

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL: SB 1878

INTRODUCER: Senator Margolis

SUBJECT: The jurisdiction of the courts

DATE: April 4, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McCarthy	Cooper	CM	Pre-meeting
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill amends s. 48.081, F.S., to permit process to be served on the Secretary of State if other individuals identified by statute cannot be personally served, and amends s. 48.151, F.S., to specify the requirements related to such actions.

The bill amends s. 48.193, F.S., to provide in the Florida long-arm statute that Florida courts have personal jurisdiction, in some instances, over persons who contractually consent to personal jurisdiction in Florida, consistent with current provisions in s. 685.102, F.S., relating to contracts.

Section 685.101, F.S., is amended to allow non-residents that do not have a business presence in Florida to agree that Florida Law will govern the contract, and consequently agree that Florida Courts will have jurisdiction in any contractual disputes, should they arise.

The bill also

- Amends s. 55.502, F.S., to clarify that judgments from Puerto Rico and other U.S. territories are entitled to enforcement in Florida;
- Corrects cross-references in the Florida International Commercial Arbitration Act, consistent with the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (Model Law) as amended in 2006; and
- Amends s. 685.102, F.S., to provide that certain contracts with forum-selection clauses are enforceable if made “consistent with” rather than “pursuant to” s. 685.101, F.S., and apply the change prospectively.

This bill substantially amends the following sections of the Florida Statutes: 48.081, 48.151, 48.193, 55.502, 684.0019, 684.0026, 685.101, and 685.102.

II. Present Situation:

Under Florida law, service of process and personal jurisdiction are two distinct but related concepts. Both are necessary before a defendant, either an individual or business entity, may be compelled to answer a claim brought in a court of law. Personal jurisdiction refers to whether the actions of an individual or business entity as set forth in the applicable statutes permit the court to exercise jurisdiction in a lawsuit brought against the individual or business entity in this state. Service of process is the means of notifying a party of a legal claim and, when accomplished, enables the court to exercise jurisdiction over the defendant and proceed to judgment. Personal jurisdiction over a nonresident of the state is circumscribed by constitutional considerations of minimum contacts as stated in the seminal case of [*International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 \(1945\)](#), and its progeny. As explained in *Venetian Salami*, two inquiries must be made regarding personal jurisdiction over a nonresident:

First, it must be determined that the complaint alleges sufficient jurisdictional facts to bring the action within the ambit of the statute; and if it does, the next inquiry is whether sufficient “minimum contacts” are demonstrated to satisfy due process requirements.¹

“It is well-settled that ‘[a] judgment entered without valid service is void for lack of personal jurisdiction and may be collaterally attacked at any time.’”²

Section 48.081, F.S., specifies the requirements for service of process on corporations who are named as defendant in lawsuits. This statute does not address situations regarding a foreign private corporation who used to do business in Florida but no longer has a presence, employees or officers in the state. Consequently, a plaintiff is unable to serve such a corporation with process.

Section 48.151, F.S., specifies the requirements for effectuating service of process on statutory agents for certain persons. Subsection (1), establishes the following responsibilities for statutory agents for service of process:

The public officer, board, agency, or commission so served shall file one copy in his or her or its records and promptly send the other copy, by registered or certified mail, to the person to be served as shown by his or her or its records. Proof of service on the public officer, board, agency, or commission shall be by a notice accepting the process which shall be issued by the public officer, board, agency, or commission promptly after service and filed in the court issuing the process. The notice accepting service shall state the date upon which the copy of the process was mailed by the public officer, board, agency, or commission to the person being served and the time for pleading prescribed by the rules of procedure shall run from this date.

¹ *Borden v. East-European Ins. Co.*, 921 So. 2d 587, 591-592 (Fla. 2006) (internal citations omitted).

² *Alvarado v. Cisneros*, 919 So. 2d 585, 587 (Fla. 3d DCA 2006) (quoting *Great Am. Ins. Co. v. Bevis*, 652 So. 2d 382, 383(Fla. 2d DCA 1995)).

Subsection (5) states that the Secretary of State is the agent for service of process for any retailer, dealer or vendor who has failed to designate an agent for service of process.

Long-Arm Jurisdiction

Section 48.193, F.S., establishes a broad list of acts that can subject a person to the jurisdiction of courts of this state.³ This section is also known as the Florida long-arm statute.

