

BILL ANALYSIS

Senate Research Center
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H.B. 45
By: Flynn et al. (Huffman)
State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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 Texas Family Code involving the marriage relationship or the parent-child relationship to protect against violations of constitutional rights and public policy. This bill seeks to require the Supreme Court of Texas to provide such procedures.

H.B. 45 amends current law relating to requiring the Texas Supreme Court to adopt rules and provide judicial instruction regarding the application of foreign laws in certain family law cases.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 2 (Sections 22.0041 and 22.022, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Sets forth legislative findings.

SECTION 2. Amends Subchapter A, Chapter 22, Government Code, by adding Sections 22.0041 and 22.022, as follows:

Sec. 22.0041. RULES REGARDING FOREIGN LAW AND FOREIGN JUDGMENTS IN CERTAIN FAMILY LAW ACTIONS. (a) Defines "comity," "foreign judgment," and "foreign law."

(b) Requires the Texas Supreme Court (supreme court) to 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) Requires that the rules adopted under Subsection (b):

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

(e) Provides that 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) Provides that, 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) 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.

(b) Requires that the course of instruction 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) Requires the supreme court to adopt rules necessary to accomplish the purposes of this section.

SECTION 3. Requires the Texas Supreme Court to 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 4. Effective date: September 1, 2017.