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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

1995-96

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Insurance, Securities and Corporate Policy...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Assembly

Senate Bill 45

February 28, 1995

April 20, 1995

Record of Committee Proceedings

AN ACT relating to liability of shareholders to corporate employes. Introduced by Senators Huelsman, Petak, Rude, Farrow, Darling, Llean, Buettner, Cowles, Schultz and Panzer; cosponsored by Representatives Seratti, Johnsrud, Dobyms, Musser, Duff, Grothman, Schneiders, Kaufert, Jensen, Ladwig, Goetsch, Freese, Handrick, Albers, Vrakas, Brandemuehl, Huebsch, Olsen and Klusman.

Referred to committee on Insurance, Securities & Corporate Policy.

PUBLIC HEARING HELD

Present: (12) Representatives Albers, Lorge, Underheim, Kreibich, Lazich, Hoven, Green, Baldus, Notestein, Robson, Cullen, and Ziegelbauer

Absent: (1) Lasee

Appearances For the Bill

► Representative Lorraine Seratti
► James Carpenter, for Senator Huelsman
► Mary Jo Paque, Metropolitan Milwaukee Association of Commerce, Milwaukee, Wisconsin

Appearances Against the Bill

► Assistant Attorney General Jennifer D. Ryan, Department of Justice, Madison, Wisconsin.
► David Knipfel, Madison, Wisconsin.
► Joanne Ricca, Wisconsin State AFL-CIO, Milwaukee, Wisconsin.
► Monica Gehrt, Beloit, Wisconsin.
► Lynn Yessa, Janesville, Wisconsin.

Appearances for Information Only

None

Registrations For the Bill

► Mary Jo Paque, Metropolitan Milwaukee Association of Commerce, Milwaukee, Wisconsin.

Registrations Against the Bill

► Lynn Yessa, Janesville, Wisconsin

September 14, 1995

EXECUTIVE SESSION HELD

Present: (12) Representatives Albers,
Lorge, Lasee, Underheim,
Lazich, Hoven, Green,
Baldus, Notestein, Robson,
Cullen, and Ziegelbauer.

Absent: (1) Kreibich.

Moved by Representative Underheim, seconded by
Representative Lazich that SB 45 be recommended
for concurrence.

Ayes: (5) Representatives Albers,
Underheim, Lazich, Hoven,
and Green.

Noes: (7) Representatives Lorge,
Lasee, Baldus, Notestein,
Robson, Cullen, and
Ziegelbauer.

Absent: (1) Kreibich.

Motion failed: Motion for concurrence of SB 45
failed.

Assembly Committee on Insurance, Securities, and Corporate Policy

DATE 9-14-95
 Moved by Underheim Seconded by Lazich
 AB _____ SB 45 Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 A _____ SR _____ Other _____

~~A/S Amdt. 0894/1~~
 A/S Amdt. _____ to A/S Amdt. _____
 A/S Sub Amdt. _____
 A/S Amdt. _____ to A/S Sub Amdt. _____
 A/S Amdt. _____ to A/S Amdt. _____ to A/S Sub Amdt. _____

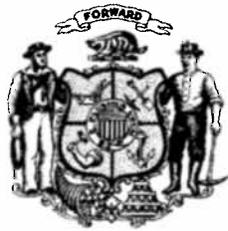
- Be recommended for:
- Passage
 - Introduction
 - Adoption
 - Rejection
 - Indefinite Postponement
 - Tabling
 - Concurrence
 - Nonconcurrence
 - Confirmation

	Committee Member	Aye	No	Absent	Not Voting
1.	Rep. Sheryl Albers, Chair	X			
2.	Rep. William Lorge, Vice-Chair		X		
3.	Rep. Gregg Underheim	X			
4.	Rep. Robin Kreibich			X	
5.	Rep. Mary Lazich	X			
6.	Rep. Tim Hoven	X			
7.	Rep. Frank Lasee		X		
8.	Rep. Mark Green	X			
9.	Rep. Al Baldus		X		
10.	Rep. Barbara Notestein		X		
11.	Rep. Judy Robson		X		
12.	Rep. David Cullen		X		
13.	Rep. Robert Ziegelbauer		X		
14.					
15.					
16.					
17.					
18.					
Totals					

MOTION CARRIED MOTION FAILED



WISCONSIN STATE LEGISLATURE





April 17, 1995

Assembly Committee on Insurance, Securities & Corporate Policy

Representative Sheryl Albers, Chair

Statement in Support of Senate Bill 45

Mary Jo K. Paque, MMAC Director of Governmental Affairs

Thank you Representative Albers and committee members for this opportunity to speak on an issue of concern to the business community.

