

House Substitute for SENATE BILL No. 79

By Committee on Judiciary

3-19

1 AN ACT concerning the protection of rights and privileges granted under
2 the United States or Kansas constitutions.

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4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. While the legislature fully recognizes the right to contract
6 freely under the laws of this state, it also recognizes that this right may be
7 reasonably and rationally circumscribed pursuant to the state's interest to
8 protect and promote rights and privileges granted under the United States
9 or Kansas constitution.

10 Sec. 2. As used in this act, "foreign law," "legal code" or "system"
11 means any law, legal code or system of a jurisdiction outside of any state
12 or territory of the United States, including, but not limited to, international
13 organizations and tribunals and applied by that jurisdiction's courts,
14 administrative bodies or other formal or informal tribunals.

15 Sec. 3. Any court, arbitration, tribunal or administrative agency ruling
16 or decision shall violate the public policy of this state and be void and
17 unenforceable if the court, arbitration, tribunal or administrative agency
18 bases its rulings or decisions in the matter at issue in whole or in part on
19 any foreign law, legal code or system that would not grant the parties
20 affected by the ruling or decision the same fundamental liberties, rights
21 and privileges granted under the United States and Kansas constitutions.

22 Sec. 4. A contract or contractual provision, if capable of segregation,
23 which provides for the choice of a foreign law, legal code or system to
24 govern some or all of the disputes between the parties adjudicated by a
25 court of law or by an arbitration panel arising from the contract mutually
26 agreed upon shall violate the public policy of this state and be void and
27 unenforceable if the foreign law, legal code or system chosen includes or
28 incorporates any substantive or procedural law, as applied to the dispute at
29 issue, that would not grant the parties the same fundamental liberties,
30 rights and privileges granted under the United States and Kansas
31 constitutions.

32 Sec. 5. (a) A contract or contractual provision, if capable of
33 segregation, which provides for a jurisdiction for purposes of granting the
34 courts or arbitration panels *in personam* jurisdiction over the parties to
35 adjudicate any disputes between parties arising from the contract mutually
36 agreed upon shall violate the public policy of this state and be void and

1 unenforceable if the jurisdiction chosen includes any foreign law, legal
2 code or system, as applied to the dispute at issue, that would not grant the
3 parties the same fundamental liberties, rights and privileges granted under
4 the United States and Kansas constitutions.

5 (b) If a resident of this state, subject to personal jurisdiction in this
6 state, seeks to maintain litigation, arbitration, agency or similarly binding
7 proceedings in this state and if the courts of this state find that granting a
8 claim of forum *non conveniens* or a related claim violates or would likely
9 violate the fundamental liberties, rights and privileges granted under the
10 United States and Kansas constitutions of the nonclaimant in the foreign
11 forum with respect to the matter in dispute, then it is the public policy of
12 this state that the claim shall be denied.

13 Sec. 6. Nothing in this act shall be construed to disapprove of or
14 abrogate any appellate decision previously rendered by the supreme court
15 of Kansas.

16 Sec. 7. Nothing in this act shall be construed to allow a court to: (a)
17 Adjudicate or prohibit any religious organization from deciding upon
18 ecclesiastical matters of a religious organization, including, but not limited
19 to, the selection, appointment, calling, discipline, dismissal, removal or
20 excommunication of a member, member of the clergy, or other person who
21 performs ministerial functions; or (b) determine or interpret the doctrine of
22 a religious organization, including, but not limited to, where adjudication
23 by a court would violate the prohibitions of the religion clauses of the first
24 amendment to the constitution of the United States, or violate the
25 constitution of the state of Kansas.

26 Sec. 8. This act shall take effect and be in force from and after its
27 publication in the statute book.

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