

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 903

H.P. 631

House of Representatives, March 7, 2017

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 SAMPSON of Alfred.
Cosponsored by Senator WOODSOME of York and
Representatives: CHACE of Durham, FOLEY of Wells, GERRISH of Lebanon, LOCKMAN
of Amherst, PRESCOTT of Waterboro, SUTTON of Warren, TUELL of East Machias,
TURNER of Burlington.

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

2 **Sec. 1. 14 MRSA c. 15** is enacted to read:

3 **CHAPTER 15**

4 **APPLICATION OF FOREIGN LAW**

5 **§351. Findings**

6 The Legislature finds that it is the public policy of this State to protect its citizens
7 from the application of foreign laws when the application of a foreign law will result in
8 the violation of one of the following fundamental liberties, rights and privileges
9 guaranteed by the United States Constitution or the Constitution of Maine: due process,
10 equal protection, freedom of religion, freedom of speech, freedom of the press and the
11 right to keep and bear arms; and any right of privacy or marriage as specifically defined
12 by the Constitution of Maine.

13 The Legislature fully recognizes the right to contract freely under the laws of this
14 State and also recognizes that this right may be reasonably and rationally circumscribed
15 pursuant to the State's interest to protect and promote these fundamental liberties, rights
16 and privileges granted under the United States Constitution and the Constitution of
17 Maine: due process, equal protection, freedom of religion, freedom of speech, freedom of
18 the press and the right to keep and bear arms; and any right of privacy or marriage as
19 specifically defined by the Constitution of Maine.

20 **§352. Definitions**

21 As used in this chapter, unless the context otherwise indicates, the following terms
22 have the following meanings.

23 **1. Court.** "Court" means a court, board, administrative agency or other adjudicative
24 or enforcement authority of this State.

25 **2. Foreign law, legal code or legal system.** "Foreign law, legal code or legal
26 system" means a law, legal code or legal system of a jurisdiction outside of any state or
27 territory of the United States, including, but not limited to, international organizations and
28 tribunals, applied by that jurisdiction's courts, administrative bodies or other formal or
29 informal tribunals. For the purposes of this chapter, "foreign law, legal code or legal
30 system" does not mean or include any laws of the federally recognized Indian tribes in
31 this State.

32 **3. Religious organization.** "Religious organization" means a church, seminary,
33 synagogue, temple, mosque, religious order or religious corporation, association or
34 society, whose identity is distinctive in terms of common religious creed, beliefs,
35 doctrines, practices or rituals, of any faith or denomination, including any organization
36 qualifying as a church or religious organization under the United States Internal Revenue
37 Code of 1986, Section 501(c)(3) or 501(d).

1 **§353. Rulings and decisions based on foreign law void and unenforceable**

2 A court, arbitration panel, tribunal or administrative agency ruling or decision
3 violates the public policy of this State and is void and unenforceable if the court,
4 arbitration panel, tribunal or administrative agency bases its ruling or decision in the
5 matter at issue in whole or in part on any foreign law, legal code or legal system that
6 would not grant the parties affected by the ruling or decision one or more of the following
7 fundamental liberties, rights and privileges granted under the United States Constitution
8 or the Constitution of Maine: due process, equal protection, freedom of religion, freedom
9 of speech, freedom of the press and the right to keep and bear arms; and any right of
10 privacy or marriage as specifically defined by the Constitution of Maine.

11 **§354. Contract and contract provisions**

12 **1. Choice of law.** A contract or severable contractual provision that provides for the
13 choice of a foreign law, legal code or legal system to govern some or all of the disputes
14 between the parties adjudicated by a court of law or by an arbitration panel arising from
15 the contract mutually agreed upon violates the public policy of this State and is void and
16 unenforceable if the foreign law, legal code or legal system chosen includes or
17 incorporates any substantive or procedural law, as applied to the dispute at issue, that
18 would not grant the parties one or more of the following fundamental liberties, rights and
19 privileges granted under the United States Constitution or the Constitution of Maine: due
20 process, equal protection, freedom of religion, freedom of speech, freedom of the press
21 and the right to keep and bear arms; and any right of privacy or marriage as specifically
22 defined by the Constitution of Maine.