The 2500 businesses which make up the Metropolitan Milwaukee Association of Commerce and its Council of Small Business Executives strongly **support** elimination of provisions in current law which impose personal liability on each shareholder of a corporation, in the amount up to the value of the shares owned, for any amount owed to employees for up to six months of work.

One of the most important factors in determining an appropriate investment level is defining liability. For a shareholder who does not control or play an active role in the management of a corporation, current liability provisions in Wisconsin statutes may reduce the amount of capital that investors can afford to put into new and expanding companies to create new jobs and economic growth.

Senate Bill 45 will encourage investment of additional capital in smaller companies, given the certainty that X dollars invested, which may be the limit an investor can afford to risk, is the limit of liability.

Investors in early stage companies, where individuals and families provide the greatest support, are often the least sophisticated investors. These shareholder liability provisions penalize those that are taking the greatest risk in order to create new jobs and opportunities.

Any provisions that help level the playing field for small businesses seeking additional capital for start-up or expansion should be encouraged. In addition, these provisions should be repealed because they send a red-flag to investors from other states who are unfamiliar with this type of regulation and see it as an "anti-business" and an indicator of Wisconsin's business climate.

The provisions in current law provide an unnecessary burden to the capitalization of small businesses, and should be repealed.

I urge your support for SB 45.

Thank you for your time and attention. I would be happy to answer any questions.





Joanne B. Huelsman
WISCONSIN STATE SENATOR

TESTIMONY BY JAMES CARPENTER
ON BEHALF OF SENATOR JOANNE B. HUELSMAN
1995 SB 45
APRIL 20, 1995

The statute that this bill repeals was enacted in 1849 - at the same time that a legislative enactment was required in order to engage in business as a corporation. At that time, public companies were rare, and stockholders were also the managers of the business.

As most of you know, people invest in corporations because of the limited liability afforded by the corporate status. Most people who invest in corporations don't even know that the 1849 statute exists. But investment advisors in Europe do, because articles have been written there encouraging people not to invest in Wisconsin because of this statute that exists in no other state in the U.S. except for Wisconsin.

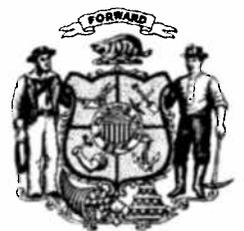
With this statute in place, the person who invests \$10,000 in a Wisconsin corporation that fails can lose not only that \$10,000, but also up to an additional \$10,000 if employees are owed unpaid wages.

Most new and growing companies must find capital from passive investors who have no hand in management of the business and insist on being protected from risks beyond the loss of money they have chosen to invest. The current statute encourages loans to corporations and discourages capital investment. It needs to be repealed by passing SB 45.





WISCONSIN STATE LEGISLATURE



Wisconsin State AFL-CIO



CHARTERED 1958

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David Newby, President • Michael J. Paul, Exec. Vice President • Phillip L. Neuenfeldt, Secretary-Treasurer

TO: Assembly Insurance, Securities
and Corporate Policy Committee

FROM: Phil Neuenfeldt, Secretary-Treasurer
Joanne Ricca, Staff Representative

DATE: April 20, 1995

RE: OPPOSITION TO SB 45
ELIMINATION OF SHAREHOLDER LIABILITY

SB 45 may appear to be a rather innocuous bill, but this bill would actually eliminate important wage protection for workers employed by firms which file for bankruptcy - or often simply close - and are left with unpaid wages. SB 45 could more accurately be called "elimination of shareholder responsibility."

