

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 640

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

Sponsors: Representatives Cleveland and Killian (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary Subcommittee C.

April 6, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO PROTECT RIGHTS AND PRIVILEGES GRANTED UNDER THE NORTH
3 CAROLINA AND UNITED STATES 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) Constitutional right. – A right of a natural person guaranteed by the North
13 Carolina Constitution or the United States Constitution.
- 14 (2) Foreign law. – A law, rule, legal code, or legal system established and used
15 or applied in a foreign venue or forum.
- 16 (3) Foreign venue or forum. – A venue or forum operating under the authority of
17 a government other than any of the following:
- 18 a. The United States.
- 19 b. A state, district, commonwealth, territory, or insular possession of
20 the United States.
- 21 c. Any other government with regard to which the decision in this State
22 as to whether to recognize a judgment of that government's courts is
23 initially subject to determination under the Full Faith and Credit
24 Clause of the United States Constitution.

25 "**§ 1-87.3. Public policy.**

26 The General Assembly hereby declares it to be the public policy of this State to protect its
27 citizens from the application of foreign law that would result in the violation of a right of a
28 natural person guaranteed by the North Carolina Constitution or the United States Constitution.
29 The public policies expressed in this section shall apply only to actual or foreseeable violations
30 of a constitutional right resulting from the application of the foreign law.

31 "**§ 1-87.4. Nonapplication of foreign law that would violate constitutional rights.**

32 A court, administrative agency, arbitrator, mediator, or other entity or person acting under
33 the authority of State law shall not apply a foreign law in any legal proceeding if doing so
34 would violate a constitutional right.

35 "**§ 1-87.5. Interpretation of contracts providing for choice of foreign law.**



1 (a) In the interpretation or enforcement by a court, administrative agency, arbitrator,
2 mediator, or other entity or person acting under the authority of State law of any contract or
3 other agreement that provides for the choice of a foreign law to govern its interpretation or the
4 resolution of any claim or dispute, the court or administrative agency shall preserve the
5 constitutional rights of the parties.

6 (b) If enforcement of any contract provision or other agreement for the choice of
7 foreign law would result in a violation of a constitutional right of one or more of the parties, the
8 agreement or contract shall be modified or amended to the extent necessary to preserve the
9 constitutional rights of the parties.

10 **"§ 1-87.6. Interpretation of contracts providing for choice of foreign venue or forum.**

11 If the enforcement of any contract provision or other agreement providing for a choice of a
12 foreign venue or forum would result in a violation of a constitutional right of one or more of the
13 parties, that provision shall be modified or amended to the extent necessary to preserve the
14 constitutional rights of the parties.

15 **"§ 1-87.7. Motions to transfer proceedings to a foreign venue or forum.**

16 If a natural person subject to personal jurisdiction in this State seeks to maintain litigation,
17 arbitration proceeding, or similarly binding proceedings in this State, and if a court of this State
18 finds that granting a motion by another party to transfer the proceeding to a foreign venue or
19 forum would likely lead to the violation of the constitutional rights of the nonmovant in the
20 foreign forum with respect to the matter in dispute, the motion shall be denied.

21 **"§ 1-87.8. Contracts not capable of modification to preserve constitutional rights void.**

22 Any contractual provision or agreement incapable of being modified or amended in order to
23 preserve the constitutional rights of the parties pursuant to the provisions of this Article shall be
24 null and void.

25 **"§ 1-87.9. Strict construction of waivers of constitutional rights.**

26 Nothing in this Article shall be interpreted to limit the right of natural persons voluntarily to
27 restrict or limit their own constitutional rights by contract or specific waiver consistent with
28 constitutional principles; however, the language of any such contract or other waiver shall be
29 strictly construed in favor of preserving the constitutional rights of natural persons in this
30 State."

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