

BILL ANALYSIS

Senate Research Center

S.B. 1639
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Business & Commerce
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The United States and the State of Texas have recognized important rights that are embodied in and protected by our constitutions, including rights such as the freedom of religion, freedom of speech, freedom of the press, the right to due process, the right to privacy, and the right to keep and bear arms. Unfortunately, not all of these rights are recognized by foreign countries or by their laws and legal doctrines.

S.B. 1639 prohibits courts, in limited circumstances, from relying on foreign laws that run counter to individual constitutional liberties and freedoms in Texas and in the United States. Specifically, S.B. 1639 clarifies that, in the area of family law jurisprudence, a court may not issue a ruling that is based on a foreign law if application of the foreign law violates a fundamental right guaranteed by the United States Constitution. The bill specifies that a contract provision relating to a marriage relationship or a parent-child relationship, to the extent such a provision violates constitutional principles, is void for purposes of its content or for purposes of designating a forum for resolving a disagreement under the contract.

As proposed, S.B. 1639 amends current law relating to the application of foreign law and foreign forum selection in certain family law proceedings.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle A, Title 1, Family Code, by adding Chapter 1A, as follows:

CHAPTER 1A. APPLICATION OF FOREIGN LAW

Sec. 1A.001. DEFINITIONS. Defines "foreign law," "court," "foreign court," "arbitrator," and "suit affecting the parent-child relationship" in this chapter.

Sec. 1A.002. DECISION BASED ON FOREIGN LAW. Prohibits a court of this state from applying foreign law to adjudicate a suit affecting the marriage relationship, or a suit affecting the parent-child relationship, if the application of the foreign law would not guarantee the same fundamental rights guaranteed by the United States Constitution.

Sec. 1A.003. CHOICE OF LAW IN A CONTRACT. Provides that any contract provision requiring the application of foreign law to adjudicate a suit affecting the marriage relationship, or a suit affecting the parent-child relationship, is void to the extent the application of the foreign law would not guarantee the same fundamental rights guaranteed by the United States Constitution.

Sec. 1A.004. ENFORCEMENT OF JUDGMENT BASED ON FOREIGN LAW. Prohibits a court of this state from enforcing, or granting comity to, a finding, ruling, order, or judgment on a suit affecting the marriage relationship, or on a suit affecting the parent-child relationship, issued by an arbitrator or foreign court based on foreign law, if

the foreign law, as applied, did not guarantee the same fundamental rights guaranteed by the United States Constitution.

Sec. 1A.005. CHOICE OF FORUM IN CONTRACT. Provides that any contract provision requiring that a foreign court or arbitrator adjudicate a suit affecting the marriage relationship, or a suit affecting the parent-child relationship, is void to the extent the arbitrator or foreign court would apply foreign law and the foreign law, as applied, would not guarantee the same fundamental rights guaranteed by the United States Constitution.

Sec. 1A.006. FORUM NON CONVENIENS. Prohibits a court of this state that has jurisdiction to adjudicate a suit affecting the marriage relationship, or a suit affecting the parent-child relationship, from declining its jurisdiction because a foreign court is a more convenient forum, if the foreign court would apply foreign law that would not guarantee the same fundamental rights guaranteed by the United States Constitution.

Sec. 1A.007. APPLICATION OF CHAPTER. (a) Provides that this chapter does not apply to a corporation or other legal entity that contracts to subject the entity to foreign law before an arbitrator or a foreign court; any transaction that is primarily for business, commercial, investment, agricultural, or similar purposes; or any transaction, issue, agreement, or provision of an agreement that is governed by Chapter 271 (Rights of Parties to Choose Law Applicable to Certain Transactions), Business & Commerce Code.

(b) Provides that this chapter is inapplicable to the extent that a statute or treaty of the United States requires the application of foreign law or the enforcement of a judgment rendered by a foreign court.

SECTION 2. Amends Chapter 271, Business & Commerce Code, by adding Section 271.012, as follows:

Sec. 271.012. APPLICATION OF CHAPTER 1A, FAMILY CODE. Provides that Chapter 1A, Family Code, does not apply to the provisions of this chapter.

SECTION 3. Provides that the changes in law made by this Act relating to the applicability of foreign law to a suit affecting the marriage relationship, a suit affecting the parent-child relationship, or a suit for modification of the parent-child relationship apply to a suit pending in a trial court on the effective date of this Act or filed on or after the effective date of this Act.

SECTION 4. Effective date: September 1, 2013.