

1999 DRAFTING REQUEST

Bill

Received: **02/18/1999**

Received By: **nelsorpl**

Wanted: **As time permits**

Identical to LRB:

For: **Michael Huebsch (608) 266-0631**

By/Representing:

This file may be shown to any legislator: NO

Drafter: **nelsorpl**

May Contact:

Alt. Drafters:

Subject: **Courts - immunity liablt**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Liability for injuries caused by manufactured goods

Instructions:

See 97-4862

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	nelsorp 1 02/19/1999	gilfokm 02/22/ 1999		_____			
/1			jfrantze 02/23/1999	_____	lrb_docadmin 02/23/1999		
/2	nelsorp 1 08/24/1999	gilfokm 09/13/1999	martykr 09/14/1999	_____	lrb-docadmin 09/14/1999		
/3	nelsorp 1 09/20/1999	gilfokm 09/20/1999	mclark 09/20/1999	_____	lrb-docadmin 09/20/1999		
/4	nelsorp 1	gilfokm	martykr	_____	lrb-docadmin	lrb-docadmin	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reaired</u>
	09/22/1999	09/22/1999	09/27/1999	_____	09/27/1999	03/09/2000	

FE Sent For:

<END>

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/3	nelsorp 1 09/20/1999	gilfokm 09/20/1999	mclark 09/20/1999	_____	lrb-docadmin 09/20/1999		
/4	nelsorp 1	gilfokm	martykr	_____	lrb-docadmin		

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/3	nelsorp 1 09/20/1999	gilfokm 09/20/1999	mclark 09/20/1999	_____	lrb-docadmin 09/20/1999		

Handwritten notes:
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 9/23
 9/23
 4/4/99
 kmf

FE Sent For:

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/1			jfrantze 02/23/1999	_____	lrb_docadmin 02/23/1999		
/2	nelsorp 1 08/24/1999	gilfokm 09/13/1999	martykr 09/14/1999	_____	lrb_docadmin 09/14/1999		
FE Sent For:		3-9-20-99 King	MRC 9/20	MRC/JF 9/20			<END>

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Drafter: nelsorpl

May Contact: Jim Hough & George?
258-8506
Subject: Courts - immunity liability

Alt. Drafters:

Extra Copies:

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Topic:

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Instructions:

See 97-4862

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FE Sent For:

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9
1997 **BILL**

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

Analysis by the Legislative Reference Bureau

This bill creates specific conditions that must be followed when a person seeks damages for an injury caused by a manufactured product. Under the bill, to obtain damages, the injured party is required to show by a preponderance of the evidence that the manufactured product was unreasonably dangerous and that the unreasonable dangerousness of the product caused the injury. The bill requires the injured party to show the unreasonable dangerousness of the product by proving that the product was defectively manufactured or defectively designed or that the manufacturer failed to provide an adequate warning or instruction regarding the product.

Under the bill, the manufacturer is not liable for a person's injury caused by a manufactured product if the product complied with standards or conditions adopted or approved by a federal or state agency, if the damage was caused by a characteristic of the product that would be recognized by an ordinary user of the product, if the injury resulted from misuse or modification of the product or if the product was manufactured 15 years or more before the injury.

The bill provides that a person who sells the manufactured product may be liable for an injury caused by the product only if the manufacturer would be liable under the bill *and either* the manufacturer is not subject to service in this state or the court determines that the injured party could not enforce a judgment against the manufacturer. To obtain damages from a product seller, the bill requires an injured

and either

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party to prove by a preponderance of the evidence that the product seller did not exercise reasonable care in assembling, inspecting or maintaining the product or in giving the injured party instructions about the dangers and use of the product and that the failure to exercise reasonable care was a cause of the injury.

The bill prohibits the admission into evidence to prove liability for an injury any action of a manufacturer taken after the injury that would have made the injury less likely.

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

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

895.047 Product liability. (I.) In any action for damages caused by a manufactured product, a manufacturer is liable to a claimant only if the claimant establishes all of the following by a preponderance of the evidence:

(a) That the product was unreasonably dangerous in one of the following ways:

1. The product was defectively manufactured.

2. The product was defectively designed.

3. The manufacturer failed to provide an adequate warning or instruction regarding the product.

(b) That the unreasonable dangerousness of the product was the proximate cause of the claimant's damages.

(2) In any action under this section, a manufacturer is not liable to the claimant if any of the following conditions exists:

(a) The product alleged to have caused the damage complied in material respects, at the time of manufacture, with relevant standards, conditions or specifications established, adopted or approved by a federal or state law or agency.

