

REFERENCE TITLE: **judicial determinations; applicability.**

State of Arizona
House of Representatives
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2010

HB 2379

Introduced by
Representatives Seel, Ash, Stevens, Senator Pearce R: Representatives
Burges, Goodale, Hendrix, Kavanagh, Mason, Weiers JP, Senators Allen S,
Gould, Harper, Melvin, Verschoor

AN ACT

**AMENDING TITLE 12, CHAPTER 1, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 5;
RELATING TO JUDICIAL DETERMINATIONS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 12, chapter 1, Arizona Revised Statutes, is amended
3 by adding article 5, to read:

4 ARTICLE 5. JUDICIAL DETERMINATIONS

5 12-181. Basis for judicial determinations: applicability:
6 definitions

7 A. A COURT SHALL NOT USE, IMPLEMENT, REFER TO OR INCORPORATE A TENET
8 OF ANY BODY OF RELIGIOUS SECTARIAN LAW INTO ANY DECISION, FINDING OR OPINION
9 AS CONTROLLING OR INFLUENTIAL AUTHORITY.

10 B. A COURT SHALL NOT USE, IMPLEMENT, REFER TO OR INCORPORATE ANY CASE
11 LAW OR STATUTE FROM ANOTHER COUNTRY OR A FOREIGN BODY OR JURISDICTION THAT IS
12 OUTSIDE OF THE UNITED STATES AND ITS TERRITORIES IN ANY DECISION, FINDING OR
13 OPINION AS EITHER:

14 1. CONTROLLING OR INFLUENTIAL AUTHORITY.

15 2. PRECEDENT OR THE FOUNDATION FOR ANY LEGAL THEORY.

16 C. ANY DECISION OR RATIFICATION OF A PRIVATE AGREEMENT THAT IS
17 DETERMINED, ON THE MERITS, BY A JUDGE IN THIS STATE WHO RELIES ON ANY BODY OF
18 RELIGIOUS SECTARIAN LAW OR FOREIGN LAW IS NULL AND VOID, IS APPEALABLE ERROR
19 AND IS GROUNDS FOR IMPEACHMENT AND REMOVAL FROM OFFICE.

20 D. THIS SECTION APPLIES TO A FEDERAL COURT SITTING IN DIVERSITY
21 JURISDICTION.

22 E. THIS SECTION DOES NOT APPLY TO:

23 1. A STATUTE OR ANY CASE LAW DEVELOPED IN THE UNITED STATES AND ITS
24 TERRITORIES THAT IS BASED ON ANGLO-AMERICAN LEGAL TRADITION AND PRINCIPLES ON
25 WHICH THE UNITED STATES WAS FOUNDED.

26 2. A STATUTE OR ANY CASE LAW OR LEGAL PRINCIPLE THAT WAS INHERITED
27 FROM GREAT BRITAIN BEFORE THE EFFECTIVE DATE OF THIS ARTICLE.

28 3. THE RECOGNITION OF A TRADITIONAL MARRIAGE BETWEEN A MAN AND A WOMAN
29 AS OFFICIATED BY THE CLERGY OR A SECULAR OFFICIAL OF THE MATRIMONIAL COUPLE'S
30 CHOICE.

31 F. FOR THE PURPOSES OF THIS SECTION:

32 1. "FOREIGN BODY" INCLUDES THE UNITED NATIONS AND ANY AGENCY
33 THEREUNDER, THE EUROPEAN UNION AND ANY AGENCY THEREUNDER, AN INTERNATIONAL
34 JUDICIARY, THE INTERNATIONAL MONETARY FUND, THE ORGANIZATION OF PETROLEUM
35 EXPORTING COUNTRIES, THE WORLD BANK AND THE SOCIALIST INTERNATIONAL.

36 2. "FOREIGN LAW" MEANS ANY STATUTE OR BODY OF CASE LAW DEVELOPED IN A
37 COUNTRY, JURISDICTION OR FOREIGN BODY OUTSIDE OF THE UNITED STATES, WHETHER
38 OR NOT THE UNITED STATES IS A MEMBER OF THAT BODY, UNLESS PROPERLY RATIFIED
39 AS A TREATY PURSUANT TO THE UNITED STATES CONSTITUTION.

40 3. "RELIGIOUS SECTARIAN LAW" MEANS ANY STATUTE, TENET OR BODY OF LAW
41 EVOLVING WITHIN AND BINDING A SPECIFIC RELIGIOUS SECT OR TRIBE. RELIGIOUS
42 SECTARIAN LAW INCLUDES SHARIA LAW, CANON LAW, HALACHA AND KARMA BUT DOES NOT
43 INCLUDE ANY LAW OF THE UNITED STATES OR THE INDIVIDUAL STATES BASED ON
44 ANGLO-AMERICAN LEGAL TRADITION AND PRINCIPLES ON WHICH THE UNITED STATES WAS
45 FOUNDED.

