

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: HB 903

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Combee and others

78 Y's

40 N's

**COMPANION
BILLS:** SB 386

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 903 passed the House on April 30, 2014, as SB 386.

The law of a foreign jurisdiction or system may be recognized in Florida in a variety of circumstances. Contracts may contain a clause which provides that disputes must be decided according to the laws of another jurisdiction, or that disputes must be adjudicated in another jurisdiction. These are known as "choice of law" and "forum selection" provisions, respectively. Further, a party may seek to enforce a judgment rendered in a foreign country in a Florida court, which invokes the principle of 'comity' or the recognition of foreign decrees. Last, a court may decline to hear a matter on the basis that the dispute would be better handled in a foreign jurisdiction. This concept is called 'forum non conveniens.'

The bill is limited in its application to dissolution proceedings and support enforcement under The Uniform Interstate Family Support Act, and provides that respect to matters under these statutes, foreign law will not be recognized or enforced in Florida where it contravenes the 'strong public policy' of this state.

The bill was approved by the Governor on May 12, 2014, ch. 2014-10, L.O.F., and will become effective on October 1, 2014.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Conflicts of Laws

The law of a foreign jurisdiction or system may be recognized in Florida in a variety of circumstances. "A court may take judicial notice of . . . laws of foreign nations and of an organization of nations." ¹ However, even if recognized, the laws of foreign nations are not necessarily enforced unless there is a reason to do so, usually by prior agreement of the parties.

There are four major areas where foreign law might be applied:

- Choice of law provisions in contracts;
- Forum selection clauses in contracts;
- Enforcement of foreign judgments; and
- Claims of *forum non conveniens*.²

Contracts often contain clauses which provide for dispute settlement according to the laws of a certain jurisdiction. These are known as "choice of law" provisions. These may direct interpretation or enforcement of the contract according to the laws of another state, but may require adherence to the law of another country. Contracts may also contain a "forum selection clause" providing that disputes must be decided in a particular jurisdiction. These clauses compel the court to decline jurisdiction, yielding it to the other state or country. Marital contracts (ante-nuptial and post-nuptial agreements) may contain either or both such provisions, and may be enforceable in a dissolution proceeding in Florida.

Foreign judgments (a judgment rendered in another country) may be enforced in Florida, subject to certain parameters, pursuant to a concept known as 'comity.' A conflict of laws arises when parties otherwise subject to Florida's body of law request a Florida court to enforce a judgment according to the law of another jurisdiction. Parties may also request that a case be transferred to another jurisdiction for decision.

The bill addresses all of the above situations - the choice of substantive law to be applied, the choice of forum, enforcement of foreign judgments, and the non-contractual situation which might cause a court to relinquish jurisdiction, i.e., a claim of *forum non conveniens*.

Application

The bill is limited in its application to dissolution proceedings (Chapter 61, F.S.), and support enforcement under The Uniform Interstate Family Support Act, Chapter 88, F.S. Foreign support orders are enforced in Florida under the Uniform Interstate Family Support Act,³ which directs that as a general rule, the law of the state issuing the order shall govern, even if enforcement is requested in

¹ Section 90.202, F.S.

² "Forum non conveniens is a common law doctrine addressing the problem that arises when a local court technically has jurisdiction over a suit but the cause of action may be fairly and more conveniently litigated elsewhere." *Kinney System, Inc., v. Continental Ins. Co.*, 674 So.2d 86 (Fla. 1996). See also s. 47.122, F.S.

³ Chapter 88, F.S.

Florida.⁴ Likewise, Chapter 61, F.S., which governs dissolution of marriage, acknowledges the enforceability of a choice of law provision in an ante-nuptial agreement.⁵

If such provisions do not offend the public policy of Florida, they are enforceable, even if the law to be applied is different than Florida law.⁶ Historically, Florida courts have enforced an ante-nuptial contract according to the law of the place where it was entered into, unless enforcement would be contrary to public policy or unconstitutional.⁷ For example, in *Akileh v. Elchahal*,⁸ the court enforced the parties' Islamic ante-nuptial agreement, arguably a religious arrangement, since it complied with Florida contract law and the court found nothing in the contract unconscionable.

Florida has also enacted the "Uniform Premarital Agreement Act," which specifically provides that premarital agreements, including their choice of law provisions, are enforceable.⁹ Choice of law provisions in property settlement agreements are valid and enforceable pursuant to the Uniform Interstate Family Support Act, as codified in ch. 88, F.S.¹⁰

Strong Public Policy

Courts maintain that where the foreign law frustrates the public policy of this state, or is not established with specificity as a matter of fact,¹¹ it will not be enforced. For example, where the husband sought to enforce a Danish prenuptial agreement which left nothing to the wife in the event of divorce, the court refused "where to do so would bring harm to a Florida citizen or would frustrate an established public policy of this state."¹²

Section 61.079 F.S., provides that choice of law provisions in premarital agreements are enforceable in Florida.¹³ Likewise, the Uniform Interstate Family Support Act does not include support orders issued pursuant to a foreign country's law or system. It only applies to orders issued by a court in another state of the union.

Application of Foreign Law

The bill cites to case law and rules of court in the 'whereas' clauses, which generally hold that such agreements and judgments will not be recognized in Florida if enforcement would violate constitutional rights:

⁴ See 28 USC s. 1738B, which is entitled "The Full Faith and Credit for Child Support Orders Act." Federal law requires that all states recognize support orders as a matter of full faith and credit. As a side note, the recognition of a foreign support order is not absolute, but the exceptions are immaterial to this analysis.

