

**2003 DRAFTING REQUEST**

**Bill**

Received: **01/22/2003**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB: **03-1641**

For: **Robert Welch (608) 266-0751**

By/Representing: **Chris**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - immunity liability**

Extra Copies:

Submit via email: **NO**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Product liability for manufacturers, distributors and sellers

---

**Instructions:**

See Attached 01-1953

---

**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> |
|--------------|--|--|------------------------|----------------|-----------------------|-----------------|-----------------|
| /?           | rnelson2<br>01/24/2003                           | jdyer<br>01/24/2003                        |                        | _____          |                       |                 |                 |
| /1           |  |  | chaskett<br>01/27/2003 | _____          | mbarman<br>01/27/2003 |                 |                 |
| /2           | rnelson2<br>02/14/2003<br>rnelson2<br>02/17/2003 | jdyer<br>02/14/2003<br>jdyer<br>02/17/2003 | rschluet<br>02/14/2003 | _____          | lemery<br>02/14/2003  |                 |                 |
| /3           | rnelson2   | jdyer                                      | rschluet               | _____          | mbarman               |                 |                 |

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
|              | 02/24/2003     | 02/24/2003      | 02/17/2003   | _____          | 02/17/2003       |                 |                 |
| /4           |                |                 | chaskett     | _____          | amentkow         |                 |                 |
|              |                |                 | 02/24/2003   | _____          | 02/24/2003       |                 |                 |
| /5           | rnelson2       | jdyer           | pgreensl     | _____          | lemery           | lemery          |                 |
|              | 03/13/2003     | 03/14/2003      | 03/14/2003   | _____          | 03/14/2003       | 03/19/2003      |                 |

FE Sent For:

<END>

↳ Not  
Needed

**2003 DRAFTING REQUEST**

**Bill**

Received: **01/22/2003**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB: **03-1641**

For: **Robert Welch (608) 266-0751**

By/Representing: **Chris**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - immunity liability**

Extra Copies:

Submit via email: **NO**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Product liability for manufacturers, distributors and sellers

---

**Instructions:**

See Attached 01-1953

---

**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> |
|--------------|--|--|------------------------|----------------|-----------------------|-----------------|-----------------|
| /?           | rnelson2<br>01/24/2003                           | jdyer<br>01/24/2003                        |                        | _____          |                       |                 |                 |
| /1           |  |  | chaskett<br>01/27/2003 | _____          | mbarman<br>01/27/2003 |                 |                 |
| /2           | rnelson2<br>02/14/2003<br>rnelson2<br>02/17/2003 | jdyer<br>02/14/2003<br>jdyer<br>02/17/2003 | rschluet<br>02/14/2003 | _____          | lemery<br>02/14/2003  |                 |                 |
| /3           | rnelson2   | jdyer                                      | rschluet               | _____          | mbarman               |                 |                 |

**Jacketed**

for  
Senate  
per  
RPN

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
|              | 02/24/2003     | 02/24/2003      | 02/17/2003   | _____          | 02/17/2003       |                 |                 |
| /4           |                |                 | chaskett     | _____          | amentkow         |                 |                 |
|              |                |                 | 02/24/2003   | _____          | 02/24/2003       |                 |                 |
| /5           | rnelson2       | jdyer           | pgreensl     | _____          | lemery           |                 |                 |
|              | 03/13/2003     | 03/14/2003      | 03/14/2003   | _____          | 03/14/2003       |                 |                 |

FE Sent For:

<END>

**2003 DRAFTING REQUEST**

**Bill**

Received: **01/22/2003**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB: **03-1641**

For: **Robert Welch (608) 266-0751**

By/Representing: **Chris**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - immunity liability**

Extra Copies:

