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# RON TUSLER

STATE REPRESENTATIVE • 3<sup>rd</sup> ASSEMBLY DISTRICT

## Testimony

on

### Assembly Bill 718

Assembly Committee on Federalism & Interstate Relations

January 23, 2020

Mr. Chairman and members of the committee, thank you for hearing Assembly Bill 718, the Uniform Foreign-Country Money Judgment Recognition Act (UFCMJRA). The original 1962 UFCMJRA was adopted by 32 states, not including Wisconsin; in 2005, the Uniform Law Commission approved updates. This bill adopts the UFCMJRA and 2005 updates, which have been adopted by twenty-five other U.S. jurisdictions, including *all* of our regional sister states of Illinois, Indiana, Iowa, Michigan, and Minnesota.

Currently, it is unclear how a Wisconsin court would handle an action to recognize a foreign country money judgment.<sup>1</sup> Unlike the U.S. Constitution that contains the Full Faith and Credit Clause, each state is left to their own devices on how to handle foreign judgments: some states have adopted the UFCMJRA, others have enacted their own statutes, and others rely on common law principles to work through these actions.<sup>2</sup> A patchwork of laws among the states and absence of a familiar, predictable procedure to adjudicate these types of claims adversely affects Wisconsin's international business opportunities if businesses opt to trade and transact business in a state where the legal climate is understood. The UFCMJRA, like the Uniform Commercial Code, is a perfect example where uniformity and adoption of the act is needed.

This bill adopts the UFCMJRA and its 2005 amendments. Specifically, this bill:

- Requires a Wisconsin court to recognize a judgment of a foreign country's court only if certain criteria are met (§§5-7):
  - The judgment is “final, conclusive, and enforceable” (§5);
  - The foreign judicial system is impartial and has due process protections (§6);
  - The defendant in the foreign proceeding received adequate notice to present a defense (§5);
  - The foreign court had personal jurisdiction over the defendant (§§6, 7); and

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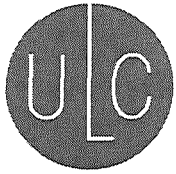
<sup>1</sup> See Daniel J. Kennedy, *Top 9 Recent Wisconsin Federal Court Decisions*, WISCONSIN LAWYER, Dec. 2018, available at <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=91&Issue=11&ArticleID=26739>.

<sup>2</sup> See *Societe dAmenagement et de Destio de lAbri Nautique v. Marine Travelift, Inc.*, 324 F. Supp. 3d 1004 (E.D. Wis. 2018) (analyzing the ability to recognize a foreign judgment without guidance in Wisconsin statutory law).

- The judgment was not obtained by fraud, based on a public policy repugnant to Wisconsin or the United States, or in conflict with another final and conclusive judgment, among other standards that prevent recognition of the judgment (§6).
- Establishes procedures to comply with and utilize this act (§§8-10);
- Clarifies and prescribes burdens of proof for parties (§§6, 8);
- Includes a statute of limitations on the enforcement of a foreign judgment (no later than allowed in the foreign country or no later than 15 years from the time when the judgment is entered) (§11).

The UFCMJRA does NOT apply to judgments for taxes, forfeitures, fines, or other penalties, or domestic relations judgments. (§5)

On behalf of the Uniform Law Commission, the growing number of states enacting the UFCMJRA, and for the sake of facilitating additional international commerce in Wisconsin, I urge your support of this bill. Thank you for your time and consideration.