23 **2. Choice of jurisdiction for personal jurisdiction.** A contract or severable
24 contractual provision that provides for a jurisdiction for purposes of granting the courts or
25 arbitration panels personal jurisdiction over the parties to adjudicate any disputes between
26 parties arising from the contract mutually agreed upon violates the public policy of this
27 State and is void and unenforceable if the jurisdiction chosen includes any foreign law,
28 legal code or legal system, as applied to the dispute at issue, that would not grant the
29 parties one or more of the following fundamental liberties, rights and privileges granted
30 under the United States Constitution or the Constitution of Maine: due process, equal
31 protection, freedom of religion, freedom of speech, freedom of the press and the right to
32 keep and bear arms; and any right of privacy or marriage as specifically defined by the
33 Constitution of Maine.

34 **§355. Denial of claim**

35 If a resident of this State, subject to personal jurisdiction in this State, seeks to
36 maintain litigation, arbitration, agency or similarly binding proceedings in this State and
37 the courts of this State find that granting a claim of forum non conveniens or a related
38 claim violates or would likely violate the fundamental liberties, rights and privileges
39 granted under the United States Constitution or the Constitution of Maine of the
40 nonclaimant in the foreign forum with respect to the matter in dispute, it is the public
41 policy of this State that the claim be denied.

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§356. Application

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

§357. Free exercise of religion, establishment of religion

A court or arbitrator may not interpret this chapter to limit the right of any person to the free exercise of religion as guaranteed by the First Amendment to the United States Constitution and by the Constitution of Maine. A court may not interpret this chapter to require or authorize any court to adjudicate or prohibit any religious organization from adjudicating ecclesiastical matters, including, but not limited to, the election, appointment, calling, discipline, dismissal, removal or excommunication of a member, officer, official, priest, nun, monk, pastor, rabbi, imam or other member of the clergy of the religious organization or determination or interpretation of the doctrine of the religious organization, where adjudication by a court would violate the prohibition of the establishment clause of the First Amendment of the United States Constitution or violate the Constitution of Maine.

§358. Treaties and international agreements

This chapter may 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 the treaty or international agreement preempts or is superior to the law of this State on the matter at issue.

SUMMARY

This bill addresses the application of foreign law in this State with the goal of protecting American citizens' constitutional rights when foreign laws and foreign legal doctrines are applied in judicial and administrative tribunals. The bill provides that:

1. A court or administrative ruling violates the public policy of this State and is void and unenforceable if it is based in whole or in part on a foreign law, legal code or legal system that would not grant the same liberties, rights and privileges as are granted under the United States Constitution and the Constitution of Maine;
2. A contract's choice of law provision that chooses such a foreign law, legal code or legal system to govern aspects of the contract is void and unenforceable if the foreign law, legal code or legal system does not protect the same liberties, rights and privileges as are protected under the United States Constitution and the Constitution of Maine;
3. A contract's choice of personal jurisdiction provision that provides jurisdiction over the parties that applies a foreign law, legal code or legal system to govern aspects of the contract is void and unenforceable if the foreign law, legal code or legal system does not protect the same liberties, rights and privileges as are protected under the United States Constitution and the Constitution of Maine; and

1 4. The court must deny a claim of forum non conveniens or related claim if granting
2 the claim would subject the nonclaimant to a foreign forum that applies a foreign law,
3 legal code or legal system that does not protect the same liberties, rights and privileges as
4 are protected under the United States Constitution and the Constitution of Maine.

5 The bill provides that these provisions do not apply to a corporation, partnership,
6 limited liability company, business association or legal entity that contracts to subject
7 itself to a foreign law, legal code or legal system in a jurisdiction other than this State or
8 the United States and do not limit the free exercise of religion or require or authorize a
9 court to adjudicate issues within a religious organization that would violate the First
10 Amendment's establishment clause.

11 The bill also provides that these provisions may not be interpreted to conflict with
12 any relevant treaty or international agreement.