

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1537 CS

Legal Actions

SPONSOR(S): Llorente

TIED BILLS: None

IDEN./SIM. BILLS: SB 2298

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Civil Justice Committee</u>	<u>4 Y, 0 N, w/CS</u>	<u>Blalock</u>	<u>Bond</u>
2) <u>Transportation & Economic Development Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

No court may preside over a case unless the court has jurisdiction over the persons and the subject matter involved. A court bases personal jurisdiction on the acts of the party involved. This bill increases the types of acts that will subject a person to the jurisdiction of Florida courts by providing that under certain circumstances a court will have personal jurisdiction of a person who enters into a contract with a choice of law agreement.

This bill expands the scope of a "foreign judgment" to include judgments of any court that is entitled to full faith and credit in Florida.

This bill expands the types of contracts that can have Florida choice of law agreements in the contracts.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases the types of acts which will subject a person to the jurisdiction of Florida courts, and increases the types of contracts which can have choice of law agreements in Florida.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 48.193(1), F.S., provides that state courts have personal jurisdiction over any person, whether or not a citizen or resident of the state, who personally or through an agent does any of the following acts:

- Operating, conducting, engaging in, or carrying on a business in this state, or having an office or agency in this state;
- Committing a tort within the state.
- Owning, using, possessing, or holding a mortgage or other lien on any real property within this state.
- Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.
- Contracting to insure any person, property, or risk located within this state at the time of contracting.
- Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if:
 - The defendant was engaged in solicitation or service activities within this state; or
 - Products, materials, or things processed, serviced, or manufactured by the defendant were used or consumed within this state in the ordinary course of commerce, trade, or use.

Sections 685.101 and 685.102, F.S., also pertain to the jurisdiction of Florida courts. Section 685.101, F.S., provides that any party to a contract involving at least \$250,000 can agree that the law of Florida will govern whether or not the contract bears any relation to the state. This provision does not apply to any contract:

- Regarding any transaction that does not bear a substantial or reasonable relation to the state of Florida in which every party is either a resident or citizen of the United States, but not this state, or incorporated or organized under the laws of another state and does not maintain a place of business in Florida.
- For labor or employment.
- Relates to any transaction for personal, family, or household purpose, unless the contract concerns a trust where at least one trustee resides or transacts business as a trustee in this state.

Section 685.102, F.S., provides that any person can file in the state of Florida any action or proceeding against a person or entity residing or located outside this state, if the action or proceeding arises out of or relates to any contract for which a choice of the law of agreement in Florida has been made pursuant to the provisions described above in s. 685.101, F.S.

Section 55.502, F.S., provides for the definition of a "foreign judgement" under the "Florida Enforcement of Foreign Judgments Act". The general purpose of the Florida Enforcement of Foreign Judgments Act is to make uniform the law with respect to enforcing foreign judgments among the states enacting it. The Act provides the method by which foreign judgments, entitled to full faith and credit under constitutional standards, may become Florida judgments for enforcement purposes. Subject to the judgment debtor's right to file an action within a specified time challenging the validity of the foreign judgment, the Act permits the enforcement of the foreign judgment without the filing of a separate action. A "foreign judgment" is any judgment, decree, or order of a court of any other state or of the United States if such judgment, decree, or order is entitled to full faith and credit in this state.

Effect of Bill

This bill amends s. 48.193(1), F.S., to provide that entering into a contract where there is a choice of Florida law agreement, pursuant to s. 685.101, F.S., will subject a person to the jurisdiction of Florida courts, whether or not they are a citizen or resident of Florida.

This bill amends s. 685.101(2), F.S. to expand the types of contracts that can have choice of law agreements. This bill removes the provision that this section does not apply to "any contract regarding any transaction that does not bear a substantial or reasonable relation to the state of Florida in which every party is either a resident or citizen of the United States, but not this state, or incorporated or organized under the laws of another state and does not maintain a place of business in Florida". Therefore, parties that are not citizens or residents of Florida and whose contract is not substantially or reasonably related to Florida would be able to agree that the law of Florida will govern the contract.

This bill also amends s. 685.101(2), F.S., to remove the provision that choice of law agreements pursuant to s. 685.101, F.S., will not apply to contracts relating to any transaction for personal, family, or household purpose, "unless the contract concerns a trust where at least one trustee resides or transacts business as a trustee in this state". Therefore, it appears that a contract or agreement that concerns a trust where at least one trustee resides or transacts business as a trustee in Florida will not be allowed to have a Florida choice of law agreement.

This bill also amends ss. 685.101(4) and 685.102(3) F.S., to provide that this section applies to contracts entered into on or before June 30, 2006. This bill removes language in both sections providing that the two sections apply to "contracts entered into prior to June 27 1989, if an action or proceeding relating to the contract is commenced on or after June 27, 1989".

This bill amends s. 55.502, F.S., to revise the definition of a "foreign judgment". This bill provides that a foreign judgment is any judgment, decree, or order of a court of the United States or any other court that is entitled to full faith and credit in this state. The change in the definition that a foreign judgment consists of an judgment of the United States or "any other court" which is entitled to full faith and credit in this state allows judgments from courts in U.S. territories and other places under U.S. jurisdiction that are not states. Current law provides that a foreign judgment only pertains to courts of "any other state, or of the United States".

C. SECTION DIRECTORY:

Section 1 amends s. 48.193, F.S., to provide that entering into a contract that complies meets certain requirements will subject a person to the jurisdiction of Florida courts.

Section 2 amends s. 55.502, F.S., to revise the definition of "foreign judgment".

Section 3 amends s. 685.101, F.S., to revise the types of contracts where a choice of law agreement in Florida is permitted.

Section 4 amends s. 685.102, F.S., to revise the timeframe that contracts must be entered to apply to the provisions of the section.

Section 5 provides an effective date of June 30, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Civil Justice Committee adopted one amendment to this bill. The amendment removed section one of the bill, which allowed the Secretary of State to be served process on behalf of a domestic corporation or a registered foreign corporation. The bill was then reported favorably with a committee substitute.