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The Fair Notice and Market Stability Act

DID YOU KNOW? Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

Legislative Findings

1. The law must be predictable so that people may order their behavior. This fundamental concept is a cornerstone of any democratic society.
2. When people cannot rely on the written law, they cannot plan and conduct their daily activities with the assurance that their legal conduct will not subsequently be the source of punishment. This state of disorder destroys an individual's ability to enter into contracts and a market's ability to structure and regulate business conduct in an orderly, reliable, and fair manner.
3. The legislative, executive, and judicial branches of government have well-defined roles that are critically important to ensuring that the law remains predictable and reliable.
4. When courts step outside their assigned role, laws are changed without notice, without consideration of the consequences of the change, and without the opportunity for the appropriate parties to defend their positions or the law. This makes the law unreliable and unpredictable.
5. Requiring courts to operate within their traditional role as an arbiter of disputes will not limit an aggrieved party's access to the courts, or their ability to obtain judgments that redress their grievances or compensate them for their injuries.

Definitions

1. Aggrieved party: Any person or business that has a contractual relationship with a regulated party, and believes that the regulated party has violated a statute, regulation, order or finding detrimental to the aggrieved party.
2. Appropriate government authority: The official or agency of government having the responsibility of interpreting or enforcing laws, or regulating parties under state law. For purposes of representing the state in litigation, but not in promulgating regulations, it may also include the State Attorney General or Chief Legal Officer.
3. Judgment: A final order by a court of competent jurisdiction. (If the state has a definition of judgment, consider citing it.)
4. Litigation: For purposes of this Act, litigation means a lawsuit brought in a court of competent jurisdiction, in which individual disputes are resolved, or the legality, constitutionality, or application of a statute, regulation, order or finding is in question.
5. Regulated Party: Any person, corporation, or other business entity licensed and regulated by an appropriate government authority of this state.

Permissible Scope of a Judgment

1. A judgment against a regulated party may only extend to the regulated party's conduct as defined in the litigation.
2. Judgments may not affect a statute, regulation, finding, or order, unless the validity of that statute, regulation, finding or order was raised as part of the litigation.
3. The appropriate government entity may, at its discretion, intervene as a party in litigation to defend a statute, regulation, finding or order.
4. The judgment of a court in another state may only extend to a regulated party in this state if the party attempting to apply the judgment shows that:
 - a. Application of the foreign judgment would not be inconsistent with, or nullify, a statute, regulation, finding or order in this state that governs the conduct being challenged, and
 - b. The facts of the foreign judgment do not differ materially from the facts being alleged in the cause in question, and

This model legislation was prepared by the National Association of Mutual Insurance Companies (NAMIC), according to NAMIC's June 11, 2004 press release

ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda-underwritten by global corporations--includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

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 - Altria Client Services, Inc.
 - American Bail Coalition
 - State Farm Insurance
- For more on these corporations, search at www.SourceWatch.org.

- c. Compliance with the foreign judgment will not require a regulated party to violate a domestic statute, regulation, finding or order.
(Note: this is intended to prevent a party from challenging one state's valid legislative or regulatory determinations without joining the state. This provision is not intended to prevent a foreign party from directly challenging a state's law, nor would it nullify any state laws allowing for the enforcement of foreign judgments.)
- d. The court may not consider conduct of a regulated party outside of this state except as it may be relevant in proving the regulated party's intent in the conduct alleged in litigation.
(Note: This may not be appropriate in states where the rules of evidence are established by the courts.)

Remedies

1. If the validity of a statute, regulation, order or finding is an issue in the litigation, a court may consider and rule on whether the statute, regulation, finding, or order is unconstitutional or invalid.
2. An aggrieved party, who is not engaged in litigation of a grievance, may pursue a remedy of the grievance through an administrative procedure with the appropriate government authority. The appropriate government authority's ruling shall be final, but may be appealed to a court of competent jurisdiction. If, before a final ruling, any party to an administrative action under this section enters into litigation on the matter being heard by the appropriate government entity, the administrative proceeding shall terminate immediately.
(Note: in some states, the legislature may also have to enact enabling legislation before an appropriate government authority may create and employ this administrative process.)
3. If, after an administrative hearing, the appropriate government authority finds in favor of the aggrieved party, the appropriate government entity may:
 - a. Order the regulated party to amend its conduct so that it complies with the statute, regulation, order or finding.
 - b. Order the regulated party to pay actual damages.
 - c. Order attorneys fees for the prevailing party.

Regulatory Authority and Duties

1. If a court of final jurisdiction has ruled that a statute, regulation, order or finding is invalid or unconstitutional, the appropriate government authority shall take the following actions:
 - a. For regulations, orders, or findings, the appropriate government authority shall immediately amend the regulation, finding, or order to comply with the judgment.
 - b. For statutes, if the legislature is out of session or concludes without addressing the court's ruling, the appropriate government authority shall immediately promulgate an emergency regulation which identifies problems created by the court's ruling, and provides regulated parties with a prescribed method of conduct until the issues set out in the emergency regulation are resolved by the legislature. The emergency regulation shall remain in effect until the legislature addresses and resolves the issues set out in the emergency regulation.
(Note: a regulator could not issue emergency guidelines if the statute in question was nullified on constitutional grounds. Further, if the judgment finds that the statute, finding, regulation or order, is unconstitutional in a particular application, amended or emergency regulations will not be necessary, in that the state law remains valid.)

Defenses

If a court properly determines that a statute, regulation, finding, or order is illegal:

1. It shall be a defense that a regulated party relied on the law, regulation, finding or order.
2. It shall be an absolute defense for conduct occurring between the time that a statute, regulation, finding, or order is found invalid, and the promulgation of a corrective or emergency regulation, or the enactment of a corrective statute, that the regulated altered its conduct to comply with the court's ruling.
3. It shall be a defense that a regulated party relied upon and complied with an emergency regulation.

This Act will achieve and sustain a healthy judiciary while ensuring market stability by: requiring that public policy decisions be made in open public

proceedings with considerations of a broad range of concerns and interests, limiting the impact of individual disputes to those named individuals, providing a mechanism for defining appropriate conduct when a court overturns a statute or regulation, clarifying that a state court judgment has no force or effect in other states, and providing a defense from damages for legal conduct.

Did you know that Victor Schwartz--a lawyer who represents companies in product litigation--was the corporate co-chair in 2011?

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Adopted by ALEC's Civil Justice Task Force at the Spring Task Force Summit May 1, 2004. Approved by full ALEC Board of Directors May, 2004.

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