Submit via email: **NO**

**Pre Topic:**

No specific pre topic given

**Topic:**

Product liability for manufacturers, distributors and sellers

**Instructions:**

See Attached 01-1953

**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> |
|--------------|------------------------|---------------------|------------------------|----------------|-----------------------|-----------------|-----------------|
| /?           | rnelson2<br>01/24/2003 | jdyer<br>01/24/2003 |                        | _____          |                       |                 |                 |
| /1           |                        |                     | chaskett<br>01/27/2003 | _____          | mbarman<br>01/27/2003 |                 |                 |
| /2           | rnelson2<br>02/14/2003 | jdyer<br>02/14/2003 | rschluet<br>02/14/2003 | _____          | lemery<br>02/14/2003  |                 |                 |
|              | rnelson2<br>02/17/2003 | jdyer<br>02/17/2003 |                        | _____          |                       |                 |                 |
| /3           | rnelson2               | jdyer               | rschluet               | _____          | mbarman               |                 |                 |

*3/14 jld*      *3/14 ps*  
*3/14*  
*ps*

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
|              | 02/24/2003     | 02/24/2003      | 02/17/2003   | _____          | 02/17/2003       |                 |                 |
| /4           |                |                 | chaskett     | _____          | amentkow         |                 |                 |
|              |                |                 | 02/24/2003   | _____          | 02/24/2003       |                 |                 |

FE Sent For:

<END>

**2003 DRAFTING REQUEST**

**Bill**

Received: **01/22/2003**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB: **03-1641**

For: **Robert Welch (608) 266-0751**

By/Representing: **Chris**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - immunity liability**

Extra Copies:

Submit via email: **NO**

**Pre Topic:**

No specific pre topic given

**Topic:**

Product liability for manufacturers, distributors and sellers

**Instructions:**

See Attached 01-1953

**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> |
|--------------|--|--|------------------------|----------------|-----------------------|-----------------|-----------------|
| /?           | rnelson2<br>01/24/2003                           | jdyer<br>01/24/2003                        | 14 cph<br>2/27         | self<br>2/27   |                       |                 |                 |
| /1           |  |  | chaskett<br>01/27/2003 |                | mbarman<br>01/27/2003 |                 |                 |
| /2           | rnelson2<br>02/14/2003<br>rnelson2<br>02/17/2003 | jdyer<br>02/14/2003<br>jdyer<br>02/17/2003 | rschluet<br>02/14/2003 |                | lemery<br>02/14/2003  |                 |                 |
| /3           |  | 14 2/24 jld                                | rschluet               |                | mbarman               |                 |                 |

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u>     | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------|-----------------|------------------|----------------|------------------|-----------------|-----------------|
|              |                |                 | 02/17/2003 _____ |                | 02/17/2003       |                 |                 |

FE Sent For:

<END>



**2003 DRAFTING REQUEST**

**Bill**

Received: **01/22/2003**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB: **03-1641**

For: **Robert Welch (608) 266-0751**

By/Representing: **Chris**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - immunity liability**

Extra Copies:

Submit via email: **NO**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Product liability for manufacturers, distributors and sellers

---

**Instructions:**

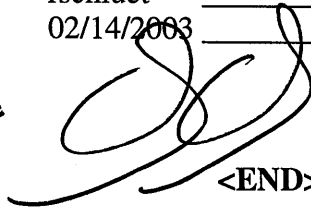
See Attached 01-1953

---

**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> |
|--------------|------------------------|---------------------|------------------------|----------------|-----------------------|-----------------|-----------------|
| /?           | rnelson2<br>01/24/2003 | jdyer<br>01/24/2003 |                        | _____          |                       |                 |                 |
| /1           |                        |                     | chaskett<br>01/27/2003 | _____          | mbarman<br>01/27/2003 |                 |                 |
| /2           | rnelson2<br>02/14/2003 | jdyer<br>02/14/2003 | rschluet<br>02/14/2003 | _____          | lemery<br>02/14/2003  |                 |                 |

13 2/17 JLD



<END>

2-17-3

FE Sent For:

**2003 DRAFTING REQUEST**

**Bill**

Received: **01/22/2003**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB: **03-1641**

For: **Robert Welch (608) 266-0751**

By/Representing: **Chris**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - immunity liability**

Extra Copies:

Submit via email: **NO**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Product liability for manufacturers, distributors and sellers

