

Foreign Law; Contracts; Constitutional Rights and Privileges; House Sub. for SB 79

House Sub. for SB 79 notes 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 makes 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, 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 defines "foreign law, legal code, or system" to mean any law, legal code, or system of a jurisdiction outside of any state or territory of the United States, including, but not limited to, international organizations and tribunals and applied by that jurisdiction's courts, administrative bodies, or other formal or informal tribunals.

Further, the bill provides 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 shall be construed to disapprove of or abrogate any previously rendered Kansas Supreme Court decision. Additionally, it shall 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. Constitution* or the *Kansas Constitution*.

Finally, the bill will 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.