

Introduced by Senator Evans

February 20, 2013

An act to amend Section 1714 of, and to add Title 11.5 (commencing with Section 1730) to Part 3 of, the Code of Civil Procedure, relating to tribal court civil judgments.

LEGISLATIVE COUNSEL'S DIGEST

SB 406, as introduced, Evans. Tribal Court Civil Judgment Act.

The Uniform Foreign-Country Money Judgments Recognition Act provides that foreign judgments that grant or deny recovery of a sum of money and that are final and conclusive are enforceable in California, with specified exceptions. The act includes within the definition of "foreign-country judgment" a judgment by any Indian tribe recognized by the government of the United States.

This bill would exempt Indian tribal judgments from the Uniform Foreign-Country Money Judgments Recognition Act, and would instead enact the Tribal Court Civil Judgment Act. The new act would likewise provide for the enforceability of tribal court judgments in California, but it would expand the range of judgments that may be enforced to include all civil tribal judgments, except as specified. The act would prescribe the procedure for applying for recognition and entry of a judgment based on a tribal court judgment, the procedure and grounds for objecting to the entry of judgment, and the bases upon which the court may refuse to enter the judgment or grant a stay of enforcement. The bill would require the Judicial Council to prescribe a form for the notice of filing the application for recognition of the tribal court judgment, as specified. The bill would require that this application be executed under penalty of perjury, which would expand the scope of the crime of perjury and thus impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1714 of the Code of Civil Procedure is
2 amended to read:

3 1714. As used in this chapter:

4 (a) “Foreign country” means a government other than any of
5 the following:

6 (1) The United States.

7 (2) A state, district, commonwealth, territory, or insular
8 possession of the United States.

9 (3) Any other government with regard to which the decision in
10 this state as to whether to recognize a judgment of that
11 government’s courts is initially subject to determination under the
12 Full Faith and Credit Clause of the United States Constitution.

13 (b) “Foreign-country judgment” means a judgment of a court
14 of a foreign country. ~~“Foreign-country judgment” includes a~~
15 ~~judgment by any Indian tribe recognized by the government of the~~
16 ~~United States.~~

17 SEC. 2. Title 11.5 (commencing with Section 1730) is added
18 to Part 3 of the Code of Civil Procedure, to read:

19
20 TITLE 11.5. TRIBAL COURT CIVIL JUDGMENT ACT
21

22 1730. This title shall be known and may be cited as the Tribal
23 Court Civil Judgment Act.

24 1731. (a) This title governs the procedures by which the
25 superior courts of the State of California recognize and enter tribal
26 court judgments of any federally recognized Indian tribe.
27 Determinations regarding recognition and entry of a tribal court
28 judgment pursuant to state law shall have no effect upon the
29 independent authority of that judgment. To the extent not
30 inconsistent with this title, the Code of Civil Procedure shall apply.

(b) This title does not apply to any of the following tribal court judgments:

(1) For taxes, fines, or other penalties.

(2) For which federal law requires that states grant full faith and credit recognition, including custody orders concerning Indian children under the Indian Child Welfare Act (25 U.S.C. Sec. 1911), protection orders under the Violence Against Women Act (18 U.S.C. Sec. 2265), or child support orders under the Child Support Enforcement Act (28 U.S.C. Sec. 1738B).

(3) For which state law provides for recognition, including child support orders recognized under the Uniform Child Custody Jurisdiction and Enforcement Act (Part 3 (commencing with Section 3400) of Division 8 of the Family Code), other forms of family support orders under the Uniform Interstate Family Support Act (Chapter 6 (commencing with Section 4900) of Part 5 of Division 9 of the Family Code), or domestic violence protective orders under the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (Part 5 (commencing with Section 6400) of Division 10 of the Family Code).

(4) For decedent's estates, guardianships, conservatorships, internal affairs of trusts, powers of attorney, or other tribal court judgments that arise in proceedings that are or would be governed by the Probate Code.

(c) Nothing in this title shall be deemed or construed to expand or limit the jurisdiction of either the state or any Indian tribe.

1732. For purposes of this title:

(a) "Applicant" means the person or persons who can bring an action to enforce a tribal court judgment.

(b) "Civil action or proceeding" means any action or proceeding that is not criminal, except for those actions or proceedings expressly excluded by subdivision (b) of Section 1731.

(c) "Due process" includes, but is not limited to, the right to be represented by legal counsel, to receive reasonable notice and an opportunity for a hearing, to call and cross-examine witnesses, and to present evidence and argument to an impartial decisionmaker.

(d) "Good cause" means a substantial reason, taking into account the prejudice or irreparable harm a party will suffer if a hearing is not held on an objection or not held within the time periods established by this title.

1 (e) “Respondent” means the person or persons against whom
2 an action to enforce a tribal court judgment can be brought.

3 (f) “Tribal court” means any court or other tribunal of any
4 federally recognized Indian nation, tribe, pueblo, band, or Alaska
5 Native village, duly established under tribal or federal law,
6 including Courts of Indian Offenses organized pursuant to Part 11
7 of Title 25 of the Code of Federal Regulations.