Sec. 2. Legislative findings

The legislature finds that:

1. The tenth amendment to the United States Constitution guarantees and reserves to the states or their people all powers not specifically granted to the federal government elsewhere in the constitution as they were publicly understood at the time that the amendment was ratified on December 15, 1791, subject only to modification by duly ratified subsequent amendments to the United States Constitution. The guaranty of those powers is a matter of compact between the state and people of Arizona and the United States as of the time that Arizona was admitted to statehood on February 14, 1912.

2. As a matter of compact between the state and people of Arizona and the United States as of the time that Arizona was admitted to statehood on February 14, 1912, the tenth amendment to the United States Constitution guarantees to the state and people of Arizona that other than the enumerated powers expressly granted to the United State under article I, section 8 of the United States Constitution, Congress and the federal government will not exercise any purported control over or commandeer the courts of the state of Arizona.

3. At the time the United States Constitution was ratified on June 21, 1788, the sole and sovereign power to regulate the state courts rested in the state legislature and has always been a compelling state concern and central to state sovereignty. Accordingly, the foregoing public meaning and understanding of article I, section 8, the establishment clause of the first amendment and the tenth amendment of the United States Constitution are matters of compact between the state and people of Arizona and the United States as of the time that Arizona was admitted to statehood on February 14, 1912.

4. At the time the United States Constitution was ratified on June 21, 1788, the commerce clause was not meant or understood to authorize Congress or the federal judiciary to regulate the state courts in the matter of state substantive law or state judicial procedure. This meaning and understanding of article I, section 8, the establishment clause of the first amendment and the tenth amendment of the United States Constitution, as they pertain to the validity of religious sectarian or foreign law as being controlling or influential precedent, have never been modified by any duly ratified amendment to the United States Constitution. Accordingly, the foregoing public meaning and understanding of article I, section 8 and the tenth amendment of the United States Constitution are matters of compact between the state and people of Arizona and the United States as of the time that Arizona was admitted to statehood on February 14, 1912.

5. At the time the United States Constitution was ratified on June 21, 1788, the commerce clause was not meant or understood to authorize Congress or the federal judiciary to establish religious sectarian or foreign statute or case law as controlling or influential precedent. This meaning and understanding of article I, section 8, the establishment clause of the first

1 amendment and the tenth amendment of the United States Constitution, as they
 2 pertain to controlling or influential legal authority, have never been
 3 modified by any duly ratified amendment to the United States Constitution.
 4 Accordingly, the foregoing public meaning and understanding of article I,
 5 section 8, the establishment clause of the first amendment and the tenth
 6 amendment of the United States Constitution are matters of compact between
 7 the state and people of Arizona and the United States as of the time that
 8 Arizona was admitted to statehood on February 14, 1912.

9 6. The Congress and the federal government are denied the power to
 10 establish a sectarian religion by recognizing or ratifying judicial decisions
 11 based on religious sectarian law.

12 7. The Congress and the federal government are denied the power to
 13 bind the states under foreign statute or case law other than those provisions
 14 duly ratified by the Congress as a treaty, so long as the treaty does not
 15 violate the United States Constitution.

16 8. The Congress has no authority to preempt state regulation of state
 17 courts.

18 9. Under the tenth amendment of the United States Constitution, the
 19 people and state of Arizona retain their exclusive power to regulate the
 20 state courts of Arizona subject only to the fourteenth amendment's guaranty
 21 that the people and state of Arizona shall exercise such sovereign power in
 22 accordance with each citizen's lawful privileges or immunities, and in
 23 compliance with the requirements of due process and equal protection of the
 24 law.

25 10. The ninth amendment of the United States Constitution secures and
 26 reserves to the people of Arizona as against the federal government their
 27 natural rights to life, liberty and property as entailed by the traditional
 28 Anglo-American conception of ordered liberty and as secured by state law,
 29 including their rights as they were understood and secured by the law at the
 30 time that the amendment was ratified on December 15, 1791, as well as their
 31 rights as they were understood and secured by the law in the state of Arizona
 32 at the time the Arizona constitution was adopted on December 9, 1910. The
 33 guaranty of those rights is a matter of compact between the state and people
 34 of Arizona and the United States as of the time that Arizona was admitted to
 35 statehood on February 14, 1912.

36 Sec. 3. Short title

37 This act may be cited as the "Arizona foreign decisions act".

38 Sec. 4. Construction and severance

39 A. Any court that construes this act must adopt a construction of each
 40 provision that:

41 1. Confines the power of Congress and the federal judiciary to impose
 42 religious sectarian law and foreign law to the least expansive interpretation
 43 permitted under binding precedent.

1 2. Secures the authority of the state of Arizona to exclusively
2 regulate its courts under the tenth amendment of the United States
3 Constitution to the greatest extent permitted under binding precedent.

4 3. Protects the constitutional rights of Arizonans under Article I,
5 section 8 of the United States Constitution, as well as the first, ninth and
6 tenth amendments to the United States Constitution to regulate its judiciary
7 permitted under binding precedent.

8 B. If a provision of this act or its application to any person or
9 circumstance is held invalid, the invalidity does not affect other provisions
10 or applications of the act that can be given effect without the invalid
11 provision or application, and to this end the provisions of this act are
12 severable.