1   **H. B. 2956**

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3   (By Delegates Sobonya, Border, Miller, D. Evans, Rowan,
4   Kessinger and Arvon)
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6   [Introduced February 24, 2015; referred to the

7   Committee on the Judiciary.]

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10   A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,

11   designated §2-1-3, relating to the preservation of rights guaranteed by the West Virginia

12   Constitution and the United States Constitution when deciding the comity of a legal decision

13   in a foreign country, the choice of law used for contractual interpretations and choice of

14   forum; exempting businesses; making legislative findings; stating public policy; defining a

15   term; and providing a severability provision.

16   *Be it enacted by the Legislature of West Virginia:*

17   That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new

18   section, designated §2-1-3, to read as follows:

19   **ARTICLE 1. COMMON LAW.**

20   **§2-1-3. Choice of Law.**

21   (a) The Legislature finds that:

22   (1) It fully recognizes the right of its citizens to contract freely under the laws of this state;

23   (2) It also recognizes that this right may be reasonably and rationally circumscribed pursuant

1 to the state's interest to protect and promote rights and privileges granted to its citizens under the

2 Constitutions of the United States or the State of West Virginia.

3 (b) As used in this section, "foreign law, legal code or system" means any law, legal code or

4 system of a jurisdiction outside of any state or territory of the United States including, but not limited

5 to, international organizations and tribunals, and applied by that jurisdiction's courts, administrative

6 bodies or other formal or informal tribunals.

7 (c) It is the public policy of this state that the primary factor which a court, administrative

8 agency, arbitrator, mediator or other entity or person acting under the authority of state law shall

9 consider in granting comity to a decision rendered under any foreign law, legal code or system

10 against a natural person in this state is whether the decision rendered either violated or would violate

11 any right of the natural person in this state guaranteed by the Constitution of the State of West

12 Virginia or the United States Constitution or any statute or decision under those Constitutions.

13 (d) If a contract, arbitration agreement or other agreement provides for the choice of a foreign

14 law, legal code or system to govern its interpretation or the resolution of any claim or dispute and

15 if the enforcement or interpretation of the contract, arbitration agreement or other agreement

16 applying that choice of law provision either resulted or would result in a violation of any right

17 guaranteed by the Constitution of the State of West Virginia or the United States Constitution, then

18 it is the public policy of this state that the primary factor in interpretation, enforcement or application

19 of the contract, arbitration agreement or other agreement shall be preservation of the constitutional

20 rights of the natural person in this state against whom enforcement is sought, unless otherwise

21 directed by state statute. Nothing in this section limits the right of a natural person of this state to

22 voluntarily restrict or limit their own constitutional rights by contract or specific waiver consistent

1 with constitutional principles. The language of any such contract or other waiver shall be strictly

2 construed in favor of preserving the constitutional rights of the natural person in this state.

3   (e) If any contract, arbitration agreement or other agreement provides for the choice of venue

4 or forum outside any state or territory of the United States and if the enforcement or interpretation

5 of the contract, arbitration agreement or other agreement applying that choice of venue or forum

6 provision either resulted or would result in a violation of any right of a natural person in this state

7 guaranteed by the Constitution of the State of West Virginia or the United States Constitution, then

8 it is the public policy of this state that, in interpreting or construing the contract or arbitration

9 agreement or other agreement, the primary factor to be considered is whether it can be interpreted

10 or construed to preserve the constitutional rights of the natural person in this state against whom

11 enforcement is sought. If a natural person of this state, subject to personal jurisdiction in this state,

12 seeks to maintain litigation, arbitration, agency or similarly binding proceedings in this state and if

13 the courts of this state find that granting a claim of forum nonconveniens or a related claim violates

14 or would likely violate the constitutional rights of the nonclaimant in the foreign forum with respect

15 to the matter in dispute, then it is the public policy of this state that the claim shall be denied.

16   (f) Without prejudice to any other legal right, this section does not apply to a corporation,

17 partnership or other form of business association.

18   (g) The public policies expressed in this section apply only to actual or foreseeable violations

19 of the constitutional rights of a natural person in this state from a foreign law, legal code or system.

20   (h) If any provision of this section or the application thereof to any person or circumstance

21 is held invalid, such invalidity shall not affect other provisions or applications of the section which

22 can be given effect without the invalid provision or application. To that end, the provisions of this

1 <u>section are declared to be severable.</u>

       NOTE: The purpose of this bill is to preserve the rights of individuals guaranteed by the West Virginia Constitution and the United States Constitution when deciding the comity of a legal decision in a foreign country, the choice of law used for contractual interpretations and choice of forum. The bill exempts businesses. The bill also makes legislative findings, states public policy, defines a term and provides a severability provision.

       This section is new; therefore, it has been completely underscored.