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Code of Arkansas of 1987

1-1-103. Application of foreign law, legal code, or system — Definitions.

(Arkansas Code Annotated - Title 1 General Provisions - Chapter 1 General Provisions).

(a) As used in this section:

(1) “Court” means any court, tribunal board, administrative agency, or other adjudicative or enforcement authority of this state;

(2)

(A) “Foreign law, legal code, or system” means any law, legal code, or system of a jurisdiction outside of any state or territory of the United States, including without limitation international organizations and tribunals, applied by that jurisdiction’s courts, administrative bodies, or other formal or informal tribunals.

(B) “Foreign law, legal code, or system” does not mean any laws of the Native American tribes in this state; and

(3) “Religious organization” means a church, seminary, synagogue, temple, mosque, religious order, religious corporation, association, or society with an identity that is distinctive in terms of common religious creed, beliefs, doctrines, practices, or rituals of any faith or denomination, including any organization qualifying as a church or religious organization under 26 U.S.C. § 501(c)(3) or 26 U.S.C. § 501(d).

(b) A court ruling or decision violates the public policy of this state and is void and unenforceable if the court bases its ruling or decision in the matter at issue in whole or in part on any foreign law, legal code, or system that does not grant the parties affected by the ruling or decision one (1) or more of the following fundamental rights, liberties, and privileges granted under the Arkansas Constitution or the United States Constitution:

(1) The right to due process;

(2) The right to equal protection;

(3) Freedom of religion;

(4) Freedom of speech;

(5) Freedom of the press;

(6) The right to keep and bear arms;

(7) The right to privacy; or

(8) The right to marry, as “marriage” is defined by the Arkansas Constitution, to the extent that the definition of marriage does not conflict with federal law or a holding by the United States Supreme Court.

(c) A contract or contractual provision, if severable, that provides for the choice of a foreign law, legal code, or system to govern some or all of the disputes between the parties adjudicated by a court of law or by an arbitration panel arising from the contract mutually agreed upon violates the public policy of

Arkansas and is void and unenforceable if the foreign law, legal code, or system chosen includes or incorporates any substantive or procedural law, as applied to the dispute at issue, that does not grant the parties one (1) or more of the following fundamental rights, liberties, and privileges granted under the Arkansas Constitution or the United States Constitution:

- (1) The right to due process;
- (2) The right to equal protection;
- (3) Freedom of religion;
- (4) Freedom of speech;
- (5) Freedom of the press;
- (6) The right to keep and bear arms;
- (7) The right to privacy; or

(8) The right to marry, as “marriage” is defined by the Arkansas Constitution, to the extent that the definition of marriage does not conflict with federal law or a holding by the United States Supreme Court.

(d)

(1) A contract or contractual provision, if severable, that provides for a jurisdiction for purposes of granting the courts or arbitration panels personal jurisdiction over the parties to adjudicate any disputes between parties arising from the contract mutually agreed upon violates the public policy of Arkansas and is void and unenforceable if the jurisdiction chosen includes any foreign law, legal code, or system, as applied to the dispute at issue, that does not grant the parties one (1) or more of the following fundamental rights, liberties, and privileges granted under the Arkansas Constitution or the United States Constitution:

- (A) The right to due process;
- (B) The right to equal protection;
- (C) Freedom of religion;
- (D) Freedom of speech;
- (E) Freedom of the press;
- (F) The right to keep and bear arms;
- (G) The right to privacy; or

(H) The right to marry, as “marriage” is defined by the Arkansas Constitution, to the extent that the definition of marriage does not conflict with federal law or a holding by the United States Supreme Court.

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

(e) Without prejudice to any legal right, this section does not apply to a corporation, partnership, limited liability company, business association, or other legal entity that contracts to subject itself to a foreign law, legal code, or system.

(f)

(1) A court or arbitrator shall not interpret this section to limit the right of any person to the free exercise of religion as guaranteed by Arkansas Constitution, Article 2, §§ 24-26, and the First Amendment of the United States Constitution.

(2) A court shall not interpret this section to require or authorize a court to adjudicate or prohibit any religious organization from adjudicating ecclesiastical matters, including without limitation the election, appointment, calling, discipline, dismissal, removal, or excommunication of a member, officer, official, priest, nun, monk, pastor, rabbi, imam, or member of the clergy of the religious organization, or the determination or interpretation of the doctrine of the religious organization if adjudication by a court would violate Arkansas Constitution, Article 2, §§ 24-26 or the First Amendment of the United States Constitution.

(g) This section shall not be interpreted by any court to conflict with any federal treaty or other international agreement to which the United States is a party to the extent that the federal treaty or international agreement preempts or is superior to state law on the matter at issue.

4-1-301. Territorial application of the subtitle — Parties' power to choose applicable law.

(Arkansas Code Annotated - Title 4 Business and Commercial Law - Subtitle 1. Uniform Commercial Code - Chapter 1 General Provisions - Part 3 — Territorial Applicability and General Rules).

(1) Except as provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this subtitle applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this subtitle specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 4-2-402.

Applicability of the chapter on leases. Sections 4-2A-105 and 4-2A-106.

Applicability of the chapter on bank deposits and collections. Section 4-4-102.

Governing law in the chapter on funds transfers. Section 4-4A-507.

Letters of Credit. Section 4-5-116.

Applicability of the chapter on Investment Securities. Section 4-8-110.

