



2009 SENATE BILL 589

March 4, 2010 – Introduced by Senator TAYLOR, cosponsored by Representative ZIGMUNT, by request of American Subcontractors Association of Wisconsin. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1 **AN ACT to repeal** 895.447 (1) and 895.447 (3); and **to create** 895.447 (1g),
2 895.447 (1m) and 895.447 (1r) of the statutes; **relating to:** indemnity clauses
3 in construction contracts.

Analysis by the Legislative Reference Bureau

Under current law, any provision in an agreement, other than an insurance contract or worker's compensation plan, relating to the construction, alteration, repair, or maintenance of a building that limits or eliminates tort liability is against public policy and void. The Wisconsin Court of Appeals, in *Gerdman v. U.S. Fire Insurance Co.*, 119 Wis. 2d 367 (Ct. App. 1984), held that this law does not apply to an indemnity clause in a contract in which a subcontractor agreed to hold the contractor harmless from any liability for damages resulting from the work of the contractor or subcontractor under the contract.

This bill overturns that decision, providing that construction contracts that require a person to indemnify or hold harmless another person from, or insure or defend another person against, any claim or damage resulting from the acts or omissions of the other person are against public policy and void. The bill also provides that any clause that is a part of a construction contract and that waives a person's right of subrogation is against public policy and void.

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

SENATE BILL 589**SECTION 1**

1 **SECTION 1.** 895.447 (1) of the statutes is repealed.

2 **SECTION 2.** 895.447 (1g) of the statutes is created to read:

3 895.447 (**1g**) 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, moving, repair, or other improvement to real
7 property, including any agreement to supply labor, materials, or equipment for an
8 improvement to real property.

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

14 **SECTION 3.** 895.447 (1m) of the statutes is created to read:

15 895.447 (**1m**) Any indemnity provision that is a part of or in connection with
16 any construction contract and that does any of the following, is against public policy
17 and void:

18 (a) Requires a person to limit another person’s tort liability for damages
19 resulting from the acts or omissions of the other person.

20 (b) Requires a person to hold another person harmless from any tort liability
21 for damages resulting from the acts or omissions of the other person.

22 (c) Requires a person to insure another person against any tort liability for
23 damages resulting from the acts or omissions of the other person.

24 (d) Requires a person to defend another person against any tort liability for
25 damages resulting from the acts or omissions of the other person.

