

Regular Session, 2010

SENATE BILL NO. 460

BY SENATOR MARTINY

CONTRACTS. Provides relative to the application of foreign laws. (8/15/10)

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AN ACT

To enact Chapter 1 of Code Title I of Code Book IV of Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:6000, relative to the application of foreign laws; to provide for definitions; to provide for legislative findings; to prohibit the enforcement of foreign laws under certain circumstances; to provide for applicability to certain persons; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 1 of Code Title I of Code Book IV of Title 9 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:6000, is hereby enacted to read as follows:

CODE BOOK IV - CONFLICT OF LAWS

CODE TITLE I - OF FOREIGN LAW

CHAPTER 1. APPLICATION OF FOREIGN LAW

§6000. Application of foreign law

A. "Foreign law" means any law, rule, or legal code or system established and used or applied in a jurisdiction outside of the states or territories of the United States.

B. The legislature finds that it shall be the public policy of this state to

1 protect its citizens from the application of foreign laws when the application of
2 a foreign law will result in the violation of a right guaranteed by the constitution
3 of this state or of the United States.

4 C. A court, arbitrator, administrative agency, or other adjudicative
5 body, mediator, or enforcement authority shall not enforce a foreign law if
6 doing so would violate a right guaranteed by the constitution of this state or of
7 the United States.

8 D.(1) If any contractual provision or agreement provides for the choice
9 of a foreign law to govern its interpretation or the resolution of any claim or
10 dispute between the parties, and if the enforcement or interpretation of the
11 contractual provision or agreement would result in a violation of a right
12 guaranteed by the constitution of this state or of the United States, the
13 contractual provision or agreement shall be interpreted or construed to the
14 extent necessary to preserve the constitutional rights of the person against
15 whom enforcement is sought.

16 (2) The provisions of this Section shall not be interpreted to limit a
17 natural person's right to voluntarily restrict or limit a person's constitutional
18 rights by contract or specific waiver consistent with constitutional principles,
19 but the language of any such contract or other waiver shall be strictly construed
20 in favor of preserving the constitutional rights of the person.

21 E. If any contractual provision or agreement provides for the choice of
22 venue or forum outside of the states or territories of the United States, and if the
23 enforcement or interpretation of the contract or agreement applying that choice
24 of venue or forum provision would result in a violation of any right guaranteed
25 by the constitution of this state or of the United States, the contractual provision
26 or agreement shall be interpreted or construed to preserve the constitutional
27 rights of a person against whom enforcement is sought. Similarly, if a natural
28 person subject to personal jurisdiction in this state seeks to maintain litigation,
29 arbitration, agency, or similarly binding proceedings in this state, and if a court

1 of this state finds that granting a claim of forum non conveniens or a related
 2 claim violates or would likely lead to the violation of the constitutional rights of
 3 the non-claimant in the foreign forum with respect to the matter in dispute,
 4 such claim shall be denied.

5 F. Any contractual provision or agreement incapable of being
 6 interpreted or construed in order to preserve the constitutional rights of the
 7 parties pursuant to the provisions of this Section shall be null and void.

8 G. Without prejudice to any other legal right, the provisions of this
 9 Section shall not apply when a juridical person as defined by Civil Code Article
 10 24 is a party to the contract or agreement.

11 H. The public policies expressed in the provisions of this Section shall
 12 apply only to actual or foreseeable violations of the constitutional rights of a
 13 person caused by the application of the foreign law.

The original instrument was prepared by Camille Sebastien Perry. The following digest, which does not constitute a part of the legislative instrument, was prepared by Jerry G. Jones.

DIGEST

Martiny (SB 460)

Present law (R.S. 13:4241-4248), the Enforcement of Foreign Judgments Act, provides for procedures for the enforcement of foreign judgments entitled to the full faith and credit of this state.

Proposed law defines "foreign law" as any law, rule, or legal code or system established and used or applied in a jurisdiction outside of the states or territories of the United States.

Proposed law provides that the public policy of this state is to protect its citizens from the application of foreign laws which will result in the violation of a constitutional right.

Proposed law prohibits the enforcement of a foreign law if doing so would violate a right guaranteed by the constitution of this state or of the United States.

Proposed law provides that if the enforcement of any choice of law, venue, or forum non conveniens provision in a contract would result in the violation of a constitutional right, that provision shall be interpreted or construed so that the enforcement of the provision will not result in a violation of a constitutional right.

Proposed law provides that if any contractual provision or agreement is incapable of being interpreted or construed in order to preserve the constitutional rights of the parties, it shall be declared null and void.

Proposed law prohibits the application of proposed law to a juridical person who is a party to the contract or agreement.

Proposed law provides for application of proposed law to only actual or foreseeable violations of constitutional rights.

Effective August 15, 2010.

(Adds R.S. 9:6000)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Natural Resources to the original bill.

1. Moved proposed law from R.S. 13:4249 to R.S. 9:6000.