

971573813

HOUSE BILL NO. 2679

Offered January 20, 1997

A BILL to amend and reenact §§ 20-88.32, 20-88.39, 20-88.41, 20-88.47 through 20-88.50, 20-88.64, 20-88.70, 20-88.71, 20-88.76, 20-88.77, and 20-88.78 of the Code of Virginia, and to amend the Code of Virginia by adding sections numbered 20-88.64:1 through 20-88.64:5 and by adding in Article 9 of Chapter 5.3 of Title 20 sections numbered 20-88.77:1 and 20-88.77:2, relating to the Uniform Interstate Family Support Act.

Patrons—Brickley, McDonnell, Almand, Bryant, Callahan, Cooper, Crouch, Davies, Diamonstein, Forbes, Griffith, Heilig, Katzen, Kilgore, Landes, Marshall, McClure, Mims, Nixon, O'Brien, Orrock, Plum, Rollison, Scott, Van Yahres and Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-88.32, 20-88.39, 20-88.41, 20-88.47 through 20-88.50, 20-88.64, 20-88.70, 20-88.71, 20-88.76, 20-88.77, and 20-88.78 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 20-88.64:1 through 20-88.64:5 and by adding in Article 9 of Chapter 5.3 of Title 20 sections numbered 20-88.77:1 and 20-88.77:2 as follows:

§ 20-88.32. Definitions.

In this chapter:

"Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

"Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

"Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

"Home state" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

"Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this Commonwealth.

"Income-withholding order" means an order or other legal process directed to an obligor's employer or other debtor, to withhold amounts for child or spousal support from the obligor's earnings as defined in § 63.1-250.

"Initiating state" means a state *from which a proceeding is forwarded* or in which a proceeding is *filed for forwarding to a responding state* under this chapter or law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act ~~is filed for forwarding to a responding state~~.

"Initiating tribunal" means the authorized tribunal in an initiating state.

"Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

"Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

"Law" includes decisional and statutory law and rules and regulations having the force of law.

"Obligee" means (i) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered, (ii) a state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee, or (iii) an individual seeking a judgment determining parentage of the individual's child.

"Obligor" means an individual, or the estate of a decedent, who (i) owes or is alleged to owe a duty of support, (ii) is alleged but has not been adjudicated to be a parent of a child, or (iii) is liable under a support order.

"Register" means to file a support order or judgment determining parentage in the juvenile and domestic relations district court or with the Division of Child Support Enforcement of the Department of

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60 Social Services.

61 "Registering tribunal" means a tribunal in which a support order is registered.

62 "Responding state" means a state *in which a proceeding is filed or to which a proceeding is*
63 *forwarded for filing from an initiating state* under this chapter or a law or procedure substantially
64 similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform
65 Reciprocal Enforcement of Support Act.

66 "Responding tribunal" means the authorized tribunal in a responding state.

67 "Spousal-support order" means a support order for a spouse or former spouse of the obligor.

68 "State" means a state of the United States, the District of Columbia, ~~the Commonwealth of Puerto~~
69 ~~Rico, the United States Virgin Islands~~ or any territory or insular possession subject to the jurisdiction of
70 the United States. The term "state" includes a Native American tribe and includes a foreign jurisdiction
71 that has *enacted a law or established procedures for issuance and enforcement of support orders which*
72 *are substantially similar to the procedures under this chapter, the Uniform Reciprocal Enforcement of*
73 *Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.*

74 "Support enforcement agency" means a public official or agency authorized to seek enforcement of
75 support orders or laws relating to the duty of support, establishment or modification of child support,
76 determination of parentage, or locating obligors or their assets. A support enforcement agency of this
77 Commonwealth is not authorized to establish or enforce a support order for spousal support only.

78 "Support order" means a judgment, decree, or order, whether temporary, final, or subject to
79 modification, for the benefit of a child, a spouse, or a former spouse, which provides for monetary
80 support, health care, arrearages, or reimbursement, and may include related costs and fees, interest,
81 income withholding, attorney's fees, and other relief.

82 "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish,
83 enforce, or modify support orders or to determine parentage; however, the support enforcement agency
84 of this Commonwealth has no authority to establish or enforce a support order for spousal support only.