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1 (b) The damage was caused by an inherent characteristic of the product that
2 would be recognized by an ordinary person with ordinary knowledge common to the
3 community that uses or consumes the product.

4 (c) The damage resulted from product misuse, alteration or modification.

5 (3) A product seller is not liable for damages to a claimant unless the
6 manufacturer would be liable under this section and one of the following conditions
7 exists:

8 (a) The manufacturer is not subject to service of process in this state.

9 (b) A court determines that the claimant would be unable to enforce a judgment
10 against the manufacturer.

11 (4) A product seller is not liable for damage to a claimant on the basis of
12 negligence unless the claimant establishes all of the following by a preponderance
13 of the evidence:

14 (a) That the product seller did not exercise reasonable care in one of the
15 following:

16 1. Assembling, inspecting or maintaining the product.

17 2. Giving the claimant warning or instruction about the dangers and proper use
18 of the product.

19 (b) That the failure of the product seller to exercise reasonable care under par.

20 (a) was the proximate cause of the damage to the claimant.

21 (5) In any action under this section, evidence of any measure taken by a
22 manufacturer after the occurrence of the claimant's damages which, if taken
23 previously, would have made the damage less likely to occur, is not admissible to
24 prove the manufacturer's liability.

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1 (6) In any action under this section, a defendant is not liable for damage to a
2 claimant if the product alleged to have caused the damage was manufactured 15
3 years or more before the event on which the claim is based.

4 SECTION 2. Initial applicability.

5 (1) This act first applies to causes of action occurring on the effective date of this
6 subsection.

7 (END)

D-Note

This draft uses the term "damage" or "damages" throughout, but perhaps "injury" would be more appropriate, ^{in some places} such ^{as} on ~~this~~ page 2, lines 11 and 14, page 3, lines 1, 4, 20, ~~and~~ 22 and 23, and page 4, lines 1 and 2.

RPN
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2270/1dn
RPN:kgjf

February 23, 1999

This draft uses the term "damage" or "damages" throughout, but perhaps "injury" would be more appropriate in some places, such as on page 2, lines 11 and 14, page 3, lines 1, 4, 20, 22 and 23, and page 4, lines 1 and 2.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-75 11

8/17 George Hardy came
in. Wants a 1/2 of
2270 based on a
draft he and Hugh's
office has prepared.
gave me a copy of
the proposal.

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

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

895.047 Product liability. (I) LIABILITY OF MANUFACTURER In an action for damages caused by a manufactured product, a manufacturer is liable to the claimant only if the claimant establishes all of the following by a preponderance of the evidence:

(a) The product is defective because it contains a manufacturing defect, is defective in design, or is defective because of inadequate instructions or warnings, as follows:

1. A product contains a manufacturing defect when the product departs from its intended design even though all possible care was exercised in the manufacture of the product;

2. A product is defective in design when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design by the manufacturer, and the omission of the alternative design renders the product not reasonably safe;

3. A product is defective because of inadequate instructions or warnings when the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings by the manufacturer and the omission of the instructions or warnings renders the product not reasonably safe.

(b) The defective condition rendered the product unreasonably dangerous to persons or property,

(c) The defective condition existed at the time that the product left the control of the manufacturer;

(d) The product reached the user or consumer without substantial change in the condition in which it was sold; and,

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

(2) LIABILITY OF SELLER OR DISTRIBUTOR. (a) A seller or distributor of a product shall not be liable to a claimant unless the claimant proves by a preponderance of the evidence that the seller or distributor has contractually assumed the manufacturer's duty to manufacture, design or provide warnings or instructions with respect to the product: or

1. That the manufacturer would be liable under sub. (1), and
2. Neither the manufacturer or its insurer is subject to service of process within this state or a court determines that the claimant would be unable to enforce a judgment against the manufacturer or its insurer.

(b) A suit against a product seller or distributor based on par. (a) 1 and 2 shall be dismissed if the manufacturer or its insurer submits itself to the jurisdiction of the court in which the suit is pending.

(3) DEFENSES. (a) Intoxication. If the defendant proves by clear and convincing evidence that at the time of the injury the claimant was intoxicated or under the influence of alcohol or any drug to an extent prohibited by the applicable state law for operating a motor vehicle, there shall be a rebuttable presumption that the claimant's intoxication or drug use was the cause of his or her injuries.

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

(c) **Misuse, Alteration or Modification.** The damages for which a manufacturer would otherwise be liable shall be reduced by the percentage of responsibility for the claimant's harm attributable to misuse, alteration or modification of a product by any person. **This** defense shall not apply to misuse, alteration or modification by the claimant's employer who is immune from suit by the claimant pursuant to section 102.02, Stats.

