



SPONSOR: Sen. Lawson & Rep. Carson
Sens. Hocker, Richardson, Wilson; Reps. Collins, Postles,
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DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 99

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

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

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

3 Chapter 55. Application of Foreign Law.

4 § 5501 Definitions.

5 As used in this chapter:

6 (1) “Foreign law” means any law, legal code, or system of a jurisdiction outside of any state or territory of the
7 United States, including international organizations and tribunals, and applied by that jurisdiction’s courts,
8 administrative bodies, or other formal or informal tribunals. “Foreign law” does not include any law, legal code, or
9 system of the Native American tribes recognized by statute by this State.

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

12 a. The United States.

13 b. A state, district, commonwealth, territory, or insular possession of the United States.

14 c. A government with regard to which the decision in this State as to whether to recognize a judgment
15 of that government’s courts is initially subject to determination under the Full Faith and Credit Clause of the
16 United States Constitution.

17 (3) “Fundamental constitutional right” means a fundamental right of an individual guaranteed by the United
18 States Constitution or the Delaware Constitution, including due process; freedom of religion, speech, or press; and any
19 right of privacy or marriage.

20 § 5502. Purpose.

21 In recognition that the United States Constitution and the Delaware Constitution constitute the supreme law of this
22 State, the General Assembly hereby declares it to be the public policy of this State to protect its citizens from the

23 application of foreign law that would result in the violation of a fundamental constitutional right. The public policies
24 expressed in this chapter apply only to actual or foreseeable violations of a fundamental constitutional right resulting from
25 the application of the foreign law.

26 § 5503. Non-application of foreign law that would violate fundamental constitutional rights.

27 A court, arbitrator, tribunal, or administrative agency ruling or decision that violates the public policy of this State
28 is void and unenforceable if the court, arbitration, tribunal, or administrative agency bases its ruling or decision in whole or
29 in part on any foreign law that does not grant the parties affected by the ruling or decision the same fundamental
30 constitutional right.

31 §5504. Defense of criminal acts.

32 A foreign law may not be used to defend a criminal act, including any form of domestic violence.

33 § 5505. Interpretation of contracts providing for choice of foreign law.

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

39 (b) If enforcement of any provision in a contract or other agreement for the choice of foreign law will result in a
40 violation of a fundamental constitutional right of 1 or more of the individuals who are parties to the contract or other
41 agreement, the agreement or contract must be modified or amended to the extent necessary to preserve fundamental
42 constitutional rights.

43 § 5506. Interpretation of contracts providing for choice of foreign venue or forum.

44 If the enforcement of a provision in a contract or other agreement providing for a choice of a foreign venue or
45 forum will result in a violation of a fundamental constitutional right of 1 or more individuals who are parties to the contract
46 or other agreement, the provision must be modified or amended to the extent necessary to preserve fundamental
47 constitutional rights.

48 § 5507. Motions to transfer proceedings to a foreign venue or forum.

49 If an individual subject to personal jurisdiction in this State seeks to maintain a litigation proceeding, arbitration
50 proceeding, or other similarly-binding proceeding in this State, and if a court of this State finds that granting a motion by
51 another party to the proceeding to transfer the proceeding to a foreign venue or forum will likely lead to the violation of a

52 fundamental constitutional right of the individual who is the non-movant in the foreign forum with respect to the matter in
53 dispute, the motion must be denied.

54 § 5508. Contracts not capable of modification to preserve fundamental constitutional rights voided.

55 A provision in a contract or other agreement incapable of being modified or amended under this chapter in order to
56 preserve the fundamental constitutional rights of the individuals who are parties to the contract or agreement is void.

57 § 5509. Foreign contracts; exclusions.

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

61 § 5510. Religious matters; exclusions.

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

66 (1) The jurisdiction of the church will be final.

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

69 (b) This exemption does not authorize an otherwise unlawful act under the guise of First Amendment protection.

70 § 5511. Federal treaties and international agreements.

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

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 over 2 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