

Representative Carl Wimmer proposes the following substitute bill:

CHOICE OF LAW IN UTAH COURTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl Wimmer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill requires that, in circumstances where applying non-U.S. law would otherwise fail to protect the fundamental constitutional rights of the parties before the courts, Utah courts should apply U.S. law as necessary in cases and controversies before them.

Highlighted Provisions:

This bill:

- ▶ requires a Utah court to apply U.S. and Utah law in cases and controversies before them if the court determines that applying a foreign law would deprive a person of fundamental rights guaranteed by the U.S. and Utah constitutions; and
- ▶ specifically does not apply to businesses or corporations.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78B-5-104, Utah Code Annotated 1953



26 *Be it enacted by the Legislature of the state of Utah:*

27 Section 1. Section **78B-5-104** is enacted to read:

28 **78B-5-104. Choice of law -- Definition -- Use of foreign laws.**

29 (1) As used in this section, "foreign law, legal code, or system" means any law, legal
30 code, or system native to a jurisdiction outside of any state or territory of the United States,
31 including international organizations and tribunals, and applied by that jurisdiction's courts,
32 administrative bodies, or other formal or informal tribunals.

33 (2) It is the public policy of this State that a court, administrative agency, arbitrator,
34 mediator, or other entity or person acting under the authority of State law may not enforce a
35 law enacted or a decision rendered under any foreign law, legal code, or system against a
36 natural person if the law enacted or the decision rendered either violated or would violate any
37 right of the natural person guaranteed by the constitution of this state or of the United States.

38 (3) If any contract, arbitration agreement, or other agreement provides for the choice of
39 a foreign law, legal code, or system to govern its interpretation or the resolution of any claim or
40 dispute, and if the enforcement or interpretation of the contract or agreement applying that
41 choice of law provision either resulted or would result in a violation of any right guaranteed by
42 the constitution of this State or of the United States, it is the public policy of this State that the
43 contract or agreement shall be interpreted or construed to preserve the constitutional rights of a
44 person against whom enforcement is sought. If an entity or person acting under the authority of
45 State law is asked to interpret or enforce a contract, arbitration agreement, or other agreement
46 that the entity or person finds cannot be interpreted or construed to preserve the constitutional
47 rights of the parties consistent with this section, then the contract or agreement incapable of
48 being so construed is null and void. Nothing in this section may be interpreted to limit a
49 natural person's right to voluntarily restrict or limit the person's constitutional rights by contract
50 or specific waiver consistent with constitutional principles, but the language of any contract or
51 other waiver shall be strictly construed in favor of preserving the person's constitutional rights.

52 (4) If any contract, arbitration agreement, or other agreement provides for the choice of
53 venue or forum outside any state or territory of the United States, and if the enforcement or
54 interpretation of the contract or agreement applying that choice of venue or forum provision
55 either resulted or would result in a violation of any right of a natural person guaranteed by the
56 constitution of this State or of the United States, it is the public policy of this State that the

57 contract or agreement shall be interpreted or construed to preserve the constitutional rights of
58 the person against whom enforcement is sought. Any provision of a contract or agreement
59 incapable of being construed in this manner is null and void. If a natural person subject to
60 personal jurisdiction in this state seeks to maintain litigation, arbitration, agency, or similarly
61 binding proceedings in this state, and if the courts of this state find that granting a claim of
62 forum non conveniens or a related claim violates or would likely lead to the violation of the
63 constitutional rights of the non-claimant in the foreign forum with respect to the matter in
64 dispute, it is the public policy of this state that the claim shall be denied.

65 (5) Without prejudice to any other legal right, this section may not apply in favor of a
66 corporation, partnership, or other form of business association.

67 (6) The public policies expressed in this section apply only to actual or foreseeable
68 violations of a natural person's constitutional rights from the foreign law, legal code or system.