---

**Instructions:**

See Attached 01-1953

---

**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> |
|--------------|------------------------|---------------------|------------------------|----------------|-----------------------|-----------------|-----------------|
| /?           | rnelson2<br>01/24/2003 | jdyer<br>01/24/2003 |                        | _____          |                       |                 |                 |
| /1           |                        | 1/2 2/4 jld         | chaskett<br>01/27/2003 | _____          | mbarman<br>01/27/2003 |                 |                 |

FE Sent For:

Handwritten signature and date: 2-14-2

<END>

**2003 DRAFTING REQUEST**

**Bill**

Received: **01/22/2003**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB: **03-1641**

For: **Robert Welch (608) 266-0751**

By/Representing: **Chris**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - immunity liability**

Extra Copies:

Submit via email: **NO**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Product liability for manufacturers, distributors and sellers

---

**Instructions:**

See Attached 01-1953

---

**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> |
|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| /?           | rnelson2       | 1 1/24 jld      | 1 1/24<br>cp | rs/cp<br>1/24  |                  |                 |                 |

FE Sent For:

<END>

**Nelson, Robert P.**

---

**From:** Newhouse, Chris  
**Sent:** Wednesday, January 22, 2003 8:39 AM  
**To:** Nelson, Robert P.  
**Subject:** requested redraft



2001 Draft  
rodLiabBill in 03..

Rob; in 2001 you drafted LRB 1953, I ask that you please redraft this for Senator Welch for this session.

thank you,

Chris

3  
Stays

3  
2001 BILL

Regen

- 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.

He

condition existed

**BILL**

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

**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 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:

**BILL**

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  
4 product.

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

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

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

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

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

22           (c) The damages for which a manufacturer, seller, or distributor would  
23 otherwise be liable shall be reduced by the percentage of responsibility for the  
24 claimant's harm attributable to misuse, alteration, or modification of a product by



**BILL**

1 any person. This defense shall not apply to misuse, alteration, or modification by the  
2 claimant's employer who is immune from suit by the claimant under s. 102.03.

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

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

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

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

20 **SECTION 2. Initial applicability.**

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

23 (END)

**Mentkowski, Annie**

---

**From:** Mentkowski, Annie

**Sent:** Wednesday, January 29, 2003 11:29 AM

**To:** Newhouse, Chris

**Subject:** LRB-1662 per your request

**Nelson, Robert P.**

---

**From:** James E. Hough [hough@hamilton-consulting.com]  
**Sent:** Tuesday, February 11, 2003 12:04 PM  
**To:** Bob Nelson  
**Cc:** Robert Delaporte; Chris Newhouse; Jim Mathie; John Metcalf; James Buchen; Eric Englund; Bob Fassbender; Andy Franken  
**Subject:** Products Draft

Bob,

In requesting that the "employer exemption" be removed, I erroneously suggested removing all of the language in (3) (c), page 5, lines 14 through 18. The only language that should be removed is the sentence beginning with "This" on line 17 and ending with "s. 102.03." on line 18. Sorry for the confusion.

Thank you.

Jim

James E. Hough  
The Hamilton Consulting Group  
10 E. Doty Street #500  
Madison, WI 53703  
P (608) 258-9506  
F (608) 283-2589  
[hough@hamilton-consulting.com](mailto:hough@hamilton-consulting.com)  
[www.hamilton-consulting.com](http://www.hamilton-consulting.com)



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-1662/1  
RPN:jld:cph

(see p 5)

2003 BILL

Regen

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, the defective condition existed 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**

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

**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 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:

**BILL**

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  
4 product.

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

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

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

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

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

22           (c) The damages for which a manufacturer, seller, or distributor would  
23 otherwise be liable shall be reduced by the percentage of responsibility for the  
24 claimant's harm attributable to misuse, alteration, or modification of a product by

**BILL**

1 any person. This defense shall not apply to misuse, alteration, or modification by the  
2 claimant's employer who is immune from suit by the claimant under s. 102.03.

