COMMITTEE REPORT

May 6, 2015

**H. 3521**

Introduced by Reps. Limehouse, Putnam, Clemmons, Gagnon, Hill, Rivers, Thayer and Yow

S. Printed 5/6/15--H. [SEC 5/7/15 1:45 PM]

Read the first time February 4, 2015.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3521) to amend the Code of Laws of South Carolina, 1976, by adding Section 14‑1‑250 so as to prevent a court or other enforcement authority from enforcing foreign, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting clause and inserting:

/ SECTION 1. The General Assembly finds 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 a right guaranteed by the Constitution of this State or of the United States including, but not limited to, due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the Constitution of this State. 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 rights and privileges granted under the United States or South Carolina Constitution including, but not limited to, due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the Constitution of this State.

SECTION 2. Chapter 1, Title 14 of the 1976 Code is amended by adding:

“Section 14‑1‑250. (A) As used in this section, ‘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, but not limited to, international organizations and tribunals and applied by that jurisdiction’s courts, administrative bodies, or other formal or informal tribunals. For the purposes of this section, foreign law shall not mean, nor shall it include, any laws of the Native American tribes in this State.

(B) Any court, arbitration, tribunal, or administrative agency ruling or decision shall violate the public policy of this State and be void and unenforceable if the court, arbitration, tribunal, or administrative agency bases its rulings or decisions in the matter at issue in whole or in part on any law, legal code, or system that would not grant the parties affected by the ruling or decision the same fundamental liberties, rights, and privileges granted under the United States and South Carolina Constitutions including, but not limited to, due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the Constitution of this State.

(C) A contract or contractual provision, if severable, which provides for the choice of a 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 shall violate the public policy of this State and be void and unenforceable if the law, legal code, or system chosen includes or incorporates any substantive or procedural law, as applied to the dispute at issue, that would not grant the parties the same fundamental liberties, rights, and privileges granted under the United States and South Carolina Constitutions including, but not limited to, due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the Constitution of this State.

(D)(1) A contract or contractual provision, if severable, which provides for a jurisdiction for purposes of granting the courts or arbitration panels *in personam* jurisdiction over the parties to adjudicate any disputes between parties arising from the contract mutually agreed upon shall violate the public policy of this State and be void and unenforceable if the jurisdiction chosen includes any law, legal code, or system, as applied to the dispute at issue, that would not grant the parties the same fundamental liberties, rights, and privileges granted under the United States and South Carolina Constitutions including, but not limited to, due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the Constitution of this State.

(2) If a resident of this State, subject to personal jurisdiction in this State, 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 liberties, rights, and privileges granted under the United States and South Carolina Constitutions of the nonclaimant in the foreign forum with respect to the matter in dispute, then it is the public policy of this State that the claim shall be denied.

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

(F) This section shall not apply to a church, religious corporation, association, or society, with respect to the individuals of a particular religion regarding matters that are purely ecclesiastical including, but not limited to, matters of calling a pastor, excluding members from a church, electing church officers, matters concerning church bylaws, constitution, and doctrinal regulations and the conduct of other routine church business, when:

(1) the jurisdiction of the church would be final; and

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

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

(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 such treaty or international agreement preempts or is superior to state law on the matter at issue.”

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 5. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 14‑1‑250 SO AS TO PREVENT A COURT OR OTHER ENFORCEMENT AUTHORITY FROM ENFORCING FOREIGN LAW INCLUDING, BUT NOT LIMITED TO, SHARIA LAW IN THIS STATE FROM A FORUM OUTSIDE OF THE UNITED STATES OR ITS TERRITORIES UNDER CERTAIN CIRCUMSTANCES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The General Assembly finds that it is necessary to protect the citizens of the State from the application of foreign law, including, but not limited to, Sharia law from a forum outside of the United States or its territories when that application will result in the violation of a constitutionally guaranteed right including, but not limited to, the right to due process, freedom of religion, freedom of speech, freedom of the press, or any right of privacy or marriage as specifically delineated in the constitution of this State or of the United States.

SECTION 2. Chapter 1, Title 14 of the 1976 Code is amended by adding:

“Section 14‑1‑250. (A) As used in this section, the term ‘foreign law’ means any law, rule, or legal code or system established and used or applied in or by another jurisdiction outside of the United States or its territories and includes, but is not limited to, Sharia law.

(B) A court, arbitrator, administrative agency, or other adjudicative, mediation, or enforcement authority may not enforce a foreign law including, but not limited to, Sharia law if it would violate a constitutionally guaranteed right of this State or of the United States. The provisions of this section apply only to actual or foreseeable violations of the constitutional rights of a person caused by the application of the foreign law.

(C) Notwithstanding another provision of law, if any contractual provision or agreement:

(1) provides for the choice of a foreign law to govern its interpretation or the resolution of a dispute between the parties and the enforcement or interpretation of the contractual provision or agreement would result in a violation of the constitutional rights of a person, the contractual provision or agreement must be modified or amended to the extent necessary to preserve the constitutional rights of the parties;

(2) provides for the choice of venue or forum outside of the United States or its territories and the enforcement or interpretation of the contractual provision or agreement applying the choice of venue or forum would result in a violation of the constitutional rights of a person, the contractual provision or agreement must be interpreted to preserve the constitutional rights of the person against whom enforcement is sought. In addition, if a natural person subject to personal jurisdiction in this State seeks to maintain litigation, arbitration, agency, or similarly binding proceedings in this State, and a court of this State finds that granting a claim of forum non conveniens or a related claim violates or would likely lead to the violation of the constitutional rights of a nonclaimant in the foreign forum with respect to the matter in dispute, the claim must be denied;

(3) is incapable of modification or amendment to preserve the constitutional rights of the parties pursuant to the provisions of this section, the offending provision is null and void.”

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 5. This act takes effect upon approval by the Governor.

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