85 § 20-88.39. Continuing, exclusive jurisdiction.

86 A. A tribunal of this Commonwealth issuing a support order consistent with the law of this
87 Commonwealth has continuing, exclusive jurisdiction over a child support order:

88 1. As long as this Commonwealth remains the residence of the obligor, the individual obligee, or the
89 child for whose benefit the support order is issued; or

90 2. Until ~~each individual party has~~ *all of the parties who are individuals have* filed written consent
91 with a tribunal of this Commonwealth for a tribunal of another state to modify the order and assume
92 continuing, exclusive jurisdiction.

93 B. A tribunal of this Commonwealth issuing a child support order consistent with the law of this
94 Commonwealth may not exercise its continuing jurisdiction to modify the order if the order has been
95 modified by a tribunal of another state pursuant to a law substantially similar to this chapter.

96 C. If a child support order of this Commonwealth is modified by a tribunal of another state pursuant
97 to a law substantially similar to this chapter, a tribunal of this Commonwealth loses its continuing,
98 exclusive jurisdiction with regard to prospective enforcement of the order issued in this Commonwealth,
99 and may only:

100 1. Enforce the order that was modified as to amounts accruing before the modification;

101 2. Enforce nonmodifiable aspects of that order; and

102 3. Provide other appropriate relief for violations of that order which occurred before the effective
103 date of the modification.

104 D. A tribunal of this Commonwealth shall recognize the continuing, exclusive jurisdiction of a
105 tribunal of another state which has issued a child support order pursuant to a law substantially similar to
106 this chapter.

107 E. A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does
108 not create continuing, exclusive jurisdiction in the issuing tribunal.

109 F. A tribunal of this Commonwealth issuing a support order consistent with the law of this
110 Commonwealth has continuing, exclusive jurisdiction over a spousal support order throughout the
111 existence of the support obligation. A tribunal of this Commonwealth may not modify a spousal support
112 order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under
113 the law of that state.

114 G. The support enforcement agency of this Commonwealth is not authorized to establish or enforce a
115 support order for spousal support only.

116 Article 4.

117 Reconciliation ~~With~~ *of Multiple Orders of Other States.*

118 § 20-88.41. Recognition of controlling child support orders.

119 A. *If a proceeding is brought under this chapter and only one tribunal has issued a child support*
120 *order, the order of that tribunal controls and must be so recognized.*

121 B. If a proceeding is brought under this chapter, and ~~one~~ two or more child support orders have been

issued ~~in~~ by tribunals of this Commonwealth or another state with regard to ~~an~~ the same obligor and a child, a tribunal of this Commonwealth shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

1. If only one tribunal has issued a child support order, the order of that tribunal must be recognized.

2. If two or more tribunals have issued child support orders for the same obligor and child, and only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls and must be so recognized.

32. If two or more tribunals have issued child support orders for the same obligor and child, and more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home state of the child controls and must be so recognized, but if an order has not been issued in the current home state of the child, the order most recently issued controls and must be so recognized.

43. If two or more tribunals have issued child support orders for the same obligor and child, and none of the tribunals would have continuing, exclusive jurisdiction under this chapter, a tribunal of this Commonwealth may having jurisdiction over the parties shall issue a child support order, which controls and must be so recognized.

BC. If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this Commonwealth, a party may request a tribunal of this Commonwealth to determine which order controls and must be recognized under subsection B. The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by a determination.

D. The tribunal that has issued an the controlling order recognized under subsection A, B or C is the tribunal having that has continuing, exclusive jurisdiction in accordance with § 20-88.39.

E. A tribunal of this Commonwealth which determines by order the identity of the controlling child support order under subdivision 1 or 2 of subsection B or which issues a new controlling child support order under subdivision 3 of subsection B shall include in that order the basis upon which the tribunal made its determination.

F. Within thirty days after issuance of the order determining the identity of the controlling order, the party obtaining that order shall file a certified copy of it with each tribunal that had issued or registered an earlier order child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure arises. The failure to file does not affect the validity or enforceability of the controlling order.

§ 20-88.47. Duties of initiating tribunal.