(d) **Open and Obvious Danger.** The claimant's action shall be barred if the damage was caused by an inherent characteristic of the product that would be recognized by an ordinary person with ordinary knowledge common to the community that uses or consumes the product.

(e) **Sealed container.** A product seller or distributor is not liable for damage to a claimant if the seller or distributor receives the product in a sealed container and has no reasonable opportunity to test or inspect the product.

(4) **Subsequent Remedial Measures.** In an action for damages caused by a manufactured product, evidence of remedial measures taken subsequent to the sale of the product shall not be admissible for the purpose of showing a manufacturing defect in the product, a defect in the design of the product, or a need for a warning or instruction. This rule does not prohibit the admission of such evidence to show a reasonable alternative design that existed at the time that the product was sold.

(5) Statute of Repose. In any action under this section, a defendant is not liable for damage to a claimant if the product alleged to have caused the damage was manufactured 15 years or more before the event on which the claim is based, unless the manufacturer makes a specific representation extending the life of the product.

SECTION 2. Initial applicability.

(l) This act first applies to causes of action accruing on the effective date of this subsection.

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Strict Liability

The doctrine of strict liability in tort set forth in the Restatement, as applied to products liability, has been adopted in Wisconsin.³² Privity of contract has been completely eliminated under the theory of strict tort liability.

Strict liability applies not only to the manufacturer but also to **the distributor**, wholesaler and retailer.³³ The concept of strict tort liability may be misleading. Strict tort liability does not make the manufacturer or seller an insurer nor does it impose absolute liability. Rather, it relieves the injured “user” from proving specific acts of negligence and protects him or her from the contractual defenses of notice of breach, disclaimer, and lack of **privity**.³⁴

The following elements must be proved to warrant recovery under the doctrine of strict liability in tort: (1) that the product was in a defective condition unreasonably dangerous; (2) that the product was defective when it left the possession or control of **the seller**; (3) **that** the defect was a cause (substantial factor) of the plaintiff’s injury; (4) that the seller was engaged in the business of selling such products (it does not apply to an isolated or infrequent sale); and (5) that the product was **one** which the seller expected to and did reach the consumer without substantial change. The doctrine of strict liability in tort in Wisconsin has been equated with the doctrine of negligence **per se**. The proof of the above 5 elements by the injured “**user**”³⁵ under the Dippel rule, **supra**, renders the seller negligent as a matter of law.

The term “seller” includes restaurateur, manufacturer, distributor, wholesaler, and retailer. One who represents a product to be his or her own is subject to the same liability as if he or **she** was the manufacturer.³⁷ A **product** is unreasonably dangerous when it is dangerous beyond **that** contemplated by the ordinary user **who** purchases it with **the** ordinary knowledge common to the community as to its **characteristics**.³⁸

A defective product is one which, when sold by a seller, is unsafe for normal use or consumption.³⁹ A product may be defective by reason of manufacturer or design. A failure to give adequate directions or warnings may likewise constitute a “defective” condition.⁴⁰

Where an adequate warning is given, the seller may reasonably **assume** that it would be read and heeded; a product bearing such warning, which would be safe for use if followed, is not in a defective condition nor is it unreasonably **dangerous**.⁴¹

The mere showing of product malfunction evidences a defective **condition**.⁴²

A seller cannot immunize himself against liability under strict tort liability theory by inserting an exculpatory clause in the sales contract as he or she may do with respect to negligence and **warranty**.⁴³

The liability under the strict tort liability theory is subject to the defense of contributory negligence as applied to the comparative negligence rule. The Dippel case suggests some of the defenses of contributory negligence: (1) failure to use the product for the intended purpose; (2) abuse or alteration of the product; and (3) use of the product where its intended use is coupled with inherent danger. The mere failure of the user of the product to discover a defect or guard against the possibility of a defect does not render the user of the product contributorily **negligent**.⁴⁴ A user may be contributorily negligent if he or she voluntarily exposes himself or herself to a known **danger**.⁴⁵

Jurisdiction

For a discussion of some of the problems and cases involving jurisdiction, see Annot., 19 A.L.R.3d 13 (1968).



D-NOTE

1999 BILL

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

Analysis by the Legislative Reference Bureau

This bill creates specific conditions that must be followed when a person seeks damages for an injury caused by a manufactured product. Under the bill, to obtain damages, the injured party is required to show by a preponderance of the evidence that the manufactured product was unreasonably dangerous and that the unreasonable dangerousness of the product caused the injury. The bill requires the injured party to show the unreasonable dangerousness of the product by proving that the product was defectively manufactured or defectively designed or that the manufacturer failed to provide an adequate warning or instruction regarding the product.

