

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 949 Grounds for Nonrecognition of Foreign Defamation Judgments

SPONSOR(S): Van Zant; Porth

TIED BILLS: None

IDEN./SIM. BILLS: SB 1066

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee	10 Y, 0 N	Bond	De La Paz
2)	Criminal & Civil Justice Policy Council	12 Y, 0 N	Bond	Havlicak
3)	Policy Council	24 Y, 0 N	Hogge	Hogge
4)				
5)				

SUMMARY ANALYSIS

The state is not required to recognize or enforce a judgment of a court in a foreign country. The state has elected, however, to recognize and enforce most foreign country judgments, with certain exceptions.

This bill adds an exception to recognition to provide that a Florida court is not required to recognize or enforce a foreign country defamation judgment if the law of that country does not contain the same constitutional free speech protections as would apply in a Florida court.

This bill does not appear to have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Foreign Judgments

A person who holds a civil judgment against another person has certain legal rights pursuant to that judgment related to enforcement and collection of the judgment. The United States Constitution requires Florida courts to give full faith and credit to judgments of other state courts, but is silent as to whether a state must give any faith or credit to judgments from foreign countries. While Congress clearly could regulate whether and how states recognize a judgment from a foreign country under the federal treaty powers, there is currently no federal law or treaty that requires Florida to recognize any foreign judgment.

In order to encourage and regulate trade, and in order to encourage courts of other foreign countries to recognize Florida's judgments, Florida has adopted the Uniform Foreign Money-Judgments Recognition Act, at ss. 55.601-55.607, F.S. Section 55.604, F.S., provides that Florida will generally accept and enforce a judgment rendered in a foreign jurisdiction. Section 55.605, F.S., however, provides a number of grounds under which a Florida court either must or may refuse to recognize a judgment from a foreign country. A Florida court must refuse to recognize a foreign judgment:

- That was rendered under a system which does not provide impartial tribunals;
- That was rendered under a system that does not provide due process of law;
- If the foreign court did not have personal jurisdiction over the defendant; or
- If foreign court did not have jurisdiction over the subject matter.

A Florida court may refuse to recognize an out-of-country foreign judgment if:

- The defendant did not receive adequate notice of the foreign court proceedings;
- 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 parties had an agreement to litigate the matter in a court other than the one that rendered the judgment;
- The foreign court was a seriously inconvenient forum for the trial of the action; or
- The foreign jurisdiction where the judgment was rendered would not give recognition to a similar judgment rendered in this state.

Defamation

The term "defamation" encompasses actions commonly known as libel or slander. Defamation is an "intentional false communication . . . that injures another's reputation or good name. . . . A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from association or dealing with him."¹

The standards for filing a defamation action vary around the world. In the United States, defamation actions are subject to the First Amendment that protects freedom of speech. For instance, if the plaintiff is a public official or public figure, the plaintiff must show that the defamatory statement was published with actual malice.² The Florida Constitution provision on free speech is similar to the First Amendment. It provides:

Freedom of speech and press.--Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for defamation the truth may be given in evidence. If the matter charged as defamatory is true and was published with good motives, the party shall be acquitted or exonerated.³

It is possible that a defamation that would be barred by state or federal constitutional law, but that was entered in a foreign jurisdiction without such protections, would not be enforced by the Florida court if the court found the foreign judgment to be repugnant to the public policy of the state.

Effect of Bill

This bill adds another exception to s. 55.604, F.S., to provide that a Florida court need not recognize a foreign judgment if the judgment is based on a defamation judgment obtained in a jurisdiction outside the United States. This exception does not apply, and the defamation judgment may be recognized, but only if the Florida court first determines that the defamation law applied in the foreign court's adjudication provided at least as much protection for freedom of speech and press in that case as would be provided by the United States Constitution and the State Constitution.

This bill also creates s. 55.6055, F.S., to provide that a Florida court has limited personal jurisdiction over a foreign person for the purpose of hearing a declaratory judgment action regarding the application of the s. 55.604, F.S., regarding nonrecognition of a foreign defamation judgment. For such purposes, a Florida court has personal jurisdiction over any person who obtains a judgment in a defamation proceeding outside the United States against any person who:

- Is a resident of this state;
- Is a person or entity amenable to the jurisdiction of this state;
- Has assets in this state; or
- May have to take action in this state to comply with the judgment.

Newly created s. 55.6055, F.S., is expressly made applicable to judgments rendered in defamation proceedings outside the United States before, on, or after the effective date of the bill.

B. SECTION DIRECTORY:

Section 1 amends s. 55.605, F.S., regarding the grounds for nonrecognition of a foreign judgment.

¹ Black's Law Dictionary, 6th Ed.

² *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)(public official); *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967)(public figure).

³ Article I, s. 4, Florida Constitution.

Section 2 creates s. 55.6055, F.S., regarding jurisdiction over persons regarding foreign defamation judgments.

Section 3 provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.