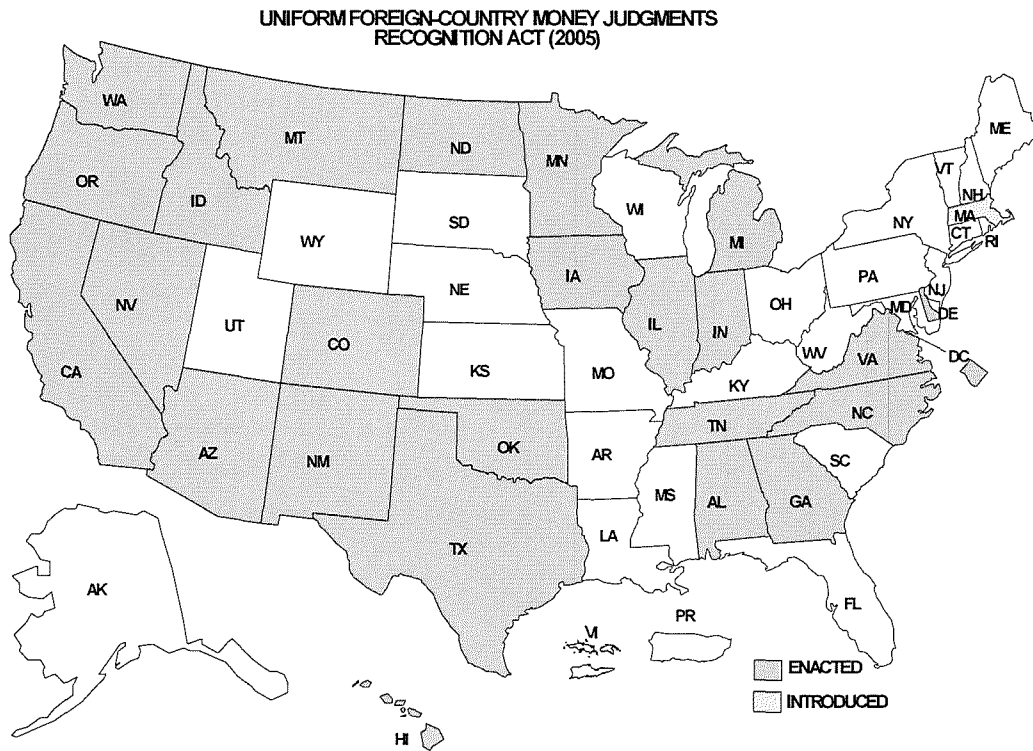
A Few Facts about

**THE UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT**

**PURPOSE:** The Uniform Foreign-Country Money Judgments Recognition Act provides updated rules and procedures for the recognition of foreign judgments. This Act is an update to the 1962 Uniform Foreign Money-Judgments Recognition Act, which has been enacted in 32 states. The Act is also Suggested State Legislation by the Council of State Governments.

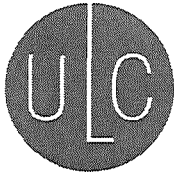
**ORIGIN:** Completed by the Uniform Law Commission in 2005.

**ENACTED BY:** Alabama, Arizona, California, Colorado, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, Montana, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Tennessee, Texas, Virginia, Washington



September 23, 2019

For more information about this uniform act, please contact ULC Legislative Counsel Kaitlin Wolff at (312) 450-6615 or [kwolff@uniformlaws.org](mailto:kwolff@uniformlaws.org).



## **THE UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT**

### *- A Summary -*

In 1962, the Uniform Law Commissioners promulgated the Uniform Foreign Money-Judgments Recognition Act. The Uniform Foreign Money-Judgments Recognition Act, enacted in 32 states, provided for enforcement of foreign country judgments in a state court in the United States.

Over the past several decades, the increase in international trade in the United States has led to more litigation, and more judgments to enforce from country to country. To meet the increased needs for enforcement of foreign country money-judgments, the Uniform Law Commission promulgated a revision of the 1962 Uniform Act with the 2005 Uniform Foreign-Country Money Judgments Recognition Act (UFCMJRA).

The first step towards enforcement is recognition of the foreign country judgment. The recognition occurs in a state court when an appropriate action is filed for that purpose. If the judgment meets the statutory standards, the state court will recognize it. Then the judgment may be enforced as if it is a judgment of another state of the United States. Enforcement may then proceed, which means the judgment creditor may proceed against the property of the judgment debtor to satisfy the judgment amount.

First, it must be shown that the judgment is conclusive, final, and enforceable in the country of origin. Certain money judgments are excluded, such as judgments on taxes, fines, or criminal-like penalties, and judgments relating to domestic relations. Domestic relations judgments are enforced under other statutes, already existing in every state. A foreign-country judgment must not be recognized if it comes from a court system that is not impartial or that dishonors due process, or there is no personal jurisdiction over the defendant or over the subject matter of the litigation. There are a number of grounds that may make a U.S. court deny recognition, i.e., the defendant did not receive notice of the proceeding or the claim is repugnant to American public policy. A final, conclusive judgment enforceable in the country of origin, if it is not excluded for one of the enumerated reasons, must be recognized and enforced. The 1962 Act and the 2005 Act generally operate the same.

The primary differences between the 1962 and the 2005 Uniform Acts are as follows:

**1. The 2005 Act makes it clear that a judgment entitled to full faith and credit under the U.S. Constitution is not enforceable under this Act.** This clarifies the relationship between the Foreign-Country Money Judgments Act and the Enforcement of Foreign Judgments Act. Recognition by a court is a different procedure than enforcement of a sister state judgment from within the United States.

