

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

Date: (Filing No. H-)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 224, L.D. 330, Bill, “An Act To Protect Rights and Privileges Granted under the United States Constitution and the Constitution of Maine”

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 14 MRSA c. 14 is enacted to read:

CHAPTER 14

APPLICATION OF FOREIGN LAW

§351. Findings

The Legislature finds that it is the public policy of this State to protect its citizens from the application of foreign laws when the application of a foreign law will result in the violation of one of the following fundamental rights guaranteed by the United States Constitution or the Constitution of Maine: due process, equal protection, freedom of religion, freedom of speech, freedom of the press and the right to keep and bear arms; and any right of privacy or marriage as specifically defined by the Constitution of Maine.

The Legislature fully recognizes the right to contract freely under the laws of this State, and also recognizes that this right may be reasonably and rationally circumscribed pursuant to the State's interest to protect and promote these fundamental rights and privileges granted under the United States Constitution and the Constitution of Maine: due process, equal protection, freedom of religion, freedom of speech, freedom of the press and the right to keep and bear arms; and any right of privacy or marriage as specifically defined by the Constitution of Maine.

§352. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1 **1. Court.** "Court" means any court, board, administrative agency or other
2 adjudicative or enforcement authority of this State.

3 **2. Foreign law, legal code or legal system.** "Foreign law, legal code or legal
4 system" means any law, legal code or legal system of a jurisdiction outside of any state or
5 territory of the United States, including, but not limited to, international organizations and
6 tribunals, applied by that jurisdiction's courts, administrative bodies or other formal or
7 informal tribunals. For the purposes of this chapter, the term does not mean or include
8 any laws of the federally recognized Indian tribes in this State.

9 **3. Religious organization.** "Religious organization" means any church, seminary,
10 synagogue, temple, mosque, religious order or religious corporation, association or
11 society, whose identity is distinctive in terms of common religious creed, beliefs,
12 doctrines, practices or rituals, of any faith or denomination, including any organization
13 qualifying as a church or religious organization under the United States Internal Revenue
14 Code of 1986, Section 501(c)(3) or 501(d).

15 **§353. Rulings and decisions based on foreign law void and unenforceable**

16 A court, arbitration panel, tribunal or administrative agency ruling or decision
17 violates the public policy of this State and is void and unenforceable if the court,
18 arbitration panel, tribunal or administrative agency bases its rulings or decisions in the
19 matter at issue in whole or in part on any foreign law, legal code or legal system that
20 would not grant the parties affected by the ruling or decision one or more of the following
21 fundamental liberties, rights and privileges granted under the United States Constitution
22 or the Constitution of Maine: due process, equal protection, freedom of religion, freedom
23 of speech, freedom of the press and the right to keep and bear arms; and any right of
24 privacy or marriage as specifically defined by the Constitution of Maine.

25 **§354. Contract and contract provisions**

26 **1. Choice of law.** A contract or severable contractual provision that provides for the
27 choice of a foreign law, legal code or legal system to govern some or all of the disputes
28 between the parties adjudicated by a court of law or by an arbitration panel arising from
29 the contract mutually agreed upon violates the public policy of this State and is void and
30 unenforceable if the foreign law, legal code or legal system chosen includes or
31 incorporates any substantive or procedural law, as applied to the dispute at issue, that
32 would not grant the parties one or more of the following fundamental liberties, rights and
33 privileges granted under the United States Constitution or the Constitution of Maine: due
34 process, equal protection, freedom of religion, freedom of speech, freedom of the press
35 and the right to keep and bear arms; and any right of privacy or marriage as specifically
36 defined by the Constitution of Maine.

37 **2. Choice of jurisdiction for personal jurisdiction.** A contract or severable
38 contractual provision that provides for a jurisdiction for purposes of granting the courts or
39 arbitration panels personal jurisdiction over the parties to adjudicate any disputes between
40 parties arising from the contract mutually agreed upon violates the public policy of this
41 State and is void and unenforceable if the jurisdiction chosen includes any foreign law,
42 legal code or legal system, as applied to the dispute at issue, that would not grant the
43 parties one or more of the following fundamental liberties, rights and privileges granted
44 under the United States Constitution or the Constitution of Maine: due process, equal

1 protection, freedom of religion, freedom of speech, freedom of the press and the right to
2 keep and bear arms; and any right of privacy or marriage as specifically defined by the
3 Constitution of Maine.

