



2009 SENATE BILL 9

January 21, 2009 – Introduced by Senators ERPENBACH, HANSEN, TAYLOR, LEHMAN, LASSA, WIRCH, SULLIVAN, OLSEN, SCHULTZ and COWLES, cosponsored by Representatives RADCLIFFE, HEBL, COLON, SOLETSKI, ROYS, RICHARDS, BERCEAU, SHILLING, PARISI, HRAYCHUCK, MOLEPSKE, JR., A. OTT and VAN ROY. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1 **AN ACT to create** 895.10 of the statutes; **relating to:** a tort action for intentional
2 misrepresentation in a residential real estate transaction.

Analysis by the Legislative Reference Bureau

In *Below v. Norton*, 2008 WI 77, 751 N.W. 2d 351, the Wisconsin Supreme Court determined that the economic loss doctrine bars a homebuyer from recovering in tort for an intentional misrepresentation concerning the property made by the seller of the property. Under the judicially created economic loss doctrine, a purchaser of a product that is defective may not recover from the seller on a tort theory, such as an action for damages for fraud or intentional misrepresentation, for damages that are solely economic; the recovery is limited to damages for a breach of contract. Before *Below*, with respect to real estate sales, the economic loss doctrine applied only to commercial transactions.

This bill reverses the decision in *Below* by providing that, in addition to any other remedies that are available, a transferee (purchaser) in a residential real estate transaction may maintain an action in tort against the transferor (seller) of the real estate for fraud committed, or an intentional misrepresentation made, by the transferor in the residential real estate transaction. The bill defines a residential real estate transaction as a real estate transfer for which a real estate condition report is required, which is, generally, a transfer of previously inhabited real property.

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

