



2017 SENATE BILL 368

August 3, 2017 - Introduced by Senators NASS and MOULTON, cosponsored by Representatives WEATHERSTON, BRANDTJEN, E. BROOKS, HORLACHER, KREMER, MURPHY, QUINN, RIPP, SANFELIPPO, SKOWRONSKI, THIESFELDT and TUSLER. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT to create** 895.015 of the statutes; **relating to:** application of foreign law.

Analysis by the Legislative Reference Bureau

This bill prohibits a court or other adjudicative authority from applying, enforcing, or granting comity, claim preclusion, or issue preclusion to a foreign country's law, legal rule, legal code, or legal or social system if doing so would violate the fundamental civil rights of the party against whom the foreign law, ruling, or judgment is being applied or enforced. If any contractual provision or agreement provides for the choice of a foreign law to govern its interpretation, or provides for a choice of venue or forum, but would result in a violation of a fundamental civil right guaranteed to an individual by the U.S. Constitution or the Wisconsin Constitution, the provision is void and unenforceable. The bill provides that a court or other adjudicative authority may not grant certain motions if the grant of the motion violates, or would likely lead to the violation of, a fundamental right of the nonmovant under the U.S. Constitution or the Wisconsin Constitution. The bill does not apply to a corporation, partnership, limited liability company, or business association that contracts to subject itself to a foreign law in a jurisdiction other than Wisconsin or the United States.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 **SECTION 1.** 895.015 of the statutes is created to read:

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1 **895.015 Application of foreign law. (1)** In this section:

2 (a) “Ecclesiastical matters” means any of the following:

3 1. The election, appointment, calling, discipline, removal, or excommunication
4 of a member, officer, official, priest, nun, imam, monk, pastor, rabbi, or member of the
5 clergy.

6 2. The determination or interpretation of a doctrine.

7 3. The application and interpretation of the laws and rules of a religious
8 organization.

9 (b) “Foreign law” means any law, legal rule, legal code, or legal or social system
10 established and used or applied in a jurisdiction outside of the United States, the
11 states of the United States, the District of Columbia, or the territories of the United
12 States, but does not include any laws of a Native American tribe or band in
13 Wisconsin.

14 (c) “Fundamental right” means a civil right, civil liberty, or privilege
15 guaranteed to an individual by the U.S. Constitution or the Wisconsin Constitution.

16 (d) “Religious organization” means an association, conference, congregation,
17 convention, committee, or other entity that is organized and operated for a religious
18 purpose and that is exempt from federal income tax under 26 USC 501 (c) (3) or (d)
19 and any subunit of such an association, conference, congregation, convention,
20 committee, or entity that is organized and operated for a religious purpose.

21 **(2)** No court or other adjudicative authority may apply, enforce, or grant comity,
22 claim preclusion, or issue preclusion to a foreign law, ruling, or judgment if doing so
23 would violate a fundamental right of the person against whom the foreign law,
24 ruling, or judgment is being applied or enforced.

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1 **(3)** If any contractual provision or agreement provides for the choice of a foreign
2 law to govern its interpretation or the resolution of any dispute between parties, and
3 if the foreign law incorporates any substantive or procedural law that, as applied to
4 the dispute at issue, would not guarantee the parties the same fundamental rights
5 guaranteed by the U.S. Constitution and the Wisconsin Constitution, the agreement
6 or contractual provision shall be interpreted or construed to preserve the
7 fundamental rights of the parties. If the contractual provision or agreement is
8 incapable of being modified or amended in order to preserve the fundamental rights
9 of the parties, the agreement or contractual provision is void and unenforceable.

10 **(4)** If a contractual provision or agreement provides for a choice of venue or
11 forum outside the United States, and if the jurisdiction chosen would likely apply any
12 substantive or procedural foreign law to the dispute at issue that would not grant the
13 parties the same fundamental rights guaranteed by the U.S. Constitution and the
14 Wisconsin Constitution, that contractual provision or agreement is void and
15 unenforceable.

16 **(5)** No court or other adjudicative authority may grant a motion for change of
17 forum or venue or a motion to dismiss granting comity to a proceeding pending in a
18 court outside the United States if the court or other adjudicative authority finds that
19 granting the motion violates, or would likely lead to the violation of, a fundamental
20 right of the nonmovant in a court outside the United States with respect to the matter
21 in dispute.

22 **(6)** Notwithstanding subs. (2) to (5), this section does not apply to a corporation,
23 partnership, limited liability company, or business association that contracts to
24 subject itself to a foreign law in a jurisdiction other than Wisconsin or the United
25 States.

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1 (7) A court or other adjudicative authority may not interpret this section as
2 requiring or authorizing any court or other adjudicative authority to do any of the
3 following:

4 (a) Adjudicate or prohibit any religious organization from adjudicating
5 ecclesiastical matters if adjudication by a court or other adjudicative authority would
6 violate the prohibition of the establishment clause of the First Amendment of the
7 U.S. Constitution or the Wisconsin Constitution.

8 (b) Determine or interpret doctrine of a religious organization.

9 (8) A court or other adjudicative authority may not interpret this section as
10 limiting the right of any person to the free exercise of religion as guaranteed by the
11 First Amendment to the U.S. Constitution or by the Wisconsin Constitution.

12 (9) This section may not be interpreted to conflict with any federal treaty or
13 other international agreement entered into by the United States as a party to the
14 extent that the treaty or international agreement preempts or is superior to state law
15 on the matter at issue.

16 **SECTION 2. Initial applicability.**

17 (1) The treatment of section 895.015 (3) and (4) of the statutes first applies to
18 a contract or agreement entered into on the effective date of this subsection.

19 (END)