



## 2005 SENATE BILL 356

September 30, 2005 – Introduced by Senators A. LASEE, COWLES, WIRCH, ROESSLER and COGGS. Referred to Committee on Judiciary, Corrections and Privacy.

- 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.

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### *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 bill 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 bill 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 on the bed or banks of a navigable water in this state as a result of a release of pollutants in this state.

The bill 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

**SENATE BILL 356**

adjudicated on or before the day the bill becomes law. The bill 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.

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*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 on the bed or banks of a navigable water in this state as a result of a release of  
8 pollutants in this state.

9           (b) "Navigable waters" has the meaning given in s. 30.01 (4m).

10          (c) "Pollutant" means any solid, liquid, or gaseous irritant or contaminant,  
11 including smoke, vapor, soot, fumes, acids, alkalies, chemicals, asbestos, petroleum  
12 products, lead, products containing lead, and waste.

13          (d) "Pollution" means the presence of pollutants in or on land, air, or water.

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

