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:

SECTION 1. 895.015 of the statutes is created to read:
895.015 Application of foreign law. (1) In this section:

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

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

2. The determination or interpretation of a doctrine.

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

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

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

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

(2) No court or other adjudicative authority may apply, enforce, or grant comity, claim preclusion, or issue preclusion to a foreign law, ruling, or judgment if doing so would violate a fundamental right of the person against whom the foreign law, ruling, or judgment is being applied or enforced.
(3) If any contractual provision or agreement provides for the choice of a foreign law to govern its interpretation or the resolution of any dispute between parties, and if the foreign law incorporates any substantive or procedural law that, as applied to the dispute at issue, would not guarantee the parties the same fundamental rights guaranteed by the U.S. Constitution and the Wisconsin Constitution, the agreement or contractual provision shall be interpreted or construed to preserve the fundamental rights of the parties. If the contractual provision or agreement is incapable of being modified or amended in order to preserve the fundamental rights of the parties, the agreement or contractual provision is void and unenforceable.

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

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

(6) Notwithstanding subs. (2) to (5), this section 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.
(7) A court or other adjudicative authority may not interpret this section as
requiring or authorizing any court or other adjudicative authority to do any of the
following:

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

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

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

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

SECTION 2. Initial applicability.

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

(END)