



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

2017-2018 General Assembly

Committee:		Date:	August 14, 2017
Introduced by:		Prepared by:	Bill Patterson Staff Attorney
Analysis of:	S.L. 2017-123		

OVERVIEW: *S.L. 2017-123 permits 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, the contract, or a 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 to resolve a dispute arising out of the contract may be brought in the courts of this State.*

The act also permits a business contract containing both of the foregoing provisions to specify one or more North Carolina counties in which any dispute arising under the contract must be litigated.

The act became effective on July 18, 2017, and applies to business contracts entered into before, on, or after that date.

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.

A contract may contain an agreement on the place where any action to resolve a dispute arising under the contract must be brought. However, this agreement will not be enforced if the selected county is not a proper venue under governing statutory law.

Article 7 of Chapter 1 of the General Statutes sets forth the proper venue for actions brought in State courts. Pursuant to G.S. 1-83, an action can be transferred to a different county from the one in which it was originally brought under any of the following circumstances:

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

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Legislative Analysis
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BILL ANALYSIS:

Section 1 enacts a new Chapter 1G of the General Statutes, entitled "North Carolina Choice of Law and Forum in Business Contracts Act." New Chapter 1G applies to contracts entered into primarily for business or commercial purposes. It does not apply to consumer contracts or employment contracts.

Among other things, new Chapter 1G provides that:

- Parties to a business contract are permitted to agree that their rights and duties under the contract will be governed by North Carolina law without regard to whether they, their contract, or the contract's subject transactions bear a reasonable relation to the State, and without regard to whether any contract provision is contrary to the fundamental policy of a jurisdiction whose law would apply if the parties had not chosen North Carolina law.
- If the parties to a business contract have agreed that North Carolina law governs the their rights and duties in whole or in part and have agreed to litigate any contract dispute in the courts of this State, then:
 - Any action for a dispute arising under the contract can be brought by any party in the courts of this State.
 - The parties to the contract are deemed to have consented to the personal jurisdiction of the courts of this State.
 - If brought in a county designated as proper in the contract, an action for a dispute arising under the contract will not be transferred to a different county based on an allegation of improper venue.

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.
- A court's subject matter jurisdiction.
- Whether or not a case is designated as a mandatory complex business case.

Section 2 amends the North Carolina Uniform Commercial Code (UCC) to affirm that parties to a contract have the right to agree that North Carolina law will govern their rights and duties under the contract, except as otherwise required under certain specified sections of the UCC.

EFFECTIVE DATE: This act became effective on July 18, 2017, and applies to business contracts entered into before, on, or after that date.