

SENATE BILL NO. 97

INTRODUCED BY K. REGIER

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A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE PRIMACY OF MONTANA LAW BY PROHIBITING THE APPLICATION OF FOREIGN LAW WHEN IT VIOLATES A FUNDAMENTAL RIGHT GUARANTEED BY THE MONTANA OR UNITED STATES CONSTITUTION; PROVIDING EXCEPTIONS; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Legislative findings.** The legislature finds the following:

(1) It is the public policy of this state to protect its citizens from the application of foreign law when the application of foreign law will violate a right guaranteed by the Montana constitution or the United States constitution, including but not limited to due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the constitution and the laws of this state.

(2) The legislature recognizes the right to contract freely under the laws of this state and also recognizes that this right may be reasonably and rationally circumscribed pursuant to the state's interest in protecting and promoting rights and privileges granted under the Montana constitution or the United States constitution, including but not limited to due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the constitution and the laws of this state.

NEW SECTION. **Section 2. Definitions.** As used in this part, the following definitions apply:

(1) "Court" means any court, board, administrative agency, or other adjudicative or enforcement authority of this state.

(2) "Foreign law", "legal code", or "system" means any law, legal code, or system of a jurisdiction outside of any state or territory of the United States, including but not limited to international organizations and tribunals and applied by that jurisdiction's courts, administrative bodies, or other formal or informal tribunals. For the purposes of this part, "foreign law" does not mean any laws of the Indian tribes in this state or treaties with the Indian tribes, international treaties, or executive orders or agreements.

(3) "Religious organization" means any church, seminary, synagogue, temple, mosque, religious order,



1 religious corporation, association, or society whose identity is distinctive in terms of common religious creed,  
2 beliefs, doctrines, practices, or rituals, of any faith or denomination, including any organization qualifying as a  
3 church or religious organization under section 501(c)(3) or 501(d) of the Internal Revenue Code.

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5 **NEW SECTION. Section 3. Foreign law prohibited.** (1) A court, arbitration, tribunal, or administrative  
6 agency ruling or decision violates the public policy of Montana and is void and unenforceable if the court,  
7 arbitration, tribunal, or administrative agency bases its ruling or decision on a law, legal code, or system that  
8 would not grant the parties affected by the ruling or decision the fundamental liberties, rights, and privileges  
9 granted under the Montana constitution or the United States constitution, including but not limited to due process,  
10 equal protection, freedom of religion, speech, or press, the right to keep and bear arms, and any right of privacy  
11 or marriage.

12 (2) A contract or contractual provision, if severable, that provides for the choice of a law, legal code, or  
13 system to govern some or all of the disputes between the parties adjudicated by a court of law or by an arbitration  
14 panel arising from the contract violates the public policy of this state and is void and unenforceable if the law, legal  
15 code, or system chosen includes or incorporates a substantive or procedural law that would not grant the parties  
16 the fundamental liberties, rights, and privileges granted under the Montana constitution or the United States  
17 constitution, including but not limited to due process, equal protection, freedom of religion, speech, or press, the  
18 right to keep and bear arms, and any right of privacy or marriage.

19 (a) A contract or contractual provision, if severable, that provides for a chosen jurisdiction for purposes  
20 of granting the courts or arbitration panels personal jurisdiction over the parties to adjudicate any disputes  
21 between parties arising from the contract violates the public policy of Montana and is void and unenforceable if  
22 the jurisdiction chosen includes any law, legal code, or system that when applied to the dispute at issue would  
23 not grant the parties the fundamental liberties, rights, and privileges granted under the Montana constitution or  
24 the United States constitution, including but not limited to due process, equal protection, freedom of religion,  
25 speech, or press, the right to keep and bear arms, and any right of privacy or marriage.

26 (b) If a resident of this state who is subject to personal jurisdiction in this state seeks to maintain litigation,  
27 arbitration, agency, or similarly binding proceedings in this state and if the courts of this state find that granting  
28 a claim of forum non conveniens or a related claim violates or would likely violate the fundamental liberties, rights,  
29 and privileges granted under the United States and Montana constitutions of the nonclaimant in the foreign forum,  
30 then it is the public policy of this state that the claim should be denied.

1 (3) Without prejudice to any legal right, this act does not apply to a person, corporation, partnership,  
2 limited liability company, business association, or other legal entity that contracts to subject itself to foreign law  
3 in a jurisdiction other than this state or the United States.  
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5 **NEW SECTION. Section 4. Exceptions -- freedom of religion -- conflict with federal treaty.** (1) No  
6 court or arbitrator may interpret [sections 1 through 4] to limit the right of any person to the free exercise of religion  
7 as guaranteed by the first amendment to the United States constitution and by the Montana constitution. No court  
8 may interpret [sections 1 through 4] to require or authorize any court to adjudicate, or prohibit any religious  
9 organization from adjudicating, ecclesiastical matters, including but not limited to the election, appointment,  
10 calling, discipline, dismissal, removal, or excommunication of a member, officer, official, priest, nun, monk, pastor,  
11 rabbi, imam, or member of the clergy of the religious organization, or the determination or interpretation of the  
12 doctrine of the religious organization, whenever adjudication by a court would violate the prohibition of the  
13 establishment clause of the first amendment to the United States constitution or violate the Montana constitution.

14 (2) [Sections 1 through 4] may not be interpreted by a court to conflict with any federal treaty, executive  
15 order, or other international agreement to which the United States or the state of Montana is a party.  
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17 **NEW SECTION. Section 5. Codification instruction.** [Sections 1 through 4] are intended to be codified  
18 as an integral part of Title 2, chapter 1, and the provisions of Title 2, chapter 1, apply to [sections 1 through 4].  
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20 **NEW SECTION. Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable  
21 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
22 remains in effect in all valid applications that are severable from the invalid applications.  
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24 **NEW SECTION. Section 7. Applicability.** [This act] applies to contracts signed on or after [the effective  
25 date of this act].  
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