

1999 ASSEMBLY BILL 884

March 15, 2000 – Introduced by Representatives HUEBSCH, SUDER, STONE, OWENS, GUNDERSON, WALKER, VRAKAS, GROTHMAN, DUFF, PORTER and F. LASEE, cosponsored by Senators ROESSLER, FARROW and HUELSMAN. Referred to Committee on Judiciary and Personal Privacy.

1 AN ACT *to create* 895.047 of the statutes; **relating to:** product liability of
2 manufacturers, distributors and sellers.

Analysis by the Legislative Reference Bureau

This bill establishes the criteria to determine if a product manufacturer, distributor or seller is liable to a person injured by the manufactured product. Currently, a person injured by a manufactured product has three avenues to determine if the manufacturer, distributor or seller is liable for the person's injury. The claimant may sue under a breach-of-warranty theory, under the common law negligent theory and under the theory of strict liability. The doctrine of strict liability, as adopted in this state, applies to manufacturers, distributors and retailers. That doctrine relieves the injured person from proving specific acts of negligence and protects that person from contractual defenses. However, the person must prove that the product was in a defective condition and unreasonably dangerous, defective when it left the seller, the defect caused the injury, the seller was engaged in the business of selling such products and the product was one that the seller expected to and did reach the consumer without substantial change.

Under this bill, a manufacturer is liable for damages caused by the manufacturer's product if the injured claimant proves that the product was defective, the defective condition made the product unreasonably dangerous, the defective condition existed at the time that the product left the control of the manufacturer, the product reached the user or consumer without substantial change and the defective condition caused the claimant's damages. The bill specifies when a manufactured product is defective.

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Under the bill, a distributor or seller is not liable for the claimant's damages unless the manufacturer would be liable for the damages and any of the following applies:

1. The distributor or seller contractually assumed one of the manufacturer's duties to manufacture, design or provide warnings or instructions regarding the product.

2. Neither the manufacturer nor its insurer is subject to service of process within this state.

3. A court determines that the claimant would not be able to enforce a judgment against the manufacturer or its insurer.

The bill requires the dismissal of the distributor or seller as defendants in an action if the manufacturer submits itself to the jurisdiction of the court in which the suit is pending.

Under the bill, if a defendant proves that the injured person, at the time of his or her injury from a manufactured product, had a blood alcohol concentration of 0.1 or more or was under the influence of any controlled substance or controlled substance analog to the extent that he or she could not operate a motor vehicle safely, that proof creates a rebuttable presumption that the intoxication or drug use was the cause of the person's injuries. The bill also creates a rebuttable presumption that the manufactured product is not defective if the product complied with relevant standards, conditions or specifications under federal or state law. The bill also reduces the manufacturer's, seller's or distributor's liability by the percentage of responsibility for the claimant's damages caused by misuse, alteration or modification of the product.

The bill requires the court to dismiss a claimant's action if the damage was caused by an inherent characteristic of the manufactured product that would be recognized by an ordinary person that uses or consumes the product. The bill also relieves a distributor or seller of liability if the distributor or seller receives the product in a sealed container and has no opportunity to test or inspect the product.

Under the bill, evidence of remedial measures taken after the sale of the manufactured product are not admissible in an action for damages caused by the product for the purpose of showing a manufacturing defect, a design defect or the need for a warning or instruction, but may be admitted to show that a reasonable alternative design existed at the time of the sale of the product. The bill limits a defendant's liability for damage caused by a manufactured product to those products manufactured within 15 years before the event that resulted in the damages.

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

1 **SECTION 1.** 895.047 of the statutes is created to read:

2 **895.047 Product liability. (1) LIABILITY OF MANUFACTURER.** In an action for
3 damages caused by a manufactured product, a manufacturer is liable to a claimant

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1 only if the claimant establishes all of the following by a preponderance of the
2 evidence:

3 (a) That the product is defective because it contains a manufacturing defect,
4 is defective in design, or is defective only because of inadequate instructions or
5 warnings. A product contains a manufacturing defect only if the product departs
6 from its intended design even though all possible care was exercised in the
7 manufacture of the product. A product is defective in design only if the foreseeable
8 risks of harm posed by the product could have been reduced or avoided by the
9 adoption of a reasonable alternative design by the manufacturer, and the omission
10 of the alternative design renders the product not reasonably safe. A product is
11 defective because of inadequate instructions or warnings only if the foreseeable risks
12 of harm posed by the product could have been reduced or avoided by the provision
13 of reasonable instructions or warnings by the manufacturer and the omission of the
14 instructions or warnings renders the product not reasonably safe.

15 (b) That the defective condition rendered the product unreasonably dangerous
16 to persons or property.

17 (c) That the defective condition existed at the time that the product left the
18 control of the manufacturer.

19 (d) That the product reached the user or consumer without substantial change
20 in the condition in which it was sold.

21 (e) That the defective condition was a cause of the claimant's damages.

22 **(2) LIABILITY OF SELLER OR DISTRIBUTOR.** (a) A seller or distributor of a product
23 is not liable to a claimant unless the manufacturer would be liable under sub. (1) and
24 any of the following applies:

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1 1. The claimant proves by a preponderance of the evidence that the seller or
2 distributor has contractually assumed one of the manufacturer's duties to
3 manufacture, design or provide warnings or instructions with respect to the product.

4 2. The claimant proves by a preponderance of the evidence that neither the
5 manufacturer nor its insurer is subject to service of process within this state.

6 3. A court determines that the claimant would be unable to enforce a judgment
7 against the manufacturer or its insurer.

8 (b) The court shall dismiss a product seller or distributor as a defendant based
9 on par. (a) 2. if the manufacturer or its insurer submits itself to the jurisdiction of the
10 court in which the suit is pending.

11 **(3) DEFENSES.** (a) If the defendant proves by clear and convincing evidence that
12 at the time of the injury the claimant was under the influence of any controlled
13 substance or controlled substance analog to the extent prohibited under s. 346.63 (1)
14 (a), or had an alcohol concentration, as defined in s. 340.01 (1v), of 0.1 or more, there
15 shall be a rebuttable presumption that the claimant's intoxication or drug use was
16 the cause of his or her injuries.

17 (b) Evidence that the product, at the time of sale, complied in material respects
18 with relevant standards, conditions or specifications adopted or approved by a
19 federal or state law or agency shall create a rebuttable presumption that the product
20 is not defective.

21 (c) The damages for which a manufacturer, seller or distributor would
22 otherwise be liable shall be reduced by the percentage of responsibility for the
23 claimant's harm attributable to misuse, alteration or modification of a product by
24 any person. This defense shall not apply to misuse, alteration or modification by the
25 claimant's employer who is immune from suit by the claimant under s. 102.03.

