THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2168 Session of 2014

INTRODUCED BY SWANGER, CALTAGIRONE, DENLINGER, GABLER, C. HARRIS, KORTZ, METCALFE, MILLARD, RAPP, ROAE, SACCONE, TALLMAN AND CLYMER, APRIL 9, 2014

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 9, 2014

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2   Pennsylvania Consolidated Statutes, prohibiting the
3   application of foreign law which would impair constitutional
4   rights.

5   The General Assembly of the Commonwealth of Pennsylvania

6 hereby enacts as follows:

7   Section 1. Section 102 of Title 42 of the Pennsylvania

8 Consolidated Statutes is amended by adding a definition to read:

9 § 102. Definitions.

10   Subject to additional definitions contained in subsequent

11 provisions of this title which are applicable to specific

12 provisions of this title, the following words and phrases when

13 used in this title shall have, unless the context clearly

14 indicates otherwise, the meanings given to them in this section:

15   * * *

16   "Foreign legal code or system." A legal code or system of a

17 jurisdiction outside of the United States, including an

18 international organization or tribunal, which is applied by that

1 jurisdiction in a judicial proceeding or an administrative

2 proceeding.

3　　* * *

4　　Section 2. Section 5322(e) of Title 42 is amended to read:

5 § 5322. Bases of personal jurisdiction over persons outside

6　　　　　　this Commonwealth.

7　　* * *

8　　(e) Inconvenient forum.--[When]

9　　　　(1) Except as set forth in paragraph (2), when a

10 tribunal finds that in the interest of substantial justice

11 the matter should be heard in another forum, the tribunal may

12 stay or dismiss the matter in whole or in part on any

13 conditions that may be just.

14　　　　(2) Relief under paragraph (1) shall not be granted if

15 the tribunal finds that granting relief has the potential to

16 violate a fundamental liberty, right or privilege granted

17 under the United States Constitution and the Constitution of

18 Pennsylvania. The exception under this paragraph does not

19 apply to any corporation, partnership, limited liability

20 company, business association or other legal entity that

21 contracts to subject itself to a foreign legal code or

22 system.

23　　Section 3. Section 5327(c) of Title 42 is amended and the

24 section is amended by adding a subsection to read:

25 § 5327. Determination of foreign law.

26　　* * *

27　　(b.1) Prohibitions.--

28　　　　(1) Except as set forth in paragraph (2), all of the

29 following apply:

30　　　　　　(i) A tribunal shall not consider a foreign legal

1   code or system which does not grant the parties affected

2   by the ruling or decision the same fundamental liberties,

3   rights and privileges granted under the United States

4   Constitution and the Constitution of Pennsylvania. This

5   subparagraph includes due process, freedom of religion,

6   freedom of speech, freedom of press and a right of

7   privacy or marriage as specifically defined by the

8   Constitution of Pennsylvania.

9   (ii) A contract which provides for the choice of a

10   foreign legal code or system to govern a dispute which

11   arises out of the contract violates the public policy of

12   the Commonwealth and shall be void and unenforceable if

13   the foreign legal code or system chosen includes or

14   incorporates substantive or procedural law, as applied to

15   the dispute at issue, which would not grant the parties

16   the same fundamental liberties, rights and privileges

17   granted under the United States Constitution and the

18   Pennsylvania Constitution. This subparagraph includes due

19   process, freedom of religion, freedom of speech, freedom

20   of press and a right of privacy or marriage as

21   specifically defined by the Constitution of Pennsylvania.

22   (iii) A contract which confers upon a tribunal or

23   arbitrator in personam jurisdiction over a party to

24   adjudicate a dispute arising out of the contract violates

25   the public policy of the Commonwealth and shall be void

26   and unenforceable if the jurisdiction chosen includes or

27   incorporates substantive or procedural law, as applied to

28   the dispute at issue, which would not grant the parties

29   the same fundamental liberties, rights and privileges

30   granted under the United States Constitution and the

1   Constitution of Pennsylvania. This subparagraph includes

2   due process, freedom of religion, freedom of speech,

3   freedom of press and a right of privacy or marriage as

4   specifically defined by the Constitution of Pennsylvania.

5   (iv) It is the public policy of the Commonwealth to

6   deny a claim of forum non conveniens if a resident of

7   this Commonwealth, subject to personal jurisdiction in

8   this Commonwealth, seeks to maintain an action in this

9   Commonwealth and if a tribunal of this Commonwealth finds

10   that granting the claim would likely violate the

11   fundamental liberties, rights and privileges granted

12   under the United States Constitution and the Constitution

13   of Pennsylvania. This subparagraph includes due process,

14   freedom of religion, freedom of speech, freedom of press

15   and a right of privacy or marriage as specifically

16   defined by the Constitution of Pennsylvania.

17   (2) Paragraph (1) does not apply to any corporation,

18   partnership, limited liability company, business association

19   or other legal entity that contracts to subject itself to

20   foreign legal code or system.

21   (3) No tribunal or arbitrator shall interpret the

22   provisions of paragraph (1) to do any of the following:

23   (i) Limit the right of a person to the free exercise

24   of religion as guaranteed by the First Amendment to the

25   United States Constitution and by sections 3 and 4 of

26   Article I of the Constitution of Pennsylvania.

27   (ii) Require a tribunal or arbitrator to adjudicate

28   an ecclesiastical matter if adjudication would violate

29   the establishment clause of the First Amendment of the

30   United States or section 3 or 4 of Article I of the

1   Constitution of Pennsylvania. This subparagraph includes:

2   (A) selection and sanction of any officer,

3   official or clergy member of a religious

4   organization; and

5   (B) determination or interpretation of the

6   doctrine of the religious organization.

7   (iii) Prohibit a religious organization from

8 adjudicating an ecclesiastical matter if adjudication

9 would violate the establishment clause of the First

10 Amendment of the United States or section 3 or 4 of

11 Article I of the Constitution of Pennsylvania. This

12 subparagraph includes:

13   (A) selection and sanction of any officer,

14   official or clergy member of a religious

15   organization; and

16   (B) determination or interpretation of the

17   doctrine of the religious organization.

18   (iv) Conflict with a Federal treaty or other

19 international agreement to which the United States is a

20 party to the extent that the treaty or international

21 agreement preempts or is superior to State law on the

22 matter at issue.

23   (c) Court decision and review.--The court, not jury, shall

24 determine the law of any governmental unit outside this

25 Commonwealth and whether that law violates subsection (b.1)(1).

26 The determination of the tribunal is subject to review on appeal

27 as a ruling on a question of law.

28   Section 4. This act shall apply to actions initiated on or

29 after the effective date of this section.

30   Section 5. This act shall take effect in 60 days.