Under the bill, the manufacturer is not liable for a person's injury caused by a manufactured product if the product complied with standards or conditions adopted or approved by a federal or state agency, if the damage was caused by a characteristic of the product that would be recognized by an ordinary user of the product, if the injury resulted from misuse or modification of the product or if the product was manufactured 15 years or more before the injury.

The bill provides that a person who sells the manufactured product may be liable for an injury caused by the product only if the manufacturer would be liable under the bill and either the manufacturer is not subject to service in this state or the court determines that the injured party could not enforce a judgment against the manufacturer. To obtain damages from a product seller, the bill requires an injured

BILL

party to prove by a preponderance of the evidence that the product seller did not exercise reasonable care in assembling, inspecting or maintaining the product or in giving the injured party instructions about the dangers and use of the product and that the failure to exercise reasonable care was a cause of the injury.

The bill prohibits the admission into evidence, to prove liability for an injury, of any action of a manufacturer taken after the injury that would have made the injury less likely.

insert and →

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: per.

(CS) Liability of manufacturer.

2 **895.047 Product liability. (1)** In any action for damages caused by a
3 manufactured product, a manufacturer is liable to a claimant only if the claimant
4 establishes all of the following by a preponderance of the evidence:

5 (a) That the product was unreasonably dangerous in one of the following ways:

- 6 1. The product was defectively manufactured.
- 7 2. The product was defectively designed.
- 8 3. The manufacturer failed to provide an adequate warning or instruction
- 9 regarding the product.

10 (b) That the unreasonable dangerousness of the product was the proximate
11 cause of the claimant's damages.

12 (2) In any action under this section, a manufacturer is not liable to the claimant
13 if any of the following conditions exists:

- 14 (a) The product alleged to have caused the damage, complied in material
- 15 respects, at the time of manufacture, with relevant standards, conditions or
- 16 specifications established, adopted or approved by a federal or state law or agency.

BILL

1 (b) The damage was caused by an inherent characteristic of the product that
2 would be recognized by an ordinary person with ordinary knowledge common to the
3 community that uses or consumes the product.

4 (c) The damage resulted from product misuse, alteration or modification.

5 (3) A product seller is not liable for damages to a claimant unless the
6 manufacturer would be liable under this section and one of the following conditions
7 exists:

8 (a) The manufacturer is not subject to service of process in this state.

9 (b) A court determines that the claimant would be unable to enforce a judgment
10 against the manufacturer.

11 (4) A product seller is not liable for damage to a claimant on the basis of
12 negligence unless the claimant establishes all of the following by a preponderance
13 of the evidence:

14 (a) That the product seller did not exercise, reasonable care in one of the
15 following:

16 1. Assembling, inspecting or maintaining the product.

17 2. Giving the claimant warning or instruction about the dangers and proper use
18 of the product.

19 (b) That the failure of the product seller to exercise reasonable care under par.
20 (a) was the proximate cause of the damage to the claimant.

21 (5) In any action under this section, evidence of any measure taken by a
22 manufacturer after the occurrence of the claimant's damages which, if taken
23 previously, would have made the damage less likely to occur, is not admissible to
24 prove the manufacturer's liability.

BILL

Insert 4-1

→ (5) TIME LIMIT

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(5) In any action under this section, a defendant is not liable for damage to a claimant if the product alleged to have caused the damage was manufactured 15 years or more before the event on which the claim is based.

unless the manufacturer or producer specifies a shorter period in the life of the product

SECTION 2. Initial applicability.

(1) This act first applies to causes of action occurring on the effective date of this subsection.

(END)

That doctrine

the person's

insert and:

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 ~~his or her~~ 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 ~~Wisconsin~~, ^{this state} applies to manufacturers, distributors and retailers, ~~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 ~~only~~ 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.

has

Under the bill, a distributor or seller is not liable for the claimant's damages unless the claimant proves that the distributor or seller contractually assumed the manufacturer's duty to manufacture, design or provide warning or instructions regarding the product or ~~both~~ that the manufacturer would be liable for the damages and that neither the manufacturer ~~or its insurer~~ is subject to service of process within this state or that 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 any action against the distributor or seller if the manufacturer submits itself to the jurisdiction of the court in which the suit is pending.