A. Upon the filing of a petition authorized by this chapter, an initiating tribunal of this Commonwealth shall forward three copies of the petition and its accompanying documents to (i) the responding tribunal or appropriate support enforcement agency in the responding state or, (ii) if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

B. If a responding state has not enacted this act or a law or procedure substantially similar to this act, a tribunal of this Commonwealth may issue a certificate or other documents and make findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state.

§ 20-88.48. Duties and powers of responding tribunal.

A. When a responding tribunal of this Commonwealth receives a petition or comparable pleading from an initiating tribunal or directly pursuant to subsection C of § 20-88.44, it shall cause the petition or pleading to be filed and notify the petitioner by first class mail where and when it was filed. An order for spousal support only shall be forwarded to the appropriate juvenile and domestic relations or family court.

B. A responding tribunal of this Commonwealth, to the extent otherwise authorized by law, may do one or more of the following:

1. Issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;

2. Order an obligor to comply with a support order, specifying the amount and the manner of compliance;

3. Order income withholding;

4. Determine the amount of any arrearages, and specify a method of payment;

5. Enforce orders by civil or criminal contempt, or both;

6. Set aside property for satisfaction of the support order;

7. Place liens and order execution on the obligor's property;

8. Order an obligor to keep the tribunal informed of the obligor's current residential address,

183 telephone number, employer, address of employment, and telephone number at the place of employment;
184 9. Issue a *capias* for an obligor who has failed after proper notice to appear at a hearing ordered by
185 the tribunal and enter the *capias* in any local and state computer systems for criminal warrants;

186 10. Order the obligor to seek appropriate employment by specified methods;

187 11. Award reasonable attorney's fees and other fees and costs; and

188 12. Grant any other available remedy.

189 C. A responding tribunal of this Commonwealth shall include in a support order issued under this
190 chapter or in the documents accompanying the order, the calculations on which the support order is
191 based.

192 D. A responding tribunal of this Commonwealth may not condition the payment of a support order
193 issued under this chapter upon compliance by a party with provisions for visitation.

194 E. If a responding tribunal of this Commonwealth issues an order under this chapter, the tribunal
195 shall promptly send a copy of the order by first class mail to the petitioner and the respondent and to
196 the initiating tribunal, if any.

197 § 20-88.49. Inappropriate tribunal.

198 If a petition or comparable pleading is received by an inappropriate tribunal of this Commonwealth,
199 it shall forward the pleading and accompanying documents to an appropriate tribunal in this
200 Commonwealth or another state, and notify the petitioner by first class mail where and when the
201 pleading was sent.

202 § 20-88.50. Duties of support enforcement agency.

203 A. A support enforcement agency of this Commonwealth, upon request, shall provide services to a
204 petitioner in a proceeding under this chapter. A support enforcement agency that is providing services to
205 the petitioner as appropriate shall:

206 1. Take all steps necessary to enable an appropriate tribunal in this Commonwealth or another state
207 to obtain jurisdiction over the respondent;

208 2. Request an appropriate tribunal to set a date, time, and place for a hearing;

209 3. Make a reasonable effort to obtain all relevant information, including information as to income
210 and property of the parties;

211 4. Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written
212 notice from an initiating, responding, or registering tribunal, send a copy of the notice by first class mail
213 to the petitioner;

214 5. Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written
215 communication from the respondent or the respondent's attorney, send a copy of the communication by
216 first class mail to the petitioner; and

217 6. Notify the petitioner if jurisdiction over the respondent cannot be obtained.

218 B. This chapter does not create or negate a relationship of attorney and client or other fiduciary
219 relationship between a support enforcement agency or the attorney for the agency and the individual
220 being assisted by the agency.

221 Article 7.

222 Direct Enforcement of Order of Another State Without Registration.

223 § 20-88.64. Employer's receipt of income-withholding order of another state.

224 A. An income-withholding order issued in another state may be sent by first class mail to the person
225 or entity defined as the obligor's employer under the income-withholding law of this Commonwealth
226 without first filing a petition or comparable pleading or registering the order with a tribunal of this
227 Commonwealth. Upon receipt of the order, the employer shall:

228 1. Treat an income-withholding order issued in another state which appears regular on its face as if it
229 had been issued by a tribunal of this Commonwealth;

230 2. Immediately provide a copy of the order to the obligor; and

231 3. Distribute the funds as directed in the withholding order.

