

1991 Assembly Bill 260

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1991 WISCONSIN ACT 43

AN ACT to renumber and amend 806.245 (1); to amend 806.245 (2) (a) and (b), (3) (b) and (4) (intro.); and to create 806.245 (1) (a) to (e) of the statutes, relating to: tribal court proceedings and acts of tribal legislatures.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LEGISLATIVE COUNCIL PREFATORY NOTE: *This bill, prepared by the legislative council's American Indian study committee, relates to the recognition of tribal court proceedings and actions of tribal legislatures in the Wisconsin state court system.*

Current s. 806.245 requires Wisconsin courts to give full faith and credit to proceedings of the Menominee tribal court and acts of the Menominee tribal legislature. The doctrine of full faith and credit requires a court to give the same force and effect to the judgments of another jurisdiction as it does to its own judgments. Most often, full faith and credit applies to the use of judgments in a collateral proceeding, such as when a decree of divorce in one state's court is taken into another state's court to obtain the division of property located in the 2nd state.

The current statute imposes 4 conditions on the granting of full faith and credit to the acts and proceedings of the Menominee tribal court and legislature:

- 1. The Menominee tribal court must grant full faith and credit to Wisconsin court proceedings and other governmental acts;*

- 2. Acts and proceedings of the tribal court or legislature must be authenticated;*
- 3. The tribal court must be a court of record; and*
- 4. The Wisconsin court must review the validity of the tribal court judgment, based on 6 statutory criteria.*

The purpose of this bill is to extend the application of the current statute to all tribal legislative bodies and tribal courts in Wisconsin.

In addition, the bill clarifies the language of the statute and makes the review by the Wisconsin court of the validity of a tribal court judgment a matter of discretion with the court, rather than a mandated review in each instance. This is consistent with the doctrine of full faith and credit, as it applies to state court judgments, in which the judgment of another state's court is presumed to be valid.

SECTION 1. 806.245 (1) of the statutes is renumbered 806.245 (1) (intro.) and amended to read:

806.245 (1) (intro.) Subject to subs. (2), (3) and (4), copies of The judicial acts, records, proceedings orders and valid judgments of the Menominee Indian tribe of an Indian tribal court in Wisconsin and acts of the Menominee Indian tribal legislature an Indian tribal legislative body shall have the same full faith and credit in the courts of this state as do the acts, records, judicial proceedings orders and judgments of any other governmental entity, if the court of the Indian tribe grants full faith and credit

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to the judicial acts, records, proceedings and valid judgments of the courts of this state and to the acts of other governmental entities in this state. all of the following conditions are met:

SECTION 2. 806.245 (1) (a) to (e) of the statutes are created to read:

806.245 (1) (a) The tribe which creates the tribal court and tribal legislative body is organized under 25 USC 461 to 479.

(b) The tribal documents are authenticated under sub. (2).

(c) The tribal court is a court of record.

(d) The tribal court judgment offered in evidence is a valid judgment.

(e) The tribal court certifies that it grants full faith and credit to the judicial records, orders and judgments of the courts of this state and to the acts of other governmental entities in this state.

SECTION 3. 806.245 (2) (a) and (b), (3) (b) and (4) (intro.) of the statutes are amended to read:

806.245 (2) (a) Copies of acts of a tribal legislature legislative body shall be authenticated by the certificate of the tribal chairperson and tribal secretary.

(b) Copies of records, judicial proceedings orders and judgments of a tribal court of record shall be authenticated by the attestation of the clerk of the court. The seal, if any, of the court shall be affixed to the attestation, together with a certification by a judge of the court that the clerk's attestation is in proper form.

(3) (b) Either a transcript or an electronic recording of the proceedings proceeding at issue in the tribal court is available.

(4) (intro.) In determining whether a tribal court judgment is a valid judgment, the circuit court shall on its own motion, or on the motion of a party, may examine the tribal court record to assure that:

SECTION 4. Initial applicability. This act first applies to actions commenced in a court of this state on the effective date of this SECTION.
