

CHAPTER 42

COURTS

HOUSE BILL 08-1202

BY REPRESENTATIVE(S) McGihon, Borodkin, Carroll T., Fischer, Gardner B., Levy, Stafford, and Stephens;
also SENATOR(S) Shaffer.

AN ACT

CONCERNING THE ENACTMENT OF THE "UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 62 of title 13, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

ARTICLE 62
Uniform Foreign-country Money
Judgments Recognition Act

13-62-101. Short title. THIS ARTICLE MAY BE CITED AS THE "UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT".

13-62-102. Definitions. IN THIS ARTICLE:

(1) "FOREIGN-COUNTRY" MEANS A GOVERNMENT OTHER THAN:

(a) THE UNITED STATES;

(b) A STATE, DISTRICT, COMMONWEALTH, TERRITORY, OR INSULAR POSSESSION OF THE UNITED STATES; OR

(c) ANY OTHER GOVERNMENT WITH REGARD TO WHICH THE DECISION IN THIS STATE AS TO WHETHER TO RECOGNIZE A JUDGMENT OF THAT GOVERNMENT'S COURTS IS INITIALLY SUBJECT TO DETERMINATION UNDER THE FULL FAITH AND CREDIT CLAUSE OF THE UNITED STATES CONSTITUTION.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(2) "FOREIGN-COUNTRY JUDGMENT" MEANS A JUDGMENT OF A COURT OF A FOREIGN COUNTRY.

13-62-103. Applicability. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, THIS ARTICLE APPLIES TO A FOREIGN-COUNTRY JUDGMENT TO THE EXTENT THAT THE JUDGMENT:

(a) GRANTS OR DENIES RECOVERY OF A SUM OF MONEY; AND

(b) UNDER THE LAW OF THE FOREIGN COUNTRY WHERE RENDERED, IS FINAL, CONCLUSIVE, AND ENFORCEABLE.

(2) THIS ARTICLE DOES NOT APPLY TO A FOREIGN-COUNTRY JUDGMENT, EVEN IF THE JUDGMENT GRANTS OR DENIES RECOVERY OF A SUM OF MONEY, TO THE EXTENT THAT THE JUDGMENT IS:

(a) A JUDGMENT FOR TAXES;

(b) A FINE OR OTHER PENALTY; OR

(c) A JUDGMENT FOR DIVORCE, SUPPORT, OR MAINTENANCE, OR OTHER JUDGMENT RENDERED IN CONNECTION WITH DOMESTIC RELATIONS.

(3) A PARTY SEEKING RECOGNITION OF A FOREIGN-COUNTRY JUDGMENT HAS THE BURDEN OF ESTABLISHING THAT THIS ARTICLE APPLIES TO THE FOREIGN-COUNTRY JUDGMENT.

13-62-104. Standards for recognition of foreign-country judgment.

(1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (2) AND (3) OF THIS SECTION, A COURT OF THIS STATE SHALL RECOGNIZE A FOREIGN-COUNTRY JUDGMENT TO WHICH THIS ARTICLE APPLIES.

(2) A COURT OF THIS STATE MAY NOT RECOGNIZE A FOREIGN-COUNTRY JUDGMENT IF:

(a) 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;

(b) THE FOREIGN COURT DID NOT HAVE PERSONAL JURISDICTION OVER THE DEFENDANT; OR

(c) THE FOREIGN COURT DID NOT HAVE JURISDICTION OVER THE SUBJECT MATTER.

(3) A COURT OF THIS STATE NEED NOT RECOGNIZE A FOREIGN-COUNTRY JUDGMENT IF:

(a) 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;

(b) THE JUDGMENT WAS OBTAINED BY FRAUD THAT DEPRIVED THE LOSING PARTY OF AN ADEQUATE OPPORTUNITY TO PRESENT ITS CASE;

(c) THE JUDGMENT OR THE CLAIM FOR RELIEF ON WHICH THE JUDGMENT IS BASED IS REPUGNANT TO THE PUBLIC POLICY OF THIS STATE OR OF THE UNITED STATES;

(d) THE JUDGMENT CONFLICTS WITH ANOTHER FINAL AND CONCLUSIVE JUDGMENT;

(e) 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 THAT FOREIGN COURT;

(f) IN THE CASE OF JURISDICTION BASED ONLY ON PERSONAL SERVICE, THE FOREIGN COURT WAS A SERIOUSLY INCONVENIENT FORUM FOR THE TRIAL OF THE ACTION;

(g) THE JUDGMENT WAS RENDERED IN CIRCUMSTANCES THAT RAISE SUBSTANTIAL DOUBT ABOUT THE INTEGRITY OF THE RENDERING COURT WITH RESPECT TO THE JUDGMENT; OR

(h) THE SPECIFIC PROCEEDING IN THE FOREIGN COURT LEADING TO THE JUDGMENT WAS NOT COMPATIBLE WITH THE REQUIREMENTS OF DUE PROCESS OF LAW.

