HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/HB 775	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Civil Justice Subcommittee; Santiago and others	117 **Y's**	0 **N's**
COMPANION BILLS:	(CS/SB 186)	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

CS/HB 775 passed the House as CS/SB 186 on April 30, 2013. The bill revises Florida's long-arm, choice-of-law, and forum-selection statutes, as well as provisions of the Enforcement of Foreign Judgment Act and the International Commercial Arbitration Act to:

- Provide that courts may assert personal jurisdiction over a nonresident who enters into a contract that complies with Florida's choice-of-law statute.
- Amend the Enforcement of Foreign Judgment Act, regarding the definition of "foreign judgment," to specify that the statute also applies to a court order or judgment from a United States territory - not merely to a court order or judgment from one of the 50 states.
- Correct cross references in the International Commercial Arbitration Act to conform with the United Nations Commission on International Trade Law Model Law on Commercial Arbitration.
- Provide that initiating arbitration 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 in any action arising out of or in connection with the arbitration and any resulting order or award.
- Provide that penalties or fines imposed in a state that does not provide a mandatory review for such fines will not be enforceable in Florida.

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

The bill was approved by the Governor on June 14, 2013, ch. 2013-164, L.O.F., and will become effective on July 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Jurisdiction

Personal Jurisdiction

The ability of a court to assert personal jurisdiction over a nonresident is subject to the constitutional requirements of the Due Process Clause of the Fourteenth Amendment.[1] The test for determining whether a court is able to assert personal jurisdiction over a nonresident is whether the nonresident has "minimum contacts" in the forum so that the commencement of a proceeding against said individual will not "offend traditional notions of fair play and substantial justice."[2] 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's Long-Arm Statute

The second limitation on a court's ability to assert personal jurisdiction is derived from a state's long-arm statute. Such statutes can be drafted broadly[4] to reach the maximum bounds of the Due Process Clause or narrowly by enumerating specific acts or activities that would allow for a court to assume personal jurisdiction in a particular case. Florida's statute falls in the latter category.

In *Venetian Salami Co. v. J.S. Parthenais*, the Florida Supreme Court described the relationship 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, two inquiries must be satisfied in determining a court's ability to assert personal jurisdiction over a nonresident: 1) whether there is a jurisdictional basis under the Florida long-arm statute to assert personal jurisdiction; and 2) if so, whether the necessary minimum contacts exist to satisfy due process requirements.[6]

Important Court Rulings

In *Jetbroadband WV, LC v. Mastec North America, Inc.*, the court held that by promulgating ss. 685.101 and 685.102, F.S., the Legislature created a separate jurisdictional basis for asserting personal jurisdiction over a nonresident that was outside the ambit of the long-arm statute.[7] In that case, the court declared that the nonresident defendant was subject to the jurisdiction of Florida's courts by virtue

[1] U.S. Const. amend. XIV, s. 2 ("No state shall . . . deprive any person of life, liberty, or property without due process of law . . .); s*ee International Shoe Co. v. Washington, Office of Unemployment Comp. and Placement,* 326 U.S. 310, 316 (1945).
[2] *International Shoe*, 326 U.S. 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] An example of a broad long-arm statute can be found in Cal. Civil Code s. 410.10 (2011), which 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."
[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. 3d DCA 2009).
[7] *Id*.

of the forum-selection clause that designated Florida as the appropriate venue to commence an action or proceeding regarding a dispute arising from the parties' agreement.[8]

The court distinguished its ruling from an earlier Florida Supreme Court case, *McRae v. J.D./M.D., Inc.*, that was decided 12 years earlier. There, the court refused to enforce a forum selection clause and denied jurisdiction on the grounds that there was no jurisdictional basis for doing so under the 1987 version of the long-arm statute.[9] At the time of the decision, Florida's choice-of-law and forum selection statutes had not been enacted.[10] In *Jetbroadband,* the court explained that, due to passage of the choice-of-law and forum selection statutes, Florida courts were now equipped with the jurisdictional authority to hear cases involving forum selection clauses that designate Florida as the venue of choice for a proceeding.[11]

Florida's Choice-of-Law Statute

The choice-of-law statute provides that a court may enforce a contract where Florida law is designated as the governing law in the agreement and the transaction is valued at no less than $250,000.[12] The statute further provides that such contracts will be enforced if: "1) the contract bears a substantial or reasonable relation to Florida, or 2) at least one of the parties is either a resident or citizen of Florida (if a person), or is incorporated or organized under the laws of Florida or maintains a place of business in Florida (if a business)."[13]

As presently drafted, the choice-of-law statute is unclear regarding whether a substantial relationship is required between the agreement, parties, and Florida. For instance, s. 685.101(1), F.S, provides that:

> [A]ny contract, agreement or undertaking . . . may, to the extent permitted under the United States Constitution, agree that the law of this state will govern such contract, agreement or undertaking . . . whether or not [it] bears any relation to this state.

