

South Carolina General Assembly
121st Session, 2015-2016

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Bill 3521

~~Indicates Matter Stricken~~

Indicates New Matter

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AMENDED

January 28, 2016

H. 3521

Introduced by Reps. Limehouse, Putnam, Clemmons, Rivers, Yow, Burns, Loftis, Chumley and Hicks

S. Printed 1/28/16--H.

Read the first time February 4, 2015.

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 14-1-250 SO AS TO PREVENT A COURT OR OTHER ENFORCEMENT AUTHORITY FROM ENFORCING FOREIGN LAW INCLUDING, BUT NOT LIMITED TO, SHARIA LAW IN THIS STATE FROM A FORUM OUTSIDE OF THE UNITED STATES OR ITS TERRITORIES UNDER CERTAIN CIRCUMSTANCES.

Amend Title To Conform

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

SECTION 1. The General Assembly finds that it shall be the public policy of this State to protect its citizens from the application of foreign laws, whether secular or religious in nature or origin, when the application of a foreign law will result in the violation of a right guaranteed by the Constitution of this State or of the United States including, but not limited to, due process, freedom of religion, speech, or press, and any right of privacy as specifically defined by the Constitution of this State. The General Assembly 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 rights and privileges granted under the United States or South Carolina Constitution including, but not limited to, due process, freedom of religion, speech, or press, and any right of privacy as specifically defined by the Constitution of the United States or of this State.

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

"Section 14-1-250. (A) As used in this section, 'foreign law' means any law, legal code, or legal system of a jurisdiction outside of any state or territory of the United States including, but not limited to, international organizations and tribunals applied by that jurisdiction's courts, administrative bodies, or other formal or informal tribunals.

(B) Any court, arbitration, tribunal, or administrative agency ruling or decision in a matter at issue shall violate the public policy of this State and be void and unenforceable to the extent that any such ruling or decision is based upon any foreign law that would not grant the parties affected by the ruling or decision, at a minimum, the fundamental liberties, rights, and privileges granted under the United States and South Carolina Constitutions including, but not limited to, due process, freedom of religion, speech, or press, and any right of privacy as specifically defined by the Constitution of the United States, or of this State.

(C) A contract or, if severable, a contractual provision which provides for the choice of a foreign law to govern some or all of the disputes between the parties adjudicated by a court of law or by an arbitration panel arising from the contract mutually agreed upon shall violate the public policy of this State and be void and unenforceable entirely or, if severable, to the extent of the violation, if the foreign law chosen would apply any substantive or procedural law that would not grant the parties the same fundamental liberties, rights, and privileges granted under the United States or South Carolina Constitutions including, but not limited to, due process, freedom of religion, speech, or press, and any right of privacy as specifically defined by the Constitution of the United States or of this State.

(D)(1) A contract or, if severable, a contractual provision which provides the courts or arbitration panels *in personam* jurisdiction over the parties to adjudicate any disputes between parties arising from the contract mutually agreed upon shall violate the public policy of this State and be void and unenforceable entirely or, if severable, to the extent of the violation, if the jurisdiction chosen applies any foreign law to the dispute at issue, that would not grant the parties, at a minimum, the fundamental liberties, rights, and privileges granted under the United States and South Carolina Constitutions including, but not limited to, due process, freedom of religion, speech, or press, and any right of privacy as specifically defined by the Constitution of the United States or the Constitution of this State.

(2) If a resident of this State, subject to personal jurisdiction in this State, seeks to maintain litigation, arbitration, agency, or similarly binding proceedings in this State and if the courts of this State find that granting a claim of forum non conveniens or a related claim would result or likely result in a violation in the foreign forum of the nonclaimant's fundamental liberties, rights, and privileges granted under the United States or South Carolina Constitution with respect to the matter in dispute, then it is the public policy of this State that the claim shall be denied.

(E) This section shall not apply to a church or other religious organization, association, or society, with respect to the individuals of a particular religion regarding matters that are purely ecclesiastical including, but not limited to, matters of calling a pastor, excluding members from a church, electing church officers, matters concerning church bylaws, constitution, and doctrinal regulations and the conduct of other routine church business, when the jurisdiction of the courts of this State would be contrary to the First Amendment of the United States and the Constitution of this State.

(F) This section shall not be interpreted by any court to conflict with any federal treaty or other international agreement to which the United States is a party to the extent that such treaty or international agreement preempts or is superior to state law on the matter at issue."

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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