

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 amended, 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 *Money* Judgment Act. The new act would likewise provide for the enforceability of tribal court *money* 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 *money* 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 *money* 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~~ *clause* of the United States
13 Constitution.

14 (b) "Foreign-country judgment" means a judgment of a court
15 of a foreign country.

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

18

19 TITLE 11.5. TRIBAL COURT CIVIL *MONEY* JUDGMENT
20 ACT

21

22 1730. This title shall be known and may be cited as the Tribal
23 Court Civil *Money* 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 *money* judgments of any federally recognized Indian tribe.
27 Determinations regarding recognition and entry of a tribal court

1 *money* judgment pursuant to state law shall have no effect upon
2 the independent authority of that judgment. To the extent not
3 inconsistent with this title, the Code of Civil Procedure shall apply.

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

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

7 (2) For which federal law requires that states grant full faith and
8 credit recognition, including ~~custody orders concerning Indian~~
9 ~~children under the Indian Child Welfare Act (25 U.S.C. Sec. 1911),~~
10 ~~protection orders under the Violence Against Women Act (18~~
11 ~~U.S.C. Sec. 2265), or child support orders under the Child Support~~
12 ~~Enforcement Act Full Faith and Credit for Child Support Orders~~
13 ~~Act (28 U.S.C. Sec. 1738B).~~

14 (3) For which state law provides for recognition, including child
15 support orders recognized under the Uniform Child Custody
16 Jurisdiction and Enforcement Act (Part 3 (commencing with
17 Section 3400) of Division 8 of the Family Code), other forms of
18 family support orders under the Uniform Interstate Family Support
19 Act (Chapter 6 (commencing with Section 4900) of Part 5 of
20 Division 9 of the Family Code), ~~or domestic violence protective~~
21 ~~orders under the Uniform Interstate Enforcement of Domestic~~
22 ~~Violence Protection Orders Act (Part 5 (commencing with Section~~
23 ~~6400) of Division 10 of the Family Code).~~

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

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

30 1732. For purposes of this title:

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

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

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

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

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

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

12 (g) “Tribal court *money* judgment” means any written judgment,
 13 decree, or order of a tribal court *for a specified amount of money*
 14 that was issued in a civil action or proceeding that is final,
 15 conclusive, and enforceable by the tribal court in which it was
 16 issued and is duly authenticated in accordance with the laws and
 17 procedures of the tribe or tribal court. ~~A tribal court judgment shall~~
 18 ~~be one of the following:~~

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

21 ~~(2) A judgment for possession of personal property.~~

22 ~~(3) A judgment for possession of real property.~~

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

24 ~~(5) A judgment that requires the performance of an act not~~
 25 ~~described in paragraphs (1) to (4), inclusive, or that requires~~
 26 ~~forbearance from the performance of an act.~~

27 1733. (a) An application for entry of a judgment under this
 28 title shall be filed in a superior court.

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

33 (1) The county in which any respondent resides or owns
 34 property.

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

36 (c) A case in which the tribal court *money* judgment amounts
 37 to twenty-five thousand dollars (\$25,000) or less is a limited civil
 38 case.

1 1734. (a) An applicant may apply for recognition and entry
2 of a judgment based on a tribal court *money* judgment by filing an
3 application in superior court pursuant to Section 1733.

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

6 (1) The name and address of the tribal court that issued the
7 judgment to be enforced and the date of the tribal court *money*
8 judgment or any renewal thereof.

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

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

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

13 (ii) If the respondent is a corporation, the corporation's name,
14 place of incorporation, and whether the corporation, if foreign, has
15 qualified to do business in this state under the provisions of Chapter
16 21 (commencing with Section 2100) of Division 1 of Title 1 of
17 the Corporations Code.

18 (iii) If the respondent is a partnership, the name of the
19 partnership, whether it is a foreign partnership, and if it is a foreign
20 partnership, whether it has filed a statement pursuant to Section
21 15800 of the Corporations Code designating an agent for service
22 of process.

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

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

30 (4) A statement that an action in this state to enforce the tribal
31 court *money* judgment is not barred by the applicable statute of
32 limitations.

33 (5) A statement, based on the applicant's information and belief,
34 that the tribal court *money* judgment is final and that no stay of
35 enforcement of the tribal court *money* judgment is currently in
36 effect.

37 ~~(6) If seeking recognition and entry of a money judgment, the~~
38 ~~applicant shall include~~ *A statement that includes* all of the
39 following:

1 (A) The amount of the award granted in the tribal court *money*
2 judgment that remains unpaid.

3 (B) If accrued interest on the tribal court *money* judgment is to
4 be included in the California judgment, the amount of interest
5 accrued on the tribal court *money* judgment, computed at the rate
6 of interest applicable to the judgment under the law of the tribal
7 jurisdiction in which the tribal court *money* judgment was issued.

8 (C) The rate of interest applicable to the *money* judgment under
9 the law of the jurisdiction in which the tribal *court money* judgment
10 was issued.

11 (D) A citation to the supporting authority.