This bill would repeal a long-standing Wisconsin statute (enacted in 1849) that imposes limited personal liability on each shareholder of a corporation, for up to six months' wages, but not to exceed the par value of shares owed by each shareholder. Since workers cannot survive for anywhere near six months without being paid, in reality the unpaid wages are usually the last pay period, which could be one or two weeks. Almost 150 years after enactment, the protection afforded by this statute is still needed.

Testimony offered at the Senate hearing on this issue by Assistant Attorney General Jennifer Ryan, who prosecutes violations of labor standards referred by DILHR, reaffirmed the value of this wage protection for Wisconsin's most vulnerable workers - those in small firms who are victims of unscrupulous shareholders who believe they can hide behind the corporation and fail to pay their workers. Often workers cannot secure unpaid wages in bankruptcy court because certain creditors receive priority on any assets and there are none left for wages. Some small firms simply close their doors leaving unpaid wages - and no remedy at all for workers in the bankruptcy code. This law opens the door for discussions with shareholders which often results in partial or full payment of wages owed.

(Over)

It's important to remember that:

1. The wage protection afforded by the law that SB 45 seeks to repeal may be the only chance some workers have to be justly compensated for the labor they performed in good faith for their employer.

2. This law does not affect the vast majority of Wisconsin corporations who follow through on their obligations to their employees.

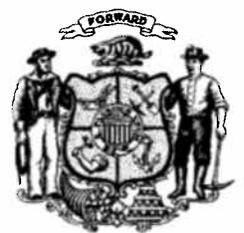
3. The argument that the repeal of this law will improve Wisconsin's "business climate" and encourage entrepreneurs says that to encourage economic development in our state we need to permit businesses to be irresponsible and to unfairly exploit their employees. We would hope that no fair-minded legislator of either party would accept, let alone promote, such a notion of economic development or a "good business climate". Current statistics indicate that business is doing well in our state -- proving that this statute has not had a chilling effect on business creation or viability.

The basic principle in our current law is that shareholders invest in a firm knowing that they are taking a risk: they make a voluntary, informed judgment about the degree of that risk and may profit handsomely--or lose their investment--something clearly understood by any investor. Workers, on the other hand, simply sell their labor. If the firm prospers workers understand that they still get only their agreed-upon wages; but if the firm fails, that should not absolve the owners of paying their workers for work performed.

No one disagrees that we need to promote job creation and economic development in Wisconsin -- but that should mean the creation of family-supporting jobs and the encouragement of responsible employment practices. SB 45 does neither, and we urge your strong opposition to this misguided proposal.



WISCONSIN STATE LEGISLATURE





STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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May 2, 1995

Representative Judy Robson
The State Assembly
State Capital, Room 124
Madison, Wisconsin 53701

Dear Representative Robson:

This letter is a summary of my testimony and responses to several questions discussed after the hearing before the Insurance, Securities and Corporate Policy Assembly Committee regarding Senate Bill 45.

As you know, if passed, Senate Bill 45 would repeal section 180.0622(2)(b) which imposes limited personal liability on each shareholder of a corporation, for up to six months' wages for employees of a corporation, but not to exceed the par value of shares owned by each shareholder.

As an Assistant Attorney General, I prosecute violations of labor standards regulations which are referred to the Department of Justice by the Department of Industry, Labor and Human Relations (DILHR), many of which include a wage component. More than 50 percent of these referrals are against corporations. I find that most of the corporations that I sue are small corporations with one to three shareholders. *Then why not amend law to hold only those small-closely held corp.s liable.*

The shareholders, who are often the officers of the corporation, make the day to day business decisions. In most of the cases I prosecute under the shareholder's liability provision, the shareholders intentionally fail to pay the employees all of their wages. Subsequently, the doors of the business are closed and the shareholders try to hide behind the corporate entity to avoid paying the employees their wages.

When most of these corporations close their doors, they do not follow statutory requirements of dissolution. The shareholders simply close the doors of the business and move on to something else. The shareholders make sure there are no corporate assets available so the employees have nothing to pursue. There is no bankruptcy proceeding or other legal proceeding in which the employees can file a claim.

