

H. B. 3220

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(By Delegates C. Miller, Sobonya and Sumner)
[Introduced February 21, 2011; referred to the
Committee on the Judiciary.]

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §2-1-3, relating to
12 the preservation of rights guaranteed by the West Virginia
13 Constitution and the United States Constitution when deciding
14 the comity of a legal decision in a foreign country, the
15 choice of law used for contractual interpretations and choice
16 of forum; exempting businesses; making legislative findings;
17 stating public policy; defining a term; and providing a
18 severability provision.

19 *Be it enacted by the Legislature of West Virginia:*

20 That the Code of West Virginia, 1931, as amended, be amended
21 by adding thereto a new section, designated §2-1-3, to read as
22 follows:

23 **ARTICLE 1. COMMON LAW.**

24 **§2-1-3. Choice of Law.**

25 (a) The Legislature finds that:

26 (1) It fully recognizes the right of its citizens to contract

1 freely under the laws of this state;

2 (2) It also recognizes that this right may be reasonably and
3 rationaly circumscribed pursuant to the state's interest to
4 protect and promote rights and privileges granted to its citizens
5 under the Constitutions of the United States or the State of West
6 Virginia.

7 (b) As used in this section, "foreign law, legal code or
8 system" means any law, legal code, or system of a jurisdiction
9 outside of any state or territory of the United States, including,
10 but not limited to, international organizations and tribunals, and
11 applied by that jurisdiction's courts, administrative bodies, or
12 other formal or informal tribunals.

13 (c) It is the public policy of this state that the primary
14 factor which a court, administrative agency, arbitrator, mediator
15 or other entity or person acting under the authority of state law
16 shall consider in granting comity to a decision rendered under any
17 foreign law, legal code or system against a natural person in this
18 state is whether the decision rendered either violated or would
19 violate any right of the natural person in this state guaranteed by
20 the Constitution of the State of West Virginia or the United States
21 Constitution or any statute or decision under those Constitutions.

22 (d) If any contract, arbitration agreement or other agreement
23 provides for the choice of a foreign law, legal code or system to
24 govern its interpretation or the resolution of any claim or dispute
25 and if the enforcement or interpretation of the contract,
26 arbitration agreement or other agreement applying that choice of

1 law provision either resulted or would result in a violation of any
2 right guaranteed by the Constitution of the State of West Virginia
3 or the United States Constitution, then it is the public policy of
4 this state that the primary factor in interpretation, enforcement
5 or application of the contract, arbitration agreement or other
6 agreement shall be preservation of the Constitutional rights of the
7 natural person in this state against whom enforcement is sought,
8 unless otherwise directed by state statute. *Provided*, That nothing
9 in this section shall be interpreted to limit the right of a
10 natural person of this state to voluntarily restrict or limit their
11 own Constitutional rights by contract or specific waiver consistent
12 with Constitutional principles; however, the language of any such
13 contract or other waiver shall be strictly construed in favor of
14 preserving the Constitutional rights of the natural person in this
15 state.

16 (e) If any contract, arbitration agreement or other agreement
17 provides for the choice of venue or forum outside any state or
18 territory of the United States and if the enforcement or
19 interpretation of the contract, arbitration agreement or other
20 agreement applying that choice of venue or forum provision either
21 resulted or would result in a violation of any right of a natural
22 person in this state guaranteed by the Constitution of the State of
23 West Virginia or the United States Constitution, then it is the
24 public policy of this state that, in interpreting or construing the
25 contract or arbitration agreement or other agreement, the primary
26 factor to be considered is whether it can be interpreted or

1 construed to preserve the Constitutional rights of the natural
2 person in this state against whom enforcement is sought. If a
3 natural person of this state, subject to personal jurisdiction in
4 this state, seeks to maintain litigation, arbitration, agency or
5 similarly binding proceedings in this state and if the courts of
6 this state find that granting a claim of forum nonconveniens or a
7 related claim violates or would likely violate the Constitutional
8 rights of the nonclaimant in the foreign forum with respect to the
9 matter in dispute, then it is the public policy of this state that
10 the claim shall be denied.

11 (f) Without prejudice to any other legal right, this section
12 does not apply to a corporation, partnership or other form of
13 business association.

14 (g) The public policies expressed in this section apply only
15 to actual or foreseeable violations of the Constitutional rights of
16 a natural person in this state from a foreign law, legal code or
17 system.

18 (h) If any provision of this section or the application
19 thereof to any person or circumstance is held invalid, such
20 invalidity shall not affect other provisions or applications of the
21 section which can be given effect without the invalid provision or
22 application, and to that end the provisions of this section are
23 declared to be severable.

NOTE: The purpose of this bill is to preserve the rights of individuals guaranteed by the West Virginia Constitution and the

United States Constitution when deciding the comity of a legal decision in a foreign country, the choice of law used for contractual interpretations and choice of forum. The bill exempts businesses. The bill also makes legislative findings, states public policy, defines a term and provides a severability provision.

This section is new; therefore, it has been completely underscored.