



HOUSE BILL 522: Foreign Laws/Protect Constitutional Rights

2013-2014 General Assembly

Committee:	Senate Judiciary I	Date:	July 17, 2013
Introduced by:	Reps. Avila, Pittman, Jeter, Speciale	Prepared by:	Bill Patterson
Analysis of:	PCS to Second Edition H522-CSTG-66		Committee Counsel

SUMMARY: *In divorce, alimony and child custody actions, the PCS for House Bill 522 would prevent courts from applying foreign law if doing so would violate a natural person's fundamental constitutional right. The provisions in the PCS entirely replace those in the original bill.*

[As introduced, this bill was identical to S545, Master Meters/Landlord-Tenant Agreement, as introduced by Sen. Rabin (enacted as S.L. 2013-168).]

CURRENT LAW

There is no current statutory prohibition against the enforcement of foreign law in disputes involving divorce, alimony, or child custody. For such disputes, principles of comity would prohibit the application of foreign law in State courts if doing so would violate an established public policy of the State. To the extent that the application of foreign law in state court proceedings is required under a treaty to which the United States is a signatory, any state law to the contrary would be invalidated by the Supremacy Clause of the United States Constitution.

ANALYSIS

The PCS for House Bill 522 would create a new Article 7A in Chapter 1 of the General Statutes, which would forbid courts or any other entity or person acting under the authority of State law from applying foreign law in divorce, alimony and child custody actions if doing so would violate a natural person's fundamental constitutional right.

Specifically, under Article 7A, courts and other persons or entities acting under color of State law:

- would be prohibited from applying or enforcing a foreign law or judgment if doing so would violate a fundamental constitutional right of any party to the proceeding who is a natural person
- would be required to interpret any contract provisions requiring the application of foreign law in a way that preserves the fundamental constitutional rights of any natural person who is a party to the contract, and to modify any such provisions to the extent necessary to preserve those rights
- would be required to treat as null and void any provision in a contract that cannot be interpreted or modified in a way that will preserve the fundamental constitutional rights of any natural persons who are parties to the contract
- would be required to deny a motion to transfer a proceeding to a foreign venue if the transfer is likely to violate the constitutional rights of a natural person not seeking the transfer
- would be required to strictly construe any ambiguity in a contract limiting or waiving the constitutional rights of a natural person in favor preserving those constitutional rights

This act becomes effective September 1, 2013, and applies to agreements and contracts entered into on or after that date.



BACKGROUND

Between 2010 and 2012, at least 32 states considered bills to restrict the circumstances in which state courts can consider foreign or religious laws in their decisions. Six states adopted various versions of this type of law. Such bills were initially directed towards preventing the use of "Sharia law." Oklahoma's law specifically banned judicial consideration of Islamic law (Sharia law), but was ruled unconstitutional in 2010 by a federal district court. In 2012, the 10th Circuit Court of Appeals affirmed the lower court's decision. Later state laws refer to "foreign" laws, instead of specifically naming Sharia law, in an effort to avoid the Oklahoma law's fate of being found to violate the Establishment Clause and Free Exercise Clause of First Amendment.

The states that have adopted laws restricting the application of "foreign" law include Arizona, Kansas, Louisiana, Oklahoma, South Dakota, and Tennessee. The laws vary from a few sentences to more lengthy provisions. Some guarantee "any right" or "a right" under the State or federal constitution [Tennessee; Louisiana]. Arizona's law is a single sentence: "A court, arbitrator, administrative agency or other adjudicative, mediation or enforcement authority shall not enforce a foreign law if doing so would violate a right guaranteed by the Constitution of this State or of the United States or conflict with the laws of the United States or this State. South Dakota's is shorter: "No court, administrative agency, or other governmental agency may enforce any provisions of any religious code." Laws such as South Dakota's are principally restatements of the constitutional ban against the establishment of a religion by a state, and don't have the reach of the other application of foreign law statutes