**South Carolina General Assembly**

119th Session, 2011-2012

**H. 3490**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Nanney, Hamilton, Barfield, Erickson, Stringer, Ryan, Chumley, Patrick, Allison, Williams, Gambrell, Clemmons, Hixon, Huggins, Lowe, Pitts, J.R. Smith, Spires, Taylor, White, Willis, Henderson, Toole, Putnam, Thayer, Quinn, Sottile, Bingham and Loftis

Document Path: l:\council\bills\ms\7061ahb11.docx

Companion/Similar bill(s): 444

Introduced in the House on January 27, 2011

Currently residing in the House Committee on **Judiciary**

Summary: Enforcement of foreign law

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/27/2011 House Introduced and read first time ([House Journal‑page 15](file:///h:\hj%20archive\2011\01-27-11.docx))

1/27/2011 House Referred to Committee on **Judiciary** ([House Journal‑page 15](file:///h:\hj%20archive\2011\01-27-11.docx))

1/27/2011 House Member(s) request name added as sponsor: Henderson

2/10/2011 House Member(s) request name added as sponsor: Toole

2/2/2012 House Member(s) request name added as sponsor: Putnam, Thayer

2/8/2012 House Member(s) request name added as sponsor: Quinn, Sottile, Bingham

2/21/2012 House Member(s) request name added as sponsor: Toole

2/22/2012 House Member(s) request name added as sponsor: Loftis

**VERSIONS OF THIS BILL**

[1/27/2011](file:///p:\pprever\2011-12\3490_20110127.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 14‑1‑240 SO AS TO PREVENT A COURT OR OTHER ENFORCEMENT AUTHORITY FROM ENFORCING FOREIGN LAW IN THIS STATE FROM A FORUM OUTSIDE OF THE UNITED STATES OR ITS TERRITORIES UNDER CERTAIN CIRCUMSTANCES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The General Assembly finds that it is necessary to protect the citizens of the State from the application of foreign law from a forum outside of the United States or its territories when that application will result in the violation of a constitutionally guaranteed right including, but not limited to, the right to due process, freedom of religion, freedom of speech, freedom of the press, or any right of privacy or marriage as specifically delineated in the constitution of this State or of the United States.

SECTION 2. Chapter 1, Title 14 of the 1976 Code is amended by adding:

“Section 14‑1‑240. (A) As used in this section, the term ‘foreign law’ means any law, rule, or legal code or system established and used or applied in or by another jurisdiction outside of the United States or its territories.

(B) A court, arbitrator, administrative agency, or other adjudicative, mediation, or enforcement authority may not enforce a foreign law if it would violate a constitutionally guaranteed right of this State or of the United States. The provisions of this section apply only to actual or foreseeable violations of the constitutional rights of a person caused by the application of the foreign law.

(C) Notwithstanding another provision of law, if any contractual provision or agreement:

(1) provides for the choice of a foreign law to govern its interpretation or the resolution of a dispute between the parties and the enforcement or interpretation of the contractual provision or agreement would result in a violation of the constitutional rights of a person, the contractual provision or agreement must be modified or amended to the extent necessary to preserve the constitutional rights of the parties;

(2) provides for the choice of venue or forum outside of the United States or its territories and the enforcement or interpretation of the contractual provision or agreement applying the choice of venue or forum would result in a violation of the constitutional rights of a person, the contractual provision or agreement must be interpreted to preserve the constitutional rights of the person against whom enforcement is sought. In addition, if a natural person subject to personal jurisdiction in this State seeks to maintain litigation, arbitration, agency, or similarly binding proceedings in this State, and a court of this State finds that granting a claim of forum non conveniens or a related claim violates or would likely lead to the violation of the constitutional rights of a nonclaimant in the foreign forum with respect to the matter in dispute, the claim must be denied;

(3) is incapable of modification or amendment to preserve the constitutional rights of the parties pursuant to the provisions of this section, the offending provision is null and void.”

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 5. This act takes effect upon approval by the Governor.

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