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2 88th General Assembly
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4

As Engrossed: S2/1/11
A Bill

SENATE BILL 97

5 By: Senators Bledsoe, J. Key, M. Lamoureux, Teague, Files, Holland, J. Hutchinson, Irvin, B. Sample, J.
6 Taylor, Whitaker, Rapert, D. Wyatt
7 By: Representatives English, Hubbard, Branscum, J. Burris, Deffenbaugh, Eubanks, Harris, Westerman,
8 D. Altes, Biviano, Hobbs, D. Hutchinson, Kerr, Linck, Mauch, Stubblefield, Summers, Jean
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For An Act To Be Entitled

11 AN ACT TO PROTECT RIGHTS AND PRIVILEGES GRANTED UNDER
12 THE UNITED STATES CONSTITUTION AND THE ARKANSAS
13 CONSTITUTION; AND FOR OTHER PURPOSES.
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Subtitle

17 TO PROTECT RIGHTS AND PRIVILEGES GRANTED
18 UNDER THE UNITED STATES CONSTITUTION AND
19 THE ARKANSAS CONSTITUTION.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. LEGISLATIVE INTENT.

25 The General Assembly finds that:

26 (1)(A) While fully recognizing that judgments and rulings issued
27 by foreign courts and foreign judicial bodies may be recognized and enforced
28 if those judgments and rulings do not conflict with the public policy of
29 Arkansas, the General Assembly also recognizes that this recognition is given
30 as a discretionary accommodation to that foreign nation and not afforded as a
31 right.

32 (B) As a matter of public policy, the recognition and
33 enforcement of a foreign judgment or ruling is limited to the extent that its
34 enforcement would not directly conflict with the public policy of Arkansas;

35 (2)(A) The fundamental rights and liberties granted to Arkansas
36 citizens and residents found in the Bill of Rights of the United States



1 Constitution and other amendments and the Declaration of Rights, Arkansas
2 Constitution, Article 2, are fundamental human rights that transcend
3 jurisdiction.

4 (B) When determining whether to recognize or enforce a
5 foreign judgment or ruling, it is in the best interest of Arkansas and the
6 public policy of Arkansas to first determine whether the parties affected by
7 such an enforcement or recognition have been afforded comparable protections,
8 including without limitation due process and equal protection, by the foreign
9 law or legal system upon which the ruling or judgment was based; and

10 (3) It is in the best interest and public policy of the state of
11 Arkansas and its citizens to ensure that before the state of Arkansas
12 recognizes and uses its police power to enforce a foreign decree, judgment or
13 ruling, that it is determined the law or legal system upon which the decree,
14 judgment, or ruling is based provides the same or similar fundamental
15 liberties, rights, and privileges afforded parties in this state seeking or
16 defending the same or similar ruling, decree, or judgment.

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18 SECTION 2. Arkansas Code Title 16, Chapter 56, Subchapter 1 is amended
19 to add an additional section to read as follows:

20 16-56-131. Application of foreign law, legal code, or system.

21 (a) As used in this section, "foreign law, legal code, or system"
22 means any law, legal code, or system of a jurisdiction outside of any state,
23 territory, or commonwealth of the United States, including without limitation
24 international organizations and tribunals, and applied by that jurisdiction's
25 courts, administrative bodies, or other formal or informal tribunals.

26 (b) Any court, arbitration, tribunal, or administrative agency ruling
27 or decision shall violate the public policy of this state and be void and
28 unenforceable if the court, arbitration, tribunal, or administrative agency
29 bases its rulings or decisions in the matter at issue in whole or in part on
30 any foreign law, legal code, or system that would not grant the parties
31 affected by the ruling or decision the same fundamental liberties, rights,
32 and privileges granted under the United States Constitution and the Arkansas
33 Constitution.

34 (c) A contract or contractual provision capable of segregation that
35 provides for the choice of a foreign law, legal code, or system to govern
36 some or all of the disputes between the parties adjudicated by a court of law

1 or by an arbitration panel arising from the contract mutually agreed upon
2 violates the public policy of this state and shall be void and unenforceable
3 if the foreign law, legal code, or system chosen includes or incorporates any
4 substantive or procedural law, as applied to the dispute at issue, that would
5 not grant the parties the same fundamental liberties, rights, and privileges
6 granted under the United States Constitution and the Arkansas Constitution.

7 (d)(1) A contract or contractual provision capable of segregation that
8 provides for a jurisdiction to grant the courts or arbitration panels in
9 personam jurisdiction over the parties to adjudicate any disputes between
10 parties arising from the contract mutually agreed upon violates the public
11 policy of this state and shall be void and unenforceable if the jurisdiction
12 chosen includes any foreign law, legal code, or system, as applied to the
13 dispute at issue, that would not grant the parties the same fundamental
14 liberties, rights, and privileges granted under the United States
15 Constitution and the Arkansas Constitution.

16 (2) If a resident of this state who is subject to personal
17 jurisdiction in this state seeks to maintain litigation, arbitration, agency,
18 or similarly binding proceedings in this state and if the courts of this
19 state find that granting a claim of forum non conveniens or a related claim
20 violates or would likely violate the fundamental liberties, rights, and
21 privileges granted under the United States Constitution and the Arkansas
22 Constitution of the nonclaimant in the foreign forum with respect to the
23 matter in dispute, then it is the public policy of this state that the claim
24 shall be denied.

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26 /s/Bledsoe
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