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

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

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

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

**SECTION 2. Initial applicability.**

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

23 (END)



2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1641/2ins  
RPN:jld:jf

insert anl:

Under the bill, in product liability cases, the contributory negligence of the injured party is compared to the product's defectiveness to determine his or her right to recovery and the amount that the damages are diminished for that person. In addition, under the bill, in product liability cases, joint and several liability only applies to a defendant who<sup>e</sup> causal negligence is 51% or greater, using the apportionment of liability for contribution among the manufacturer, assembler, dealer, and seller as the amount of negligence attributable to each defendant.

1 insert 2-1:

2 SECTION 1. 895.045 (3)<sup>x</sup> of the statutes is created to read:

3 895.045 (3) PRODUCT LIABILITY. In an action based on damages caused by a  
4 defective product in which strict liability applies, the<sup>✓</sup> contributory negligence of the  
5 injured party is compared to the product's defectiveness to determine if the injured  
6 party has the right to recover damages and the amount that the damages are  
7 diminished for that person. In an action based on damages caused by a defective  
8 product in which strict liability applies, the<sup>✓</sup> joint and several liability provisions  
9 under sub. (1)<sup>✓</sup> apply using the determination of the apportion of liability for  
10 contribution among the manufacturer, assembler, dealer, and seller as the amount  
11 of causal negligence attributable to each defendant.

D-Note

2003 BILL

Regen

1 AN ACT to create 895.045 (3) and 895.047 of the statutes; relating to: product  
2 liability of 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, the defective condition existed 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**

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.

Under the bill, in product liability cases, the contributory negligence of the injured party is compared to the product's defectiveness to determine his or her right to recovery and the amount that the damages are diminished for that person. In addition, under the bill, in product liability cases, joint and several liability only applies to a defendant whose causal negligence is 51% or greater, using the

**BILL**

apportionment of liability for contribution among the manufacturer, assembler, dealer, and seller as the amount of negligence attributable to each defendant.

---

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

1           **SECTION 1.** 895.045 (3) of the statutes is created to read:

2           **895.045 (3) PRODUCT LIABILITY.** In an action based on damages caused by a  
3 defective product in which strict liability applies, the contributory negligence of the  
4 injured party is compared to the product's defectiveness to determine if the injured  
5 party has the right to recover damages and the amount that the damages are  
6 diminished for that person. In an action based on damages caused by a defective  
7 product in which strict liability applies, the joint and several liability provisions  
8 under sub. (1) apply using the determination of the apportion of liability for  
9 contribution among the manufacturer, assembler, dealer, and seller as the amount  
10 of causal negligence attributable to each defendant.

11           **SECTION 2.** 895.047 of the statutes is created to read:

12           **895.047 Product liability. (1) LIABILITY OF MANUFACTURER.** In an action for  
13 damages caused by a manufactured product, a manufacturer is liable to a claimant  
14 only if the claimant establishes all of the following by a preponderance of the  
15 evidence:

16           (a) That the product is defective because it contains a manufacturing defect,  
17 is defective in design, or is defective only because of inadequate instructions or  
18 warnings. A product contains a manufacturing defect only if the product departs  
19 from its intended design even though all possible care was exercised in the  
20 manufacture of the product. A product is defective in design only if the foreseeable  
21 risks of harm posed by the product could have been reduced or avoided by the

**BILL**

1 adoption of a reasonable alternative design by the manufacturer and the omission  
2 of the alternative design renders the product not reasonably safe. A product is  
3 defective because of inadequate instructions or warnings only if the foreseeable risks  
4 of harm posed by the product could have been reduced or avoided by the provision  
5 of reasonable instructions or warnings by the manufacturer and the omission of the  
6 instructions or warnings renders the product not reasonably safe.

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

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

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

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

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

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

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

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

**BILL**

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

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

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

14           (c) The damages for which a manufacturer, seller, or distributor would  
15 otherwise be liable shall be reduced by the percentage of responsibility for the  
16 claimant's harm attributable to misuse, alteration, or modification of a product by  
17 any person.