In several of the cases I prosecuted, the attorney representing the corporation and the individual shareholders indicated that since the corporation is no longer in business, since there is no shareholder liability, and since there are no corporate

Representative Judy Robson
May 2, 1995
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assets, the matter is closed and should be dismissed. When I point out that there is limited shareholder liability under section 180.0622, I often find a shareholder who is very interested in resolving the matter and finding the money to pay some or all of the wages depending on the individual circumstances of the case.

One example of such a corporation, was a corporation doing business as a day care center in Milwaukee. The day care closed its doors owing several employees wages. The sole shareholder indicated that there were no corporate assets with which to pay the employees. Upon mentioning to the shareholder that he was liable for the wages, he indicated a willingness to resolve the case. During discovery in the case, we determined that the sole shareholder had started another corporation shortly before closing the day care center. Clearly, there was money available to pay the employees, but it was diverted to another corporation.

If a corporation legitimately goes out of business and the shareholders do not profit from the business closing, I do not use the shareholder's liability provision to hound the shareholder for money. However, this provision is necessary and vital to recouping wages from unscrupulous shareholders who intentionally fail to pay wages and divert corporate monies to themselves or others. The shareholder's liability provision is not used very often, but when it is invoked, it is often the only viable option available to the employees to obtain their wages.

Most of the employers which I prosecute are not foreign corporations; they are domestic corporations with local shareholders. Earlier in the hearing there was testimony that this provision has a negative impact on foreign corporations. This provision has no impact on honest corporations which intend to pay the employees their wages; this provision only impacts on unscrupulous employers.

There were numerous inquiries regarding and suggestions that the employees could pierce the corporate veil to obtain their wages from the shareholders. Pursuing a lawsuit under this legal theory is extremely expensive and time consuming. There is a legal presumption against finding individual shareholders responsible for the actions of the corporation. A lawsuit under this theory is cost prohibitive for employees who often have only a few thousand dollars or less of wages owed. A few thousand dollars may not sound like a lot of money, but for each individual who has worked for several days to several weeks without pay, the money means a lot. This money is the employees' livelihood with which they pay their rent and buy their food.

This provision of the law does not affect most corporate shareholders because they pay their employees, but it does protect employees against the unscrupulous shareholders who believe they can hide behind the corporation and fail to pay their

Representative Judy Robson
May 2, 1995
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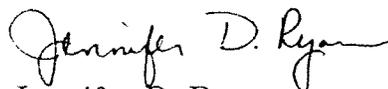
employe wages. Although section 180.0622 has a very narrow scope, the practical effect is that we get the shareholder involved in a dialogue regarding the unpaid wages. It has been my experience that when we sue a corporation that has closed its doors and we do not name a shareholder in the lawsuit, we get a default judgment against the corporation, which means the corporation fails to respond to our complaint and the court enters a judgment against the corporation. Since the judgment is against the corporation and the corporation is defunct, meaning there are no corporate assets, we cannot collect any money for the employes. However, in those cases where we name an individual shareholder as a party to the action in addition to the corporation, we nearly always get a response and some money for the employes.

The employes provided the employers with services and now have limited recourse to obtain the wages they earned. The employes have done nothing wrong; they are innocent, yet they must take legal action to get wages which they have earned. This law protects these innocent workers from unscrupulous employers who often shut down one corporation only to start another. We are not talking about the vast majority of corporate entities which are responsible to their employes.

In summary, section 180.0622(2)(b) is very limited in scope, but is a tremendous help in going after shareholders who intentionally fail to pay their corporate employes all of their wages. I ask that you vote against Senate Bill 45.

Please do not hesitate to call me if you have questions or wish to discuss this matter in greater detail.

Sincerely,



Jennifer D. Ryan
Assistant Attorney General

JDR:sll

cc: Representative Sheryl Abers, Chair
Mr. Kelly Kennedy, DOJ Policy Analyst

Ryan\SB45.ltr