



## THE FLORIDA BAR INTERNATIONAL LAW SECTION

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## **THE INTERNATIONAL LAW SECTION OF THE FLORIDA BAR'S ("ILS") OPPOSITION TO SENATE BILL 58 (HAYES) AND HOUSE BILL 351 (METZ) ENTITLED "APPLICATION OF FOREIGN LAW IN CERTAIN CASES"**

SB 58 and HB 351 prohibit trial court judges from applying foreign laws, or in some cases, even religious laws, in divorce or child custody proceedings unless the foreign law/religious law is the "same" as Florida law. This is a significant departure from the applicable standard under Florida law as to when non-Florida law will apply in Florida trial court proceedings. The standard has always been whether application of the non-Florida law would offend Florida's public policy. Requiring trial court judges to weigh whether a non-Florida law is the "same" as Florida law is, for the reasons discussed in the ILS' attached White Paper, unconstitutional, conflictive with other Florida laws, and will lead to more expensive, drawn-out litigation and further burden our court system.

The ILS opposes these bills. Moreover, the American Bar Association has spoken out against bills like SB 58 / HB 351. See August 8-9, 2011 House of Delegates Resolution. The Family Law Section of The Florida Bar also opposes these bills.

As far as unconstitutionality, the bills offend the separation of powers (found in the Florida Constitution) in that our legislature would be dictating to the trial court how and when to apply foreign laws; it offends the contracts clause (U.S. Constitution) in that they greatly restrict divorcing parties from applying foreign laws in their antenuptial agreements; it offends the Federal Government's exclusive right to set foreign policy in that Florida trial court judges under these bills will have to pass judgment as to whether foreign laws are "the same" as ours, and therefore enforceable in our Courts; and lastly the bills may offend the First Amendment of the U.S. Constitution in that certain religious, family law-related agreements will not be enforceable unless a Florida trial court judge concludes the governing religious law is the "same" as our own. Even if SB 58 / HB 351 were enforceable, the fact trial court judges may have to pass judgment on whether foreign laws are the "same" as ours means expert evidence will have to be taken on the issue, and potential trials held on that matter, leading to greater delay in case resolution and expense for an already overburdened judiciary. SB 58/HB 351 would also conflict with legal standards presently existing in the Uniform Child Custody Jurisdiction and Enforcement Act and the Uniform-Out-of-Country Foreign Money Judgment Recognition Act.

Moreover, SB 58 / HB 351 prohibit trial court judges from dismissing divorce or child custody cases filed here that have nothing to do with Florida unless the foreign jurisdiction – where the case truly belongs – affords the "same" protections as Florida and U.S. law. No foreign country provides the "same" rights as our own, and therefore, these bills would prohibit any case from being dismissed to a foreign forum even though justice may require such a dismissal

We invite you to read the attached ILS White Paper as to SB 58 / HB 351.

