

Consumer Protection

AB 6 – SB 9

Rep. Radcliffe

Summary of Bill (*as amended*):

Assembly Bill 6/Senate Bill 9 reverses Wisconsin Supreme Court decision 2008 WI 77, 751 N.W. 2d 351, Below vs. Norton. In the decision, The Court found that the Economic Loss Doctrine barred a residential real estate purchaser from recovering in tort against the seller for intentionally misrepresenting the condition of a home. Before the Supreme Court decision, the Economic Loss Doctrine applied only to commercial real estate. This legislation would reverse the Court's decision and, in addition to other remedies currently available, allow for tort action seeking both economic and punitive damages. Unlike other consumer protection measures, which marks the beginning of the statute of limitations at the time of the transaction, this legislation would 'start the clock' on the statute of limitation when a problem is discovered with the home. The statute of limitations would be six years from when the purchaser discovers a problem.

Fiscal Effect:

There is no fiscal estimate for this legislation.

Supporters Message:

- This legislation would restore previous law and provide residential real-estate consumers with more options to recover loss from dishonest home sellers. It would also allow more time for these misrepresentations to be discovered as many issues with a home may go unnoticed for quite some time. This legislation is necessary because home buyers currently do not have protections against fraud and intentional misrepresentations in the sale of a home.

Opponents Message:

- This legislation is unnecessary as current statutory and contractual remedies exist. It would also, in effect, weaken the Economic Loss Doctrine which provides a major distinction between contract and tort. This legislation would also create a cause of action which would never cease, leaving open the possibility of lawsuits being filed thirty years or more after the sale of a home. Finally, this legislation would allow a purchaser to seek punitive damages and not simply their actual economic loss, leading to the distinct possibility of an increase in frivolous lawsuits seeking major settlements and/or judgments.

Key Supporters:

Representative Mark Radcliffe (author); Representative Gary Hebl; Senator Jon Erpenbach (senate author); Wisconsin Realtors Association; Wisconsin Association For Justice (formerly Wisconsin Academy of Trial Lawyers); Wisconsin Association of Home Inspectors; State Bar of Wisconsin

Key Opponents:

Wisconsin Defense Counsel (formerly the Civil Trial Counsel of Wisconsin); Civil Trial Counsel; Wisconsin Civil Justice Counsel; Wisconsin Insurance Alliance

Committee Vote:

On February 19, 2009, the Assembly Committee on Consumer Protection recommended passage of AB6 on a vote of 7-2. [Lothian, Spanbauer voted Aye; Meyer, Kleefisch voted No.] Senate Bill 9 did not receive a hearing in the Assembly. It passed the Senate on a voice vote.

Ranking Member Author of Bill Summary

Tyler August; Office of Rep. Tom Lothian (6-1190)