

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

934T0607

SENATE BILL NO. 136

Introduced by: Senator Lederman and Representatives Miller and Russell

1 FOR AN ACT ENTITLED, An Act to regulate the application of foreign laws, legal codes, and
2 systems within the jurisdiction of the State of South Dakota.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The Legislature declares that it is the public policy of this state to protect its
5 citizens from the application of foreign laws, legal codes, and systems if the application of a
6 foreign law, legal code, or system will result in the violation of a right guaranteed by the
7 constitution of this state or of the United States, including due process of law, the freedom of
8 religion, speech, or press, or any right of privacy or marriage as specifically provided by the
9 constitution of this state. The Legislature fully recognizes the right to contract freely under the
10 laws of this state and also recognizes that this right may be reasonably and rationally
11 circumscribed pursuant to the state's interest to protect and promote rights and privileges granted
12 under the constitutions of the United States or South Dakota, including due process of law, the
13 freedom of religion, speech, or press, and any right of privacy or marriage as specifically
14 provided by the constitution of this state.

15 Section 2. For the purposes of this Act, a foreign law, legal code, or system is any foreign



1 law, legal code, or system of a jurisdiction outside of any state or territory of the United States,
2 including international organizations and tribunals, and applied by that jurisdiction's courts,
3 administrative bodies, or other formal or informal tribunals. For the purposes of this Act, the
4 term, foreign law, does not include any tribal laws of the Native American tribes in this state.

5 Section 3. For the purposes of this Act, a court is any court, arbitrator, administrative
6 agency, or other adjudicative mediation or enforcement authority of this state.

7 Section 4. For the purposes of this Act, a religious organization is any church, seminary,
8 synagogue, temple, mosque, religious order, religious corporation, association, or society, whose
9 identity is distinctive in terms of common religious creed, beliefs, doctrines, practices, or rituals,
10 of any faith or denomination, including any organization qualifying as a church or religious
11 organization under section 501(c)(3) or 501(d) of the United States Internal Revenue Code.

12 Section 5. No court ruling or decision may violate the public policy of this state set forth in
13 section 1 of this Act. Any ruling or decision that does so is void and unenforceable if the court
14 bases its ruling or decision in the matter at issue in whole or in part on any foreign law, legal
15 code, or system that would not grant the parties affected by the ruling or decision the same
16 fundamental liberties, rights, and privileges granted under the constitutions of the United States
17 and South Dakota, including due process of law, freedom of religion, speech, or press, and any
18 right of privacy or marriage as specifically provided by the constitution of this state.

19 Section 6. No contract or contractual provision, if capable of segregation, which provides
20 for the choice of a foreign law, legal code, or system to govern some or all of the disputes
21 between the parties adjudicated by a court arising from the contract mutually agreed upon may
22 violate the public policy of this state set forth in section 1 of this Act. Any contract or
23 contractual provision that does so is void and unenforceable if the foreign law, legal code, or
24 system chosen includes or incorporates any substantive or procedure law, as applied to the

1 dispute at issue, that would not grant the parties the same fundamental liberties, rights, and
2 privileges granted under the constitutions of the United States and South Dakota, including due
3 process of law, the freedom of religion, speech, or press, and any right of privacy of marriage
4 as provided by the constitution of this state.

5 Section 7. No contract or contractual provision, if capable of segregation, which provides
6 for a jurisdiction for purposes of granting the courts or arbitration panels *in personam*
7 jurisdiction over the parties to adjudicate any disputes between parties arising from the contract
8 mutually agreed upon may violate the public policy of this state set forth in section 1 of this Act.
9 Any contract or contractual provision that does so is void and unenforceable if the jurisdiction
10 chosen includes any foreign law, legal code, or system, as applied to the dispute at issue, that
11 would not grant the parties the same fundamental liberties, rights, and privileges granted under
12 the constitutions of the United States and South Dakota, including due process of law, the
13 freedom of religion, speech, or press, and any right of privacy or marriage as specifically
14 provided by the constitution of this state. If a resident of this state, subject to personal
15 jurisdiction in this state, seeks to maintain litigation, arbitration, administrative hearing, or
16 similarly binding proceedings in this state and if the courts of this state find that granting a claim
17 of forum non conveniens or a related claim violates or would likely violate the fundamental
18 liberties, rights, and privileges granted under the constitutions of the United States or South
19 Dakota of the nonclaimant in the foreign forum with respect to the matter in dispute, then the
20 claim shall be denied.

21 Section 8. Without prejudice to any legal right, this Act does not apply to a corporation,
22 partnership, limited liability company, business association, or other legal entity that contracts
23 to subject itself to foreign law in a jurisdiction other than this state or the United States.

24 Section 9. No court or arbitrator may interpret this Act to limit the right of any person to the

1 free exercise of religion as guaranteed by the First Amendment to the United States Constitution
2 and by the constitution of this state. No court may interpret this Act to require or authorize any
3 court to adjudicate, or prohibit any religious organization from adjudicating, ecclesiastical
4 matters, including the election, appointment, calling, discipline, dismissal, removal, or
5 excommunication of a member, officer, official, priest, nun, monk, pastor, rabbi, imam, or
6 member of the clergy, of the religious organization, or any determination or interpretation of the
7 doctrine of the religious organization, if adjudication by a court would violate the prohibition
8 of the establishment clause of the First Amendment of the United States, or violate the
9 constitution of this state.

10 Section 10. This statute may not be interpreted by any court to conflict with any federal
11 treaty or other international agreement to which the United States is a party to the extent that
12 such treaty or international agreement preempts or is superior to state law on the matter at issue.