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LEGISLATIVE ACTION

Senate

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House

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Floor: 1/AD/3R

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04/28/2014 10:28 AM

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Senator Simmons moved the following:

**Senate Amendment (with title amendment)**

Delete lines 20 - 59

and insert:

Section 1. Section 61.040, Florida Statutes, is created to read:

61.040 Application of the law of a foreign country in courts relating to matters arising out of or relating to chapters 61 and 88.-

(1) As used in this section, the term "strong public policy" means public policy of sufficient importance to outweigh



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12 the policy of protecting freedom of contract.

13 (2) A court may not enforce:

14 (a) A choice of law provision in a contract selecting the  
15 law of a foreign country which contravenes the strong public  
16 policy of this state or that is unjust or unreasonable.

17 (b) A forum selection clause in a contract that selects a  
18 forum in a foreign country if the clause is shown to be  
19 unreasonable or unjust or if strong public policy would prohibit  
20 the enforceability of the clause under the specific facts of the  
21 case.

22 (3) Before enforcing a judgment or order of a court of a  
23 foreign country, a court must review the judgment or order to  
24 ensure that it complies with the rule of comity. A judgment or  
25 order of a court of a foreign country is not entitled to comity  
26 if the parties were not given adequate notice and the  
27 opportunity to be heard, the foreign court did not have  
28 jurisdiction, or the judgment or order of the foreign court  
29 offends the public policy of this state. As used in this  
30 subsection, a "foreign court" or "court of a foreign country"  
31 includes any court or tribunal that has jurisdiction under the  
32 laws of that nation over the subject of matters governed by  
33 chapter 61 or chapter 88.

34 (4) Any attempt to apply the law of a foreign country is  
35 void if it contravenes the strong public policy of this state or  
36 if the law is unjust or unreasonable.

37 (5) A trial court may not dismiss an action on the grounds  
38 that a satisfactory remedy may be more conveniently sought in a  
39 foreign country unless the trial court finds in accordance with  
40 all the applicable rules of civil procedure and this section



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41 that an adequate alternate forum exists.

42 (6) This section applies only to matters governed by or  
43 relating to chapter 61 or chapter 88.

44  
45 The purpose of this section is to codify existing case law, and  
46 that intent should guide the interpretation of this section.

47  
48 ===== T I T L E A M E N D M E N T =====

49 And the title is amended as follows:

50 Delete lines 10 - 16

51 and insert:

52 entitled to comity; providing that the attempt to  
53 apply the law of a foreign country is void under  
54 certain circumstances; prohibiting a trial court from  
55 dismissing an action on the grounds that a  
56 satisfactory remedy may be more conveniently sought in  
57 a foreign country; providing an exception; providing  
58 applicability; providing an effective date.

59  
60 WHEREAS, the purpose of the courts of this state is to  
61 fairly and justly adjudicate disputes, and

62 WHEREAS, the common law and other court interpreted law of  
63 this state protects litigants from the application of unfair and  
64 unjust laws of foreign countries, and

65 WHEREAS, with respect to the enforceability of choice of  
66 law provisions, this act codifies the holdings of *Mintz & Fraade*  
67 *P.C., v. Beta Drywall Aquisition, LLC*, 59 So.3d 1173, 1176 (Fla.  
68 4th DCA 2011); *Walls v. Quick & Reilly, Inc.*, 824 So.2d 1016,  
69 1018 (Fla. 5th DCA); and



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70           WHEREAS, with respect to the enforceability of forum  
71 selection clauses, this act codifies the holdings of *Manrique v.*  
72 *Fabbri*, 493 So.2d 437, 440 (Fla. 1986) and *Illinois Union*  
73 *Insurance Co. v. Co-Free, Inc.*, 128 So.3d 820 (Fla 1st DCA  
74 2013); and

75           WHEREAS, with respect to the enforceability of a judgment  
76 or order of a court of a foreign country, this act codifies the  
77 holding of *Nahar v. Nahar*, 656 So.2d 225, 229 (Fla. 3d DCA  
78 1995); and

79           WHEREAS, with respect to the application of the law of a  
80 foreign state, this act codifies *McNamara v. McNamara*, 40 So.3d  
81 78, 80 (Fla. 5th DCA 2010); and

82           WHEREAS, with respect to the dismissal of a case on the  
83 grounds that a satisfactory remedy may be more conveniently  
84 sought in a foreign country, this Act codifies the result of  
85 Rule 1.061(a)(1), Florida Rules of Civil Procedure, NOW,  
86 THEREFORE,