

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 Committee on Judiciary

BILL: CS/SB 186

INTRODUCER: Judiciary Committee and Senator Diaz de la Portilla

SUBJECT: Jurisdiction of the Courts

DATE: March 19, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Hrdlicka	CM	Favorable
2.	Brown	Cibula	JU	Fav/CS
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 186 addresses personal jurisdiction of the courts of this state.

This bill clarifies that foreign judgments issued by United States territories are entitled to full faith and credit in this state under the Florida Enforcement of Foreign Judgments Act.

The bill extends personal jurisdiction to parties who initiate arbitration or enter into written contracts that provide for arbitration in this state for any action that arises out of arbitration or a resulting award.

The Florida International Commercial Arbitration Act is amended to correct cross-references within the act to conform exactly to the UNCITRAL Model Law on Commercial Arbitration.

This bill substantially amends the following sections of the Florida Statutes: 48.193, 55.502, 684.0002, 684.0003, 684.0019, and 684.0026.

The bill creates section 684.0049, Florida Statutes.

II. Present Situation:

Jurisdiction

The ability of a court to assert personal jurisdiction over a nonresident is subject to the constitutional Due Process Clause of the Fourteenth Amendment.¹ The test for determining whether a court may assert personal jurisdiction over a nonresident is whether the nonresident has “minimum contacts” in the forum so that commencing a proceeding against that individual does “not offend traditional notions of fair play and justice.”² Foreseeability is key; therefore, the principal inquiry is whether the nonresident’s conduct and connection with the forum state would lead him or her to believe that they could “reasonably anticipate being haled into court”³

Florida Long-Arm Statute

The second limit on a court’s ability to assert personal jurisdiction is derived from a state’s long-arm statute. Such statutes can be drafted broadly⁴ to reach the maximum bounds of the Due Process Clause or narrowly by enumerating specific acts or activities that would allow a court to assume personal jurisdiction in a particular case. Florida’s statute falls into the latter category. In *Venetian Salami Co. v. J.S. Parthenais*, the Florida Supreme Court described the interplay between Florida’s long-arm statute and the due process requirements of the Fourteenth Amendment as follows:

By enacting section 48.193, the legislature has determined the requisite basis for obtaining jurisdiction over nonresident defendants as far as Florida is concerned. It has not specifically addressed whether the federal constitutional requirement of minimum contacts has been met. As a practical matter, it could not do so because each case will depend upon the facts.⁵

Therefore, a court must satisfy two inquiries. The first is whether there is a jurisdictional basis under the Florida long-arm statute to assert personal jurisdiction; and if so, whether minimum contacts exist.⁶

Florida Enforcement of Foreign Judgments Act

Article IV, clause 1 of the United States Constitution provides that “Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other

¹ U.S. Const. amend. XIV, s. 2 (“No state shall . . . deprive any person of life, liberty, or property without due process of law”); *See International Shoe Co. v. Washington, Office of Unemployment Comp. and Placement*, 326 U.S. 310, 316 (1945).

² *Id.* at 316.

³ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985) (quoting *World-Wide Volkswagen Co. v. Woodson*, 444 U.S. 286, 297 (1980)).

⁴ As an example of a broad long-arm statute, California’s long-arm statute states: “A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.” Cal. Civ. Proc. s. 410.10 (2012).

⁵ *Venetian Salami Co. v. J.S. Parthenais*, 554 So. 2d 499, 500 (Fla. 1989).

⁶ *Jetbroadband WV, LLC v. Mastec North America, Inc.*, 13 So. 3d 159, 161 (Fla. 3rd DCA 2009).

State.”⁷ Accordingly, under the Florida Enforcement of Foreign Judgments Act (Act), ss. 55.501-55.509, F.S., foreign judgments from sister jurisdictions may be enforced in Florida upon being recorded **in the office of the clerk of the circuit court of any county.**⁸

Foreign judgments enforceable 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.”⁹ The Act is silent regarding whether territories or possessions are also entitled to full faith and credit under federal law.¹⁰

In *Rodriguez v. Nasrallah*,¹¹ a Florida court clarified 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, taken literally, a judgment from a Puerto Rican court would not qualify as a judgment from a state court under s. 55.502(1), F.S.

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 Model Law on International Commercial Arbitration (UNCITRAL Model Law) as amended in 2006 by the General Assembly.

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

Presently, two of the statutes in the Florida International Commercial Arbitration Act contain inadvertent clerical errors as they relate to cross-references. As such, in its current form, the statute does not conform exactly to the UNCITRAL Model Law.

III. Effect of Proposed Changes:

Arbitration as a Basis for Jurisdiction

Section 684.009, F.S., provides that initiating arbitration in Florida or the making of a written contract agreeing to arbitrate in this state constitutes consent for the courts of this state to assert personal jurisdiction over the parties. Personal jurisdiction applies to any action arising out of or

⁷ U.S. CONST. art. IV, cl 1.

⁸ Section 55.503, F.S.

⁹ Section 55.502(1), F.S.

¹⁰ See 28 U.S.C. s. 1738 (“The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.”).

¹¹ *Rodriguez v. Nasrallah*, 659 So. 2d 437, 439 (Fla. 1st DCA 1995).

in connection with the arbitration and any resulting order or award. This provision previously existed in statute and was removed upon the enactment of the UNCITRAL Model law.¹²

Florida Enforcement of Foreign Judgments Act

The bill clarifies that foreign judgments issued by United States territories are entitled to full faith and credit in this state, under the Florida Enforcement of Foreign Judgments Act. This provision ensures that Florida courts will equally recognize judgments from territories, as well as states.

The bill takes effect July 1, 2013.

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:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Office of the State Courts Administrator's 2013 Judicial Impact Statement, SB 186 as filed could increase the number of contract actions filed in circuit court. It is unknown whether an impact will result from the bill as revised.¹³

VI. Technical Deficiencies:

None.

¹² See s. 684.30, F.S. (2009).

¹³ Office of the State Courts Administrator, *2013 Judicial Impact Statement* (Jan. 11, 2013) (on file with the Senate Commerce and Tourism Committee and the Judiciary Committee).

VII. Related Issues:

The 2012 Legislature passed the substance of this bill in HB 917 (Senate Bill 486 contained the Senate version.) Governor Scott subsequently vetoed the bill on the basis that the bill would permit individuals and businesses with no ties to Florida to litigate in our court system. “Establishing Florida as a destination for lawsuits by entities outside of the state of Florida is unattractive for the business climate.”¹⁴ The Governor also noted that increasing litigation in the state may add to a backlog of cases and increased judicial workload. CS/SB 186 adds as a basis for personal jurisdiction the initiation of arbitration in this state, but deletes other language providing for more flexible standards for jurisdiction by the state.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on March 18, 2013:**

The committee substitute:

- Removes provisions of the bill which would have amended ss. 685.101, and 685.102, F.S., to extend the jurisdiction of the courts of this state to hear cases that do not:
 - Bear a substantial or reasonable relation to this state; or
 - Include a party that is a resident of this state or the United States.
- Clarifies that foreign judgments issued by United States territories are entitled to full faith and credit in this state under the Florida Enforcement of Foreign Judgments Act.

B. Amendments:

None.

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

¹⁴ Executive Office of the Governor, *House Bill 917 Veto Message* (April 13, 2012).