

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

HOUSE BILL 1041

5 By: Representative B. Smith
6

For An Act To Be Entitled

8 AN ACT TO PROTECT THE RIGHTS AND PRIVILEGES GRANTED
9 UNDER THE ARKANSAS CONSTITUTION AND THE UNITED STATES
10 CONSTITUTION; TO DECLARE AMERICAN LAWS FOR AMERICAN
11 COURTS; AND FOR OTHER PURPOSES.
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Subtitle

14 TO PROTECT THE RIGHTS AND PRIVILEGES
15 GRANTED UNDER THE ARKANSAS CONSTITUTION
16 AND THE UNITED STATES CONSTITUTION; AND
17 TO DECLARE AMERICAN LAWS FOR AMERICAN
18 COURTS.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. DO NOT CODIFY. Legislative intent.

25 (a) The General Assembly intends that it shall be the public policy of
26 this state to protect its citizens from the application of foreign laws when
27 the application of a foreign law will result in the violation of one (1) or
28 more of the following fundamental rights, liberties, and privileges
29 guaranteed by the Arkansas Constitution or the United States Constitution:

- 30 (1) The right to due process;
- 31 (2) The right to equal protection;
- 32 (3) Freedom of religion;
- 33 (4) Freedom of speech;
- 34 (5) Freedom of the press;
- 35 (6) The right to keep and bear arms;
- 36 (7) The right to privacy; or



1 (8) The right to marry, as "marriage" is defined by Arkansas
 2 Constitution, Amendment 83.

3 (b) The General Assembly fully recognizes the right to contract freely
 4 under the laws of this state, and also recognizes that this right may be
 5 reasonably and rationally circumscribed pursuant to the state's interest to
 6 protect and promote the following fundamental rights, liberties, and
 7 privileges granted under the Arkansas Constitution or the United States
 8 Constitution:

9 (1) The right to due process;

10 (2) The right to equal protection;

11 (3) Freedom of religion;

12 (4) Freedom of speech;

13 (5) Freedom of the press;

14 (6) The right to keep and bear arms;

15 (7) The right to privacy; or

16 (8) The right to marry, as "marriage" is defined by Arkansas
 17 Constitution, Amendment 83.

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 19 SECTION 2. Arkansas Code Title 1, Chapter 1, Subchapter 1, is amended
 20 to add an additional section to read as follows:

21 1-1-103. Application of foreign law, legal code, or system.

22 (a) As used in this section:

23 (1) "Court" means any court, tribunal board, administrative
 24 agency, or other adjudicative or enforcement authority of this state;

25 (2)(A) "Foreign law, legal code, or system" means any law, legal
 26 code, or system of a jurisdiction outside of any state or territory of the
 27 United States, including without limitation international organizations and
 28 tribunals, applied by that jurisdiction's courts, administrative bodies, or
 29 other formal or informal tribunals.

30 (B) "Foreign law, legal code, or system" does not mean any
 31 laws of the Native American tribes in this state; and

32 (3) "Religious organization" means a church, seminary,
 33 synagogue, temple, mosque, religious order, religious corporation,
 34 association, or society with an identity that is distinctive in terms of
 35 common religious creed, beliefs, doctrines, practices, or rituals of any
 36 faith or denomination, including any organization qualifying as a church or

1 religious organization under 26 U.S.C. § 501(c)(3) or 26 U.S.C. § 501(d).

2 (b) A court ruling or decision violates the public policy of this
3 state and is void and unenforceable if the court bases its ruling or decision
4 in the matter at issue in whole or in part on any foreign law, legal code, or
5 system that does not grant the parties affected by the ruling or decision one
6 (1) or more of the following fundamental rights, liberties, and privileges
7 granted under the Arkansas Constitution or the United States Constitution:

8 (1) The right to due process;

9 (2) The right to equal protection;

10 (3) Freedom of religion;

11 (4) Freedom of speech;

12 (5) Freedom of the press;

13 (6) The right to keep and bear arms;

14 (7) The right to privacy; or

15 (8) The right to marry, as "marriage" is defined by Arkansas
16 Constitution, Amendment 83.

17 (c) A contract or contractual provision, if severable, that provides
18 for the choice of a foreign law, legal code, or system to govern some or all
19 of the disputes between the parties adjudicated by a court of law or by an
20 arbitration panel arising from the contract mutually agreed upon violates the
21 public policy of Arkansas and is void and unenforceable if the foreign law,
22 legal code, or system chosen includes or incorporates any substantive or
23 procedural law, as applied to the dispute at issue, that does not grant the
24 parties one (1) or more of the following fundamental rights, liberties and
25 privileges granted under the Arkansas Constitution or the United States
26 Constitution:

27 (1) The right to due process;

28 (2) The right to equal protection;

29 (3) Freedom of religion;

30 (4) Freedom of speech;

31 (5) Freedom of the press;

32 (6) The right to keep and bear arms;

33 (7) The right to privacy; or

34 (8) The right to marry, as "marriage" is defined by Arkansas
35 Constitution, Amendment 83.

36 (d)(1) A contract or contractual provision, if severable, that

1 provides for a jurisdiction for purposes of granting the courts or
 2 arbitration panels personal jurisdiction over the parties to adjudicate any
 3 disputes between parties arising from the contract mutually agreed upon
 4 violates the public policy of Arkansas and is void and unenforceable if the
 5 jurisdiction chosen includes any foreign law, legal code, or system, as
 6 applied to the dispute at issue, that does not grant the parties one (1) or
 7 more of the following fundamental rights, liberties and privileges granted
 8 under the Arkansas Constitution or the United States Constitution:

- 9 (A) The right to due process;
- 10 (B) The right to equal protection;
- 11 (C) Freedom of religion;
- 12 (D) Freedom of speech;
- 13 (E) Freedom of the press;
- 14 (F) The right to keep and bear arms;
- 15 (G) The right to privacy; or
- 16 (H) The right to marry, as "marriage" is defined by

17 Arkansas Constitution, Amendment 83.

18 (2) If a resident of Arkansas who is subject to personal
 19 jurisdiction in Arkansas seeks to maintain litigation, arbitration, agency,
 20 or similarly binding proceedings in this state and if the courts of this
 21 state find that granting a claim of forum non conveniens or a related claim
 22 violates or would likely violate the fundamental rights, liberties, and
 23 privileges granted under the Arkansas Constitution or the United States
 24 Constitution of the nonclaimant in the foreign forum with respect to the
 25 matter in dispute, then it is the public policy of Arkansas that the claim be
 26 denied.

27 (e) Without prejudice to any legal right, this section does not apply
 28 to a corporation, partnership, limited liability company, business
 29 association, or other legal entity that contracts to subject itself to a
 30 foreign law, legal code, or system.

31 (f)(1) A court or arbitrator shall not interpret this section to limit
 32 the right of any person to the free exercise of religion as guaranteed by
 33 Arkansas Constitution, Article 2, §§ 24-26, and the First Amendment of the
 34 United States Constitution.

35 (2) A court shall not interpret this section to require or
 36 authorize a court to adjudicate or prohibit any religious organization from

1 adjudicating ecclesiastical matters, including without limitation the
2 election, appointment, calling, discipline, dismissal, removal, or
3 excommunication of a member, officer, official, priest, nun, monk, pastor,
4 rabbi, imam, or member of the clergy of the religious organization, or the
5 determination or interpretation of the doctrine of the religious organization
6 if adjudication by a court would violate Arkansas Constitution, Article 2, §§
7 24-26 or the First Amendment of the United States Constitution.

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

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