HB 2582

Introduced by
Representatives Burges, Smith D, Senators Bundgaard: Nelson, Pierce S, Shooter

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

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

ARTICLE 5. JUDICIAL DETERMINATIONS

12-181. Basis for judicial determinations; applicability; definitions

A. A court shall not use, implement, refer to or incorporate a tenet of any body of religious sectarian law into any decision, finding or opinion as controlling or influential authority.

B. A court shall not use, implement, refer to or incorporate any case law or statute from another country or a foreign body or jurisdiction that is outside of the United States and its territories in any decision, finding or opinion as either:

1. Controlling or influential authority.
2. Precedent or the foundation for any legal theory.

C. Any decision or ratification of a private agreement that is determined, on the merits, by a judge in this state who relies on any body of religious sectarian law or foreign law is void, is appealable error and is grounds for impeachment and removal from office.

D. This section applies to a federal court sitting in diversity jurisdiction.

E. This section does not apply to:

1. A statute or any case law developed in the United States and its territories that is based on Anglo-American legal tradition and principles on which the United States was founded.
2. A statute or any case law or legal principle that was inherited from Great Britain before the effective date of this article.
3. The recognition of a traditional marriage between a man and a woman as officiated by the clergy or a secular official of the matrimonial couple's choice.

F. For the purposes of this section:

1. "Foreign body" includes the United Nations and any agency thereunder, the European Union and any agency thereunder, an international judiciary, the International Monetary Fund, the Organization of Petroleum Exporting Countries, the World Bank and the Socialist International.
2. "Foreign law" means any statute or body of case law developed in a country, jurisdiction or foreign body outside of the United States, whether or not the United States is a member of that body, unless properly ratified as a treaty pursuant to the United States Constitution.
3. "Religious sectarian law" means any statute, tenet or body of law evolving within and binding a specific religious sect or tribe. Religious sectarian law includes Sharia law, Canon law, Halacha and Karma but does not include any law of the United States or the individual states based on Anglo-American legal tradition and principles on which the United States was 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 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 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 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 States 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 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. The 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 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. The 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 controlling or influential legal authority, 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, 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 Arizona was admitted to statehood on February 14, 1912.

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

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

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

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

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

Sec. 3. Construction and severability

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

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

2. Secures the authority of the state of Arizona to exclusively regulate its courts under the tenth amendment of the United States Constitution to the greatest extent permitted under binding precedent.
3. Protects the constitutional rights of Arizonans under article I, section 8 of the United States Constitution, as well as the first, ninth and tenth amendments to the United States Constitution to regulate the state's judiciary permitted under binding precedent.

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

Sec. 4. Short title
This act may be cited as the "Arizona Foreign Decisions Act".