

BILL ANALYSIS

C.S.H.B. 45
By: Flynn
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties assert the need for clear procedures regarding how Texas courts should determine whether to afford comity to the laws of foreign nations and the judgments of foreign courts in actions under the Family Code involving the marriage relationship or the parent-child relationship to protect against violations of constitutional rights and public policy. C.S.H.B. 45 seeks to require the Supreme Court of Texas to provide such procedures.

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 rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 45 amends the Government Code to require the Supreme Court of Texas to adopt rules of evidence and procedure to implement limitations on the granting of comity to a foreign judgment or an arbitration award involving a marriage relationship or a parent-child relationship under the Family Code to protect against violations of constitutional rights and public policy and to set out requirements for such rules. The bill defines "foreign judgment," among other terms, as a judgment of a court, tribunal, or administrative adjudicator of a jurisdiction outside of the states and territories of the United States.

C.S.H.B. 45 requires the supreme court to adopt any other additional rules the supreme court considers necessary or advisable to accomplish the purposes of the bill's provisions. The bill establishes that a rule adopted under the bill does not apply to an action brought under the federal International Child Abduction Remedies Act and that, in the event of a conflict between a rule adopted under the bill and a federal or state law, the federal or state law prevails.

C.S.H.B. 45 requires the supreme court to provide for a course of instruction that relates to issues regarding foreign law, foreign judgments, and arbitration awards in relation to foreign law that arise in actions under the Family Code involving the marriage relationship and the parent-child relationship for judges involved in those actions. The bill requires the course instruction to include information about the limits on comity and the freedom to contract for arbitration that protect against violations of constitutional rights and public policy in the application of foreign law and the recognition and enforcement of foreign judgments and arbitration awards in actions brought under the Family Code, and information about the rules of evidence and procedure adopted under the bill's provisions. The bill requires the supreme court to adopt rules necessary to accomplish the purposes of these provisions.

C.S.H.B. 45 requires the supreme court to adopt rules as required by the bill not later than January 1, 2018.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 45 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 148 to read as follows:

CHAPTER 148. APPLICATION OF FOREIGN LAWS; SELECTION OF FOREIGN FORUM

Sec. 148.001. DEFINITION. In this chapter, "foreign law" means a law, rule, or legal code of a jurisdiction outside of the states and territories of the United States. The term does not include a law of a Native American tribe of a state or territory of the United States.

Sec. 148.002. DECISION BASED ON FOREIGN LAW. A ruling or decision of a court, arbitrator, or administrative adjudicator may not be based on a foreign law if the application of that law would violate a right guaranteed by the United States Constitution or the constitution of this state.

Sec. 148.003. CHOICE OF FOREIGN LAW OR FORUM IN CONTRACT. (a) A contract provision providing that a foreign law is to govern a dispute arising under the contract is void to the extent that the application of the foreign law to the dispute would violate a right guaranteed by the United States Constitution or the constitution of this state.

(b) A contract provision providing that the forum to resolve a dispute arising under the contract is located outside the states and territories of the United States is void if the foreign law that would be applied to the dispute in that forum would, as applied, violate a right guaranteed by the United States Constitution or the constitution of this

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

state.

Sec. 148.004. LIMITATION ON FORUM NON CONVENIENS. If a resident of this state commences an action in this state, a court may not grant a motion for forum non conveniens if the foreign law that would be applied to the dispute in the forum to which the moving party seeks to have the action removed would, as applied, violate a right guaranteed by the United States Constitution or the constitution of this state.

SECTION 2. (a) Section 148.002, Civil Practice and Remedies Code, as added by this Act, applies only to a ruling or decision that becomes final on or after the effective date of this Act. A ruling or decision that becomes final before the effective date of this Act and any appeal of that ruling or decision are governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Section 148.003, Civil Practice and Remedies Code, as added by this Act, applies only to a contract entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

(c) Section 148.004, Civil Practice and Remedies Code, as added by this Act, applies only to a motion for forum non conveniens made on or after the effective date of this Act. A motion for forum non conveniens made before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

No equivalent provision.

No equivalent provision.

SECTION 1. The legislature finds that:

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

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

(C) federal and state judicial precedent; and

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

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

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

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

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

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

(B) consider the best interest of the child;

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

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

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

No equivalent provision.

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

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

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

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

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

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

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

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

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

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

(4) to facilitate appellate review, require that a court state its findings of fact and

conclusions of law in a written order determining whether to enforce a foreign judgment or an arbitration award based on foreign law that involves a marriage relationship or a parent-child relationship;

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

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

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

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

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

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

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

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

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

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

No equivalent provision.

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

SECTION 3. This Act takes effect September 1, 2017.

SECTION 4. Same as introduced version.