0.1

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 ~~10~~ 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 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 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.

that

Ingerit 4-1

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

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

895.047 Product liability. ~~(1) LIABILITY OF MANUFACTURER. In an action for damages caused by a manufactured product, a manufacturer is liable to the claimant only if the claimant establishes all of the following by a preponderance of the evidence:~~

(a) ~~The product is defective because it contains a manufacturing defect, is defective in design, or is defective because of inadequate instructions or warnings.~~ ^{That}

~~1. A product contains a manufacturing defect when the product departs from its intended design even though all possible care was exercised in the manufacture of the product.~~ ^(No P) ^{if}

~~2. A product is defective in design when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design by the manufacturer, and the omission of the alternative design renders the product not reasonably safe.~~ ^(No P) ^{if}

~~3. A product is defective because of inadequate instructions or warnings when the foreseeable risks of harm posed by the product could have been reduced, or avoided by the provision of reasonable instructions or warnings by the manufacturer and the omission of the instructions or warnings renders the product not reasonably safe.~~ ^(No P) ^{if}

(b) ^{That} The defective condition rendered the product unreasonably dangerous to persons or property.

1

Insert 4-1 cont.

(c) ~~The~~ ^{That} defective condition existed at the time that the product left the control of the manufacturer.

(d) ~~The~~ ^{That} product reached the user or consumer without substantial change in the condition in which it was sold.

(e) ~~The~~ ^{That} defective condition was a cause of the claimant's damages.

(B) (C)

(2) LIABILITY OF SELLER OR DISTRIBUTOR. (a) A seller or distributor of a product shall not be liable to a claimant unless the claimant proves by a preponderance of the evidence that the seller or distributor has contractually assumed the manufacturer's duty to manufacture, design or provide warnings or instructions with respect to the product.

2. That the manufacturer would be liable under sub. (i) and that

Neither the manufacturer or its insurer is subject to service of process within this state or a court determines that the claimant would be unable to enforce a judgment against the manufacturer or its insurer. The court shall dismiss a

(b) suit against a product seller or distributor based on par.

(a) shall be dismissed if the manufacturer or its insurer submits itself to the jurisdiction of the court in which the suit is pending.

(B) (C)

(3) DEFENSES. (a) Intoxication If the defendant proves by clear and convincing evidence that at the time of the injury the

claimant was intoxicated or under the influence of alcohol or any drug controlled substance or controlled substance analog to an extent prohibited by the applicable state law for operating a

motor vehicle, there shall be a rebuttable presumption that the claimant's intoxication or drug use was the cause of his or her injuries. defined in s. 340.01(4), of 0.1 or more

discuss suit or replace parties?

dr:

(3)

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

(c) ~~Misuse, Alteration or Modification~~ The damages for which a manufacturer would otherwise be liable shall be reduced by the percentage of responsibility for the claimant's harm attributable to misuse, alteration or modification of a product by any person. This defense shall not apply to misuse, alteration or modification by the claimant's employer who is immune from suit by the claimant pursuant to section 102.02.

dh - no
102.02. Did
you mean
102.03

under s. 102.03.

~~Stars.~~ Court shall discuss the under this section
(d) ~~Open and Obvious Danger~~ The claimant's action shall be barred if the damage

was caused by an inherent characteristic of the product that would be recognized by an ordinary person with ordinary knowledge common to the community that uses or consumes the product.

(e) ~~Sealed container~~ A product seller or distributor is not liable for damage to a claimant if the seller or distributor receives the product in a sealed container and has no reasonable opportunity to test or inspect the product.

(4) ⁽¹⁵⁾ Subsequent Remedial Measures. In an action for damages caused by a manufactured product, evidence of remedial measures taken subsequent to the sale of the product shall not be admissible for the purpose of showing a manufacturing defect in the product, a defect in the design of the product, or a need for a warning or instruction. This subsection does not prohibit the admission of such evidence to show a reasonable alternative design that existed at the time that the product was sold.

(3)

End of Insert 4-1

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2270/2dn
RPN:kg:jf

As you will see, I made numerous style changes that are not intended to change the substance of the bill. I do have some questions about the bill, as drafted.

In subsection (2), paragraph (a), does the claimant's requirement to prove by a preponderance of the evidence apply only to the seller's or distributor's contractual assumption of the manufacturer's duties? Or does it also apply to whether the manufacturer would be liable but is not subject to service or judgment enforcement? As drafted, that burden of proof seems to apply to both. If the burden does apply to both, the language about the court determining that the claimant would be unable to enforce the judgment is confusing. Does the claimant have to prove by a preponderance of the evidence that a court determined that the claimant would be unable to enforce the judgment?

Also in that paragraph, how can a seller or distributor contractually assume the manufacturer's duty to manufacture a product? Don't they become manufacturer's themselves then, and thus become subject to subsection (1). Lr

In subsection (2), paragraph (b), the court is required to dismiss the suit against the seller or distributor if the manufacturer submits to the jurisdiction of the court in which the suit is pending. If the suit is dismissed, there will be no suit pending. Is this language intended to provide that the manufacturer be substituted as the party in the action in place of the seller or distributor? If so, I would prefer to say that.