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

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

**BILL**

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

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

**SECTION 3. Initial applicability.**

11           **(1)** This act first applies to causes of action occurring on the effective date of this  
 12 subsection.  
 13

(END)

*D- Note*

*This draft is identical  
to LRB-1641/3.*

*RPN*

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

LRB-1662/3dn  
RPN:jld:rs

February 17, 2003

This draft is identical to LRB-1641/3.

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511  
E-mail: [robert.nelson@legis.state.wi.us](mailto:robert.nelson@legis.state.wi.us)



# Recommended Changes to LRB 1641/3

## 1. Substitute for Section 1

SECTION 1. 895.045 (3) of the statutes is created to read:

895.045 (3) PRODUCT LIABILITY. In an action by any person or the person's legal representative to recover damages caused by a defective product in which strict liability applies, the contributory negligence of the injured party is compared to the defective condition of the product and to any contributory negligence of any other person alleged to have been responsible for the damage claimed to determine if the injured party has the right to recover damages. If the plaintiff's causal negligence is greater than the causation attributed to the defective condition of the product, the plaintiff is barred from recovery from the product defendants. Any damages allowed shall be diminished in the proportion to the amount of negligence attributed to the person recovering. ~~In a case where~~ multiple defendants are alleged to be responsible for the defective product, either as manufacturer, assembler, distributor or seller, or otherwise by placing the product in the stream of commerce, the liability of the ~~so-called~~ product defendants shall be determined by a separate apportionment of responsibility between the product defendants. The liability of each product defendant shall be determined by multiplying the percentage of causation attributed to the defective condition of the product by the individual apportionment for each product defendant. A product defendant whose causal responsibility is 51% or more of the total causal responsibility for the damages claimed, including any causal negligence attributed to the person recovering or any other person alleged to have been responsible, shall be jointly and severally liable for the damages allowed. The liability of a product defendant whose causal responsibility is less than 51% of the total causal responsibility for the damages claimed, including any causal negligence attributed to the person recovering or any other person alleged to have been responsible, is limited to the causal responsibility of that product defendant. If the plaintiff is entitled to recover from the product defendants because the ~~causal responsibility of~~ the product is equal to or greater than the contributory negligence of the plaintiff, ~~the fact that~~ the plaintiff's contributory negligence <sup>that</sup> exceeds the causal responsibility of any individual product defendant shall not bar the plaintiff from recovering against that individual product defendant, up to the percentage of causal responsibility attributed to that individual product defendant.

causation attributed  
to the defective condition  
of

## 2. Analysis by the Legislative Reference Bureau

Minor suggestion in the first paragraph. Suggested language, last paragraph, based on changes to Section 1.

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 negligence theory, and under the theory of strict liability. The doctrine of strict liability, as adopted in this state, applies to manufacturers, distributors, and retailers sellers. 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, the defective condition existed 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 the bill, in product liability cases, the contributory negligence of the injured party is compared to the product's defectiveness to determine his or her right to recovery and the amount that the damages are diminished for that person. In addition, under the bill, in product liability cases, joint and several liability only applies to a defendant whose causal negligence responsibility is 51% or greater of the total causal responsibility, using the apportionment of liability for contribution among the manufacturer, assembler, dealer, and seller as the amount of negligence attributable to each defendant multiplied by the causation attributed to the defective condition of the product.

## 3. Delete the first "only" in Section 895.047 (1) (a)

SECTION 3. 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 a claimant only if the claimant establishes all of the following by a preponderance of the evidence:

(a) That the product is defective because it contains a manufacturing defect, is defective in design, or is defective ~~only~~ because of inadequate instructions or warnings. A product contains a manufacturing defect only if the product departs from its intended design even though all possible care was exercised in the manufacture of the product. A product is defective in design only if 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. A product is defective because of inadequate instructions or warnings only if 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.

5804 (2/28)

2003 - 2004 LEGISLATURE

1662/4  
LRB-1644/4  
RPN:jld:jf  
↑  
Stays  
note

2003 BILL

Regen

1 AN ACT *to create* 895.045 (3) and 895.047 of the statutes; **relating to:** product  
2 liability of manufacturers, assemblers, distributors, and sellers.

