

SESSION OF 2012

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE SUBSTITUTE FOR SENATE BILL NO. 79**

As Agreed to March 30, 2012

**Brief\***

House Sub. for SB 79 would note the Kansas Legislature's recognition of the right to contract freely under Kansas law, which can be reasonably and rationally circumscribed pursuant to the state's interest in protecting and promoting rights and privileges granted by the U.S. and Kansas constitutions. It also would make void and unenforceable:

- Any court, arbitration, tribunal, or administrative ruling or decision based on a foreign law, legal code, or system that does not grant the parties affected the fundamental liberties, rights, and privileges granted by the U.S. and Kansas constitutions;
- A contract or contractual provision, if severable, that provides for the choice of a foreign law, legal code, or system to govern disputes between the parties that does not grant the parties affected the fundamental liberties, rights, and privileges granted by the U.S. and Kansas constitutions; and
- A contract or contractual provision, if severable, that grants *in personam* jurisdiction for adjudication of disputes if the jurisdiction chosen includes any foreign law, legal code, or system that does not grant the parties affected the fundamental liberties,

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rights, and privileges granted by the U.S. and Kansas constitutions.

Where relevant, the above provisions include the following non-exclusive list of the liberties, rights, and privileges granted by the U.S. and Kansas constitutions: equal protection, due process, free exercise of religion, freedom of speech or press, and any right of privacy or marriage.

The bill would define "foreign law, legal code, or system."

Further, the bill would provide for denial of a claim of *forum non conveniens* or a related claim if a resident, subject to personal jurisdiction in Kansas, seeks to maintain litigation, arbitration, agency, or similarly binding proceedings, and granting the claim violates or likely would violate the fundamental liberties, rights, and privileges granted by the U.S. and Kansas constitutions.

Nothing in the bill would be construed to disapprove of or abrogate any previously rendered Kansas Supreme Court decision. Additionally, it would not be construed to allow a court to:

- Adjudicate or prohibit any religious organization from deciding upon ecclesiastical matters of a religious organization, including, among other issues, the selection, appointment, calling, discipline, dismissal, removal, or excommunication of a member, member of the clergy, or other person who performs ministerial functions; or
- Determine or interpret the doctrine of a religious organization, including, but not limited to, where adjudication by a court would violate the prohibitions of the religion clauses of the First Amendment to the U.S. and Kansas constitutions.

Finally, the bill states it would not apply to a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity that contracts to subject itself to foreign law or courts in a jurisdiction other than Kansas or the United States.

### **Conference Committee Action**

The Conference Committee agreed to the House substitute bill with the following additions: a non-exclusive list of the liberties, rights, and privileges the bill is intended to protect, as well as an additional section providing that the Act shall not apply to specified business or other legal entities that contract to subject themselves to foreign law or courts.

### **Background**

SB 79, as introduced, would have amended the state debt setoff law to provide that the collection assistance fee for all debts owed to a court shall be paid by the debtor as an additional cost, rather than deducted from the debts owed to a court.

In the Senate Committee on Judiciary, a representative of the Kansas Association of District Court Clerks and Administrators (KADCCA), appeared in support of the bill. No opponents provided testimony. The Committee made no changes to the bill and recommended it be passed.

In the House Committee on Judiciary, a representative of the KADCCA appeared in support of the bill. The Committee amended the bill by adopting a substitute bill, incorporating the text of HB 2087, as further amended by the House Committee on Judiciary.

### ***Background of HB 2087***

In the 2011 House Committee on Judiciary, Representative Peggy Mast, a local attorney, and a concerned citizen appeared in support of the bill. No opponents offered testimony. The House Committee on Judiciary amended the bill by adding “foreign” before “law” in four locations in the bill.

The 2011 House Committee of the Whole amended the bill to clarify that it would not disapprove of or abrogate any previously rendered Kansas Supreme Court decision.

In the 2012 Senate Judiciary Committee, Representative Mast, a former FBI special agent, a former New York firefighter, two Kansas attorneys, and a private citizen spoke in favor of the bill. No opponents testified.

The fiscal note for HB 2087, as introduced, stated it would have no fiscal effect on the Judicial Branch.

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Contracts; constitutional rights and privileges; foreign law; choice of law.