See my changes in subsection (3), paragraph (a). There are two levels of alcohol intoxication, .08 and .10, depending on the number of drunk driving convictions. I used .10. OK?

In subsection (3), paragraph (c), only the manufacturer is mentioned, not the seller or distributor. Is that correct, or should their liability also be reduced by the misuse, alternation or modification of a product?

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511



2

1999 BILL

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, ~~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.

That doctrine

BILL

Under the bill, a distributor or seller is not liable for the claimant's damages unless the claimant proves that the distributor or seller contractually assumed the manufacturer's duty to manufacture, design or provide warnings or instructions regarding the product or proves that the manufacturer would be liable for the damages and that neither the manufacturer nor its insurer is subject to service of process within this state or that a court has determined that the claimant would not be able to enforce a judgment against the manufacturer or its insurer. The bill requires the dismissal of any action against the distributor or seller 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 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 any action for
3 damages caused by a manufactured product, a manufacturer is liable to a claimant
4 only if the claimant establishes all of the following by a preponderance of the
5 evidence:

BILL

SECTION 1

neither

1 2. That the manufacturer would be liable under sub. (1), and that whether the
 2 manufacturer ^knot its insurer is subject to ^lservices of process within this state or a
 3 court determines that the claimant would be unable to enforce a judgment against
 4 the manufacturer or its insurer.

5 (b) The court shall dismiss a suit against a product seller or distributor based
 6 on par. (a) if the manufacturer or its insurer submits itself to the jurisdiction of the
 7 court in which the suit is pending.

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

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

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

23 (d) The court shall dismiss the claimant's action under this section if the
 24 damage was caused by an inherent characteristic of the product that would be

BILL

1 recognized by an ordinary person with ordinary knowledge common to the
2 community that uses or consumes the product.

3 (e) A product seller or distributor is not liable for damage to a claimant if the
4 seller or distributor receives the product in a sealed container and has no reasonable
5 opportunity to ^{test} inspect the product.

6 (4) **SUBSEQUENT REMEDIAL MEASURES.** In an action for damages caused by a
7 manufactured product, evidence of remedial measures taken subsequent to the sale
8 of the product is not admissible for the purpose of showing a manufacturing defect
9 in the product, a defect in the design of the product, or a need for a warning or
10 instruction. This subsection does not prohibit the admission of such evidence to show
11 a reasonable alternative design that existed at the time that the product was sold.

12 (5) **TIME LIMIT.** In any action under this section, a defendant is not liable for
13 damage to a claimant if the product alleged to have caused the damage was
14 manufactured 15 years or more before the event on which the claim is based, unless
15 the manufacturer makes ^a specific representation extending the life of the product.

SECTION 2. Initial applicability.

16 (1) This act first applies to causes of action occurring on the effective date of this
17 subsection.
18

19 (END)

DRAFTER'S MOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2270/2dn
RPN:kg:km

September 13, 1999

As you will see, I made numerous style changes that are not intended to change the substance of the bill. I do have some questions about the bill, as drafted.

In subsection (2), paragraph (a), does the claimant's requirement to prove by a preponderance of the evidence apply only to the seller's or distributor's contractual assumption of the manufacturer's duties? Or does it also apply to whether the manufacturer would be liable but is not subject to service or judgment enforcement? As drafted, that burden of proof seems to apply to both. If the burden does apply to both, the language about the court determining that the claimant would be unable to enforce the judgment is confusing. Does the claimant have to prove by a preponderance of the evidence that a court determined that the claimant would be unable to enforce the judgment?

Also in that paragraph, how can a seller or distributor contractually assume the manufacturer's duty to manufacture a product? Don't they become manufacturer's themselves then, and thus become subject to subsection (1).

In subsection (2), paragraph (b), the court is required to dismiss the suit against the seller or distributor if the manufacturer submits to the jurisdiction of the court in which the suit is pending. If the suit is dismissed, there will be no suit pending. Is this language intended to provide that the manufacturer be substituted as the party in the action in place of the seller or distributor? If so, I would prefer to say that.

See my changes in subsection (3), paragraph (a). There are two levels of alcohol intoxication, .08 and .10, depending on the number of drunk driving convictions. I used .10. OK?

In subsection (3), paragraph (c), only the manufacturer is mentioned, not the seller or distributor. Is that correct, or should their liability also be reduced by the misuse, alternation or modification of a product?