232 B. An obligor may contest the validity or enforcement of an income-withholding order issued in
233 another state in the same manner as if the order had been issued by a tribunal of this Commonwealth.
234 Section 20-88.68 applies to the contest. The obligor shall give notice of the contest to any support
235 enforcement agency providing services to the obligee and to (i) the person or agency designated to
236 receive payments in the income-withholding order or (ii) if no person or agency is designated, the
237 obligee.

238 § 20-88.64:1. Employer's compliance with income-withholding order of another state.

239 A. Upon receipt of the order, the obligor's employer shall immediately provide a copy of the order to
240 the obligor. The employer shall treat an income-withholding order issued in another state which appears
241 regular on its face as if it had been issued by a tribunal of this Commonwealth.

242 B. Except as provided in subsection C and § 20-88.64:2, the employer shall withhold and distribute
243 the funds as directed in the withholding order by complying with the terms of the order, as applicable,
244 that specify:

1. The duration and amount of periodic payments of current child support, stated as a sum certain;
 2. The person or agency designated to receive payments and the address to which the payments are to be forwarded;

3. Medical support, whether in the form of periodic cash payments, stated as a sum certain or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employer;

4. The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

5. The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

C. An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

1. The employer's fee for processing an income-withholding order;

2. The maximum amount permitted to be withheld from the obligor's income; and

3. The times within which the employer must implement the withholding order and forward the child support payment.

§ 20-88.64:2. Compliance with multiple income-withholding orders.

If an obligor's employer receives multiple income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish priorities for withholding and allocating income withheld for multiple child support obligees.

§ 20-88.64:3. Immunity from civil liability.

An employer who complies with an income withholding order issued in another state in accordance with this article is not subject to civil liability to any individual or agency with regard to the employer's withholding child support from the obligor's income.

§ 20-88.64:4. Penalties for noncompliance.

An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this Commonwealth.

§ 20-88.64:5. Contest by obligor.

An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this Commonwealth in the same manner as if the order had been issued by a tribunal of this Commonwealth. Section 20-88.69 applies to the contest. The obligor shall give notice of the contest to (i) a support enforcement agency providing services to the obligee, (ii) each employer which has directly received an income-withholding order, and (iii) the person or agency designated to receive payments in the income-withholding order or if no person or agency is designated, the obligee.

§ 20-88.70. Contest of validity or enforcement; registration of order.

A. When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. Notice must be given by first-class, certified, or registered mail or by any means of personal service authorized by the law of this Commonwealth. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

B. The notice must inform the nonregistering party:

1. That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this Commonwealth;

2. That a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after the date of mailing or personal service of the notice;

3. That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

4. Of the amount of any alleged arrearages.

C. Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to the income-withholding for support law of this Commonwealth.

§ 20-88.71. Procedure to contest validity or enforcement of registered order.

A. A nonregistering party seeking to contest the validity or enforcement of a registered order in this Commonwealth shall request a hearing within twenty days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to § 20-88.72.

B. If the nonregistering party fails to contest the validity or enforcement of the registered order in a

306 timely manner, the order is confirmed by operation of law.

307 C. If a nonregistering party requests a hearing to contest the validity or enforcement of the registered
308 order, the registering tribunal shall schedule the matter for hearing and give notice to the parties by
309 first-class mail of the date, time, and place of the hearing.

310 § 20-88.76. Modification of child support order of another state.

