



**SENATE SUBSTITUTE AMENDMENT 1,
TO 2005 SENATE BILL 356**

October 25, 2005 – Offered by Senator A. LASEE.

- 1 **AN ACT** *to create* 632.28 of the statutes; **relating to:** choice of law in cases
2 involving environmental claims under general liability insurance policies.

Analysis by the Legislative Reference Bureau

Under common law rules in Wisconsin, if there is a dispute over which state's laws should be used to resolve a controversy that involves an insurance policy, the court first looks at whether the policy specifies the law that will be used. If the policy does not, the court uses a "grouping-of-contacts" approach, which looks at a number of factors, called contacts, such as the place of contracting, the place of performance, and the location of the place of business of the parties, to determine which state has the most significant relationship to the transaction. If the insured risk, which is the policyholder's insured activity, is located principally in one state, that contact is given greater weight than any other single contact for determining which state's laws will be applied. This substitute amendment provides that, unless the policy specifies otherwise, Wisconsin law will be applied in every case that involves an environmental claim that is made under a general liability insurance policy, regardless of the state in which the policy was issued or delivered. An environmental claim is defined in the substitute amendment as a claim made by an insured for defense or indemnity based on the insured's liability or potential liability for bodily injury or property damage arising from the presence of pollutants in this state as a result of a release of pollutants in this state.

The substitute amendment provides that the statutory requirement regarding the application of Wisconsin law applies with respect to every environmental claim

that is submitted under a general liability insurance policy and that has not been settled or finally adjudicated on or before the day the bill becomes law. The substitute amendment also provides that nothing in the statutory requirement regarding the application of Wisconsin law is to be 1) interpreted to modify common law rules regarding what state's law applies with respect to claims that involve damage arising from pollution outside of Wisconsin or 2) construed to raise the inference that the legislature intends to change the common law of this state with respect to the interpretation of general liability insurance policies that are not subject to environmental claims.

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

1 **SECTION 1.** 632.28 of the statutes is created to read:

2 **632.28 Environmental claims; choice of law. (1) DEFINITIONS.** In this
3 section:

4 (a) “Environmental claim” means a claim for defense or indemnity that is
5 submitted by an insured and that is based on the insured's liability or potential
6 liability for bodily injury or property damage arising from the presence of pollutants
7 in this state as a result of a release of pollutants in this state.

8 (b) “Pollutant” means any solid, liquid, or gaseous irritant or contaminant,
9 including smoke, vapor, soot, fumes, acids, alkalies, chemicals, asbestos, petroleum
10 products, lead, products containing lead, and waste.

11 (c) “Pollution” means the presence of pollutants in or on land, air, or water.

12 **(2) CHOICE OF LAW.** Except as otherwise provided in the policy, Wisconsin law
13 shall be applied in a case involving an environmental claim that is submitted under
14 a general liability insurance policy, regardless of the state in which the general
15 liability insurance policy was issued or delivered.

16 **(3) APPLICABILITY.** This section applies to all environmental claims that are
17 submitted under general liability insurance policies and that are not settled or

1 finally adjudicated on or before the effective date of this subsection [revisor inserts
2 date], regardless of when the claim arose.

3 (4) INTERPRETATION AND CONSTRUCTION. (a) Nothing in this section shall be
4 interpreted to modify common law rules governing a choice of law determination for
5 a claim for defense or indemnity that is submitted under a general liability insurance
6 policy and that involves bodily injury or property damage arising from pollution
7 outside this state.

8 (b) Nothing in this section shall be construed to raise or support any inference
9 that it is the intention of the legislature to change the common law of this state with
10 respect to the interpretation of a general liability insurance policy not subject to an
11 environmental claim.

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(END)