⁵ See s. 61.079, F.S.

⁶ *McNamara v. McNamara*, 40 So.3d 78, 80 (Fla. 5th DCA 2010).

⁷ *Gessler v. Gessler*, 273 F.2d 302 (5th Cir. 1959).

⁸ 666 So.2d 246 (Fla. 2d DCA 1996).

⁹ See s. 61.079 F.S.

¹⁰ See generally, *Keeton v. Keeton*, 807 So.2d 186 (Fla. 1st DCA 2002)(holding that property settlement agreement was enforceable in Florida with Kentucky law controlling), and *Blitz v. Florida Dept. Of Revenue ex rel. Maxwell*, 898 So.2d 121, 125 (Fla. 4th DCA 2005).

¹¹ See, eg., *Courtlandt Corp. v. Whitmer*, 121 So.2d 57 (Fla. 2d DCA 1960); cf. *Hieber v. Hieber*, 151 So.2d 646 (Fla. 3d DCA 1963) (law of foreign state).

¹² *Gustafson v. Jensen*, 515 So.2d 1298 (Fla. 3d DCA 1987).

¹³ "Parties to a premarital agreement may contract with respect to. . . the choice of law governing the construction of the agreement and any other matter, including their personal rights and obligations, not in violation of either the public policy of this state or a law imposing a criminal penalty." Section 61.079, F.S.

- "Choice of law provisions, in general, are enforced by Florida courts, so long as the law of the foreign state does not contravene 'strong public policy of Florida or is unjust or unreasonable.'"¹⁴
- "Florida courts will generally enforce choice-of-law provisions 'unless the law of the chosen forum contravenes strong public policy.'"¹⁵
- "The trial courts of this state can effectively protect a party by refusing to enforce those forum selection provisions which are unreasonable or result from unequal bargaining power. We hold that forum selection clauses should be enforced in the absence of a showing that enforcement would be unreasonable or unjust."¹⁶
- "A mandatory forum selection clause must be enforced unless it is shown to be unreasonable or unjust."¹⁷
- "It is well settled that, as a general rule, only the final judgments of courts of a foreign country are subject to recognition and enforcement in this country, provided certain jurisdictional and due process standards are observed by the foreign court; non-final or interlocutory orders of foreign courts, however, are generally not entitled to such recognition or enforcement."¹⁸
- "A contract is not void, as against public policy, unless it is injurious to the interest of the public, or contravenes some established interest in society." "The mere difference between the law of the forum and that of a foreign state does not make application of the foreign law contrary to Florida public policy." "Absent a public policy violation, this state enforces the parties' choice of law. . ."¹⁹
- "An action may be dismissed on the ground that a satisfactory remedy may be more conveniently sought in a jurisdiction other than Florida when the trial court finds that an adequate alternate forum exists which possesses jurisdiction over the whole case, including all of the parties. . ." ²⁰

The bill takes the term, "strong public policy," from the case law cited in the preamble, and defines it as "public policy of sufficient importance to outweigh the policy of protecting freedom of contract."²¹

The bill further defines "foreign court" or "court of a foreign country" as any court or tribunal that has jurisdiction in another nation over the subject matters governed by chs. 61 or 88, F.S. The bill addresses the four major areas where foreign law might be applied:

1. Choice of law provisions: Courts may not enforce choice of law provisions if the law is from a foreign country; and
 - The law contravenes the strong public policy of Florida; or
 - The law is unjust or unreasonable.

¹⁴ *Mintz & Freaade, P.C. v. Beta Dry wall Acquisitions, LLC*, 59 So. 3rd 1173 (Fla. 4th DCA 2011).

¹⁵ *Walls v. Quick & Reilly, Inc.*, 824 So.2d 1016 (Fla. 5th DCA 2002).

¹⁶ *Manrique v. Fabbri*, 493 So.2d 437 (Fla. 1986).

¹⁷ *Illinois Union Ins. Co. v. Co-Free, Inc.*, 128 So.2d 820 (Fla. 1st DCA 2013).

¹⁸ *Nahar v. Nahar*, 656 So.2d 225 (Fla. 3rd DCA 1995).

¹⁹ *McNamara v. McNamara*, 40 So.3d 78 (Fla. 5th DCA 2010).

²⁰ Fla. R. Civ. P. 1.061(a)(1).

²¹ *Walls v. Quick & Reilly, Inc.*, 824 So.2d 1016, 1018 (Fla. 5th DCA 2002).

2. Forum selection clauses: Courts may not enforce forum selection clauses if the forum is a foreign country; and

- The strong public policy of Florida would prohibit enforcement; or
- The clause is unjust or unreasonable.

3. Enforcement of foreign judgments: Courts may not enforce foreign judgments under the principle of comity if the judgment was rendered in a foreign country; and

- The parties were not given adequate notice and the opportunity to be heard;
- The foreign court did not have jurisdiction; or
- The judgment or order offends the public policy of Florida.

4. Claims of forum non conveniens: Courts may not dismiss an action unless the trial court finds in accordance with the rules of civil procedure and the bill that an adequate alternate forum exists.

In addition to the above provisions, the bill provides that any attempt to apply the law of a foreign country is void if it contravenes the strong public policy of Florida or if the law is unjust or unreasonable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.