

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 695
PROPOSED COMMITTEE SUBSTITUTE H695-PCS70427-RK-55

Short Title: Foreign Laws/Protect Constitutional Rights. (Public)

Sponsors:

Referred to:

April 11, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO PROTECT RIGHTS AND PRIVILEGES GRANTED UNDER THE UNITED
3 STATES AND NORTH CAROLINA CONSTITUTIONS IN THE APPLICATION OF
4 FOREIGN LAW.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 1 of the General Statutes is amended by adding a new
7 Article to read:

8 "Article 7A.

9 "Application of Foreign Law.

10 **"§ 1-87.2. Definitions.**

11 The following definitions apply in this Article:

- 12 (1) Fundamental constitutional right. – A fundamental right of a natural person
13 guaranteed by the United States Constitution or the North Carolina
14 Constitution.
15 (2) Foreign law. – A law, rule, resolution, legal code, legal system, or any
16 component of a legal system established and used or applied in a foreign
17 venue or forum.
18 (3) Foreign venue or forum. – A venue or forum operating under the authority of
19 a government other than any of the following:
20 a. The United States.
21 b. A state, district, commonwealth, territory, or insular possession of
22 the United States.
23 c. Any other government with regard to which the decision in this State
24 as to whether to recognize a judgment of that government's courts is
25 initially subject to determination under the Full Faith and Credit
26 Clause of the United States Constitution.

27 **"§ 1-87.3. Public policy.**

28 In recognition that the United States Constitution and the Constitution of North Carolina
29 constitute the supreme law of this State, the General Assembly hereby declares it to be the
30 public policy of this State to protect its citizens from the application of foreign law that would
31 result in the violation of a fundamental constitutional right of a natural person. The public
32 policies expressed in this section shall apply only to actual or foreseeable violations of a
33 fundamental constitutional right resulting from the application of the foreign law.

34 **"§ 1-87.4. Nonapplication of foreign law that would violate fundamental constitutional**
35 **rights.**



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1 A court, administrative agency, arbitrator, mediator, or other entity or person acting under
2 the authority of State law shall not apply a foreign law in any legal proceeding involving or
3 recognize a foreign judgment involving a claim for absolute divorce, divorce from bed and
4 board, child custody, child support, alimony, or equitable distribution, if doing so would violate
5 a fundamental constitutional right of one or more natural persons who are parties to the
6 proceeding.

7 **"§ 1-87.5. Interpretation of contracts providing for choice of foreign law.**

8 (a) In the interpretation or enforcement by a court, administrative agency, arbitrator,
9 mediator, or other entity or person acting under the authority of State law of any contract or
10 other agreement that provides for the choice of a foreign law to govern its interpretation or the
11 resolution of any claim or dispute, the court or administrative agency shall preserve the
12 fundamental constitutional rights of natural persons who are parties to the contract or other
13 agreement.

14 (b) If enforcement of any provision in a contract or other agreement for the choice of
15 foreign law would result in a violation of a fundamental constitutional right of one or more of
16 the natural persons who are parties to the contract or other agreement, the agreement or contract
17 shall be modified or amended to the extent necessary to preserve the fundamental constitutional
18 rights of the natural persons.

19 **"§ 1-87.6. Interpretation of contracts providing for choice of foreign venue or forum.**

20 If the enforcement of any provision in a contract or other agreement providing for a choice
21 of a foreign venue or forum would result in a violation of a fundamental constitutional right of
22 one or more of the natural persons who are parties to the contract or other agreement, that
23 provision shall be modified or amended to the extent necessary to preserve the fundamental
24 constitutional rights of the natural persons.

25 **"§ 1-87.7. Motions to transfer proceedings to a foreign venue or forum.**

26 If a natural person subject to personal jurisdiction in this State seeks to maintain a litigation
27 proceeding, arbitration proceeding, or other similarly binding proceeding in this State, and if a
28 court of this State finds that granting a motion by another party to the proceeding to transfer the
29 proceeding to a foreign venue or forum would likely lead to the violation of a fundamental
30 constitutional right of the natural person who is the nonmovant in the foreign forum with
31 respect to the matter in dispute, the motion shall be denied.

32 **"§ 1-87.8. Contracts not capable of modification to preserve fundamental constitutional**
33 **rights void.**

34 Any provision in a contract or other agreement incapable of being modified or amended
35 pursuant to this Article in order to preserve the fundamental constitutional rights of the natural
36 persons who are parties to the contract or agreement shall be null and void.

37 **"§ 1-87.9. Strict construction of waivers of constitutional rights.**

38 Nothing in this Article shall be interpreted to limit the right of natural persons voluntarily to
39 restrict or limit their own constitutional rights by contract or specific waiver consistent with
40 constitutional principles; however, any ambiguity in the language of any such contract or other
41 waiver shall be strictly construed in favor of preserving the constitutional rights of natural
42 persons in this State.

43 **"§ 1-87.10. Application.**

44 The provisions in this act shall apply only to proceedings or matters under Chapter 50 and
45 Chapter 50A of the General Statutes."

46 **SECTION 2.** This act is effective when it becomes law.