(4) A PARTY RESISTING RECOGNITION OF A FOREIGN-COUNTRY JUDGMENT HAS THE BURDEN OF ESTABLISHING THAT A GROUND FOR NONRECOGNITION STATED IN SUBSECTION (2) OR (3) OF THIS SECTION EXISTS.

13-62-105. Personal jurisdiction. (1) A FOREIGN-COUNTRY JUDGMENT MAY NOT BE REFUSED RECOGNITION FOR LACK OF PERSONAL JURISDICTION IF:

(a) THE DEFENDANT WAS SERVED WITH PROCESS PERSONALLY IN THE FOREIGN COUNTRY;

(b) 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;

(c) THE DEFENDANT, BEFORE THE COMMENCEMENT OF THE PROCEEDING, HAD AGREED TO SUBMIT TO THE JURISDICTION OF THE FOREIGN COURT WITH RESPECT TO THE SUBJECT MATTER INVOLVED;

(d) THE DEFENDANT WAS DOMICILED IN THE FOREIGN COUNTRY WHEN THE PROCEEDING WAS INSTITUTED OR WAS A CORPORATION OR OTHER FORM OF BUSINESS ORGANIZATION THAT HAD ITS PRINCIPAL PLACE OF BUSINESS IN, OR WAS ORGANIZED UNDER THE LAWS OF, THE FOREIGN COUNTRY;

(e) THE DEFENDANT HAD A BUSINESS OFFICE IN THE FOREIGN COUNTRY AND THE PROCEEDING IN THE FOREIGN COURT INVOLVED A CLAIM FOR RELIEF ARISING OUT OF BUSINESS DONE BY THE DEFENDANT THROUGH THAT OFFICE IN THE FOREIGN

COUNTRY; OR

(f) THE DEFENDANT OPERATED A MOTOR VEHICLE OR AIRPLANE IN THE FOREIGN COUNTRY AND THE PROCEEDING INVOLVED A CLAIM FOR RELIEF ARISING OUT OF THAT OPERATION.

(2) THE LIST OF BASES FOR PERSONAL JURISDICTION IN SUBSECTION (1) OF THIS SECTION IS NOT EXCLUSIVE. THE COURTS OF THIS STATE MAY RECOGNIZE BASES OF PERSONAL JURISDICTION OTHER THAN THOSE LISTED IN SUBSECTION (1) OF THIS SECTION AS SUFFICIENT TO SUPPORT A FOREIGN-COUNTRY JUDGMENT.

13-62-106. Procedure for recognition of foreign-country judgment. (1) IF RECOGNITION OF A FOREIGN-COUNTRY JUDGMENT IS SOUGHT AS AN ORIGINAL MATTER, THE ISSUE OF RECOGNITION SHALL BE RAISED BY FILING AN ACTION SEEKING RECOGNITION OF THE FOREIGN- COUNTRY JUDGMENT.

(2) IF RECOGNITION OF A FOREIGN-COUNTRY JUDGMENT IS SOUGHT IN A PENDING ACTION, THE ISSUE OF RECOGNITION MAY BE RAISED BY COUNTERCLAIM, CROSS-CLAIM, OR AFFIRMATIVE DEFENSE.

13-62-107. Effect of recognition of foreign-country judgment. (1) IF THE COURT IN A PROCEEDING UNDER SECTION 13-62-106 FINDS THAT THE FOREIGN-COUNTRY JUDGMENT IS ENTITLED TO RECOGNITION UNDER THIS ARTICLE THEN, TO THE EXTENT THAT THE FOREIGN-COUNTRY JUDGMENT GRANTS OR DENIES RECOVERY OF A SUM OF MONEY, THE FOREIGN-COUNTRY JUDGMENT IS:

(a) CONCLUSIVE BETWEEN THE PARTIES TO THE SAME EXTENT AS THE JUDGMENT OF A SISTER STATE ENTITLED TO FULL FAITH AND CREDIT IN THIS STATE WOULD BE CONCLUSIVE; AND

(b) ENFORCEABLE IN THE SAME MANNER AND TO THE SAME EXTENT AS A JUDGMENT RENDERED IN THIS STATE.

