

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

**Introduced**

### **House Bill 4109**

BY DELEGATES BUTLER, FAST, KESSINGER, FOSTER, D.

JEFFRIES, BIBBY, PACK, S. MARTIN, D. KELLY, J.

JEFFRIES AND GRAVES

[Introduced January 13, 2020; Referred to the Committee  
on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §2-1-3, relating to the preservation of rights guaranteed by the West Virginia  
 3 Constitution and the United States Constitution when deciding the comity of a legal  
 4 decision in a foreign country, the choice of law used for contractual interpretations and  
 5 choice of forum; exempting businesses; making legislative findings; stating public policy;  
 6 defining a term; and providing a severability provision.

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

**ARTICLE 1. COMMON LAW.**

**§2-1-3. Choice of law.**

1 (a) The Legislature finds that:

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

3 (2) It also recognizes that this right may be reasonably and rationally circumscribed  
 4 pursuant to the state’s interest to protect and promote rights and privileges granted to its citizens  
 5 under the Constitutions of the United States or the State of West Virginia.

6 (b) As used in this section, “foreign law, legal code or system” means any law, legal code,  
 7 or system of a jurisdiction outside of any state or territory of the United States, including, but not  
 8 limited to, international organizations and tribunals, and applied by that jurisdiction’s courts,  
 9 administrative bodies, or other formal or informal tribunals.

10 (c) It is the public policy of this state that the primary factor which a court, administrative  
 11 agency, arbitrator, mediator or other entity or person acting under the authority of state law shall  
 12 consider in granting comity to a decision rendered under any foreign law, legal code or system  
 13 against a natural person in this state is whether the decision rendered either violated or would  
 14 violate any right of the natural person in this state guaranteed by the Constitution of the State of  
 15 West Virginia or the United States Constitution or any statute or decision under those  
 16 Constitutions.

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

18 foreign law, legal code or system to govern its interpretation or the resolution of any claim or  
19 dispute and if the enforcement or interpretation of the contract, arbitration agreement or other  
20 agreement applying that choice of law provision either resulted or would result in a violation of  
21 any right guaranteed by the Constitution of the State of West Virginia or the United States  
22 Constitution, then it is the public policy of this state that the primary factor in interpretation,  
23 enforcement or application of the contract, arbitration agreement or other agreement shall be  
24 preservation of the constitutional rights of the natural person in this state against whom  
25 enforcement is sought, unless otherwise directed by state statute: *Provided*, That nothing in this  
26 section shall be interpreted to limit the right of a natural person of this state to voluntarily restrict  
27 or limit their own constitutional rights by contract or specific waiver consistent with constitutional  
28 principles; however, the language of any such contract or other waiver shall be strictly construed  
29 in favor of preserving the constitutional rights of the natural person in this state.

30 (e) If any contract, arbitration agreement or other agreement provides for the choice of  
31 venue or forum outside any state or territory of the United States and if the enforcement or  
32 interpretation of the contract, arbitration agreement or other agreement applying that choice of  
33 venue or forum provision either resulted or would result in a violation of any right of a natural  
34 person in this state guaranteed by the Constitution of the State of West Virginia or the United  
35 States Constitution, then it is the public policy of this state that, in interpreting or construing the  
36 contract or arbitration agreement or other agreement, the primary factor to be considered is  
37 whether it can be interpreted or construed to preserve the constitutional rights of the natural  
38 person in this state against whom enforcement is sought. If a natural person of this state, subject  
39 to personal jurisdiction in this state, seeks to maintain litigation, arbitration, agency or similarly  
40 binding proceedings in this state and if the courts of this state find that granting a claim of forum  
41 nonconvenience or a related claim violates or would likely violate the constitutional rights of the  
42 nonclaimant in the foreign forum with respect to the matter in dispute, then it is the public policy  
43 of this state that the claim shall be denied.

44 (f) Without prejudice to any other legal right, this section does not apply to a corporation,  
45 partnership or other form of business association.

46 (g) The public policies expressed in this section apply only to actual or foreseeable  
47 violations of the constitutional rights of a natural person in this state from a foreign law, legal code  
48 or system.

49 (h) If any provision of this section or the application thereof to any person or circumstance  
50 is held invalid, such invalidity shall not affect other provisions or applications of the section which  
51 can be given effect without the invalid provision or application, and to that end the provisions of  
52 this section are declared to be severable.

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.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.