Robert I? Nelson
Senior Legislative Attorney
Phone: (608) 267-7511

99-2270

George Harby 9/20

P. 2, 6th line - change
"has determined" to "determines"

P 3, L. 23 after "assured" add
"one of"

P 3, L. 24 change to "duties
with respect to the"

P 4, L. 5: after "distributor"
add "as a defendant"

P 4, L. 18: after, "manufacturer"
add "seller or distributor"



1999 BILL

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.

TO: BOB

FROM: KMG

RE: LRB-2270/4

*** * * * * PLEASE USE *ANOTHER COLOR* FOR *ANY CHANGES***

1. Page 4, line 5: subd. 3. doesn't seem to make sense with the (intro.) par. - how does one "prove . . . a court determines"? Note that subds. 1. and 2., as the intro. is written, must be proved ...; ~~so~~ the same would apply to subd. 3. Please check all subdivisions. ✓

Analysis: same?

applies

BILL

§ 2.

one of the following: § 1. ~~§ 2.~~

duties

Under the bill, a distributor or seller is not liable for the claimant's damages unless ~~the claimant proves that~~ the distributor or seller contractually assumed the manufacturer's ~~duty to manufacture, design or provide warnings or instructions regarding the product, or proves that~~ the manufacturer would be liable for the damages and ~~that~~ neither the manufacturer nor its insurer is subject to service of process within this state ~~or that~~ a court has determined that the claimant would not be able to enforce a judgment against the manufacturer or its insurer. The bill requires the dismissal of ~~any action~~ against the distributor or seller if the manufacturer submits itself to the jurisdiction of the court in which the suit is pending.

one of

§ 3.

a s defendants in an action

sellers or distributors

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~~ 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
 4 only if the claimant establishes all of the following by a preponderance of the
 5 evidence:

BILL

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

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

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

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

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

20 (2) **LIABILITY OF SELLER OR DISTRIBUTOR.** (a) A seller or distributor of a product
21 is not liable to a claimant unless the claimant proves any of the following by a
22 preponderance of the evidence:

23 1. That the seller or distributor has contractually assumed ^{one of} the manufacturer's
24 ~~duty to manufacture, design or provide warnings or instructions~~ ^{duties} with respect to the
25 product.

BILL

1 2. That the manufacturer would be liable under sub. (1), and that neither the
2 manufacturer nor its insurer is subject to service of process within this state or a
3 court determines that the claimant would be unable to enforce a judgment against
4 the manufacturer or its insurer. *as a defendant*

5 (b) The court shall dismiss a ~~suit against a~~ product seller or distributor based
6 on par. (a) if the manufacturer or its insurer submits itself to the jurisdiction of the
7 court in which the suit is pending.

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

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

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

23 (d) The court shall dismiss the claimant's action under this section if the
24 damage was caused by an inherent characteristic of the product that would be

BILL

1 recognized by an ordinary person with ordinary knowledge common to the
2 community that uses or consumes the product.

3 (e) A ~~product~~ ^{of a product} seller or distributor is not liable for damage to a claimant if the
4 seller or distributor receives the product in a sealed container and has no reasonable
5 opportunity to test or inspect the product.

6 (4) **SUBSEQUENT REMEDIAL MEASURES.** In an action for damages caused by a
7 manufactured product, evidence of remedial measures taken subsequent to the sale
8 of the product is not admissible for the purpose of showing a manufacturing defect
9 in the product, a defect in the design of the product, or a need for a warning or
10 instruction. This subsection does not prohibit the admission of such evidence to show
11 a reasonable alternative design that existed at the time that the product was sold.

12 (5) **TIME LIMIT.** In any action under this section, a defendant is not liable for
13 damage to a claimant if the product alleged to have caused the damage was
14 manufactured 15 years or more before the event on which the claim is based, unless
15 the manufacturer makes a specific representation extending the life of the product.

16 **SECTION 2. Initial applicability.**

17 (1) This act first applies to causes of action occurring on the effective date of this
18 subsection.

19 (END)

99-2270/3

9/22 Bob Fassbender came

in with changes in his draft:

1. - P 3, C 5 7 & 11 wants to make these all that meant by the terms

2. P 4, C 2 - Wants to

allow assumption of only manufacturing, designing or providing warnings and instructions

Robert I. Fassbender

- Limit to only if manufacturer would be liable.

WILSON, FASSBENDER, OSBORNE & ASSOCIATES, INC.

10 E. Doty St., Suite 500 • Madison, WI 53703
Phone: 608/258-9506 • Fax: 608/283-2589
email: fassbender@hfomadison.com

Robert I. Fassbender

9/23 Fassbender wants x-ret than p 4, line 8 to par. (a) 2. &

• agrees that no "proof" needed that a court determined that the claimant would be unable to enforce a judgment against the manufacturer.