Law governing perfection, the effect of perfection or non-perfection, and the priority of security interests and agricultural liens. Sections 4-9-301 through 4-9-307.

4-2-402. Rights of seller's creditors against sold goods.

(Arkansas Code Annotated - Title 4 Business and Commercial Law - Subtitle 1. Uniform Commercial Code - Chapter 2 Sales - Part 4 — Title, Creditors, and Good Faith Purchasers).

(1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this chapter (§§ 4-2-502 and 4-2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this chapter shall be deemed to impair the rights of creditors of the seller

(a) under the provisions of the chapter on secured transactions (Chapter 9 of this title); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this chapter constitute the transaction a fraudulent transfer or voidable preference.

4-2A-105. Territorial application of chapter to goods covered by certificate of title

(Arkansas Code Annotated - Title 4 Business and Commercial Law - Subtitle 1. Uniform Commercial Code - Chapter 2A Leases - Part 1 — General Provisions).

Subject to the provisions of §§ 4-2A-304(3) and 4-2A-305(3), with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of (a) surrender of the certificate, or (b) four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

4-2A-106. Limitation on power of parties to consumer lease to choose applicable law and judicial forum

(Arkansas Code Annotated - Title 4 Business and Commercial Law - Subtitle 1. Uniform Commercial Code - Chapter 2A Leases - Part 1 — General Provisions).

(1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within thirty (30) days thereafter or in which the goods are to be used, the choice is not enforceable.

(2) If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

4-4-102. Applicability

(Arkansas Code Annotated - Title 4 Business and Commercial Law-Subtitle 1. Uniform Commercial Code - Chapter 4 Bank Deposits and Collections - Part 1 — General Provisions and Definitions).

(a) To the extent that items within this chapter are also within Chapters 3 and 8 of this subtitle, they are subject to those chapters. If there is conflict, this chapter governs Chapter 3, but Chapter 8 governs this chapter.

(b) The liability of a bank for action or non-action with respect to an item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

4-4A-507. Choice of law.

(Arkansas Code Annotated - Title 4 Business and Commercial Law - Subtitle 1. Uniform Commercial Code - Chapter 4A Funds Transfers - Part 5 — Miscellaneous Provisions).

(a) The following rules apply unless the affected parties otherwise agree or subsection (c) applies:

(1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(b) If the parties described in each paragraph of subsection (a) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that

jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(c) A funds-transfer system rule may select the law of a particular jurisdiction to govern (i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(d) In the event of inconsistency between an agreement under subsection (b) and a choice-of-law rule under subsection (c), the agreement under subsection (b) prevails.

(e) If a funds transfer is made by use of more than one (1) funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

4-5-116. Choice of law and forum.

(Arkansas Code Annotated Title 4 Business and Commercial Law Subtitle 1. Uniform Commercial Code Chapter 5 Letters of Credit).

(a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in § 4-5-104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(b) Unless subsection (a) of this section applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one (1) address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(c) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this chapter would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b) of this section, (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this chapter and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in § 4-5-103(c).

(d) If there is conflict between this chapter and Chapter 3, 4, 4A, or 9, this chapter governs.

(e) The forum for settling disputes arising out of an undertaking within this chapter may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a) of this section.

4-8-110. Applicability — Choice of law.

(Arkansas Code Annotated Title 4 Business and Commercial Law Subtitle 1. Uniform Commercial Code Chapter 8 Investment Securities Part 1 — Short Title and General Matters).

(a) The local law of the issuer's jurisdiction, as specified in subsection (d), governs:

(1) the validity of a security;

(2) the rights and duties of the issuer with respect to registration of transfer;

(3) the effectiveness of registration of transfer by the issuer;

(4) whether the issuer owes any duties to an adverse claimant to a security; and

(5) whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) The local law of the securities intermediary's jurisdiction, as specified in subsection (e), governs:

(1) acquisition of a security entitlement from the securities intermediary;

(2) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(4) whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(c) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(d) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subsection (a)(2)-(5).

(e) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of the Uniform Commercial Code, that jurisdiction is the securities intermediary's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(4) If none of the preceding paragraphs apply, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

(5) If none of the preceding paragraphs apply, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

(f) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

4-9-301. Law governing perfection and priority of security interests.

(Arkansas Code Annotated - Title 4 Business and Commercial Law - Subtitle 1. Uniform Commercial Code - Chapter 9 Secured Transactions - Part 3 — Perfection and Priority - Subpart 1 Law Governing Perfection and Priority).

Except as otherwise provided in §§ 4-9-303 — 4-9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4) of this section, while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

4-9-307. Location of debtor.

(Arkansas Code Annotated Title 4 Business and Commercial Law Subtitle 1. Uniform Commercial Code Chapter 9 Secured Transactions Part 3 — Perfection and Priority Subpart 1 Law Governing Perfection and Priority).

(a) In this section, “place of business” means a place where a debtor conducts its affairs.

(b) Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one (1) place of business is located at its place of business.

(3) A debtor that is an organization and has more than one (1) place of business is located at its chief executive office.

(c) Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) A registered organization that is organized under the law of a state is located in that state.

(f) Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) in the state that the law of the United States designates, if the law designates a state of location;

(2) in the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, including by designating its main office, home office, or other comparable office; or

(3) in the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

(g) A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) the dissolution, winding up, or cancellation of the existence of the registered organization.

(h) The United States is located in the District of Columbia.

(i) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one (1) state.

(j) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) This section applies only for purposes of this part.