

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 1639  
By: Carona et al.  
Business & Commerce  
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Committee Report (Substituted)

### **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.

C.S.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, C.S.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 dissolution of a marriage or to 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.

C.S.S.B. 1639 amends current law relating to the application of foreign laws 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 "arbitrator," "foreign law," "foreign tribunal," and "tribunal" in this chapter.

Sec. 1A.002. DECISION BASED ON FOREIGN LAW. Prohibits a tribunal of this state from applying foreign law to adjudicate a suit for dissolution of a marriage if the application of that 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 a contract provision requiring the application of foreign law to adjudicate a suit for dissolution of a marriage is void to the extent that the application of 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 tribunal of this state from enforcing or granting comity to a finding, ruling, order, or judgment in a suit for dissolution of a marriage issued by an arbitrator or foreign tribunal based on foreign law if the foreign law, as applied, would 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 for dissolution of a marriage is void if the foreign law that would be applied to the dispute by that tribunal or arbitrator would, as applied, not guarantee the same fundamental rights guaranteed by the United States Constitution.

Sec. 1A.006. FORUM NON CONVENIENS. Prohibits a tribunal of this state that has jurisdiction to adjudicate a suit for dissolution of a marriage from declining 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 a foreign tribunal or arbitrator; any transaction that is primarily for business, commercial, investment, agricultural, or similar purposes; or any transaction, issue, agreement, or provision of an agreement 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 tribunal.

SECTION 2. Amends Subtitle A, Title 5, Family Code, by adding Chapter 112, as follows:

#### CHAPTER 112. APPLICATION OF FOREIGN LAW

Sec. 112.001. DEFINITIONS. Defines "arbitrator," "foreign law," "foreign tribunal," and "tribunal" in this chapter.

Sec. 112.002. DECISION BASED ON FOREIGN LAW. Prohibits a tribunal of this state from applying foreign law to adjudicate a suit affecting the parent-child relationship if the application of that law would not guarantee the same fundamental rights guaranteed by the United States Constitution.

Sec. 112.003. CHOICE OF LAW IN CONTRACT. Provides that a contract provision requiring the application of foreign law to adjudicate a suit affecting the parent-child relationship is void to the extent that the application of foreign law would not guarantee the same fundamental rights guaranteed by the United States Constitution.

Sec. 112.004. ENFORCEMENT OF JUDGMENT BASED ON FOREIGN LAW. Prohibits a tribunal of this state from enforcing or granting comity to a finding, ruling, order or judgment in a suit affecting the parent-child relationship issued by an arbitrator or foreign tribunal based on foreign law if the foreign law, as applied, would not guarantee the same fundamental rights guaranteed by the United States Constitution.

Sec. 112.005. CHOICE OF FORUM IN CONTRACT. Provides that any contract provision requiring that a foreign tribunal or arbitrator adjudicate a suit affecting the parent-child relationship is void if the foreign law that would be applied to the dispute by that tribunal or arbitrator would, as applied, not guarantee the same fundamental rights guaranteed by the United States Constitution.

Sec. 112.006. FORUM NON CONVENIENS. Prohibits a tribunal of this state that has jurisdiction to adjudicate a suit affecting the parent-child relationship from declining jurisdiction because a foreign tribunal is a more convenient forum if the foreign tribunal would apply foreign law that would not guarantee the same fundamental rights guaranteed by the United States Constitution.

Sec. 112.007. 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 a foreign tribunal or arbitrator; any transaction that is primarily for business, commercial, investment, agricultural, or similar purposes; or any transaction, issue, agreement, or provision of an agreement governed by Chapter 271, Business & Commerce Code.

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

SECTION 3. Amends Chapter 271, Business & Commerce Code, by adding Section 271.012, as follows:

Sec. 271.012. APPLICATION OF CERTAIN FAMILY LAW PROVISIONS. Provides that Chapters 1A and 112, Family Code, do not apply to this chapter.

SECTION 4. Provides that Chapters 1A and 112, Family Code, as added by this Act, apply to a suit for dissolution of a marriage or a suit affecting the parent-child relationship pending in a trial court on or filed on or after the effective date of this Act.

SECTION 5. Effective date: September 1, 2013.