

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/SB 2298

INTRODUCER: Judiciary Committee and Senator Webster

SUBJECT: Legal Actions

DATE: April 26, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Maclure	JU	Fav/CS
2.			CM	
3.				
4.				
5.				
6.				

I. Summary:

This bill makes the following clarifying changes to Florida law:

- Provides in the Florida long-arm statute that Florida courts have personal jurisdiction, in some instances, over persons who contractually consent to personal jurisdiction in Florida;
- Provides that judgments from U.S. territories and possessions may be enforced in Florida;
- Provides that certain contracts with forum-selection clauses are enforceable if made consistent with rather than pursuant to s. 685.101, F.S.

This bill amends, the following sections of the Florida Statutes: 48.193, 55.502, 685.102.

II. Present Situation:

Under Florida law, service of process and personal jurisdiction are two distinct but related concepts. Both are necessary before a defendant, either an individual or business entity, may be compelled to answer a claim brought in a court of law. Personal jurisdiction refers to whether the actions of an individual or business entity as set forth in the applicable statutes permit the court to exercise jurisdiction in a lawsuit brought against the individual or business entity in this state. Service of process is the means of notifying a party of a legal claim and, when accomplished, enables the court to exercise jurisdiction over the defendant and proceed to judgment. Personal jurisdiction over a nonresident of the state is circumscribed by constitutional considerations of minimum contacts as stated in the seminal case of *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.

Ct. 154, 90 L.Ed. 95 (1945), and its progeny. As explained in *Venetian Salami*, two inquiries must be made regarding personal jurisdiction over a nonresident:

First, it must be determined that the complaint alleges sufficient jurisdictional facts to bring the action within the ambit of the statute; and if it does, the next inquiry is whether sufficient “minimum contacts” are demonstrated to satisfy due process requirements.¹

“It is well-settled that ‘[a] judgment entered without valid service is void for lack of personal jurisdiction and may be collaterally attacked at any time.’”²

Long-Arm Jurisdiction

Section 48.193, F.S., establishes a broad list of acts that can subject a person to the jurisdiction of courts of this state.³ This section is also known as the Florida long-arm statute. The acts subjecting a person to jurisdiction in the statute do not expressly include contracting to consent to personal jurisdiction in Florida. Nevertheless, contracts with forum-selection clauses by which parties consent to jurisdiction in Florida are generally enforceable.⁴ However, in *McRae v.*

¹ *Borden v. East-European Ins. Co.*, 921 So. 2d 587, 591-592 (Fla. 2006) (internal citations omitted).

² *Alvarado v. Cisneros*, 919 So. 2d 585, 587 (Fla. 3d DCA 2006) (quoting *Great Am. Ins. Co. v. Bevis*, 652 So. 2d 382, 383 (Fla. 2d DCA 1995)).

³ Section 48.193, F.S., states in part:

(1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself and, if he or she is a natural person, his or her personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts:

- (a) Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.
- (b) Committing a tortious act within this state.
- (c) Owning, using, possessing, or holding a mortgage or other lien on any real property within this state.
- (d) Contracting to insure any person, property, or risk located within this state at the time of contracting.
- (e) With respect to a proceeding for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintaining a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.
- (f) Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if, at or about the time of the injury, either:
 - 1. The defendant was engaged in solicitation or service activities within this state; or
 - 2. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use.
- (g) Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.
- (h) With respect to a proceeding for paternity, engaging in the act of sexual intercourse within this state with respect to which a child may have been conceived.

(2) A defendant who is engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity.

⁴ *Manrique v. Fabbri*, 493 So. 2d 437 (Fla. 1986).

J.D./M.D., Inc., 511 So. 2d 540 (Fla. 1987), the Florida Supreme Court held that a forum-selection clause cannot be the sole basis for jurisdiction over a defendant. Two years after *McRae*, the Legislature adopted s. 685.101, F.S., which expressly authorized forum-selection clauses in certain contracts involving at least \$250,000. In some cases under s. 685.101, F.S., personal jurisdiction may be conveyed on Florida courts when neither the parties nor the contract have any relationship to this state.

Florida Enforcement of Foreign Judgments Act

Under the Florida Enforcement of Foreign Judgments Act (act), ss. 55.501-55.509, F.S., foreign judgments may be enforced in Florida. The foreign judgments that may be enforced 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.”⁵ In *Rodriguez v. Nasrallah*, 659 So. 2d 437, 439 (Fla. 1st DCA 1995), the court stated 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, a judgment from a Puerto Rican court is not a judgment from a *state court* as required by the act. Accordingly, the wording of the act would appear to preclude the enforcement of the judgments of courts for U.S. territories and possessions in Florida.

III. Effect of Proposed Changes:

The bill makes the following clarifying changes to Florida law:

- Provides in the Florida long-arm statute that Florida courts have personal jurisdiction, in some instances, over persons who contractually consent to personal jurisdiction in Florida;
- Provides that judgments from U.S. territories and possessions may be enforced in Florida;
- Provides that certain contracts with forum-selection clauses are enforceable if made consistent with rather than pursuant to s. 685.101, F.S.

The bill takes effect on July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁵ Section 55.502(1), F.S.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may make possible the entry of judgments against corporations whose representatives cannot be located.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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