

# SENATE BILL No. 16

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 34-7-8.

**Synopsis:** Application of foreign law. Provides that a court may not apply, enforce, or grant comity, res judicata, claim preclusion, or issue preclusion to a foreign law, ruling, or judgment if doing so would violate the fundamental liberties, rights, and privileges guaranteed by the Constitution of the United States or the Constitution of the State of Indiana. Provides that a provision in a contract or agreement that: (1) provides for the choice of foreign laws in its interpretation; or (2) provides for the choice of venue or forum; and that would result in a violation of a fundamental liberty, right, or privilege guaranteed by the Constitution of the United States or the Constitution of the State of Indiana is void and unenforceable. Prohibits a court from granting certain motions if the transfer is likely to affect the constitutional rights of the nonmoving party. Provides that a court may not require or authorize any court to: (1) adjudicate or prohibit a religious organization from adjudicating ecclesiastical matters; or (2) determine or interpret the doctrine of a religious organization.

**Effective:** July 1, 2017.

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January 3, 2017, read first time and referred to Committee on Judiciary.

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First Regular Session 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

## SENATE BILL No. 16

A BILL FOR AN ACT to amend the Indiana Code concerning civil law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 34-7-8 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2017]:

4 **Chapter 8. Application of Foreign Law**  
5 **Sec. 1. This chapter does not apply to a corporation,**  
6 **partnership, limited liability company, or business association that**  
7 **contracts to subject itself to a foreign law in a jurisdiction other**  
8 **than Indiana or the United States.**

9 **Sec. 2. As used in this chapter, "court" includes any court,**  
10 **board, administrative agency, or other adjudicative authority in**  
11 **Indiana.**

12 **Sec. 3. As used in this chapter, "ecclesiastical matters" includes:**  
13 **(1) the:**  
14 **(A) election;**  
15 **(B) appointment;**  
16 **(C) calling;**  
17 **(D) discipline;**



1                   (E) dismissal;  
 2                   (F) removal; or  
 3                   (G) excommunication;  
 4           of a member, officer, official, priest, nun, imam, monk, pastor,  
 5           rabbi, or member of the clergy;  
 6           (2) the determination or interpretation of a doctrine; and  
 7           (3) the application and interpretation of the laws and rules;  
 8   of a religious organization.

9       **Sec. 4. (a) As used in this chapter, "foreign law" means any law,**  
 10   **rule, legal code, or system:**  
 11           (1) established; and  
 12           (2) used or applied;  
 13   **in a jurisdiction outside the states of the United States, the District**  
 14   **of Columbia, or the territories of the United States.**

15       (b) The term does not mean or include any laws of a Native  
 16   American tribe in Indiana.

17       **Sec. 5. (a) As used in this chapter, "religious organization"**  
 18   **means any church, seminary, synagogue, temple, mosque, religious**  
 19   **order, religious corporation, religious association, or religious**  
 20   **society whose identity is distinctive in terms of a common religious**  
 21   **creed, beliefs, doctrines, practices, or rituals based on any faith or**  
 22   **denomination.**

23       (b) The term includes a church or religious ministry that is a  
 24   religious organization exempt from federal income taxation under  
 25   Section 501(c)(3) or 501(d) of the Internal Revenue Code.

26       **Sec. 6. A court may not apply, enforce, or grant comity, res**  
 27   **judicata, claim preclusion, or issue preclusion to a foreign law,**  
 28   **ruling, or judgment if doing so would violate the fundamental**  
 29   **liberties, rights, and privileges guaranteed by the Constitution of**  
 30   **the United States or the Constitution of the State of Indiana of the**  
 31   **person against whom the foreign law, ruling, or judgment is being**  
 32   **applied or enforced. The fundamental liberties, rights, and**  
 33   **privileges to which this section applies include due process,**  
 34   **freedom of religion, freedom of speech, and freedom of the press.**

35       **Sec. 7. If any contractual provision or agreement provides for**  
 36   **the choice of a foreign law to govern its interpretation or the**  
 37   **resolution of any dispute between parties, and if the foreign law**  
 38   **incorporates any substantive or procedural law that, as applied to**  
 39   **the dispute at issue, would not guarantee the parties the same**  
 40   **fundamental liberties, rights, and privileges guaranteed by the**  
 41   **Constitution of the United States and the Constitution of the State**  
 42   **of Indiana, the agreement or contractual provision shall be**



1 interpreted or construed to preserve the fundamental  
2 constitutional liberties, rights, and privileges of the parties. If the  
3 contractual provision or agreement is incapable of being modified  
4 or amended in order to preserve the fundamental liberties, rights,  
5 and privileges of the parties, the agreement or contractual  
6 provision is void and unenforceable.

7 **Sec. 8. (a)** If a contractual provision or agreement provides for  
8 the choice of venue or forum outside the United States, and if the  
9 jurisdiction chosen would likely apply any substantive or  
10 procedural foreign law to the dispute at issue that would not grant  
11 the parties the same fundamental liberties, rights, and privileges  
12 guaranteed by the Constitution of the United States and the  
13 Constitution of the State of Indiana, that agreement or contractual  
14 provision is void and unenforceable.

15 (b) A court may not grant a motion of forum non conveniens or  
16 a motion to dismiss granting comity to a proceeding pending in a  
17 court outside the United States if the court finds that granting the  
18 motion violates, or would likely lead to the violation of, the  
19 fundamental liberties, rights, and privileges guaranteed under the  
20 Constitution of the United States or the Constitution of the State of  
21 Indiana of the nonmovant in a court outside the United States with  
22 respect to the matter in dispute.

23 **Sec. 9. (a)** A court may not interpret this chapter as requiring or  
24 authorizing any court to:

- 25 (1) adjudicate or prohibit any religious organization from  
26 adjudicating ecclesiastical matters if adjudication by a court  
27 would violate the prohibition of the establishment clause of  
28 the First Amendment to the Constitution of the United States  
29 or violate the Constitution of the State of Indiana; or  
30 (2) determine or interpret doctrine of the religious  
31 organization.

32 (b) A court or arbitrator may not interpret this chapter as  
33 limiting the right of any person to the free exercise of religion as  
34 guaranteed by the First Amendment to the Constitution of the  
35 United States or by the Constitution of the State of Indiana.

36 (c) This chapter shall not be interpreted to conflict with any  
37 federal treaty or other international agreement entered into by the  
38 United States as a party to the extent that the treaty or  
39 international agreement preempts or is superior to state law on the  
40 matter at issue.