311 A. After a child support order issued in another state has been registered in this Commonwealth, the
312 responding tribunal of this Commonwealth may modify that order only if, § 20-88.77:1 *does not apply*
313 *and* after notice and hearing; it finds that:

314 1. The following requirements are met:

315 a. The child, the individual obligee, and the obligor do not reside in the issuing state;

316 b. A petitioner who is a nonresident of this Commonwealth seeks modification; and

317 c. The respondent is subject to the personal jurisdiction of the tribunal of this Commonwealth; or

318 2. ~~An individual party or the~~ *The child or a party who is an individual* is subject to the personal
319 jurisdiction of the tribunal *of this Commonwealth* and all of the individual parties have filed a written
320 ~~consent~~ *consents* in the issuing tribunal ~~providing that~~ *for* a tribunal of this Commonwealth ~~may~~ *to*
321 modify the support order and assume continuing, exclusive jurisdiction over the order. *However, if the*
322 *issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially*
323 *similar to the procedures under this chapter, the consent otherwise required of an individual residing in*
324 *this Commonwealth is not required for the tribunal to assume jurisdiction to modify the child support*
325 *order.*

326 B. Modification of a registered child support order is subject to the same requirements, procedures,
327 and defenses that apply to the modification of an order issued by a tribunal of this Commonwealth and
328 the order may be enforced and satisfied in the same manner.

329 C. A tribunal of this Commonwealth may not modify any aspect of a child support order that may
330 not be modified under the law of the issuing state. *If two or more tribunals have issued child support*
331 *orders for the same obligor and child, the order that controls and must be so recognized under*
332 *§ 20-88.41 establishes the aspects of the support order which are nonmodifiable.*

333 D. On issuance of an order modifying a child support order issued in another state, a tribunal of this
334 Commonwealth becomes the tribunal ~~of~~ *having* continuing, exclusive jurisdiction.

335 E. ~~Within thirty days after issuance of a modified child support order, the party obtaining the~~
336 ~~modification shall file a certified copy of the order with the issuing tribunal which had continuing,~~
337 ~~exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows that the~~
338 ~~earlier order has been registered.~~

339 § 20-88.77. Recognition of order modified in another state.

340 A tribunal of this Commonwealth shall recognize a modification of its earlier child support order by
341 a tribunal of another state which assumed jurisdiction pursuant to *this chapter* or a law substantially
342 similar to this chapter and, upon request, except as otherwise provided in this chapter, shall:

343 1. Enforce the order that was modified only as to amounts accruing before the modification;

344 2. Enforce only nonmodifiable aspects of that order;

345 3. Provide other appropriate relief only for violations of that order which occurred before the
346 effective date of the modification; and

347 4. Recognize the modifying order of the other state, upon registration, for the purpose of
348 enforcement.

349 § 20-88.77:1. *Jurisdiction to modify support order of another state when individual parties reside in*
350 *this Commonwealth.*

351 A. *If all of the parties who are individuals reside in this Commonwealth and the child does not*
352 *reside in the issuing state, a tribunal of this Commonwealth has jurisdiction to enforce and to modify*
353 *the issuing state's child support order in a proceeding to register that order.*

354 B. *A tribunal of this Commonwealth exercising jurisdiction as provided in this section shall apply the*
355 *provisions of Articles 1 (§ 20-88.32 et seq.) and 2 (20-88.35 et seq.), this article and the procedural and*
356 *substantive law of this Commonwealth to the enforcement or modification. Articles 3 through 5*
357 *(§ 20-88.37 et seq.) and Articles 7 (§ 20-88.64 et seq.) and 8 (§ 20-88.66 et seq.) do not apply.*

358 § 20-88.77:2. *Notice to issuing tribunal of modification.*

359 *Within thirty days after issuance of a modified child support order, the party obtaining the*
360 *modification shall file a certified copy of the order with the issuing tribunal that had continuing,*
361 *exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier*
362 *order has been registered. A party who obtains the order and fails to file a certified copy is subject to*
363 *appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure does not*
364 *affect the validity or enforceability of the modified order of the new tribunal of continuing, exclusive*
365 *jurisdiction.*

366 § 20-88.78. Proceeding to determine parentage.

367 A. A tribunal of this Commonwealth may serve as an initiating or responding tribunal in a

368 proceeding brought under this chapter or a law *or procedure* substantially similar to this chapter; *or to*
369 the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of
370 Support Act to determine that the petitioner is a parent of a particular child or to determine that a
371 respondent is a parent of that child.

372 B. In a proceeding to determine parentage, a responding tribunal of this Commonwealth shall apply
373 the procedural and substantive law of this Commonwealth, and the rules of this Commonwealth on
374 choice of law.