

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: S3/16/17
A Bill

HOUSE BILL 1041

By: Representative B. Smith

By: Senator J. Cooper

For An Act To Be Entitled

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

Subtitle

TO PROTECT THE RIGHTS AND PRIVILEGES GRANTED UNDER THE ARKANSAS CONSTITUTION AND THE UNITED STATES CONSTITUTION; AND TO DECLARE AMERICAN LAWS FOR AMERICAN COURTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative intent.

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

- (1) The right to due process;
- (2) The right to equal protection;
- (3) Freedom of religion;
- (4) Freedom of speech;
- (5) Freedom of the press;
- (6) The right to keep and bear arms;



(7) The right to privacy; or

(8) The right to marry, as "marriage" is defined by the Arkansas Constitution, to the extent that the definition of marriage does not conflict with federal law or a holding by the United States Supreme Court.

(b) 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 the following fundamental rights, liberties, and privileges granted under the Arkansas Constitution or the United States Constitution:

(1) The right to due process;

(2) The right to equal protection;

(3) Freedom of religion;

(4) Freedom of speech;

(5) Freedom of the press;

(6) The right to keep and bear arms;

(7) The right to privacy; or

(8) The right to marry, as "marriage" is defined by the Arkansas Constitution, to the extent that the definition of marriage does not conflict with federal law or a holding by the United States Supreme Court.

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

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

(a) As used in this section:

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

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

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

(3) "Religious organization" means a church, seminary, synagogue, temple, mosque, religious order, religious corporation,

association, or society with an identity that is distinctive in terms of common religious creed, beliefs, doctrines, practices, or rituals of any faith or denomination, including any organization qualifying as a church or religious organization under 26 U.S.C. § 501(c)(3) or 26 U.S.C. § 501(d).

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

(1) The right to due process;

(2) The right to equal protection;

(3) Freedom of religion;

(4) Freedom of speech;

(5) Freedom of the press;

(6) The right to keep and bear arms;

(7) The right to privacy; or

(8) *The right to marry, as "marriage" is defined by the Arkansas Constitution, to the extent that the definition of marriage does not conflict with federal law or a holding by the United States Supreme Court.*

(c) A contract or contractual provision, if severable, that provides for the choice of a foreign law, legal code, or system 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 violates the public policy of Arkansas and is void and unenforceable if the foreign law, legal code, or system chosen includes or incorporates any substantive or procedural law, as applied to the dispute at issue, that does not grant the parties one (1) or more of the following fundamental rights, liberties and privileges granted under the Arkansas Constitution or the United States Constitution:

(1) The right to due process;

(2) The right to equal protection;

(3) Freedom of religion;

(4) Freedom of speech;

(5) Freedom of the press;

(6) The right to keep and bear arms;

(7) The right to privacy; or

(8) The right to marry, as "marriage" is defined by the Arkansas Constitution, to the extent that the definition of marriage does not conflict with federal law or a holding by the United States Supreme Court.

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

(A) The right to due process;

(B) The right to equal protection;

(C) Freedom of religion;

(D) Freedom of speech;

(E) Freedom of the press;

(F) The right to keep and bear arms;

(G) The right to privacy; or

(H) The right to marry, as "marriage" is defined by the Arkansas Constitution, to the extent that the definition of marriage does not conflict with federal law or a holding by the United States Supreme Court.

(2) If a resident of Arkansas who is subject to personal jurisdiction in Arkansas 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 violates or would likely violate the fundamental rights, liberties, and privileges granted under the Arkansas Constitution or the United States Constitution of the nonclaimant in the foreign forum with respect to the matter in dispute, then it is the public policy of Arkansas that the claim be denied.

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

(f)(1) A court or arbitrator shall not interpret this section to limit

the right of any person to the free exercise of religion as guaranteed by Arkansas Constitution, Article 2, §§ 24-26, and the First Amendment of the United States Constitution.

(2) A court shall not interpret this section to require or authorize a court to adjudicate or prohibit any religious organization from adjudicating ecclesiastical matters, including without limitation the election, appointment, calling, discipline, dismissal, removal, or excommunication of a member, officer, official, priest, nun, monk, pastor, rabbi, imam, or member of the clergy of the religious organization, or the determination or interpretation of the doctrine of the religious organization if adjudication by a court would violate Arkansas Constitution, Article 2, §§ 24-26 or the First Amendment of the United States Constitution.

(g) 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 the federal treaty or international agreement preempts or is superior to state law on the matter at issue.

SECTION 3. Arkansas Code § 4-59-101(a), concerning contracts, agreements, or promises required to be in writing, is amended to read as follows:

(a) Unless the agreement, promise, or contract, or some memorandum or note thereof, upon which an action is brought is made in writing and signed by the party to be charged therewith, or signed by some other person properly authorized by the person sought to be charged, no action shall be brought to charge any:

(1) Executor or administrator, upon any special promise, to answer for any debt or damage out of his or her own estate;

(2) Person, upon any special promise, to answer for the debt, default, or miscarriage of another;

(3) Person upon an agreement made in consideration of marriage;

(4) Person upon any contract for the sale of lands, tenements, or hereditaments, or any interest in or concerning them;

(5) Person upon any lease of lands, tenements, or hereditaments for a longer term than one (1) year;

(6) Person upon ~~any~~ a contract, promise, or agreement that is not to be performed within one (1) year from the making of the contract,

promise, or agreement; or

(7) Person upon a contract, promise, or agreement that results in a waiver of a right protected by the Arkansas Constitution or the United States Constitution.

/s/B. Smith