---

*Analysis by the Legislative Reference Bureau*

This bill establishes the criteria to determine if a product manufacturer, distributor, assembler, 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, assembler, or seller is liable for the person's injury. The claimant may sue under a breach-of-warranty theory, under the common law negligence theory, and under the theory of strict liability. The doctrine of strict liability, as adopted in this state, applies to manufacturers, distributors, assemblers, and sellers. 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, the defective condition existed 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**

Under the bill, a distributor, assembler, 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, assembler, 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, assembler, 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, assembler'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.

Under the bill, in product liability cases, to determine the causal responsibility for the injury, the fact finder must determine what percentage of that causal responsibility is the result of the contributory negligence of the injured party, the defective condition of the product, and the contributory negligence of any third person. The bill provides that, if the injured party's percentage of total causal responsibility for the injury is greater than the percentage resulting from the defective condition of the product, the injured party may not recover from the manufacturer or any other person responsible for placing the product in the stream of commerce. If the injured party does have the right to recover, the injured party's

**BILL**

damages are diminished by the injured party's percentage of causal responsibility for the injury. Under the bill, after determining the percentage of causal responsibility for the injury that is the result of the defective condition of the product, the fact finder is required to determine the percentage of causal responsibility of each product defendant for the defective condition of the product. The judge, under the bill, multiplies this percentage by the percentage of causal responsibility for the injury that is the result of the defective condition of the product to determine an individual product defendant's percentage of responsibility for the damages to the injured party.

Under the bill, a product defendant whose responsibility for the damages to the injured party is 51% or more is jointly and severally liable for all of those damages. The liability of a product defendant whose responsibility for the damages to the injured party is less than 51% is limited to that product defendant's percentage of responsibility for the damages. The bill also allows the injured party to recovery from the product defendants even when the injured party's causal responsibility for the injury is greater than an individual product defendant's responsibility for the damages to the injured party.

---

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

1           **SECTION 1.** 895.045 (3) of the statutes is created to read:

2           895.045 (3) **PRODUCT LIABILITY.** (a) In an action by any person to recover  
3 damages for injuries caused by a defective product, the court shall first determine  
4 if the injured party has the right to recover damages. To do so, the court shall  
5 determine what percentage of the total causal responsibility for the injury resulted  
6 from the contributory negligence of the injured person, what percentage resulted  
7 from the defective condition of the product, and what percentage resulted from the  
8 contributory negligence of any other person.

9           (b) If the injured party's percentage of total causal responsibility for the injury  
10 is greater than the percentage resulting from the defective condition of the product,  
11 the injured party may not recover from the manufacturer, assembler, distributor,  
12 seller, or any other person responsible for placing the product in the stream of  
13 commerce based on the defect in the product.

**BILL**

1 (c) If the injured party's percentage of total causal responsibility for the injury  
2 is equal to or less than the percentage resulting from the defective condition of the  
3 product, the injured party may recover but the damages recovered by the injured  
4 party shall be diminished by the percentage attributed to that injured party.

5 (d) If multiple defendants are alleged to be responsible for the defective  
6 condition of the product, and the injured party is not barred from recovery under par.  
7 (b), the court shall determine the percentage of causal responsibility of each product  
8 defendant for the defective condition of the product. The judge shall then multiply  
9 that percentage of causal responsibility of each product defendant for the defective  
10 condition of the product by the percentage of causal responsibility for the injury to  
11 the person attributed to the defective product. The result of that multiplication is  
12 the individual product defendant's percentage of responsibility for the damages to  
13 the injured party. A product defendant whose responsibility for the damages to the  
14 injured party is 51% or more of the total responsibility for the damages to the injured  
15 party is jointly and severally liable for all of the damages to the injured party. The  
16 responsibility of a product defendant whose responsibility for the damages to the  
17 injured party is less than 51% of the total responsibility for the damages to the  
18 injured party is limited to that product defendant's percentage of responsibility for  
19 the damages to the injured party.