8 (g) “Tribal court judgment” means any written judgment, decree,
9 or order of a tribal court that was issued in a civil action or
10 proceeding that is final, conclusive, and enforceable by the tribal
11 court in which it was issued and is duly authenticated in accordance
12 with the laws and procedures of the tribe or tribal court. A tribal
13 court judgment shall be one of the following:

14 (1) A money judgment, including judgment in a civil action or
15 proceeding, to enforce civil regulatory laws of the tribe.

16 (2) A judgment for possession of personal property.

17 (3) A judgment for possession of real property.

18 (4) A judgment for the sale of real or personal property.

19 (5) A judgment that requires the performance of an act not
20 described in paragraphs (1) to (4), inclusive, or that requires
21 forbearance from the performance of an act.

22 1733. (a) An application for entry of a judgment under this
23 title shall be filed in a superior court.

24 (b) Subject to the power of the court to transfer proceedings
25 under this title pursuant to Title 4 (commencing with Section 392)
26 of Part 2, the proper county for the filing of an application is either
27 of the following:

28 (1) The county in which any respondent resides or owns
29 property.

30 (2) If no respondent is a resident, any county in this state.

31 (c) A case in which the tribal court judgment amounts to
32 twenty-five thousand dollars (\$25,000) or less is a limited civil
33 case.

34 1734. (a) An applicant may apply for recognition and entry
35 of a judgment based on a tribal court judgment by filing an
36 application in superior court pursuant to Section 1733.

37 (b) The application shall be executed under penalty of perjury
38 and include all of the following information:

1 (1) The name and address of the tribal court that issued the
2 judgment to be enforced and the date of the tribal court judgment
3 or any renewal thereof.

4 (2) The name and address of the party seeking recognition.

5 (3) (A) Any of the following statements, as applicable:

6 (i) If the respondent is an individual, the name and last known
7 residence address of the respondent.

8 (ii) If the respondent is a corporation, the corporation's name,
9 place of incorporation, and whether the corporation, if foreign, has
10 qualified to do business in this state under the provisions of Chapter
11 21 (commencing with Section 2100) of Division 1 of Title 1 of
12 the Corporations Code.

13 (iii) If the respondent is a partnership, the name of the
14 partnership, whether it is a foreign partnership, and if it is a foreign
15 partnership, whether it has filed a statement pursuant to Section
16 15800 of the Corporations Code designating an agent for service
17 of process.

18 (iv) If the respondent is a limited liability company, the
19 company's name, whether it is a foreign company, and if so,
20 whether it has filed a statement pursuant to Section 17060 of the
21 Corporations Code.

22 (B) Except for facts that are matters of public record in this
23 state, the statements required by this paragraph may be made on
24 the basis of the applicant's information and belief.

25 (4) A statement that an action in this state to enforce the tribal
26 court judgment is not barred by the applicable statute of limitations.

27 (5) A statement, based on the applicant's information and belief,
28 that the tribal court judgment is final and that no stay of
29 enforcement of the tribal court judgment is currently in effect.

30 (6) If seeking recognition and entry of a money judgment, the
31 applicant shall include all of the following:

32 (A) The amount of the award granted in the tribal court judgment
33 that remains unpaid.

34 (B) If accrued interest on the tribal court judgment is to be
35 included in the California judgment, the amount of interest accrued
36 on the tribal court judgment, computed at the rate of interest
37 applicable to the judgment under the law of the tribal jurisdiction
38 in which the tribal court judgment was issued.

39 (C) The rate of interest applicable to the money judgment under
40 the law of the jurisdiction in which the tribal judgment was issued.

1 (D) A citation to the supporting authority.

2 (7) If seeking entry of a judgment, order, or decree providing
3 for relief other than monetary relief, the applicant shall include all
4 of the following:

5 (A) The terms and provisions of the relief provided in the tribal
6 court judgment, order, or decree and the extent to which the
7 responding party has complied with those terms and provisions.

8 (B) A statement that the tribal court judgment is not barred by
9 state law.

10 (8) A statement that no action based on the tribal court judgment
11 is currently pending in any state court and that no judgment based
12 on the tribal court judgment has previously been entered in any
13 proceeding in this state.

14 (c) All of the following items shall be attached to the application:

15 (1) An authenticated copy of the tribal court judgment, certified
16 by the judge or clerk of the tribal court.

17 (2) A copy of the tribal court rules of procedure pursuant to
18 which the judgment was entered.

19 (3) A declaration under penalty of perjury by the tribal court
20 clerk, applicant, or applicant's attorney stating, based on personal
21 knowledge, that the case that resulted in the entry of the judgment
22 was conducted in compliance with the tribal court's rules of
23 procedure.

24 1735. (a) Promptly upon the filing of the application, the
25 applicant shall serve upon the respondent a notice of filing of the
26 application to recognize and enter the tribal court judgment,
27 together with a copy of the application and any documents filed
28 with the application. The notice of filing shall be in a form that
29 shall be prescribed by the Judicial Council, and shall inform the
30 respondent that the respondent has 30 days from service of the
31 notice of filing to file objections to the enforcement of the
32 judgment. The notice shall include the name and address of the
33 applicant and the applicant's attorney, if any, and the text of
34 Sections 1736 and 1737.

