

REFERENCE TITLE: **basis for judicial determinations; applicability**

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

## **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)

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 VOID, IS APPEALABLE ERROR AND IS  
19 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.

1           Sec. 2. Legislative findings

2           The legislature finds that:

3           1. The tenth amendment to the United States Constitution guarantees  
4 and reserves to the states or their people all powers not specifically  
5 granted to the federal government elsewhere in the constitution as they were  
6 publicly understood at the time the amendment was ratified on December 15,  
7 1791, subject only to modification by duly ratified subsequent amendments to  
8 the United States Constitution. The guaranty of those powers is a matter of  
9 compact between the state and people of Arizona and the United States as of  
10 the time Arizona was admitted to statehood on February 14, 1912.

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

19           3. At the time the United States Constitution was ratified on June 21,  
20 1788, the sole and sovereign power to regulate the state courts rested in the  
21 state legislature and has always been a compelling state concern and central  
22 to state sovereignty. Accordingly, the foregoing public meaning and  
23 understanding of article I, section 8, the establishment clause of the first  
24 amendment and the tenth amendment of the United States Constitution are  
25 matters of compact between the state and people of Arizona and the United  
26 States as of the time Arizona was admitted to statehood on February 14, 1912.

27           4. At the time the United States Constitution was ratified on June 21,  
28 1788, the commerce clause was not meant or understood to authorize Congress  
29 or the federal judiciary to regulate the state courts in the matter of state  
30 substantive law or state judicial procedure. The meaning and understanding  
31 of article I, section 8, the establishment clause of the first amendment and  
32 the tenth amendment of the United States Constitution, as they pertain to the  
33 validity of religious sectarian or foreign law as being controlling or  
34 influential precedent, have never been modified by any duly ratified  
35 amendment to the United States Constitution. Accordingly, the foregoing  
36 public meaning and understanding of article I, section 8 and the tenth  
37 amendment of the United States Constitution are matters of compact between  
38 the state and people of Arizona and the United States as of the time Arizona  
39 was admitted to statehood on February 14, 1912.

40           5. At the time the United States Constitution was ratified on June 21,  
41 1788, the commerce clause was not meant or understood to authorize Congress  
42 or the federal judiciary to establish religious sectarian or foreign statute  
43 or case law as controlling or influential precedent. The meaning and  
44 understanding of article I, section 8, the establishment clause of the first  
45 amendment and the tenth amendment of the United States Constitution, as they

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

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

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

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

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

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

35 Sec. 3. Construction and severability

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

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

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

1           3. Protects the constitutional rights of Arizonans under article I,  
2 section 8 of the United States Constitution, as well as the first, ninth and  
3 tenth amendments to the United States Constitution to regulate the state's  
4 judiciary permitted under binding precedent.

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

10          Sec. 4. Short title

11          This act may be cited as the "Arizona Foreign Decisions Act".