20 (e) If the injured party is not barred from recovery from the product defendants  
21 under par. (b), the fact that the injured party's causal responsibility for the injury is  
22 greater than an individual product defendant's responsibility for the damages to the  
23 injured party does not bar the injured party from recovering from that individual  
24 product defendant.

25 **SECTION 2.** 895.047 of the statutes is created to read:

**BILL**

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

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

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

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

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

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

**BILL**

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

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

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

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

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

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

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



**BILL**

1 (c) The damages for which a manufacturer, seller, assembler, or distributor  
2 would otherwise be liable shall be reduced by the percentage of responsibility for the  
3 claimant's harm attributable to misuse, alteration, or modification of a product by  
4 any person.

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

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

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

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

**SECTION 3. Initial applicability.**

22  
23 (1) This act first applies to causes of action occurring on the effective date of this  
24 subsection.

25 (END)

**Nelson, Robert P.**

---

**To:** James E. Hough

**Subject:** RE: Products Draft Slash 4

I think I added "assemblers" because when I was talking to Jim Mathie about the contributory negligence changes, he used examples involving both manufacturerers and assemblers, so I thought that I had missed them in the s. 895.047 language. Does it make sense to have them mentioned in s. 895.045 (3) but not in s. 895.047?

-----Original Message-----

**From:** James E. Hough [mailto:hough@hamilton-consulting.com]

**Sent:** Wednesday, February 26, 2003 11:24 AM

**To:** Bob Nelson

**Cc:** Robert Delaporte; Chris Newhouse; Jim Mathie; John Metcalf

**Subject:** Products Draft Slash 4

Bob,

We've reviewed the most recent draft and the SECTION 1 language re contributory negligence/joint and several liability looks good. You did an excellent job with some tough wordsmithing.

We do, however, have a question about the addition of "assembler" in s.895.047(2). We believe that "assembler" is closer to a manufacturer. The proposal provides liability protection for sellers and distributors who get brought into strict liability litigation unfairly. We do not believe that the same argument can be made for "assemblers" as we understand that term and we believe that the liability protection should be limited to sellers and distributors.

If you have a different understanding or reason for adding assemblers, please advise. Our inclination is to leave "assemblers" out.

Thank you.

Jim

3/13 Chris - remove  
"assemblers"

James E. Hough  
The Hamilton Consulting Group  
10 E. Doty Street #500  
Madison, WI 53703  
P (608) 258-9506  
F (608) 283-2589  
[hough@hamilton-consulting.com](mailto:hough@hamilton-consulting.com)  
[www.hamilton-consulting.com](http://www.hamilton-consulting.com)

02/26/2003



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-1662/A<sup>5</sup>

RPN:jld:cph

506a (2/13)

2003 BILL

Regen

- 1 AN ACT *to create* 895.045 (3) and 895.047 of the statutes; **relating to:** product  
2 liability of manufacturers, ~~assemblers~~ distributors, and sellers.

---

***Analysis by the Legislative Reference Bureau***

This bill establishes the criteria to determine if a product manufacturer, distributor, ~~assembler~~, 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, ~~assembler~~, or seller is liable for the person's injury. The claimant may sue under a breach-of-warranty theory, under the common law negligence theory, and under the theory of strict liability. The doctrine of strict liability, as adopted in this state, applies to manufacturers, distributors, ~~assemblers~~, and sellers. 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, the defective condition existed 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**

Under the bill, a distributor, ~~assembler~~ 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, ~~assembler~~ 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, ~~assembler~~ 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, ~~assembler'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.

