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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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**2003 Assembly Bill 317**

**Assembly Substitute  
Amendment 1**

*Memo published:* October 29, 2003

*Contact:* Don Dyke, Chief of Legal Services (266-0292)

Assembly Substitute Amendment 1 makes the following changes to the original proposal.

1. **Effect on negligence and breach of warranty claims.** Clarifies that the provisions of the proposal apply to product liability claims based on strict liability; claims based on negligence or breach of warranty are unaffected.

2. **Role of jury in comparative negligence.** Clarifies, for purposes of the proposal's comparative negligence and joint and severable liability provisions, the jury's role as the fact finder in cases tried to a jury. (The substitute amendment substitutes "fact finder" for "court" in appropriate places.)

3. **Statute of repose.** Concerning the proposal's 15-year statute of repose:

a. Provides that the 15-year period applies to a claim that "accrues" more than 15 years after the product was manufactured; in the original bill, the defendant is not liable if the product was manufactured 15 years or more before the "event on which the claim is based."

b. Revises the statute of repose exception in the original bill that applies when the manufacturer makes a "specific representation extending the life of the product" by substituting a "specific representation that the product will last for a period of time beyond 15 years."

c. Provides a new exception to the statute of repose:

- If the claimant establishes by a preponderance of the evidence:
  - That the defective product caused a latent disease that did not manifest itself until a date on or after three years before the expiration of the 15-year period; and

- That the claimant commenced the action within three years of the date of manifestation of the latent disease.

4. **Effect of certain contributory negligence on damages.** Clarifies that contributory negligence consisting of product misuse, alteration, or modification reduces damages if the contributory negligence is attributable to the claimant, rather than to “any person.” (Under the original bill, the percentage of responsibility for the claimant’s harm attributable to misuse, alteration, or modification of a product “by any person” reduces, by that percentage, the damages for which the manufacturer, distributor, or seller is otherwise liable. [p. 7, lines 1 to 4 (original bill).] Under the comparative negligence provision of the bill, the damages recovered by the injured party are diminished by the percentage of causal responsibility “attributed to that injured party.” [p. 4, lines 1 to 4 (original bill).] Because these two provisions may be read as inconsistent, the substitute amendment revises the misuse, alteration, or modification provision for consistency with the comparative negligence provision.)

5. **Under-the-influence defense.** Substitutes in the “under-the-influence” defense reference to a blood alcohol concentration of 0.08, rather than 0.1, for consistency with 2003 Wisconsin Act 30.

6. **Application to “assemblers.”** Deletes reference to “assemblers” from the references in the proposal to product sellers and distributors (nonmanufacturer sellers and distributors); it was not the intent of the authors of the proposal to treat assemblers as product sellers and distributors.

Assembly Substitute Amendment 1 was introduced by Representative Mark Gundrum. The substitute amendment was recommended for adoption by the Assembly Committee on Judiciary by a vote of Ayes, 6; Noes, 2.

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