TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION

ON S.B. NO. 119

RELATING TO THE UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT.

BEFORE THE HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 17, 2009, at 2:00 p.m.
LOCATION: Conference Room 325, State Capitol

PERSON(S) TESTIFYING: KEVIN P. H. SUMIDA, Commissioner
Commission to Promote Uniform Legislation

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Chair Karamatsu and Members of the Committee:

My name is Kevin Sumida and I am testifying on behalf of the Hawaii Commission to Promote Uniform Legislation, whose members are Lani Ewart, Elizabeth Kent, Peter Hamasaki, and Ken Takayama. Our Commission also benefits from the voluntary participation and assistance of Robert Toyofuku and Hiroshi Sakai, who are life members of the national organization, the National Conference of Commissioners on Uniform State Laws. I am here to testify in relation to S.B. No. 119, a bill to enact the Uniform Foreign-Country Money Judgments Recognition Act.

The Foreign-Country Money Judgments Recognition Act provides a uniform method for enforcement of judgments obtained in a foreign country. This Act revises the Uniform Foreign Money Judgments Recognition Act, which was previously adopted by the State of Hawaii, as chapter 658C, Hawaii Revised Statutes, and which simplified international business by recognizing money judgments obtained in other nations for the purpose of enforcement. This revision updates the prior Act, clarifying its provisions, and correcting problems

created by the interpretation of provisions of that Act by the courts over the years since its promulgation.

This updated act has already been adopted by five states, including California, Colorado, Idaho, Michigan, and Nevada, and is under consideration by the legislatures of nine other states.

Further information is contained in the Summary of the Uniform Foreign-Country Money Judgments Recognition Act attached hereto and made a part of this testimony.

Thank you for the opportunity to testify on this bill.

Uniform Law Commissioners
The National Conference of Commissioners on Uniform State Laws

SUMMARY

Uniform Foreign-Country Money Judgments Recognition Act

In 1962, the Uniform Law Commissioners promulgated the Uniform Foreign Money-Judgments Recognition Act. It is a companion to the 1948 (amended in 1962) Uniform Enforcement of Foreign Judgments Act. In spite of the similarities in titles, these acts deal with quite different problems of judgment enforcement. The Enforcement of Foreign Judgments Act provides for enforcement of a state court judgment in another state to implement the Full Faith and Credit clause of the U.S. Constitution. The Foreign Money-Judgments Recognition Act provided for enforcement of foreign country judgments in a state court in the United States. The 1962 Uniform Foreign Money-Judgments Recognition act has been enacted in 32 states.

The increase in international trade in the United States has also meant more litigation in the interstate context. This means more judgments to be enforced from country to country. There is a strong need for uniformity between states with respect to the law governing foreign country money-judgments. If foreign country judgments are not enforced appropriately and uniformly, it may make enforcement of the judgments of American courts more difficult in foreign country courts. To meet the increased needs for enforcement of foreign country money-judgments, the Uniform Law Commissioners have promulgated a revision of the 1962 Uniform Act with the 2005 Uniform Foreign-Country Money Judgments Recognition Act (UFCMJRA).

The first step towards enforcement is recognition of the foreign country judgment. The recognition occurs in a state court when an appropriate action is filed for the purpose. If the judgment meets the statutory standards, the state court will recognize it. It then may be enforced as if it is a judgment of another state of the United States. Enforcement may then proceed, which means the judgment creditor may proceed against the property of the judgment debtor to satisfy the judgment amount.

First, it must be shown that the judgment is conclusive, final and enforceable in the country of origin. Certain money judgments are excluded, such as judgments on taxes, fines or criminal-like penalties and judgments relating to domestic relations. Domestic relations judgments are enforced under other statutes, already existing in every state. A foreign-country judgment must not be recognized if it comes from a court system that is not impartial or that dishonors due process, or there is no personal jurisdiction over the defendant or over the subject matter of the litigation. There are a number of grounds that may make a U.S. court deny recognition, i.e., the defendant did not receive notice of the proceeding or the claim is repugnant to American public policy. A final, conclusive judgment enforceable in the country of origin, if it is not excluded for one of the enumerated reasons, must be recognized and enforced. The 1962 Act and the 2005 Act generally operate the same.

The primary differences between the 1962 and the 2005 Uniform Acts are as follows:

1. The 2005 Act makes it clear that a judgment entitled to full faith and credit under the U.S. Constitution is not enforceable under this Act. This clarifies the relationship between the Foreign-Country Money Judgments Act and the Enforcement of Foreign Judgments Act. Recognition by a court is a different procedure than enforcement of a sister state judgment from within the United States.

2. The 2005 Act expressly provides that a party seeking recognition of a foreign judgment has the burden to prove that the judgment is subject to the Uniform Act. Burden of proof was not addressed in the 1962 Act.

3. Conversely, the 2005 Act imposes the burden of proof for establishing a specific ground for non-recognition upon the party raising it. Again, burden of proof is not addressed in the 1962 Act.

4. The 2005 Act addresses the specific procedure for seeking enforcement. If recognition is sought as an original matter, the party seeking recognition must file an action in the court to obtain recognition. If recognition is sought in a pending action, it may be filed as a counter-claim, cross-claim or affirmative defense in the pending action. The 1962 Act does not address the procedure to obtain recognition at all, leaving that to other state law.

5. The 2005 Act provides a statute of limitations on enforcement of a foreign-country judgment. If the judgment cannot be enforced any longer in the country of origin, it may not be enforced in a court of an

enacting state. If there is no limitation on enforcement in the country of origin, the judgment becomes unenforceable in an enacting state after 15 years from the time the judgment is effective in the country of origin.

These are the principal advances of the 2005 Act over the 1962 Act. The 2005 Act is not a radically new act. It builds upon the tried principles of the 1962 Act in a necessary upgrade for the 21st Century. It should be enacted in every state as soon as possible. If substantial uniformity is not gained within the foreseeable future, Congress may preempt the recognition and enforcement law.

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