



SENATE BILL 621: Business Contracts/Choice of Law and Forum.

2017-2018 General Assembly

Committee:	Senate Commerce and Insurance. If favorable, re-refer to Rules and Operations of the Senate	Date:	April 26, 2017
Introduced by:	Sen. Barringer	Prepared by:	Amy Darden
Analysis of:	Second Edition		Committee Co-Counsel

OVERVIEW: *Senate Bill 621 would permit a business contract to provide that:*

- *North Carolina law will govern the parties' rights and duties under the contract in whole or in part, regardless of whether the parties, contract, or related transaction bear a reasonable relation to the State, and regardless of whether a provision in the contract may conflict with a fundamental policy under the law of another jurisdiction that would apply if the parties had not chosen North Carolina law.*
- *Any action brought to resolve a dispute arising out of the contract may be brought in the courts of this State.*
- *If the business contract contains both of the foregoing provisions, then the contract can also provide that any contract dispute is required to be litigated only in one or more counties of this State specified in the contract.*

CURRENT LAW: Courts will generally enforce the choice of law agreed to by parties to a contract if there is a reasonable basis for the choice and no provision in the contract is contrary to a fundamental policy of the state that would have jurisdiction in the absence of the choice of law agreement. For contracts governed by G.S. 25-1-301 of the Uniform Commercial Code, a choice of law agreement will be upheld if the transaction between the parties bears a reasonable relation to the state whose law is chosen to govern their rights and duties under the contract.

"Venue" refers to the county where a civil action is brought. The proper venue for various types of actions is set forth by statute in Article 7 of Chapter 1 of the General Statutes. Pursuant to G.S. 1-83, an action can be transferred from the county in which it was originally brought to another county in the following cases:

- (1) When the county designated for that purpose is not the proper one.
- (2) When the convenience of witnesses and the ends of justice would be promoted by the change.
- (3) When the judge has, at any time, been interested as party or counsel.
- (4) When motion is made by the plaintiff and the action is for divorce and the defendant has not been personally served with summons.

A contract may also contain a "forum selection clause" in which the parties agree on the place where any action to resolve a dispute arising under the contract must be brought. However, such an agreement will not be enforced if the selected county is not a proper venue under governing statutory law.

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BILL ANALYSIS:

Section 1 would enact a new Chapter 1G of the General Statutes, entitled "North Carolina Choice of Law and Forum in Business Contracts Act."

Chapter 1G would apply to "business contracts," defined as contracts "entered into primarily for business or commercial purposes." It would not apply to contracts entered into "by an individual primarily for the individual's personal, family or household purposes" ("consumer contracts") or to contracts "between an individual and another party to provide labor or personal services by that individual to the other party, whether the relationship is in the nature of employer-employee or principal-independent contractor" ("employment contract").

New **G.S. 1G-3** would provide that parties to a business contract could agree that their rights and duties under the contract will be governed by North Carolina law without regard to whether the parties, their contract, or the transactions that are the subject of the contract bear a reasonable relation to the State, or whether any provision in the contract is contrary to the fundamental policy of a jurisdiction whose law would apply if the parties had not chosen North Carolina law.

New **G.S. 1G-4(a)** would provide that a party to a business contract may bring an action in North Carolina courts to resolve a dispute arising under the contract if the parties to the contract have agreed that North Carolina law shall govern the parties' rights and duties in whole or in part and have also agreed to litigate a dispute under the contract in the courts of this State.

A party to a contract meeting the foregoing conditions would also be deemed to have consented to personal jurisdiction of North Carolina courts in any action for a dispute arising under the contract, and if the parties designated one or more specific counties in the State as the proper venue, then that agreement would be enforced and the venue could not be changed to another county except when:

- The convenience of witnesses and the ends of justice would be promoted by the change (G.S. 1-83(2)).
- The judge has, at any time, been interested as party or counsel (G.S. 1-83(3)).
- There are probable grounds to believe that a fair and impartial trial cannot be obtained in the county in which the action is pending (G.S. 1-84).

G.S. 1G-5 would provide that nothing in Chapter 1G affects the enforcement of a choice of law or choice of forum provision in a contract that is not a business contract, affects a court's subject matter jurisdiction, or affects whether or not a case is designated as a mandatory complex business case.

Section 2 would amend G.S. 25-1-301 to affirm the parties' right to choose North Carolina law as governing their rights and duties under the contract, except as otherwise required under specified sections of the UCC.

EFFECTIVE DATE: The act is effective when it becomes law and applies to business contracts entered into before, on, or after that date.

**Staff Attorney, Bill Patterson, substantially contributed to this summary.*