13-62-108. Stay of proceedings pending appeal of foreign-country judgment. IF A PARTY ESTABLISHES THAT AN APPEAL FROM A FOREIGN-COUNTRY JUDGMENT IS PENDING OR WILL BE TAKEN, THE COURT MAY 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.

13-62-109. Statute of limitations. AN ACTION TO RECOGNIZE A FOREIGN-COUNTRY JUDGMENT MUST BE COMMENCED WITHIN THE EARLIER OF THE TIME DURING WHICH THE FOREIGN-COUNTRY JUDGMENT IS EFFECTIVE IN THE FOREIGN COUNTRY OR FIFTEEN YEARS FROM THE DATE THAT THE FOREIGN-COUNTRY JUDGMENT BECAME EFFECTIVE IN THE FOREIGN COUNTRY.

13-62-110. Uniformity of interpretation. IN APPLYING AND CONSTRUING THIS UNIFORM ACT, CONSIDERATION MUST BE GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

13-62-111. Saving clause. THIS ARTICLE DOES NOT PREVENT THE RECOGNITION UNDER PRINCIPLES OF COMITY OR OTHERWISE OF A FOREIGN-COUNTRY JUDGMENT NOT WITHIN THE SCOPE OF THIS ARTICLE.

13-62-112. Applicability. THIS ARTICLE APPLIES TO ALL ACTIONS COMMENCED ON OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE IN WHICH THE ISSUE OF RECOGNITION OF A FOREIGN-COUNTRY JUDGMENT IS RAISED.

SECTION 2. 11-37.5-301 (3), Colorado Revised Statutes, is amended to read:

11-37.5-301. Legislative declaration - asset protection - purpose and perspective - limitations upon recognition of foreign judgments. (3) The "~~Uniform Foreign Money-Judgments Recognition Act~~" "UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT", article 62 of title 13, C.R.S., signifies a departure from comity because it codifies the principles of comity but with certain exceptions and modifications. This part 3 enacts a further departure from comity that is intended to uphold the state's interest in extending to a customer of a foreign capital depository the maximum amount of privacy possible within prudential limits as well as state and federal law.

SECTION 3. 11-37.5-302 (2) and (3), Colorado Revised Statutes, are amended to read:

11-37.5-302. Definitions. As used in this part 3, unless the context otherwise requires:

(2) "Foreign judgment" has the same meaning as IS PROVIDED FOR THE TERM "FOREIGN-COUNTRY JUDGMENT" in section 13-62-102 (2), C.R.S.

(3) "Foreign state" has the same meaning as IS PROVIDED FOR THE TERM "FOREIGN-COUNTRY" in section 13-62-102 (1), C.R.S.

SECTION 4. 11-37.5-303 (1) (b), Colorado Revised Statutes, is amended to read:

11-37.5-303. Defense against enforcement of foreign judgments - depository obligations. (1) A foreign capital depository shall, unless relieved of the responsibility by a waiver signed by a depository customer, provide a customer with competent legal counsel and defense against:

(b) The execution of a foreign judgment in Colorado pursuant to section ~~13-62-104~~ 13-62-107, C.R.S., but only to the extent that the execution would affect the customer's assets in the depository.

SECTION 5. 11-37.5-305 (2), Colorado Revised Statutes, is amended to read:

11-37.5-305. Burden of proof - financial liabilities. (2) The customer or the foreign capital depository acting on behalf of a customer bears the burden of proving that any one of the grounds for nonrecognition provided for in section ~~13-62-105 (2)~~ 13-62-104 (3), C.R.S., exists.

SECTION 6. Inclusion of official comments. There shall be included in the publication of the "Uniform Foreign-country Money Judgments Act", as nonstatutory matter, following each section of the article, the full text of the official comments to that section contained in the official volume containing the February 10, 2006, official text of the "Uniform Foreign-country Money Judgments Act" issued by the national conference of commissioners on uniform state laws, with any changes in the official comments or Colorado comments to correspond to Colorado changes in the uniform act. The revisor of statutes shall prepare the comments, and the committee on legal services shall approve the comments for publication.

SECTION 7. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: March 19, 2008