MISSISSIPPI LEGISLATURE REGULAR SESSION 2012

By: Representatives Smith (39th), Beckett, Chism, Howell

To: Judiciary A

HOUSE BILL NO. 2

AN ACT TO ADDRESS THE APPLICATION OF FOREIGN LAWS IN JUDICIAL PROCEEDINGS IN THIS STATE; TO PROVIDE LEGISLATIVE FINDINGS; TO DEFINE CERTAIN TERMS; TO PROHIBIT THE USE AND ENFORCEMENT OF FOREIGN LAWS UNDER CERTAIN CIRCUMSTANCES; TO PROVIDE FOR APPLICABILITY IN CERTAIN CIRCUMSTANCES; AND FOR RELATED PURPOSES.

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

SECTION 1. The Legislature finds that it is the public policy of this state to protect its citizens from the application of foreign laws when the application of a foreign law will result in the violation of a right guaranteed by the Constitution of this state or of the United States, 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 of this state. The Legislature fully 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 to protect and promote rights and privileges granted under the United States or Mississippi 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 laws of this state.

SECTION 2. The following words and phrases shall have the meanings ascribed herein, unless the context clearly indicates otherwise:

(a) "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 act, foreign law shall not mean, nor shall it include, any laws of the Native American tribes in this state.

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

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

SECTION 3. Any court, arbitration, tribunal, or administrative agency ruling or decision which violates the public policy of this state shall be void and unenforceable if the court, arbitration, tribunal, or administrative agency bases its rulings or decisions in the matter at issue, in whole or in part, on any law, legal code or system that would not grant the parties affected by the ruling or decision the same fundamental liberties, rights, and privileges granted under the United States and Mississippi Constitutions, 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 of this state.

SECTION 4. A contract or contractual provision (if capable of segregation) which provides for the choice of a law, legal code or system to govern some or all of the disputes between the parties adjudicated by a court of law or by an arbitration panel arising from the contract mutually agreed upon violates the public

policy of this state and shall be void and unenforceable if the law, legal code or system chosen includes or incorporates any substantive or procedural law, as applied to the dispute at issue, that would not grant the parties the same fundamental liberties, rights, and privileges granted under the United States and Mississippi Constitutions, 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 of this state.

SECTION 5. (1) A contract or contractual provision (if capable of segregation) which provides for a jurisdiction for purposes of granting the courts or arbitration panels in personam jurisdiction over the parties to adjudicate any disputes between parties arising from the contract mutually agreed upon violates the public policy of this state and shall be void and unenforceable if the jurisdiction chosen includes any law, legal code or system, as applied to the dispute at issue, that would not grant the parties the same fundamental liberties, rights, and privileges granted under the United States and Mississippi Constitutions, 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 of this state.

(2) If a resident 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 fundamental liberties, rights, and privileges granted under the United States and Mississippi Constitutions of the nonclaimant in the foreign forum with respect to the matter in dispute, then it is the public policy of this state that the claim shall be denied.

SECTION 6. Without prejudice to any legal right, this act shall not apply to a corporation, partnership, limited liability company, business association, or other legal entity that contracts to subject itself to foreign law in a jurisdiction other than this state or the United States.

SECTION 7. No court or arbitrator shall interpret this act 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 this state. No court shall interpret this act 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 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 or violate the Constitution of this state.

SECTION 8. This act shall 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 such treaty or international agreement preempts or is superior to state law on the matter at issue.

SECTION 9. This act shall take effect and be in force from and after July 1, 2012.