D-Note

1999 BILL

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.

BILL

Hand *applies*

Under the bill, a distributor or seller is not liable for the claimant's damages unless ~~the claimant proves one~~ of the following:

1. ~~That~~ the distributor or seller contractually assumed one of the manufacturer's duties regarding the product.

2. ~~That~~ the manufacturer would be liable for the damages and that neither the manufacturer nor its insurer is subject to service of process within this state ~~or that~~ a court determined that the claimant would not be able to enforce a judgment against the manufacturer or its insurer.

193.

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.

to manufacture, design or provide warnings or instructions?

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

BILL

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 because of inadequate instructions or warnings.

5 A product contains a manufacturing defect ^{only} if the product departs from its intended
6 design even though all possible care was exercised in the manufacture of the product.

7 A product is defective in design ^{only} if the foreseeable risks of harm posed by the product
8 could have been reduced or avoided by the adoption of a reasonable alternative
9 design by the manufacturer, and the omission of the alternative design renders the
10 product not reasonably safe. A product is defective because of inadequate

11 instructions or warnings ^{only} if the foreseeable risks of harm posed by the product could
12 have been reduced or avoided by the provision of reasonable instructions or warnings
13 by the manufacturer and the omission of the instructions or warnings renders the
14 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 claimant proves any of the following ^{applies}
24 ~~preponderance of the evidence~~ ^{to the manufacturer} ~~by a~~ ^{would be liable under sub. (1)}

would be liable under sub. (1) and

2023-2024

BILL

The claimant proves by a preponderance of the evidence to manufacture, design or provide warnings or instructions

1 1. That the seller or distributor has contractually assumed one of the
2 manufacturer's duties with respect to the product.

3 2. That the manufacturer would be liable under sub. (1), and that neither the
4 manufacturer nor its insurer is subject to service of process within this state
5 3. -A
6 court determines that the claimant would be unable to enforce a judgment against
7 the manufacturer or its insurer.

8 (b) The court shall dismiss a product seller or distributor as a defendant based
9 on par. (a) 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 (Iv), 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.

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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
claimant's employer who is immune from suit by the claimant under s. 102.03.

BILL

1 (d) The court shall dismiss the claimant's action under this section if the
2 damage was caused by an inherent characteristic of the product that would be
3 recognized by an ordinary person with ordinary knowledge common to the
4 community that uses or consumes the product.

5 (e) A seller or distributor of a product is not liable for damage to a claimant if
6 the seller or distributor receives the product in a sealed container and has no
7 reasonable opportunity to test or inspect the product.

8 (4) **SUBSEQUENT REMEDIAL MEASURES.** In an action for damages caused by a
9 manufactured product, evidence of remedial measures taken subsequent to the sale
10 of the product is not admissible for the purpose of showing a manufacturing defect
11 in the product, a defect in the design of the product, or a need for a warning or
12 instruction. This subsection does not prohibit the admission of such evidence to show
13 a reasonable alternative design that existed at the time that the product was sold.

14 (5) **TIME LIMIT.** In any action under this section, a defendant is not liable for
15 damage to a claimant if the product alleged to have caused the damage was
16 manufactured 15 years or more before the event on which the claim is based, unless
17 the manufacturer makes a specific representation extending the life of the product.

18 **SECTION 2. Initial applicability.**

19 (1) This act first applies to causes of action occurring on the effective date of this
20 subsection.

21 (END)

D - Note

*Perhaps this draft would be better
if the language on pg 3, lines 5614,
was changed to definitions and put at
the beginning of the section. What do you think?
For example "Manufacturing defect" means that the product...
RPN*

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2270/4dn
RPN:kg:km

September 27, 1999

Perhaps this draft would be better if the language on page 3, lines 5 to 14, was changed to definitions and put at the beginning of the section. What do you think? For example, "manufacturing defect" means that the product"

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511

Barman. Mike

From: Barman, Mike
Sent: Wednesday, September 29, 1999 11:34 AM
To: Delaporte, Robert
Subject: 99-2270/4 (per your request)



99 2270/4



99 2270/4dn

Mike Barman

Mike Barman - Program Asst. (PH. **608-266-3561**)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
legislative Reference Bureau - legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection, Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 0912711999

To: Representative Huebsch

Relating to LRB drafting number: LRB-2270


Topic

Liability for injuries caused by manufactured goods

Subject(s)

Courts - immunity liability

1. **JACKET** the draft for introduction



in the **Senate** or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Robert P. Nelson, Senior Legislative Attorney
Telephone: (608) 267-75 11