35 (b) Except as provided in subdivision (c), service shall be made
36 in the manner provided for service of summons by Article 3
37 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part
38 2.

39 (c) If a respondent is the State of California or any of its officers,
40 employees, departments, agencies, boards, or commissions, service

1 of the notice of filing on that respondent may be by mail to the
2 office of the Attorney General.

3 (d) The fee for service of the notice of filing under this section
4 is an item of costs recoverable in the same manner as statutory
5 fees for service of a writ as provided in Chapter 5 (commencing
6 with Section 685.010) of Division 1 of Title 9 of Part 2, but the
7 recoverable amount for that fee shall not exceed the amount
8 allowed to a public officer or employee of this state for that service.

9 (e) The applicant shall file a proof of service of the notice
10 promptly following service.

11 1736. (a) If no objections are timely filed in accordance with
12 Section 1737, the clerk shall certify that no objections were timely
13 filed, and a judgment shall be entered.

14 (b) The judgment entered by the superior court shall be based
15 on and contain the provisions and terms of the tribal court
16 judgment. The judgment shall be entered in the same manner and
17 have the same effect and shall be enforceable in the same manner
18 as any civil judgment, order, or decree of a court of this state.

19 1737. (a) Any objection to the recognition and entry of the
20 tribal court judgment shall be served and filed within 30 days of
21 service of the notice of filing. If any objection is filed within this
22 time period, the superior court shall set a time period for replies
23 and set the matter for a hearing. The hearing shall be held by the
24 superior court within 45 days from the date the objection is filed
25 unless good cause exists for a later hearing. The only grounds for
26 objecting to the recognition or enforcement of a tribal court
27 judgment are the grounds set forth in subdivisions (b) and (c).

28 (b) A tribal court judgment shall not be recognized and entered
29 if the respondent demonstrates to the superior court that at least
30 one of the following occurred:

31 (1) The tribal court did not have personal jurisdiction over the
32 respondent.

33 (2) The tribal court did not have jurisdiction over the subject
34 matter.

35 (3) The tribal court judge was not impartial.

36 (4) The respondent was not afforded due process.

37 (c) The superior court may, in its discretion, decline to recognize
38 and enter a tribal court judgment on any one of the following
39 grounds:

40 (1) The tribal court judgment was obtained by extrinsic fraud.

1 (2) The tribal court judgment conflicts with another final
2 judgment that is entitled to recognition.

3 (3) The tribal court judgment is inconsistent with the parties'
4 contractual choice of forum.

5 (4) Recognition of the tribal court judgment or the cause of
6 action upon which it is based is against the fundamental public
7 policy of this state or the United States.

8 (d) If objections have been timely filed, the applicant has the
9 burden of establishing that the tribal court judgment is entitled to
10 recognition. If the applicant has met its burden, a party resisting
11 recognition of the tribal court judgment has the burden of
12 establishing that a ground for nonrecognition exists pursuant to
13 subdivision (b) or (c).

14 1738. The superior court shall grant a stay of enforcement if
15 the respondent establishes one of the following to the superior
16 court:

17 (a) An appeal from the tribal court judgment is pending or may
18 be taken in the tribal court, in which case the superior court shall
19 stay state execution of the tribal court judgment until the
20 proceeding on appeal has been concluded or the time for appeal
21 has expired.

22 (b) A stay of enforcement of the tribal court judgment has been
23 granted by the tribal court, in which case the superior court shall
24 stay enforcement of the tribal court judgment until the stay of
25 execution expires or is vacated.

26 (c) Any other circumstance exists where the interests of justice
27 require a stay of enforcement.

28 1739. An action to recognize a tribal court judgment or any
29 renewal thereof shall be commenced within the earlier of the
30 following periods:

31 (a) The time during which the tribal court judgment is effective
32 within the territorial jurisdiction of the tribal court.

33 (b) Ten years from the date that the tribal court judgment became
34 effective in the tribal jurisdiction.

35 1740. (a) The superior court may, after notice to all parties,
36 attempt to resolve any issues raised regarding a tribal court
37 judgment by contacting the tribal court judge who issued the
38 judgment.

1 (b) The superior court shall allow the parties to participate in,
2 and shall prepare a record of, any communication made with the
3 tribal court judge pursuant to this section.

4 1741. (a) The Uniform Foreign-Country Money Judgments
5 Recognition Act (Chapter 2 (commencing with Section 1713) of
6 Title 11 of Part 3) applies to all actions commenced in superior
7 court before the effective date of this title in which the issue of
8 recognition of a tribal judgment is raised.

9 (b) This title applies to all actions to enforce tribal court
10 judgments as defined herein commenced in superior court on or
11 after the effective date of this title. A judgment entered under this
12 title shall not limit the right of a party to seek enforcement of any
13 part of a judgment, order, or decree entered by a tribal court that
14 is not encompassed by the judgment entered under this title.

15 SEC. 3. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.