4 **§355. Denial of claim**

5 If a resident of this State, subject to personal jurisdiction in this State, seeks to
6 maintain litigation, arbitration, agency or similarly binding proceedings in this State and
7 if the courts of this State find that granting a claim of forum non conveniens or a related
8 claim violates or would likely violate the fundamental liberties, rights and privileges
9 granted under the United States Constitution or the Constitution of Maine of the
10 nonclaimant in the foreign forum with respect to the matter in dispute, it is the public
11 policy of this State that the claim be denied.

12 **§356. Application**

13 Without prejudice to any legal right, this chapter does not apply to a corporation,
14 partnership, limited liability company, business association or other legal entity that
15 contracts to subject itself to foreign law, legal code or legal system in a jurisdiction other
16 than this State or the United States.

17 **§357. Free exercise of religion, establishment of religion**

18 A court or arbitrator may not interpret this chapter to limit the right of any person to
19 the free exercise of religion as guaranteed by the First Amendment to the United States
20 Constitution and by the Constitution of Maine. A court may not interpret this chapter to
21 require or authorize any court to adjudicate or prohibit any religious organization from
22 adjudicating ecclesiastical matters, including, but not limited to, the election,
23 appointment, calling, discipline, dismissal, removal or excommunication of a member,
24 officer, official, priest, nun, monk, pastor, rabbi, imam or other member of the clergy of
25 the religious organization or determination or interpretation of the doctrine of the
26 religious organization, where adjudication by a court would violate the prohibition of the
27 establishment clause of the First Amendment of the United States Constitution or violate
28 the Constitution of Maine.

29 **§358. Treaties and international agreements**

30 This chapter may not be interpreted by any court to conflict with any federal treaty or
31 other international agreement to which the United States is a party to the extent that the
32 treaty or international agreement preempts or is superior to the law of this State on the
33 matter at issue.'

34 **SUMMARY**

35 This amendment is the minority report of the Joint Standing Committee on Judiciary.

36 This amendment replaces the bill. It addresses the application of foreign law in this
37 State with the goal of protecting American citizens' constitutional rights when foreign
38 laws and foreign legal doctrines are applied in judicial and administrative tribunals and
39 mediation. The amendment provides that:

1 1. A court or administrative ruling violates the public policy of this State and is void
2 and unenforceable if it is based in whole or in part on a foreign law, legal code or legal
3 system that would not grant the same liberties, rights and privileges as are granted under
4 the United States Constitution and the Constitution of Maine;

5 2. A contract's choice of law provision that chooses such a foreign law, legal code or
6 legal system to govern aspects of the contract is void and unenforceable if the foreign
7 law, legal code or legal system does not protect the same liberties, rights and privileges as
8 are protected under the United States Constitution and the Constitution of Maine;

9 3. A contract's choice of personal jurisdiction provision that provides jurisdiction
10 over the parties that applies a foreign law, legal code or legal system to govern aspects of
11 the contract is void and unenforceable if the foreign law, legal code or legal system does
12 not protect the same liberties, rights and privileges as are protected under the United
13 States Constitution and the Constitution of Maine;

14 4. The court must deny a claim of forum non conveniens or related claim if granting
15 the claim would subject the nonclaimant to a foreign forum that applies a foreign law,
16 legal code or legal system that does not protect the same liberties, rights and privileges as
17 are protected under the United States Constitution and the Constitution of Maine;

18 5. The law does not apply to a corporation, partnership, limited liability company,
19 business association or legal entity that contracts to subject itself to a foreign law, legal
20 code or legal system in a jurisdiction other than this State or the United States;

21 6. The law does not limit the free exercise of religion or require or authorize a court
22 to adjudicate issues within a religious organization that would violate the First
23 Amendment's establishment clause; and

24 7. The law may not be interpreted to conflict with any relevant treaty or international
25 agreement.