12 ~~(7) If seeking entry of a judgment, order, or decree providing~~
13 ~~for relief other than monetary relief, the applicant shall include all~~
14 ~~of the following:~~

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

18 ~~(B) A statement that the tribal court judgment is not barred by~~
19 ~~state law.~~

20 ~~(8)~~

21 (7) A statement that no action based on the tribal court *money*
22 judgment is currently pending in any state court and that no
23 judgment based on the tribal court *money* judgment has previously
24 been entered in any proceeding in this state.

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

26 (1) An authenticated copy of the tribal court *money* judgment,
27 certified by the judge or clerk of the tribal court.

28 (2) A copy of the tribal court rules of procedure pursuant to
29 which the *money* judgment was entered.

30 (3) A declaration under penalty of perjury by the tribal court
31 clerk, applicant, or applicant's attorney stating, based on personal
32 knowledge, that the case that resulted in the entry of the judgment
33 was conducted in compliance with the tribal court's rules of
34 procedure.

35 1735. (a) Promptly upon the filing of the application, the
36 applicant shall serve upon the respondent a notice of filing of the
37 application to recognize and enter the tribal court *money* judgment,
38 together with a copy of the application and any documents filed
39 with the application. The notice of filing shall be in a form that
40 shall be prescribed by the Judicial Council, and shall inform the

1 respondent that the respondent has 30 days from service of the
2 notice of filing to file objections to the enforcement of the *money*
3 judgment. The notice shall include the name and address of the
4 applicant and the applicant's attorney, if any, and the text of
5 Sections 1736 and 1737.

6 (b) Except as provided in subdivision (c), service shall be made
7 in the manner provided for service of summons by Article 3
8 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part
9 2.

10 (c) If a respondent is the State of California or any of its officers,
11 employees, departments, agencies, boards, or commissions, service
12 of the notice of filing on that respondent may be by mail to the
13 office of the Attorney General.

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

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

22 1736. (a) If no objections are timely filed in accordance with
23 Section 1737, the clerk shall certify that no objections were timely
24 filed, and a judgment shall be entered.

25 (b) The judgment entered by the superior court shall be based
26 on and contain the provisions and terms of the tribal court *money*
27 judgment. The judgment shall be entered in the same manner ~~and~~,
28 have the same effect, and ~~shall~~ be enforceable in the same manner
29 as any civil judgment, order, or decree of a court of this state.

30 1737. (a) Any objection to the recognition and entry of the
31 tribal court *money* judgment shall be served and filed within 30
32 days of service of the notice of filing. If any objection is filed
33 within this time period, the superior court shall set a time period
34 for replies and set the matter for a hearing. The hearing shall be
35 held by the superior court within 45 days from the date the
36 objection is filed unless good cause exists for a later hearing. The
37 only grounds for objecting to the recognition or enforcement of a
38 tribal court *money* judgment are the grounds set forth in
39 subdivisions (b) and (c).

1 (b) A tribal court *money* judgment shall not be recognized and
2 entered if the respondent demonstrates to the superior court that
3 at least one of the following occurred:

4 (1) The tribal court did not have personal jurisdiction over the
5 respondent.

6 (2) The tribal court did not have jurisdiction over the subject
7 matter.

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

9 ~~(4) The respondent was not afforded due process.~~*The tribal*
10 *court did not provide procedures compatible with the requirements*
11 *of due process of law.*

12 (c) The superior court may, in its discretion, decline to recognize
13 and enter a tribal court *money* judgment on any one of the following
14 grounds:

15 ~~(1) The tribal court judgment was obtained by extrinsic~~
16 ~~fraud.~~*The defendant in the proceeding in the tribal court did not*
17 *receive notice of the proceeding in sufficient time to enable the*
18 *defendant to defend.*

19 ~~(2) The tribal court judgment conflicts with another final~~
20 ~~judgment that is entitled to recognition.~~*The judgment was obtained*
21 *by fraud that deprived the losing party of an adequate opportunity*
22 *to present its case.*

23 ~~(3) The tribal court judgment is inconsistent with the parties'~~
24 ~~contractual choice of forum.~~*The judgment or the cause of action*
25 *or claim for relief on which the judgment is based is repugnant to*
26 *the public policy of the state or of the United States.*

27 ~~(4) Recognition of the tribal court judgment or the cause of~~
28 ~~action upon which it is based is against the fundamental public~~
29 ~~policy of this state or the United States.~~*The judgment conflicts with*
30 *another final and conclusive judgment.*

31 (5) *The proceeding in the tribal court was contrary to an*
32 *agreement between the parties under which the dispute in question*
33 *was to be determined otherwise than by proceedings in that tribal*
34 *court.*

35 (6) *In the case of jurisdiction based on personal service only,*
36 *the tribal court was a seriously inconvenient forum for the trial of*
37 *the action.*

38 (7) *The judgment was rendered under circumstances that raise*
39 *substantial doubt about the integrity of the rendering court with*
40 *respect to the judgment.*

1 (8) *The specific proceeding in the tribal court leading to the*
2 *judgment was not compatible with the requirements of due process*
3 *of law.*

4 (9) *The judgment includes recovery for a claim of defamation,*
5 *unless the court determines that the defamation law applied by the*
6 *tribal court provided at least as much protection for freedom of*
7 *speech and the press as provided by both the United States and*
8 *California Constitutions.*

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

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

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

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

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

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

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

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

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

9 (b) This title applies to all actions to enforce tribal court *money*
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.