

# JUDICIAL PROCEDURE, CIVIL

## CHAPTER 226

### SENATE BILL NO. 2169

(Senators Hogue, D. Larson)  
(Representatives Brabandt, Klemin)  
(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 28-20.3 of the North Dakota Century Code, relating to recognition of foreign-country money judgments; and to repeal chapter 28-20.2 of the North Dakota Century Code, relating to foreign money judgments.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Chapter 28-20.3 of the North Dakota Century Code is created and enacted as follows:

##### **28-20.3-01. Definitions.**

As used in this chapter:

1. "Foreign country" means a government other than:
  - a. The United States;
  - b. A state, district, commonwealth, territory, or insular possession of the United States; or
  - c. Any other government with regard to which the decision in this state as to whether to recognize a judgment of that government's courts is initially subject to determination under section 1 of article IV of the Constitution of the United States.
2. "Foreign-country judgment" means a judgment of a court of a foreign country.

##### **28-20.3-02. Applicability.**

1. Except as otherwise provided in subsection 2, this chapter applies to a foreign-country judgment to the extent the judgment:
  - a. Grants or denies recovery of a sum of money; and
  - b. Under the law of the foreign country where rendered, is final, conclusive and enforceable.
2. This chapter does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent the judgment is:

- a. A judgment for taxes;
  - b. A fine or other penalty; or
  - c. A judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.
3. A party seeking recognition of a foreign-country judgment has the burden of establishing that this chapter applies to the foreign-country judgment.

**28-20.3-03. Standards for recognition of foreign-country judgment.**

1. Except as otherwise provided in subsections 2 and 3, a court of this state shall recognize a foreign-country judgment to which this chapter applies.
2. A court of this state may not recognize a foreign-country judgment if:
  - a. The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
  - b. The foreign court did not have personal jurisdiction over the defendant; or
  - c. The foreign court did not have jurisdiction over the subject matter.
3. A court of this state need not recognize a foreign-country judgment if:
  - a. The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;
  - b. The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;
  - c. The judgment or the cause of action on which the judgment is based is repugnant to the public policy of this state or of the United States;
  - d. The judgment conflicts with another final and conclusive judgment;
  - e. The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;
  - f. In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;
  - g. The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or
  - h. The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.
4. A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection 2 or 3 exists.

**28-20.3-04. Personal jurisdiction.**

1. A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if:
  - a. The defendant was served with process personally in the foreign country;
  - b. The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;
  - c. The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;
  - d. The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;
  - e. The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign country;  
or
  - f. The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action arising out of that operation.
2. The list of bases for personal jurisdiction in subsection 1 is not exclusive. The courts of this state may recognize bases of personal jurisdiction other than those listed in subsection 1 as sufficient to support a foreign-country judgment.

**28-20.3-05. Procedure for recognition of foreign-country judgment.**

1. If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition must be raised by filing an action seeking recognition of the foreign-country judgment.
2. If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.

**28-20.3-06. Effect of recognition of foreign-country judgment.**

If the court in a proceeding under section 28-20.3-05 finds the foreign-country judgment is entitled to recognition under this chapter then, to the extent the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

1. Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive; and
2. Enforceable in the same manner and to the same extent as a judgment rendered in this state.

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**28-20.3-07. Stay of proceedings pending appeal of foreign-country judgment.**

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

**28-20.3-08. Statute of limitations.**

An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or fifteen years from the date the foreign-country judgment became effective in the foreign country.

**28-20.3-09. Uniformity of interpretation.**

In applying and construing this uniform chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**SECTION 2. REPEAL.** Chapter 28-20.2 of the North Dakota Century Code is repealed.

Approved March 30, 2017

Filed March 30, 2017

## CHAPTER 227

### HOUSE BILL NO. 1300

(Representatives Kempenich, K. Koppelman, Olson)  
(Senators Klein, D. Larson, Unruh)

AN ACT to amend and reenact subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to agencies exempt from the definition of administrative agency.

#### **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
  - a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
  - b. The adjutant general with respect to the department of emergency services.
  - c. The council on the arts.
  - d. The state auditor.
  - e. The department of commerce with respect to the division of economic development and finance.
  - f. The dairy promotion commission.
  - g. The education factfinding commission.
  - h. The educational technology council.
  - i. The board of equalization.
  - j. The board of higher education.
  - k. The Indian affairs commission.

- l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.
- m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
- n. The pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The state fair association.
- r. The attorney general with respect to activities of the state toxicologist and the state crime laboratory.
- ~~s. The board of university and school lands except with respect to activities under chapter 47-30.1.~~
- t. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- ~~u.t.~~ The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
- ~~v.u.~~ The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.
- ~~w.v.~~ The commission on legal counsel for indigents.
- ~~x.w.~~ The attorney general with respect to twenty-four seven sobriety program guidelines and program fees.
- ~~y.x.~~ The industrial commission with respect to approving or setting water rates under chapter 61-40.

Approved April 20, 2017

Filed April 21, 2017