

One Hundred Third Legislature - Second Session - 2014

Introducer's Statement of Intent

LB722

Chairperson: Senator Brad Ashford

Committee: Judiciary

Date of Hearing: January 29, 2014

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

The purpose of LB 722 is to provide an express procedure for the recognition and enforcement of tribal court civil judgments in state courts so that there is no question of the State of Nebraska's intention to provide full faith and credit to tribal court civil judgments.

Under current state law, "foreign judgments" may be enforced by state courts. However, the Nebraska Uniform Enforcement of Foreign Judgments Act defines foreign judgment as "any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state." See Neb. Rev. Stat. § 25-1587.02.

State law does not specifically identify what other courts are entitled to full faith and credit in Nebraska. State law does provide in the Uniform Child Custody Enforcement and Jurisdiction Act and Nebraska Indian Child Welfare Act for state recognition of tribal court orders addressing custody and placement of Indian children. The principle of comity would control for any other tribal court orders.

The Full Faith and Credit Clause of the U.S. Constitution does not require states to give full faith and credit to any tribal court orders. Similarly, Congress has not required federal and state courts to give full faith and credit to all tribal court orders. However, Congress has required full faith and credit in three specific areas: (1) child custody orders (25 U.S.C. § 1911(d)); (2) child support orders (28 U.S.C. § 1738B); and (3) domestic violence or protection orders (18 U.S.C. § 2265).

The bill would enact the Recognition and Enforcement of Tribal Court Civil Judgments Act and give full faith and credit to all civil orders from tribal courts. Although it is not limiting, other types of tribal court orders that could be enforced would include, for example, judgments for money damages, declaratory judgments, restraining orders and injunctions. If the tribal court civil judgment is recognized by the state court, it may be enforced like any other state court order and will serve as lien on real estate.

The procedure for enforcing a tribal court civil judgment would require filing an authenticated copy of the order with the clerk of the state court, an affidavit of the responding party's contact information, and paying a filing fee. Notice of the filing and the tribal court

civil judgment is required to be provided to the responding party, who has 30 days to object to the filing. If an objection is made, the court will hold a hearing to hear the objection.

The state court may not recognize the order if the responding party proves by a preponderance of the evidence that (a) the tribal court did not have personal or subject matter jurisdiction or (b) the party was not afforded due process.

The state court would have the discretion to decline to recognize and enforce a tribal judgment on equitable grounds for any of the following reasons:

- (a) The tribal judgment was obtained by extrinsic fraud;
- (b) The tribal judgment conflicts with another filed judgment that is entitled to recognition in this state;
- (c) The tribal judgment is inconsistent with the parties' contractual choice of forum provided the contractual choice of forum issue was timely raised in the tribal court;
- (d) The tribal court does not recognize and enforce judgments of the courts of this state under standards similar to those provided in the Recognition and Enforcement of Tribal Court Civil Judgments Act; or
- (e) The cause of action or defense upon which the tribal judgment is based is repugnant to the fundamental public policy of the United States or this state.

The bill would extend full faith and credit to tribal court civil judgments and is consistent with the public policy demonstrated by state law governing child custody and ICWA cases.

Principal Introducer: _____

Senator Rick Kolowski