In contrast, s. 685.101(2), F.S, provides that:

> [T]his section does not apply to any contract, agreement, or undertaking 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 [a nonresident of this state or incorporated or organized under the laws of another state].

In sum, s. 685.101(1), F.S., appears to require no substantial connection between the subject matter of the agreement and Florida; however, in s. 685.101(2), F.S., the statute explicitly requires a connection between the parties and Florida.

Florida's Forum-Selection Statute

The forum-selection statute, s. 685.102, F.S., grants courts jurisdiction to hear cases relating to a contract made pursuant to Florida's choice-of-law statute, or s. 685.101, F.S.

Regarding enforceability, the United States Supreme Court has held that such clauses should be upheld, unless it can be shown that its enforcement would be unreasonable or unjust, or that the clause was invalid as a result of fraud or overreaching.[14] The Court has also held that the minimum contacts

---

[8] *Id.* at 162-63.
[9] *McRae v. J.D./M.D., Inc.* 511 So.2d 540, 542 (Fla. 1987).
[10] Sections 685.101 and 685.102, F.S., (The statutes were passed in 1989, two years after the court's decision in *McRae*).
[11] *Jetbroadband,*13 So.3d 159 (Fla. 3d DCA 2009), citing ss. 685.101 and 685.102, F.S.
[12] Section 685.101, F.S.
[13] *Jetbroadband,* 13 So.3d at 162 (*quoting* Edward M. Mullins & Douglas J. Giuliano, Contractual Waiver of Personal Jurisdiction Under F.S. § 685.102: The Long-Arm Statute's Little-Known Cousin, 80-May Fla. B.J. 36, 37 (2006)).
[14] *M/S Bremen v. Zapata Off-Shore Co.,* 407 U.S. 1, 15 (1972).

standard is met if a forum-selection clause exists that is "freely negotiated and is not unreasonable and unjust."[15]

Effect of Bill Regarding Personal Jurisdiction

The bill amends s. 48.193, F.S., to provide that courts may assert personal jurisdiction over a nonresident who enters into a contract that complies with the choice-of-law statute, s. 685.102, F.S.[16] As a result, a court may exercise personal jurisdiction in a case involving nonresidents if they enter into a contract where the parties agree to designate Florida law as governing the contract and contractually agree to submit to personal jurisdiction in this state.

Additionally, s. 684.0049, F.S., is created to provide 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 in any action arising out of or 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 United Nations Commission on International Trade Law (UNCITRAL) Model Law.[17]

Recognition of Foreign Judgments

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 State. . ." Accordingly, the Florida Enforcement of Foreign Judgments Act (Act), ss. 55.501-55.509, F.S., provides that a judgment from another state may be enforced in Florida upon being recorded in the office of the clerk of the circuit court of any county.[18] Current law limits this to only apply to a judgment or order from "any other state."

The definition does not contain any reference to territories or possessions of the United States entitled to full faith and credit under federal law.[19] Territories of the United Sates include Washington, D.C., Puerto Rico, U.S. Virgin Islands, Guam, and other insular possessions.

In *Rodriguez v. Nasrallah*,[20] a state court held 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.

The bill amends s. 55.502, F.S., to add that a judgment from any territory or commonwealth of the United States is also a foreign judgment recognizable under Florida law just like a judgment from another state is recognized. A fine or penalty imposed by a state agency is not a judgment requiring recognition under the Act. The bill amends s. 48.193, F.S., to make clear that an agency fine or penalty imposed on a person or business in another state which does not afford mandatory review of the fine is not enforceable in Florida.

---

[15] *Burger King,* 471 U.S. at 473 n. 14.

[16] Several other jurisdictions have similar language in their respective long-arm statutes. MICH. COMP. LAWS s. 600.705 (2011); MONT. CODE ANN. s. 25-20-4(b)(1)(E) (2011); S.D. CODIFIED LAWS s. 15-7-2(5) (2011); TENN. CODE ANN. s. 20-2-214 (2011) ("Entering into a contract for services to be rendered or for materials to be furnished in [this state] by such person.").

[17] *See* s. 684.30, F.S. (2009).

[18] Section 55.503, F.S. (2011).

[19] *See* 28 U.S.C. s. 1738 (2006) (". . . 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 . . .").

[20] *See* 659 So.2d 437, 439 (Fla. 1st DCA 1995).

Florida International Commercial Arbitration Act

Chapter 2010-60, L.O.F., repealed statutes relating to international commercial arbitration and, in its place, adopted the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (Model Law).

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 and any other country. Currently, two of the statutes contain clerical errors relating to cross-references. The bill amends ss. 684.0003, 684.0019 and 684.0026, F.S., to correct cross-references to conform the Florida International Commercial Arbitration Act to the UNCITRAL Model Law.

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 any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.