**2. The 2005 Act expressly provides that a party seeking recognition of a foreign judgment has the burden to prove that the judgment is subject to the Uniform Act.** Burden of proof was not addressed in the 1962 Act.

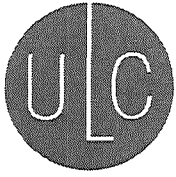
**3. Conversely, the 2005 Act imposes the burden of proof for establishing a specific ground for non-recognition upon the party raising it.** Again, burden of proof is not addressed in the 1962 Act.

**4. The 2005 Act addresses the specific procedure for seeking enforcement.** If recognition is sought as an original matter, the party seeking recognition must file an action in the court to obtain recognition. If recognition is sought in a pending action, it may be filed as a counter-claim, cross-claim or affirmative defense in the pending action. The 1962 Act does not address the procedure to obtain recognition at all, leaving that to other state law.

**5. The 2005 Act provides a statute of limitations on enforcement of a foreign-country judgment.** If the judgment cannot be enforced any longer in the country of origin, it may not be enforced in a court of an enacting state. If there is no limitation on enforcement in the country of origin, the judgment becomes unenforceable in an enacting state after 15 years from the time the judgment is effective in the country of origin.

These are the principal advances of the 2005 Act over the 1962 Act. The 2005 Act is not a radically new act. It builds upon the principles of the 1962 Act and improves it for the 21<sup>st</sup> century.

For further information about UFCMJRA, please contact ULC Legislative Counsel Kaitlin Wolff at (312) 450-6615 or [kwolff@uniformlaws.org](mailto:kwolff@uniformlaws.org).



**Uniform Law Commission**  
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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**WHY YOUR STATE SHOULD ADOPT THE  
UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT (2005)**

The Uniform Foreign-Country Money Judgments Recognition Act is a revision of the Uniform Foreign Money Judgments Recognition Act of 1962. The Act codifies the most prevalent common law rules related to the recognition and enforcement of money judgments rendered in other countries. Under the 1962 Act, a state was required to recognize a foreign-country money judgment if the judgment satisfied the standards for recognition set out in the Act.

Since its promulgation more than 40 years ago, the 1962 Act has been adopted in a majority of the states. There are some changes needed, however, to update that Act. The revisions contained in the Uniform Foreign-Country Money Judgments Recognition Act are timely because of the continuing increase in international trade and the need to make each state a recognized forum for international business. The Act does the following:

- ***Provides simple court procedures.*** The Act adds a new section addressing the proper procedure for seeking recognition of a foreign-country judgment. Under the Act, recognition of the foreign-country judgment must occur in a court proceeding. A party may seek recognition as an original matter, or may raise it by counterclaim, cross-claim, or affirmative defense in a pending action.
- ***Addresses burdens of proof.*** The Act addresses burdens of proof for the first time, providing that a petitioner for recognition has the burden of proving a judgment is entitled to recognition under the standards of the Act, and that any respondent resisting recognition and enforcement has the burden of proof respecting denial of recognition.
- ***Establishes a statute of limitations for recognition actions.*** The Act requires a party to commence an action either during the time when 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, whichever is earlier.
- ***Revises the grounds for denying recognition of foreign-country money judgments.*** The Act specifies mandatory grounds for non-recognition and discretionary grounds for non-recognition. The updated Act adds two discretionary grounds for non-recognition.
- ***Updates the definitions contained in the Act.*** The Act contains an updated definition section to clarify terms. The Act now refers to a “foreign country” and a “foreign-country judgment” to clarify that the Act does not apply to sister-state judgments.

For further information about the Uniform Foreign-Country Money Judgments Recognition Act, please contact ULC Legislative Counsel Kaitlin Wolff at (312) 450-6615 or [kwolff@uniformlaws.org](mailto:kwolff@uniformlaws.org).



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Statement of Kaitlin Wolff  
In Support of Assembly Bill 718  
The Uniform Foreign-Country Money Judgments Recognition Law  
Before the Committee on Federalism and Interstate Relations  
January 23, 2020

Chair Vorpapel and Members of the Committee:

My name is Kaitlin Wolff and I serve as Legislative Counsel for the Uniform Law Commission. The Uniform Law Commission, or ULC, is a nonprofit organization based in Chicago that is made up of volunteer attorneys appointed by their states. The ULC's mission is to draft model legislation for states in areas in which uniformity is practical and desirable. I am delighted to be here today to offer the ULC's support for the Uniform Foreign-Country Money Judgments Recognition Law, AB 718.

