and the recognition and enforcement of foreign

1 judgments and arbitration awards.

2 (d) In addition to the rules required under Subsection (b),
3 the supreme court shall adopt any other rules the supreme court
4 considers necessary or advisable to accomplish the purposes of this
5 section.

6 (e) A rule adopted under this section does not apply to an
7 action brought under the International Child Abduction Remedies Act
8 (22 U.S.C. Section 9001 et seq.).

9 (f) In the event of a conflict between a rule adopted under
10 this section and a federal or state law, the federal or state law
11 prevails.

12 Sec. 22.022. JUDICIAL INSTRUCTION RELATED TO FOREIGN LAW
13 AND FOREIGN JUDGMENTS. (a) The supreme court shall provide for a
14 course of instruction that relates to issues regarding foreign law,
15 foreign judgments, and arbitration awards in relation to foreign
16 law that arise in actions under the Family Code involving the
17 marriage relationship and the parent-child relationship for judges
18 involved in those actions.

19 (b) The course of instruction must include information
20 about:

21 (1) the limits on comity and the freedom to contract
22 for arbitration that protect against violations of constitutional
23 rights and public policy in the application of foreign law and the
24 recognition and enforcement of foreign judgments and arbitration
25 awards in actions brought under the Family Code; and

26 (2) the rules of evidence and procedure adopted under
27 Section 22.0041.

1 (c) The supreme court shall adopt rules necessary to
2 accomplish the purposes of this section.

3 SECTION 3. The Texas Supreme Court shall adopt rules as
4 required by this Act as soon as practicable following the effective
5 date of this Act, but not later than January 1, 2018.

6 SECTION 4. This Act takes effect September 1, 2017.