

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 94

BY STATE AFFAIRS 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. 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 73-502. DEFINITIONS. As used in this chapter:

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

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

31 (3) "Religious organization" means any church, seminary, synagogue,
32 temple, mosque, religious order, or religious corporation, association or
33 society whose identity is distinctive in terms of common religious creed,
34 beliefs, doctrines, practices or rituals, of any faith or denomination, in-
35 cluding any organization qualifying as a church or religious organization
36 under section 501(c) (3) or 501(d) of the Internal Revenue Code.

37 73-503. USE OF FOREIGN LAWS -- ENFORCEABILITY. Any court ruling or de-
38 cision that violates the public policy of this state shall be void and un-
39 enforceable to the extent that the court bases its ruling or decision in the

1 matter at issue in whole or in part on any foreign law that would not grant the
2 parties affected by the ruling or decision similar fundamental liberties,
3 rights and privileges guaranteed under the constitution of the United States
4 and the constitution of the state of Idaho including, but not limited to, due
5 process, freedom of religion, speech or press, and any right of privacy or
6 marriage embodied in the constitution of the state of Idaho.

7 73-504. CHOICE OF LAW. A contract or contractual provision, if capable
8 of segregation, that provides for the choice of foreign law to govern some
9 or all of the disputes between the parties adjudicated by a court or by an
10 arbitration panel arising from the contract mutually agreed upon that vio-
11 lates the public policy of this state shall be void and unenforceable if the
12 foreign law chosen includes or incorporates substantive or procedural law,
13 as applied to the dispute at issue, that would not grant the parties simi-
14 lar fundamental liberties, rights, and privileges guaranteed under the con-
15 stitution of the United States and the constitution of the state of Idaho
16 including, but not limited to, due process, freedom of religion, speech or
17 press, and any right of privacy or marriage embodied in the constitution of
18 the state of Idaho.

19 73-505. JURISDICTION. A contract or contractual provision, if capa-
20 ble of segregation, that provides for jurisdiction for the purpose of grant-
21 ing the courts or arbitration panels in personam jurisdiction over the par-
22 ties to adjudicate any disputes between the parties arising from the con-
23 tract mutually agreed upon shall violate the public policy of this state and
24 be void and unenforceable if the jurisdiction or arbitration panel chosen
25 includes or incorporates substantive or procedural foreign law, as applied
26 to the dispute at issue, that would not guarantee the parties similar funda-
27 mental liberties, rights, and privileges guaranteed under the constitution
28 of the United States and the constitution of the state of Idaho including,
29 but not limited to, due process, freedom of religion, speech or press, and
30 any right of privacy or marriage embodied in the constitution of the state of
31 Idaho.

32 73-506. FORUM NON CONVENIENS. If a person of this state, subject to
33 personal jurisdiction in this state, seeks to maintain litigation, arbitra-
34 tion, agency or similarly binding proceedings in this state and if the courts
35 of this state find that granting a claim of forum non conveniens violates
36 or would likely violate a fundamental right guaranteed under the constitu-
37 tion of the United States and the constitution of the state of Idaho of the
38 nonclaimant in the foreign forum with respect to the matter in dispute, the
39 claim shall be denied.

40 73-507. APPLICABILITY. (1) This chapter shall not apply to a corpora-
41 tion, partnership, limited liability corporation, business association or
42 other legal entity to the extent that it contracts to subject itself to for-
43 eign law in a jurisdiction other than this state or the United States.

44 (2) No court or arbitrator shall interpret the provisions of this chap-
45 ter to limit the right of any person to the free exercise of religion as guar-
46 anteed by the first amendment to the constitution of the United States and

1 section 4, article I, of the constitution of the state of Idaho. No court
2 shall interpret the provisions of this act to require or authorize any court
3 to adjudicate or prohibit any religious organization from adjudicating ec-
4 clesiastical matters including, but not limited to, the appointment, call-
5 ing, discipline, dismissal, removal or excommunication of a member, offi-
6 cer, official, priest, nun, monk, pastor, rabbi, imam or other member of
7 the clergy of the religious organization, or determination or interpreta-
8 tion of the doctrine of the religious organization where adjudication by a
9 court would violate the establishment or free exercise clause of the first
10 amendment to the constitution of the United States and section 4, article I,
11 of the constitution of the state of Idaho.

12 73-508. CONFLICT. This chapter shall not be interpreted by any court
13 to conflict with any federal treaty or other international agreement to
14 which the United States is a party to the extent that such treaty or inter-
15 national agreement is valid and preempts or is superior to state law on the
16 matter at issue.