

JAN 22 2016

A BILL FOR AN ACT

RELATING TO PRIMACY OF HAWAII AND UNITED STATES CONSTITUTIONAL
LAW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that it is the public
2 policy of this state to protect its citizens from the
3 application of foreign law when the application of foreign law
4 would violate a right guaranteed by the Hawaii Constitution or
5 the United States Constitution, including but not limited to due
6 process, freedom of religion, speech or press, and any right of
7 privacy or of marriage. The legislature recognizes the right to
8 contract freely and also recognizes that this right may be
9 reasonably and rationally circumscribed pursuant to the state's
10 interest in preserving rights granted under the Hawaii
11 Constitution or the United States constitution, including but
12 not limited to due process, freedom of speech, or press, and any
13 right of privacy or marriage.

14 The purpose of this act is to preserve the state and
15 federal constitutional rights of the citizens of this state.



1 SECTION 2. Chapter 1, Hawaii Revised Statutes is amended
2 by adding four new sections to be appropriately designated and
3 to read as follows:

4 "§1- Definitions. Whenever used in this section, unless
5 the context otherwise requires:

6 "Court" means any court, board, administrative agency, or
7 other adjudicative or enforcement authority of this state.

8 "Foreign law", "legal code", or "system" means any law,
9 legal code, or system of a jurisdiction outside of any state or
10 territory of the United States, including but not limited to
11 international organizations and tribunals and applied by that
12 jurisdiction's courts, administrative bodies, or other formal or
13 informal tribunals.

14 "Religious organization" means any church, seminary,
15 synagogue, temple, mosque, religious order, religious
16 corporation, association, or society whose identity is
17 distinctive in terms of common religious creed, beliefs,
18 doctrines, practices, or rituals, of any faith or denomination,
19 including any organization qualifying as a church or religious
20 organization under section 501(c)(3) or 501(d) of the Internal
21 Revenue Code.



1 §1- Foreign law prohibited. (a) A court, arbitration,
2 tribunal, or administrative agency ruling or decision violates
3 the public policy of Hawaii and is void and unenforceable if the
4 court, arbitration, tribunal, or administrative agency bases its
5 ruling or decision on a law, legal code, or system that would
6 not grant the parties affected by the ruling or decision any of
7 the fundamental liberties, rights, and privileges granted under
8 the Hawaii Constitution or the United States Constitution,
9 including but not limited to due process, equal protection,
10 freedom of religion, speech, or press, the right to keep and
11 bear arms, and any right of privacy or marriage.

12 (b) A contract or contractual provision, if severable,
13 that provides for the choice of a law, legal code or system to
14 govern some or all of the disputes between the parties
15 adjudicated by a court of law or by an arbitration panel arising
16 from the contract violates the public policy of this state and
17 is void and unenforceable if the law, legal code or system
18 chosen includes or incorporates a substantive or procedural law
19 that would not grant the parties any of the fundamental
20 liberties, rights and privileges granted under the Hawaii
21 Constitution or United States Constitution, including but not



1 limited to due process, equal protection, freedom of religion,
2 speech, or press, the right to keep and bear arms, and any right
3 of privacy or marriage.

4 (1) A contract or contractual provision, if severable,
5 that provides for a chosen jurisdiction for purposes of granting
6 the courts or arbitration panels personal jurisdiction over the
7 parties to adjudicate any disputes between parties arising from
8 the contract violates the public policy of Hawaii and is void
9 and unenforceable if the jurisdiction chosen includes any law,
10 legal code, or system that when applied to the dispute at issue
11 would not grant the parties any of the fundamental liberties,
12 rights and privileges granted under the Hawaii Constitution or
13 United States Constitution, including but not limited to due
14 process, equal protection, freedom of religion, speech, or
15 press, the right to keep and bear arms, and any right of privacy
16 or marriage.

17 (2) If a resident of this state who is subject to personal
18 jurisdiction in this state seeks to maintain litigation,
19 arbitration, agency or similarly binding proceedings in this
20 state and if the courts of this state find that granting a claim
21 of forum non conveniens or a related claim violates or would



1 likely violate the fundamental liberties, rights, and privileges
2 granted under the United States and Hawaii constitutions of the
3 nonclaimant in the foreign forum, then it is the public policy
4 of this state that the claim should be denied.

5 (c) Without prejudice to any legal right, this act does
6 not apply to a person, sorporation, partnership, limited
7 liability company, business association, or other legal entity
8 that contacts to subject itself to foreign law in a jurisdiction
9 other than Hawaii or the United States.

10 §1- Exceptions; freedom of religion; conflict with
11 federal treaty. (a) No court or arbitrator may interpret this
12 section as to limit the right of any person to the free exercise
13 of religion as guaranteed by the first amendment to the United
14 States Constitution and by the Hawaii Constitution. No court
15 may interpret this section to require or authorize any court to
16 adjudicate, or prohibit any religious organization from
17 adjudicating, ecclesiastical matters, including but not limited
18 to the election, appointment, calling, discipline, dismissal,
19 removal, or excommunication of a member, officer, official,
20 priest, nun, monk, pastor, rabbi, imam, or member of the clergy
21 of the religious organization, whenever adjudication by a court



1 would violate the prohibition of the establishment clause of the
2 first amendment of the United States Constitution or violate the
3 Hawaii Constitution.

4 (b) This section may not be interpreted by a court to
5 conflict with any federal treaty, executive order, or other
6 international agreement to which the United States or Hawaii is
7 a party.

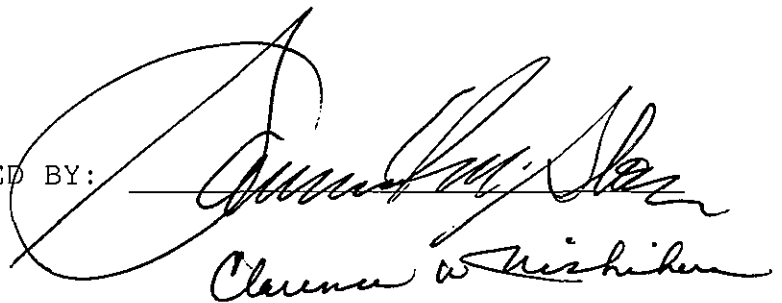
8 §1- Severability. If a part of this act is invalid, all
9 parts that are severable from the invalid part remain in effect
10 in all valid applications that are severable from the invalid
11 applications."

12 SECTION 3. New statutory material is underscored.

13 SECTION 4. This act shall take effect on July 1, 2016.

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INTRODUCED BY:


Clarence W. Nishikawa



S.B. NO. 2716

Report Title:

Primacy of Hawaii and United States constitutional law.

Description:

Prohibits the application of foreign law in state courts when application of foreign law would violate rights guaranteed by the United States Constitution or Hawaii Constitution.

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