

2001 ASSEMBLY BILL 606

October 30, 2001 – Introduced by Representative GARD. Referred to Committee on Judiciary.

- 1 **AN ACT** *to create* 895.491 of the statutes; **relating to:** indemnification and hold
2 harmless provisions and additional endorsements in construction contracts.

Analysis by the Legislative Reference Bureau

Under current law, any provision in an agreement relating to the construction maintenance or alteration of a structure that limits or eliminates tort liability is void. In *Gerdman v. United States Fire Ins. Co.*, 119 Wis. 2d 367 (Ct. App. 1984), the court held that an indemnity clause in a construction contract was not affected by this law. The current law does not apply to an insurance contract or to a worker's compensation plan.

Under this bill, any provision in or collateral to a construction contract that requires one person (the indemnitor) to indemnify (secure against loss or damage) or hold harmless another person (the indemnitee) for damages, injury, or death is void to the extent that the provision applies to acts or omissions of the indemnitee or a person other than the indemnitor's agents or employees. For example, under the bill, if, as part of a construction agreement, the contractor agreed to pay any amount that the owner was required to pay to an injured party as the result of the owner's negligence that occurred during the construction of the building, that part of the agreement would be void. The bill also provides that any additional insured endorsement furnished as part of a construction agreement cannot extend coverage

ASSEMBLY BILL 606

so as to result in one person indemnifying another person for the acts or omissions of that second person.

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

1 **SECTION 1.** 895.491 of the statutes is created to read:

2 **895.491 Certain indemnity provisions in construction contracts void.**

3 **(1)** In this section:

4 (a) “Construction contract” means an agreement for architectural services,
5 alterations, construction, demolition, design services, development, engineering
6 services, excavation, maintenance, repair, or other improvement to real property,
7 including any agreement to supply labor, materials, or equipment for an
8 improvement to real property.

9 (b) “Indemnification or hold harmless clause” means any provision in an
10 agreement that requires an indemnitor to indemnify or hold harmless an indemnitee
11 from, or insure or defend an indemnitee against, any claim, damage, loss, or expense
12 attributable to bodily injury, sickness, disease, or death, or to injury to or destruction
13 of property other than the property improvement that is the subject of the
14 construction contract.

15 (c) “Indemnitee” means the person whom the indemnitor is required to
16 indemnify, hold harmless, insure, or defend under an indemnification and hold
17 harmless clause.

18 (d) “Indemnitor” means the person who agrees and is required to indemnify or
19 hold harmless an indemnitee from, or insure or defend an indemnitee against, any
20 claim, damage, loss, or expense attributable to bodily injury, sickness, disease, or

ASSEMBLY BILL 606

1 death, or to injury to or destruction of property other than the property improvement
2 that is the subject of the construction contract.

3 (2) Any indemnification or hold harmless clause in or collateral to a
4 construction contract is against public policy and void to the extent that the clause
5 requires the indemnitor to indemnify or hold harmless an indemnitee from, or insure
6 or defend an indemnitee against, any claim, damage, loss, or expense attributable
7 to bodily injury, sickness, disease, or death, or to injury to or destruction of property
8 other than the property improvement that is the subject of the construction contract,
9 caused by or arising out of the acts or omissions of the indemnitee or any other
10 person, except the indemnitor or the indemnitor's agents or employees.

11 (3) Notwithstanding sub. (2), an indemnification and hold harmless clause and
12 an additional insured endorsement may provide that the indemnitor indemnify an
13 indemnitee for losses that the indemnitee incurs because of the indemnitee's
14 negligent failure to discover or remedy a dangerous condition created by the
15 indemnitor.

16 (4) This section does not apply to an indemnity agreement executed by an
17 indemnitor in favor of a surety company, or to a surety bond or an insurance contract,
18 including owners and contractors protective insurance, project management
19 protective liability insurance, builder's risk insurance, or worker's compensation
20 plan. However, any additional insured endorsement furnished in accordance with
21 an agreement in or collateral to a construction contract may not extend coverage to
22 the person covered by that additional insurance if that would result in a violation of
23 sub. (2).

24 **SECTION 2. Initial applicability.**

