

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2029 Session of
2011

INTRODUCED BY SWANGER, METCALFE, PERRY, BAKER, BENNINGHOFF,
CLYMER, COX, CREIGHTON, CUTLER, DENLINGER, DUNBAR, J. EVANS,
GABLER, GEIST, GINGRICH, GROVE, HELM, HENNESSEY, KAUFFMAN,
F. KELLER, KNOWLES, MAHER, METZGAR, MILLARD, MILLER, MOUL,
MURT, MUSTIO, OBERLANDER, PEIFER, PYLE, RAPP, ROAE, SACCONE,
SAYLOR, SCHRODER, STERN, TALLMAN, TOEPEL, TOOHL, TRUITT,
VEREB AND YOUNGBLOOD, NOVEMBER 18, 2011

REFERRED TO COMMITTEE ON JUDICIARY, NOVEMBER 18, 2011

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, prohibiting the
3 application of foreign law which would impair constitutional
4 rights.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Section 102 of Title 42 of the Pennsylvania
8 Consolidated Statutes is amended by adding a definition to read:
9 § 102. Definitions.

10 Subject to additional definitions contained in subsequent
11 provisions of this title which are applicable to specific
12 provisions of this title, the following words and phrases when
13 used in this title shall have, unless the context clearly
14 indicates otherwise, the meanings given to them in this section:

15 * * *

16 "Foreign legal code or system." A legal code or system of a

1 jurisdiction outside of the United States, including an
2 international organization or tribunal, which is applied by that
3 jurisdiction in a judicial proceeding or an administrative
4 proceeding.

5 * * *

6 Section 2. Section 5322(e) of Title 42 is amended to read:
7 § 5322. Bases of personal jurisdiction over persons outside
8 this Commonwealth.

9 * * *

10 (e) Inconvenient forum.--[When]

11 (1) Except as set forth in paragraph (2), when a
12 tribunal finds that in the interest of substantial justice
13 the matter should be heard in another forum, the tribunal may
14 stay or dismiss the matter in whole or in part on any
15 conditions that may be just.

16 (2) Relief under paragraph (1) shall not be granted if
17 the tribunal finds that granting relief has the potential to
18 violate a fundamental liberty, right or privilege granted
19 under the United States Constitution and the Constitution of
20 Pennsylvania. The exception under this paragraph does not
21 apply to any corporation, partnership, limited liability
22 company, business association or other legal entity that
23 contracts to subject itself to foreign legal code or system.

24 Section 3. Section 5327(c) of Title 42 is amended and the
25 section is amended by adding a subsection to read:

26 § 5327. Determination of foreign law.

27 * * *

28 (b.1) Prohibitions.--

29 (1) Except as set forth in paragraph (2), all of the
30 following apply:

1 (i) A tribunal shall not consider a foreign legal
2 code or system which does not grant the parties affected
3 by the ruling or decision the same fundamental liberties,
4 rights and privileges granted under the United States
5 Constitution and the Constitution of Pennsylvania. This
6 subparagraph includes due process, freedom of religion,
7 freedom of speech, freedom of press and a right of
8 privacy or marriage as specifically defined by the
9 Constitution of Pennsylvania.

10 (ii) A contract which provides for the choice of a
11 foreign legal code or system to govern a dispute which
12 arises out of the contract violates the public policy of
13 the Commonwealth and shall be void and unenforceable if
14 the foreign legal code or system chosen includes or
15 incorporates substantive or procedural law, as applied to
16 the dispute at issue, which would not grant the parties
17 the same fundamental liberties, rights and privileges
18 granted under the United States Constitution and the
19 Pennsylvania Constitution. This subparagraph includes due
20 process, freedom of religion, freedom of speech, freedom
21 of press and a right of privacy or marriage as
22 specifically defined by the Constitution of Pennsylvania.

23 (iii) A contract which confers upon a tribunal or
24 arbitrator in personam jurisdiction over a party to
25 adjudicate a dispute arising out of the contract violates
26 the public policy of the Commonwealth and be void and
27 unenforceable if the jurisdiction chosen includes or
28 incorporates substantive or procedural law, as applied to
29 the dispute at issue, which would not grant the parties
30 the same fundamental liberties, rights and privileges

1 granted under the United States Constitution and the
2 Pennsylvania Constitution. This subparagraph includes due
3 process, freedom of religion, freedom of speech, freedom
4 of press and a right of privacy or marriage as
5 specifically defined by the Constitution of Pennsylvania.

6 (iv) It is the public policy of the Commonwealth to
7 deny a claim to maintain an action in this Commonwealth
8 by a resident of this Commonwealth subject to personal
9 jurisdiction in this Commonwealth.

10 (2) Paragraph (1) does not apply to any corporation,
11 partnership, limited liability company, business association
12 or other legal entity that contracts to subject itself to
13 foreign legal code or system.

14 (3) No tribunal or arbitrator shall interpret the
15 provisions of paragraph (1) to do any of the following:

16 (i) Limit the right of a person to the free exercise
17 of religion as guaranteed by the First Amendment to the
18 United States Constitution and by sections 3 and 4 of
19 Article I of the Constitution of Pennsylvania.

20 (ii) Require a tribunal or arbitrator to adjudicate
21 an ecclesiastical matter if adjudication would violate
22 the establishment clause of the First Amendment of the
23 United States or section 3 or 4 of Article I of the
24 Constitution of Pennsylvania. This subparagraph includes:

25 (A) selection and sanction of any officer,
26 official or clergy member of a religious
27 organization; and

28 (B) determination or interpretation of the
29 doctrine of the religious organization.

30 (iii) Prohibit a religious organization from

1 adjudicating an ecclesiastical matter if adjudication
2 would violate the establishment clause of the First
3 Amendment of the United States or section 3 or 4 of
4 Article I of the Constitution of Pennsylvania. This
5 subparagraph includes:

6 (A) selection and sanction of any officer,
7 official or clergy member of a religious
8 organization; and

9 (B) determination or interpretation of the
10 doctrine of the religious organization.

11 (iv) Conflict with a Federal treaty or other
12 international agreement to which the United States is a
13 party to the extent that the treaty or international
14 agreement preempts or is superior to State law on the
15 matter at issue.

16 (c) Court decision and review.--The court, not jury, shall
17 determine the law of any governmental unit outside this
18 Commonwealth and whether that law violates subsection (b.1)(1).
19 The determination of the tribunal is subject to review on appeal
20 as a ruling on a question of law.

21 Section 4. This act shall apply to actions initiated on or
22 after the effective date of this section.

23 Section 5. This act shall take effect in 60 days.