Section 685.102, F.S., establishes acts relating to contracts that can subject a person to the jurisdiction of the courts of this state, including a foreign defendant who enters into a contract and satisfies the other requirements related to choice of law in s. 685.101, F.S.

Section 685.101, F.S., establishes a choice of law provision within Florida Statutes whereby parties to any agreement may chose to have the law of this state govern such contract. However, subsection (2) restricts the choice of law to contracts, agreements or undertakings:

³ Section 48.193, F.S., states in part:

- (1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself and, if he or she is a natural person, his or her personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts:
 - (a) Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.
 - (b) Committing a tortious act within this state.
 - (c) Owning, using, possessing, or holding a mortgage or other lien on any real property within this state.
 - (d) Contracting to insure any person, property, or risk located within this state at the time of contracting.
 - (e) With respect to a proceeding for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintaining a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.
 - (f) Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if, at or about the time of the injury, either:
 1. The defendant was engaged in solicitation or service activities within this state; or
 2. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use.
 - (g) Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.
 - (h) With respect to a proceeding for paternity, engaging in the act of sexual intercourse within this state with respect to which a child may have been conceived.
- (2) A defendant who is engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity.
- (3) Service of process upon any person who is subject to the jurisdiction of the courts of this state as provided in this section may be made by personally serving the process upon the defendant outside this state, as provided in s. [48.194](#). The service shall have the same effect as if it had been personally served within this state.
- (4) If a defendant in his or her pleadings demands affirmative relief on causes of action unrelated to the transaction forming the basis of the plaintiff's claim, the defendant shall thereafter in that action be subject to the jurisdiction of the court for any cause of action, regardless of its basis, which the plaintiff may by amendment assert against the defendant.
- (5) Nothing contained in this section limits or affects the right to serve any process in any other manner now or hereinafter provided by law.

- Regarding any transaction which does not bear a substantial or reasonable relation to this state in which every party is either or a combination of:
 1. A resident and citizen of the United States, but not of this state; or
 2. Incorporated or organized under the laws of another state and does not maintain a place of business in this state; . . .

Florida Enforcement of Foreign Judgments Act

Under the Florida Enforcement of Foreign Judgments Act (act), ss. 55.501-55.509, F.S., foreign judgments may be enforced in Florida. The foreign judgments that may be enforced under the act include “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.”⁴ In *Rodriguez v. Nasrallah*, 659 So. 2d 437, 439 (Fla. 1st DCA 1995), the court stated that “[j]udgments of courts in Puerto Rico are entitled to full faith and credit in the same manner as judgments from courts of sister States.” As a result, the court permitted the enforcement of a Puerto Rican judgment in Florida. However, a judgment from a Puerto Rican court is not a judgment from a *state court* as required by the act. Accordingly, the wording of the act would appear to preclude the enforcement of the judgments of courts for U.S. territories and possessions in Florida.

Florida International Commercial Arbitration Act

Chapter 2010-60, L.O.F., repealed the then current law relating to international commercial arbitration and adopted instead the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (Model Law) as amended in 2006.

Chapter 684, F.S., in accordance with the UNCITRAL Model Law on International Commercial Arbitration, applies to any international commercial arbitration subject to an agreement between the United States of America and any other country. The law provides certain definitions, principles under which the law is to be interpreted, procedural requirements, discovery and evidentiary requirements, and arbitral tribunal powers and immunity.

The law also limits a court’s authority to intervene in arbitration and specifies when a court should intervene.

III. Effect of Proposed Changes:

Section 1 amends s. 48.081, F.S., to permit process to be served on the Secretary of State if representatives of a corporation, as identified in this section, cannot be personally served pursuant to s. 48.151, F.S.

Section 2 amends s. 48.151, F.S., setting out the procedure to be used for service on the Secretary of State when a domestic corporation or a registered foreign corporation is being served pursuant s. 48.081, F.S., as amended in Section 1 of the bill. Specifically, to require:

⁴ Section 55.502(1), F.S.

- That process served on the Secretary of State on behalf of a defendant corporation be accompanied by a fee, an affidavit detailing other attempts to serve the corporation, and known addresses of representatives of the corporation, and multiple copies of the process;
- That the Secretary of State mail, by regular and registered/certified mail, a copy of the process to representatives of the defendant corporation;
- That the Secretary of State provide a notice of service to the plaintiff or plaintiff's attorney; and
- The Secretary of State shall explain the reasons for rejecting the service of process.

