

125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1076

H.P. 811

House of Representatives, March 15, 2011

An Act To Protect Maine Laws under the United States Constitution and the Constitution of Maine

Reference to the Committee on Judiciary suggested and ordered printed.

Heath & Print

HEATHER J.R. PRIEST Clerk

Presented by Representative WATERHOUSE of Bridgton. Cosponsored by Representatives: CEBRA of Naples, O'CONNOR of Berwick, SARTY of Denmark, SIROCKI of Scarborough, Senators: HASTINGS of Oxford, PLOWMAN of Penobscot.

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	<u>§351. Findings</u>
6 7 8 9	While the Legislature fully recognizes the right to contract freely under the laws of this State, it also recognizes that this right may be reasonably and rationally circumscribed pursuant to the State's interest to protect and promote rights and privileges granted under the United States Constitution and the Constitution of Maine.
10	§352. Foreign law, legal code or system defined
11 12 13 14	As used in this chapter, "foreign law, legal code or system" means any law, legal code or legal system of a jurisdiction outside of any state or territory of the United States, including, but not limited to, international organizations and tribunals, that is applied by that jurisdiction's courts, administrative bodies or other formal or informal tribunals.
15	§353. Comity to foreign decision
16 17 18 19 20 21	The primary factor that a court, administrative agency, arbitrator, mediator or other entity or person acting under the authority of state law must consider in granting comity to a decision rendered under a foreign law, legal code or legal system against a natural person in this State is whether the decision rendered either violated or would violate any right of the natural person in this State guaranteed by the Constitution of Maine or the United States Constitution or any statute or decision under those constitutions.
22	<u>§354. Choice of law</u>
23 24 25 26 27 28 29 30 31	1. Preservation of constitutional rights. If a contract, arbitration agreement or other agreement provides for the choice of a foreign law, legal code or legal system to govern its interpretation or the resolution of any claim or dispute and if the enforcement or interpretation of the contract, arbitration agreement or other agreement applying that choice of law provision either resulted or would result in a violation of any right guaranteed by the Constitution of Maine or the United States Constitution, the primary factor in interpretation, enforcement or application of the contract, arbitration agreement or other agreement is preservation of the constitutional rights of the natural person in this State against whom enforcement is sought, unless otherwise directed by state law.
32 33 34 35 36 37	2. Voluntary restriction or limitation. This chapter may not be interpreted to limit the right of a natural person of this State to voluntarily restrict or limit that person's own constitutional rights by contract or specific waiver consistent with constitutional principles; however, the language of any such contract or other waiver must be strictly construed in favor of preserving the constitutional rights of the natural person in this 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 resulted or would result in a violation of any right of a natural person in this State 6 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 State against whom enforcement is sought. 11

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

18 **§356.** Application

- 19 <u>1. Corporation, partnership or other business entity.</u> 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.
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SUMMARY

This bill is based on Tennessee Public Acts, 2010, Public Chapter Number 983. The
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 agreement provides for the choice of a foreign law, legal code or legal system, the 32 primary factor in the interpretation, enforcement or application of the agreement is the 33 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 consistent with constitutional principles is not limited by the bill; however, a contract or 36 37 specific waiver restricting or limiting rights must be strictly construed in favor of 38 preserving the constitutional rights of the natural person.

The bill provides that the primary factor to be considered in interpreting or construing 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.