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DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 89

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO JUDICIAL PROCEDURES.

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

Section 1. Add new Chapter to Title 10 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

Chapter 46. Application of Foreign Law

In this chapter:

(1) "Foreign law" means any law, legal code, or system of a jurisdiction outside of any state or territory of the United States, including, international organizations and tribunals, and applied by that jurisdiction's courts, administrative bodies, or other formal or informal tribunals. The term does not include any law, legal code, or system of the Native American tribes in the State of Delaware.

(2) "Foreign venue or forum" means a venue or forum operating under the authority of a government other than any of the following:

- a. The United States.
- b. A state, district, commonwealth, territory, or insular possession of the United States.
- c. Any other government with regard to which the decision in this State as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(3) "Fundamental constitutional right" means a fundamental right of a natural person guaranteed by the United States Constitution or the Delaware Constitution including due process; freedom of religion, speech, or press; and any right of privacy or marriage.

§ 4602. Purpose.

In recognition that the United States Constitution and the Delaware Constitution constitute the supreme law of this State, the General Assembly hereby declares it to be the public policy of this State to protect its citizens from the application of foreign law that would result in the violation of a fundamental constitutional right. The public policies

expressed in this section shall apply only to actual or foreseeable violations of a fundamental constitutional right resulting from the application of the foreign law.

§ 4603. Non-application of foreign law that would violate fundamental constitutional rights.

Any court, arbitrator, tribunal, or administrative agency ruling or decision that violates the public policy of this State shall be void and unenforceable if the court, arbitration, tribunal, or administrative agency bases its ruling or decisions in the matter at issue in whole or in part on any foreign law that would not grant the parties affected by the ruling or decision the same fundamental constitutional right.

§4604. Defense of criminal acts.

No foreign law shall be used to defend a criminal act including any form of domestic violence.

§ 4605. Interpretation of contracts providing for choice of foreign law.

(a) In the interpretation or enforcement by a court, administrative agency, arbitrator, mediator, or other entity or person acting under the authority of State law of any contract or other agreement that provides for the choice of a foreign law to govern its interpretation or the resolution of any claim or dispute, the court or administrative agency shall preserve the fundamental constitutional rights of natural persons who are parties to the contract or other agreement.

(b) If enforcement of any provision in a contract or other agreement for the choice of foreign law would result in a violation of a fundamental constitutional right of one or more of the natural persons who are parties to the contract or other agreement, the agreement or contract shall be modified or amended to the extent necessary to preserve fundamental constitutional rights.

§ 4606. Interpretation of contracts providing for choice of foreign venue or forum.

If the enforcement of any provision in a contract or other agreement providing for a choice of a foreign venue or forum would result in a violation of a fundamental constitutional right of one or more natural persons who are parties to the contract or other agreement, that provision shall be modified or amended to the extent necessary to preserve fundamental constitutional rights.

§ 4607. Motions to transfer proceedings to a foreign venue or forum.

If a natural person subject to personal jurisdiction in this State seeks to maintain a litigation proceeding, arbitration proceeding, or other similarly binding proceeding in this State, and if a court of this State finds that granting a motion by another party to the proceeding to transfer the proceeding to a foreign venue or forum would likely lead to the violation of a fundamental constitutional right of the natural person who is the non-movant in the foreign forum with respect to the matter in dispute, the motion shall be denied.

§ 4608. Contracts not capable of modification to preserve fundamental constitutional rights voided.

53 Any provision in a contract or other agreement incapable of being modified or amended pursuant to this Chapter in
54 order to preserve the fundamental constitutional rights of the natural persons who are parties to the contract or agreement
55 shall be null and void.

56 § 4609. Foreign contracts that are not applicable.

57 Without prejudice to any legal right, this Chapter shall not apply to a corporation, partnership, limited liability
58 company, business association, or other legal entity that contracts to subject itself to foreign law in a jurisdiction other than
59 this State or the United States.

60 § 4610. Religious matters that are not applicable.

61 (a) This chapter shall not apply to a church, religious corporation, association, or society, with respect to the
62 individuals of a particular religion regarding matters that are purely ecclesiastical, including matters of calling a pastor;
63 excluding members from a church; electing church officers; matters concerning church bylaws, constitution, and doctrinal
64 regulations; and the conduct of other routine church business, where:

65 (1) The jurisdiction of the church would be final.

66 (2) The jurisdiction of the courts of this State would be contrary to the First Amendment to the United
67 States Constitution and the Delaware Constitution.

68 (b) This exemption in no way grants permission for any otherwise unlawful act under the guise of First
69 Amendment protection.

70 § 4611. Federal treaties and international agreements.

71 This chapter shall not be interpreted by any court to conflict with any federal treaty or other international
72 agreement to which the United States is a party to the extent that such treaty or international agreement preempts or is
73 superior to state law on the matter at issue.

74 SYNOPSIS

This Act is modeled after American Laws for American Courts legislation that has passed in Tennessee, Louisiana, Arizona, Kansas, South Dakota, Alabama, and North Carolina. The Declaration of Independence announced the formation of a new country that would no longer find itself in the clutches of a foreign power. For more than two centuries, hundreds of thousands of men and women have given their lives to protect America's sovereignty and freedom. America has unique values of liberty which do not exist in all foreign legal systems such as freedom of religion, speech, and press, due process, and the right to privacy. Unfortunately, because state legislatures have generally not been explicit about what their public policy is relative to foreign laws, the courts and the parties litigating in those courts are left to their own devices. State legislatures play a vital role in preserving fundamental constitutional rights and American values of liberty and freedom. No United States citizen or resident should be denied these guaranteed liberties, rights, and freedom.

Author: Senator Lawson