Increasing international trade in the United States also means increasing litigation in the international context, and more judgments to be recognized and enforced from country to country. There is a strong need for consistency and uniformity between the states in the law governing these procedures. If foreign-country judgments are not recognized and enforced appropriately and uniformly in the United States, recognition and enforcement of United States judgments becomes more difficult in foreign countries' courts. The increasing potential for litigation between foreign parties means that foreign entities seeking economic opportunities and partnerships in the United States want a fair and predictable legal platform, and United States businesses and individuals need certainty that fundamental considerations and protections inherent in our jurisprudence are accounted for in recognition actions.

To meet the needs and expectations of both constituencies, the Uniform Law

Commission created the original 1962 Uniform Foreign Money Judgments Recognition Act, which was subsequently adopted in 32 jurisdictions. In 2005, the ULC revisited the act and drafted a revised version, the Uniform Foreign-Country Money Judgments Recognition Act, which is before you today in AB 718. AB 718 updates the law and clarifies issues that came up in 43 years of experience and case law with the original act.

The purpose of AB 718 is to provide for domestic recognition of foreign-country judgments in a state court, which is a step prior to enforcement for foreign-country judgments. A party seeking recognition files an action, and if the court determines that the judgment meets appropriate legal standards, the court will recognize it. Enforcement may then proceed as if it were a judgment from another state of the United States, so that the judgment creditor may proceed against the judgment debtor to satisfy the judgment amount.

Under AB 718, it must first be shown that a judgment is conclusive, final and enforceable in the country of origin. Certain money judgments are excluded, such as judgments on taxes, fines or criminal-like penalties, and judgments relating to domestic relations (domestic relations judgments are enforced under other statutes, already existing in every state, and subject to treaty). Assuming the judgment is final and covered by the act, there may be considerations that preclude recognition. For example, a foreign-country judgment must not be recognized if it is shown that it comes from a court system that is not impartial or that dishonors due process, or there is no personal jurisdiction over the defendant or over the subject matter of the litigation. There are also grounds upon which a state court may exercise discretion to deny recognition, i.e., the defendant did not receive notice of the proceeding or the claim is repugnant to public policy. A final, conclusive judgment enforceable in the country of origin that is not excluded under the act will be recognized and rendered enforceable.



Some of the features of AB 718 that did not appear in the earlier version of the act include:

1. AB 718 makes it clear that a judgment entitled to Full Faith and Credit under the U.S. Constitution is not enforceable under this Act. This clarifies the relationship between the Act and the Uniform Enforcement of Foreign Judgments Act, which governs enforcement of sister-state judgments from within the United States. This change clears up confusion that occurred in some state courts because of the similar terminology used in both acts.

2. AB 718 expressly provides that a party seeking recognition of a foreign country judgment has the burden to prove that it is subject to the act. Conversely, AB 718 imposes the burden of proof for establishing a specific ground for non-recognition upon the party raising it. Burden of proof in either context was not addressed in the earlier version of the uniform act.

3. AB 718 addresses the specific procedure for seeking recognition. If recognition is sought as an original matter, the party seeking recognition must file an action in the court to obtain recognition. If recognition is sought or contested in a pending action, such must be pursued as a counter-claim, cross-claim, or affirmative defense raised in the pending action. The earlier uniform act did not address the procedure to obtain or contest recognition.

4. AB 718 provides a statute of limitations on recognition of a foreign-country judgment. If the judgment is no longer effective in the country of origin, it may not be recognized in a court of an enacting state. If there is no limitation in the country of origin, the judgment becomes unrecognizable after 15 years from the time the judgment became effective in that country.

5. With regard to discretionary grounds for refusing recognition, AB 718 expands the concept of “repugnant to public policy” to include either the claim/cause of action, and the judgment itself, and clarifies that public policy is that of the state or the United States. AB 718

also allows a court to consider whether there is substantial doubt as to the integrity of the individual foreign action or court proceeding leading to the judgment; the 1962 Act limited the consideration to the foreign country's judicial system as a whole.

AB 718 builds upon the tried principles of the original 1962 uniform act and represents a necessary upgrade for modern practice. It has been well received nationally, with 24 enactments so far across the states. Another 13 states still operate under the 1962 act.

Thank you for the opportunity to discuss AB 718, the Uniform Foreign-Country Money Judgments Recognition Law. I would be pleased to answer any questions that the Committee may have.