2011 DRAFTING REQUEST

Bill

Received: **01/11/2012**

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB:

For: **Robin Vos (608) 266-9171**

By/Representing: **Jenny Toftness**

May Contact:

Drafter: **tkuczens**

Subject: **Courts - torts**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Vos@legis.wisconsin.gov**

Carbon copy (CC:) to: **tracy.kuczenski@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Changes to product liability provisions governing manufacturers, distributors, sellers and promoters of products

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Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	tkuczens 01/11/2012	jdyer 01/11/2012		_____ _____			
/1			phenry 01/12/2012	_____ _____	sbasford 01/12/2012	ggodwin 01/23/2012	

FE Sent For:

None

<END>

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/?	tkuczens	1/12 jld	1/12 ph	✓			

FE Sent For:

<END>

Kuczenski, Tracy

From: Burri, Lance
Sent: Wednesday, January 11, 2012 4:42 PM
To: Kuczenski, Tracy
Cc: Toftness, Jennifer
Subject: Lrb 3693/3

Attachments: 11-36933.pdf

Tracy, please draft an assembly version for Rep. Vos' office. Jenny Toftness is the contact there. Thanks.

11-36933.pdf (34 KB)

Lance Burri
Office of Sen. Glenn Grothman
608-266-7513

3798/1

State of Wisconsin
2011 – 2012 LEGISLATURE

LRB–~~3693~~/3
TKK:jld/kjf/med:jf
Keep RMN12

2011 BILL

1/11/12
wanted 1/12/12 (no changes)

Regen

AN ACT ***to repeal*** 895.047 (6); ***to renumber*** 895.046 (1); ***to amend*** 895.046 (2); and ***to create*** 895.046 (1g) and 895.046 (8) of the statutes; **relating to:** changes to product liability law and the law governing remedies against manufacturers, distributors, sellers, and promoters of a product.

Analysis by the Legislative Reference Bureau

2011 Wisconsin Act 2 (Act 2) made a number of changes to the law governing civil actions involving product liability claims brought under a theory of strict liability and to civil actions against manufacturers, distributors, sellers, and promoters of products. This bill makes several changes to certain provisions enacted under Act 2.

PRODUCT LIABILITY

REQUIREMENTS FOR BRINGING A PRODUCT LIABILITY ACTION BASED ON A DEFECTIVE PRODUCT; DEFENSES AND EXCEPTIONS TO LIABILITY

Act 2 created specific requirements for bringing a product liability action seeking damages under the theory of strict liability against manufacturers of the product and against sellers and distributors of the product. Act 2 included defenses and exceptions to strict liability for these types of parties. Finally, Act 2 included an inapplicability provision making the requirements for bringing a product liability action seeking damages under a theory of strict liability, the exceptions to strict liability, and the defenses to strict liability inapplicable to actions based on a claim of negligence or breach of warranty. This bill eliminates the inapplicability provision.

RISK CONTRIBUTION THEORY: REMEDIES AGAINST MANUFACTURERS, DISTRIBUTORS, SELLERS, AND PROMOTERS OF A PRODUCT

Under Act 2, a manufacturer, distributor, seller, or promoter of a product who is a defendant in a civil action generally may be held liable for damages only if an injured party proves, in addition to causation, damages, and other elements of the claim, that the specific product that caused the injury was manufactured, distributed, sold, or promoted by the defendant. Also under Act 2, in cases in which an injured party cannot prove that the defendant manufactured, distributed, sold or promoted the specific product that caused the injury, the defendant may be held liable under risk contribution theory if: 1) the injured party names as defendants in the action those manufacturers who, collectively, during the relevant production period, manufactured at least 80 percent of all products sold in this state that are chemically identical to the specific product that allegedly caused the claimant's injury and 2) the injured party proves certain other elements related to the cause of the injury and the right of the injured party to a recovery. These provisions of Act 2 were made applicable to actions or special proceedings commenced on or after the effective date of the Act.

This bill provides that the provisions of Act 2 governing remedies against manufacturers, distributors, sellers, and promoters of a product apply to all actions in law or equity, whenever filed or accrued. The bill includes a statement of legislative findings and intent which states, in part, that the portions of Act 2 governing remedies against manufacturers, distributors, sellers, and promoters of a product under risk contribution theory were enacted in response to the Wisconsin Supreme Court's decision in *Thomas v. Mallett*, 2005 WI 129. The bill also explicitly abrogates common law doctrines governing product liability claims that conflict with the elements, requirements, and defenses established under Act 2.

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

1 **SECTION 1.** 895.046 (1) of the statutes, as created by 2011 Wisconsin Act 2, is
2 renumbered 895.046 (1r).

3 **SECTION 2.** 895.046 (1g) of the statutes is created to read:

4 895.046 **(1g)** LEGISLATIVE FINDINGS AND INTENT. The legislature finds that it is
5 in the public interest to clarify product liability law, generally, and the application
6 of the risk contribution theory of liability first announced by the Wisconsin Supreme
7 Court in *Collins v. Eli Lilly Company*, 116 Wis. 2d 166 (1984), specifically, in order

to return tort law to its historical, common law roots. This return both protects the rights of citizens to pursue legitimate and timely claims of injury resulting from defective products, and assures that businesses may conduct activities in this state without fear of being sued for indefinite claims of harm from products which businesses may never have manufactured, distributed, sold, or promoted, or which were made and sold decades ago. The legislature finds that the application of risk contribution to former white lead carbonate manufacturers in *Thomas v. Mallet*, 285 Wis. 2d 236 (2005), was an improperly expansive application of the risk contribution theory of liability announced in Collins, and that application raised substantial questions of deprivation of due process, equal protection, and right to jury trial under the federal and Wisconsin constitutions. The legislature finds that this section protects the right to a remedy found in article I, section 9, of the Wisconsin Constitution, by preserving the narrow and limited application of the risk contribution theory of liability announced in *Collins*.

SECTION 3. 895.046 (2) of the statutes, as created by 2011 Wisconsin Act 2, is amended to read:

895.046 **(2)** APPLICABILITY. This section applies to all actions in law or equity, <u>whenever filed or accrued,</u> in which a claimant alleges that the manufacturer, distributor, seller, or promoter of a product is liable for an injury or harm to a person or property, including actions based on allegations that the design, manufacture, distribution, sale, or promotion of, or instructions or warnings about, a product caused or contributed to a personal injury or harm to a person or property, a private nuisance, or a public nuisance, and to all related or independent claims, including unjust enrichment, restitution, or indemnification.

SECTION 4. 895.046 (8) of the statutes is created to read:

895.046 **(8)** ABROGATION OF COMMON LAW. This section establishes the elements of and requirements for causation and product identification in and defenses for product liability claims in this state, and supersedes common law doctrines that conflict with the elements, requirements, and defenses established in this section. Except as provided in this subsection, this section does not alter the other elements required to establish a product liability claim or a claim for misrepresentation or breach of warranty under common law.

SECTION 5. 895.047 (6) of the statutes, as created by 2011 Wisconsin Act 2, is repealed.

SECTION 6. Initial applicability.

(1) The treatment of sections 895.046 (1), (1g), (2), and (8) and 895.047 (6) of the statutes first applies to actions or special proceedings pending or commenced on the effective date of this subsection.

(END)

Godwin, Gigi

From: Hale, Janine
Sent: Monday, January 23, 2012 3:12 PM
To: LRB.Legal
Subject: Draft Review: LRB 11-3798/1 Topic: Changes to product liability provisions governing manufacturers, distributors, sellers and promoters of products

Please Jacket LRB 11-3798/1 for the ASSEMBLY.