Section 3 amends s. 48.193, F.S., to provide in the Florida long-arm statute that Florida courts have personal jurisdiction, in some instances, over persons who contractually consent to personal jurisdiction in Florida, consistent with current provisions in s. 685.102, F.S. Specifically, persons who enter into contracts that comply with s. 685.102, F.S., are subject to the jurisdiction of Florida courts.

Section 4 amends subsection (1) of s. 55.502, F.S., to delete the limitation of the term foreign judgments to "any other state or of the United States," thereby allowing for judgments from Puerto Rico and other territories or possession of the United States to be recognized and be entitled to enforcement in Florida.

Sections 5 and 6 amend the Florida International Commercial Arbitration Act (act), which was adopted in 2010, to change cross-references that the International Law Section of the Florida Bar represent were "inadvertent clerical errors" in the crafting of the act, which are inconsistent with the UNCITRAL Model Law on commercial Arbitration.

Section s. 684.0018, F.S., authorizes arbitral tribunals to order interim measures, unless otherwise agreed to by the parties. An interim measure must be requested by a party and is a temporary measure that may include an order to:

- (1) Maintain or restore the status quo;
- (2) Take action to prevent, or refrain from an action that is likely to cause, current or imminent harm or prejudice to the arbitral process;
- (3) Preserve assets, which may be used to satisfy an award; or
- (4) Preserve evidence relevant and material to the dispute being arbitrated.

Section 684.0019, F.S., requires a party to prove certain conditions prior to requesting an interim measure. Subsection (1) specifies that a party must prove:

- Without the interim measure, there would be irreparable harm that an award would not repair and the irreparable harm outweighs the harm that would affect the party to whom the interim measure is against; and
- It is reasonably possible that the party requesting the interim measure will succeed on the merits of its claim.

Subsection (2) of s. 684.019, F.S., states that with regard to a request for an interim measure under s. 684.018, F.D., the requirements apply only to the extent the arbitral tribunal considers appropriate.

Section 5 amends 684.019(2), F.S., to replace the general reference to s. 684.018, F.S., to a specific reference to subsection (4) of s. 684.018, F.S., which is consistent with the UNCITRAL model law.

Section 684.026, F.S., provides for the recognition and enforcement of an interim measure. Subsection (1) states that an interim measure is binding upon the parties and enforced, upon application of a party, by a court or a country's equivalent authority, "subject to s. 684.0019(1)."

Section 6 amends s. 684.0026(1), F.S., to replace the reference to s. 684.0019(1), F.S., with s. 684.0027, F.S., which specifies the grounds for refusing recognition or enforcement. This is consistent with the UNCITRAL model law.

Section 7 amends s. 685.101, F.S., to allow entities who are entering into any contract, agreement, or undertaking contingent or otherwise involving in the aggregate at least \$250,000, to agree that the law of this state govern such contract, agreement, or undertaking. This change removes the requirement that the transaction bear a substantial or reasonable relation to this state.

Changes to this section take effect prospectively – for contracts entered into on or after July 1, 2011.

Section 8 amends s. 685.102, F.S., to clarify that certain contracts with forum-selection clauses are enforceable if made "consistent with" rather than "pursuant to" s. 685.101, F.S., which relates to choice of law.

Changes to this section take effect prospectively – for contracts entered into on or after July 1, 2011.

Section 9 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Section 2 of the bill authorizes a service fee of \$10 for service on the Secretary of State.

B. Private Sector Impact:

According to The Florida Bar, International Law Section, the bill enhances the business climate in Florida by clarifying and streamlining existing legislation related to international law matters in order to increase Florida's attractiveness as a business friendly state.⁵

C. Government Sector Impact:

Currently the Secretary of State accepts substitute service of process under 17 statutory provisions. This bill affects two of these provisions and it is estimated that the yearly cost to comply with the requirements of this bill will be \$917,397, with revenue projected to be \$37,500.⁶

The change in law to allow parties the choice of using Florida Law in their contracts may increase the amount of litigation in the state and create a corresponding cost with respect to the court system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁵ Memo from The Florida Bar, International Law Section on file with the Senate Commerce and Tourism Committee.

⁶ Department of State analysis on file with the Senate Commerce and Tourism Committee.