

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 568

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO FOREIGN LAWS; AMENDING TITLE 73, IDAHO CODE, BY THE ADDITION OF
2 A NEW CHAPTER 5, TITLE 73, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT, TO
3 DEFINE TERMS, TO PROVIDE FOR THE USE AND ENFORCEABILITY OF FOREIGN LAWS,
4 TO PROVIDE FOR CHOICE OF LAW IN CERTAIN INSTANCES, TO PROVIDE FOR JU-
5 RISDICTION IN CERTAIN INSTANCES, TO PROVIDE FOR FORUM NON CONVENIENS IN
6 CERTAIN INSTANCES, TO PROVIDE APPLICABILITY AND TO PROVIDE FOR CERTAIN
7 CONFLICTS.
8

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. That Title 73, Idaho Code, be, and the same is hereby amended
11 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
12 ter 5, Title 73, Idaho Code, and to read as follows:

13 CHAPTER 5
14 APPLICATION OF FOREIGN LAWS

15 73-501. LEGISLATIVE INTENT. (1) It shall be the public policy of this
16 state to protect its citizens from the application of foreign laws when the
17 application of foreign law will result in the violation of a fundamental
18 right guaranteed by the constitution of the United States or the consti-
19 tution of the state of Idaho including, but not limited to, due process,
20 freedom of religion, speech or press, and any right of privacy or marriage
21 embodied in the constitution of the state of Idaho.

22 (2) It shall be the public policy of this state to fully recognize the
23 right to contract freely under the laws of this state and also to recognize
24 that this right may be reasonably and rationally circumscribed pursuant to
25 the state's interest to protect and promote fundamental rights and privi-
26 leges granted under the constitution of the United States and the constitu-
27 tion of the state of Idaho including, but not limited to, due process, free-
28 dom of religion, speech or press, and any right of privacy or marriage embod-
29 ied in the constitution of the state of Idaho.

30 73-502. DEFINITIONS. As used in this chapter:

31 (1) "Court" means any court, board, tribunal, arbitration, administra-
32 tive agency or other adjudicative or enforcement authority of this state.

33 (2) "Foreign law" means any law, legal code or system of a jurisdiction
34 outside of any state or territory of the United States including, but not
35 limited to, international organizations and tribunals and applied by that
36 jurisdiction's courts, administrative bodies or other formal or informal
37 tribunals. For the purposes of this chapter, "foreign law" shall not mean,
38 nor shall it include, any laws of the Indian tribes in this state.

39 (3) "Religious organization" means any church, seminary, synagogue,
40 temple, mosque, religious order, or religious corporation, association or

1 society whose identity is distinctive in terms of common religious creed,
2 beliefs, doctrines, practices or rituals, of any faith or denomination, in-
3 cluding any organization qualifying as a church or religious organization
4 under section 501(c) (3) or 501(d) of the Internal Revenue Code.

5 73-503. USE OF FOREIGN LAWS -- ENFORCEABILITY. Any court ruling or de-
6 cision that violates the public policy of this state shall be void and unen-
7 forceable if the court bases its ruling or decision in the matter at issue in
8 whole or in part on any foreign law that would not grant the parties affected
9 by the ruling or decision the same fundamental liberties, rights and priv-
10 ileges guaranteed under the constitution of the United States and the con-
11 stitution of the state of Idaho including, but not limited to, due process,
12 freedom of religion, speech or press, and any right of privacy or marriage
13 embodied in the constitution of the state of Idaho.

14 73-504. CHOICE OF LAW. A contract or contractual provision, if capable
15 of segregation, that provides for the choice of foreign law to govern some
16 or all of the disputes between the parties adjudicated by a court or by an
17 arbitration panel arising from the contract mutually agreed upon that vio-
18 lates the public policy of this state shall be void and unenforceable if the
19 foreign law chosen includes or incorporates any substantive or procedural
20 law, as applied to the dispute at issue, that would not grant the parties
21 the same fundamental liberties, rights, and privileges guaranteed under the
22 constitution of the United States and the constitution of the state of Idaho
23 including, but not limited to, due process, freedom of religion, speech or
24 press, and any right of privacy or marriage embodied in the constitution of
25 the state of Idaho.

26 73-505. JURISDICTION. A contract or contractual provision, if capable
27 of segregation, that provides for jurisdiction for the purpose of granting
28 the courts or arbitration panels in personam jurisdiction over the parties
29 to adjudicate any disputes between the parties arising from the contract mu-
30 tually agreed upon shall violate the public policy of this state and be void
31 and unenforceable if the jurisdiction or arbitration panel chosen includes
32 or incorporates any substantive or procedural foreign law, as applied to the
33 dispute at issue, that would not guarantee the parties the same fundamental
34 liberties, rights, and privileges guaranteed under the constitution of the
35 United States and the constitution of the state of Idaho including, but not
36 limited to, due process, freedom of religion, speech or press, and any right
37 of privacy or marriage embodied in the constitution of the state of Idaho.

38 73-506. FORUM NON CONVENIENS. If a person of this state, subject to
39 personal jurisdiction in this state, seeks to maintain litigation, arbitra-
40 tion, agency or similarly binding proceedings in this state and if the courts
41 of this state find that granting a claim of forum non conveniens or a related
42 claim violates or would likely violate a fundamental right guaranteed under
43 the constitution of the United States and the constitution of the state of
44 Idaho of the nonclaimant in the foreign forum with respect to the matter in
45 dispute, the claim shall be denied.

1 73-507. APPLICABILITY. (1) Without prejudice to any legal right, this
2 chapter shall not apply to a corporation, partnership, limited liability
3 corporation, business association or other legal entity that contracts to
4 subject itself to foreign law in a jurisdiction other than this state or the
5 United States.

6 (2) No court or arbitrator shall interpret the provisions of this chap-
7 ter to limit the right of any person to the free exercise of religion as guar-
8 anteed by the first amendment to the constitution of the United States and
9 section 4, article I, of the constitution of the state of Idaho. No court
10 shall interpret the provisions of this act to require or authorize any court
11 to adjudicate or prohibit any religious organization from adjudicating ec-
12 clesiastical matters including, but not limited to, the appointment, call-
13 ing, discipline, dismissal, removal or excommunication of a member, offi-
14 cer, official, priest, nun, monk, pastor, rabbi, imam or other member of
15 the clergy of the religious organization, or determination or interpreta-
16 tion of the doctrine of the religious organization where adjudication by a
17 court would violate the establishment clause of the first amendment to the
18 constitution of the United States and section 4, article I, of the constitu-
19 tion of the state of Idaho.

20 73-508. CONFLICT. This chapter shall not be interpreted by any court
21 to conflict with any federal treaty or other international agreement to
22 which the United States is a party to the extent that such treaty or interna-
23 tional agreement preempts or is superior to state law on the matter at issue.