

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 330

H.P. 224

House of Representatives, February 10, 2015

An Act To Protect Rights and Privileges Granted under the United States Constitution and the Constitution of Maine

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative McCLELLAN of Raymond.

Cosponsored by Representatives: BICKFORD of Auburn, DUNPHY of Embden, HARLOW of Portland, HAWKE of Boothbay Harbor, NADEAU of Winslow, O'CONNOR of Berwick, PETERSON of Rumford, SHORT of Pittsfield.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 14 MRSA c. 14** is enacted to read:

3 **CHAPTER 14**

4 **APPLICATION OF FOREIGN LAW**

5 **§351. Findings**

6 While the Legislature fully recognizes the right to contract freely under the laws of
7 this State, it also recognizes that this right may be reasonably and rationally
8 circumscribed pursuant to the State's interest to protect and promote rights and privileges
9 granted under the United States Constitution and the Constitution of Maine.

10 **§352. Foreign law, legal code or legal system defined**

11 As used in this chapter, "foreign law, legal code or legal system" means any law,
12 legal code or legal system of a jurisdiction outside of any state or territory of the United
13 States, including, but not limited to, international organizations and tribunals, that is
14 applied by that jurisdiction's courts, administrative bodies or other formal or informal
15 tribunals.

16 **§353. Comity to foreign decision**

17 The primary factor that a court, administrative agency, arbitrator, mediator or other
18 entity or person acting under the authority of state law must consider in granting comity
19 to a decision rendered under a foreign law, legal code or legal system against a natural
20 person in this State is whether the decision rendered either violated or would violate any
21 right of the natural person in this State guaranteed by the Constitution of Maine or the
22 United States Constitution or any statute or decision under those constitutions.

23 **§354. Choice of law**

24 **1. Preservation of constitutional rights.** If a contract, arbitration agreement or
25 other agreement provides for the choice of a foreign law, legal code or legal system to
26 govern its interpretation or the resolution of any claim or dispute and if the enforcement
27 or interpretation of the contract, arbitration agreement or other agreement applying that
28 choice of law provision either resulted or would result in a violation of any right
29 guaranteed by the Constitution of Maine or the United States Constitution, the primary
30 factor in interpretation, enforcement or application of the contract, arbitration agreement
31 or other agreement is preservation of the constitutional rights of the natural person in this
32 State against whom enforcement is sought, unless otherwise directed by state law.

33 **2. Voluntary restriction or limitation.** This chapter may not be interpreted to limit
34 the right of a natural person of this State to voluntarily restrict or limit that person's own
35 constitutional rights by contract or specific waiver consistent with constitutional
36 principles; however, the language of any such contract or other waiver must be strictly
37 construed in favor of preserving the constitutional rights of the natural person in this
38 State.

1 **§355. Choice of venue or forum**

2 **1. Preservation of constitutional rights.** If any contract, arbitration agreement or
3 other agreement provides for the choice of venue or forum outside any state or territory of
4 the United States and if the enforcement or interpretation of the contract, arbitration
5 agreement or other agreement applying that choice of venue or forum provision either
6 resulted or would result in a violation of any right of a natural person in this State
7 guaranteed by the Constitution of Maine or the United States Constitution, in interpreting
8 or construing the contract or arbitration agreement or other agreement, the primary factor
9 to be considered is whether the contract, arbitration agreement or other agreement can be
10 interpreted or construed to preserve the constitutional rights of the natural person in this
11 State against whom enforcement is sought.

12 **2. Denial of claim.** If a natural person of this State, subject to personal jurisdiction
13 in this State, seeks to maintain litigation, arbitration, agency or similarly binding
14 proceedings in this State and if the courts of this State find that granting a claim of forum
15 non conveniens or a related claim violates or would likely violate the constitutional rights
16 of the nonclaimant in the foreign forum with respect to the matter in dispute, the claim
17 must be denied.

18 **§356. Application**

19 **1. Corporation, partnership or other business entity.** This chapter does not apply
20 to a corporation, partnership, limited liability corporation, professional corporation or any
21 other legal business entity recognized under the laws of the State.

22 **2. Actual or foreseeable violations.** This chapter applies only to actual or to
23 foreseeable violations of constitutional rights of a natural person in this State from a
24 foreign law, legal code or legal system.

25 **SUMMARY**

26 This bill is based on Tennessee Public Acts, 2010, Public Chapter Number 983. The
27 bill addresses the application of foreign law in this State.

28 The bill provides that the factor in considering whether to grant comity to a decision
29 rendered under any foreign law, legal code or legal system against a natural person in this
30 State is whether the constitutional rights under the United States Constitution and the
31 Constitution of Maine of the person would be protected. Similarly, if a contract or other
32 agreement provides for the choice of a foreign law, legal code or legal system, the
33 primary factor in the interpretation, enforcement or application of the agreement is the
34 preservation of the constitutional rights of the natural person in this State. The right of a
35 natural person to voluntarily restrict or limit that person's own constitutional rights
36 consistent with constitutional principles is not limited by the bill; however, a contract or
37 specific waiver restricting or limiting rights must be strictly construed in favor of
38 preserving the constitutional rights of the natural person.

39 The bill provides that the primary factor to be considered in interpreting or construing
40 a choice of venue or forum provision is whether it can be interpreted or construed to

1 preserve the constitutional rights of the natural person in this State against whom
2 enforcement is sought. A claim for forum non conveniens or a related claim must be
3 denied if the court determines that granting the claim violates or would likely violate the
4 constitutional rights of the nonclaimant in the foreign forum with respect to the matter in
5 dispute.

6 The bill does not apply to a corporation, partnership or other legal business entity.

7 The bill applies only to actual or to foreseeable violations of the constitutional rights
8 of a natural person in this State from a foreign law, legal code or legal system.