Under the bill, in product liability cases, to determine the causal responsibility for the injury, the fact finder must determine what percentage of that causal responsibility is the result of the contributory negligence of the injured party, the defective condition of the product, and the contributory negligence of any third person. The bill provides that, if the injured party's percentage of total causal responsibility for the injury is greater than the percentage resulting from the defective condition of the product, the injured party may not recover from the manufacturer or any other person responsible for placing the product in the stream of commerce. If the injured party does have the right to recover, the injured party's

**BILL**

damages are diminished by the injured party's percentage of causal responsibility for the injury. Under the bill, after determining the percentage of causal responsibility for the injury that is the result of the defective condition of the product, the fact finder is required to determine the percentage of causal responsibility of each product defendant for the defective condition of the product. The judge, under the bill, multiplies this percentage by the percentage of causal responsibility for the injury that is the result of the defective condition of the product to determine an individual product defendant's percentage of responsibility for the damages to the injured party.

Under the bill, a product defendant whose responsibility for the damages to the injured party is 51% or more is jointly and severally liable for all of those damages. The liability of a product defendant whose responsibility for the damages to the injured party is less than 51% is limited to that product defendant's percentage of responsibility for the damages. The bill also allows the injured party to recovery from the product defendants even when the injured party's causal responsibility for the injury is greater than an individual product defendant's responsibility for the damages to the injured party.

---

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

1           **SECTION 1.** 895.045 (3) of the statutes is created to read:

2           895.045 (3) **PRODUCT LIABILITY.** (a) In an action by any person to recover  
3 damages for injuries caused by a defective product, the court shall first determine  
4 if the injured party has the right to recover damages. To do so, the court shall  
5 determine what percentage of the total causal responsibility for the injury resulted  
6 from the contributory negligence of the injured person, what percentage resulted  
7 from the defective condition of the product, and what percentage resulted from the  
8 contributory negligence of any other person.

9           (b) If the injured party's percentage of total causal responsibility for the injury  
10 is greater than the percentage resulting from the defective condition of the product,  
11 the injured party may not recover from the manufacturer, ~~assembler~~ distributor,  
12 seller, or any other person responsible for placing the product in the stream of  
13 commerce based on the defect in the product.

**BILL**

1           (c) If the injured party's percentage of total causal responsibility for the injury  
2 is equal to or less than the percentage resulting from the defective condition of the  
3 product, the injured party may recover but the damages recovered by the injured  
4 party shall be diminished by the percentage attributed to that injured party.

5           (d) If multiple defendants are alleged to be responsible for the defective  
6 condition of the product, and the injured party is not barred from recovery under par.  
7 (b), the court shall determine the percentage of causal responsibility of each product  
8 defendant for the defective condition of the product. The judge shall then multiply  
9 that percentage of causal responsibility of each product defendant for the defective  
10 condition of the product by the percentage of causal responsibility for the injury to  
11 the person attributed to the defective product. The result of that multiplication is  
12 the individual product defendant's percentage of responsibility for the damages to  
13 the injured party. A product defendant whose responsibility for the damages to the  
14 injured party is 51% or more of the total responsibility for the damages to the injured  
15 party is jointly and severally liable for all of the damages to the injured party. The  
16 responsibility of a product defendant whose responsibility for the damages to the  
17 injured party is less than 51% of the total responsibility for the damages to the  
18 injured party is limited to that product defendant's percentage of responsibility for  
19 the damages to the injured party.

20           (e) If the injured party is not barred from recovery from the product defendants  
21 under par. (b), the fact that the injured party's causal responsibility for the injury is  
22 greater than an individual product defendant's responsibility for the damages to the  
23 injured party does not bar the injured party from recovering from that individual  
24 product defendant.

25           **SECTION 2.** 895.047 of the statutes is created to read:

**BILL**

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

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

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

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

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

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

**BILL**

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

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

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

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

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

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

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



**BILL**

1 (c) The damages for which a manufacturer, seller, ~~manufacturer~~<sup>assembly</sup> or distributor  
2 would otherwise be liable shall be reduced by the percentage of responsibility for the  
3 claimant's harm attributable to misuse, alteration, or modification of a product by  
4 any person.

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

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

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

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

**SECTION 3. Initial applicability.**

22 (1) This act first applies to causes of action occurring on the effective date of this  
23 subsection.  
24

25 (END)

## Emery, Lynn

---

**From:** Emery, Lynn  
**Sent:** Monday, March 17, 2003 8:48 AM  
**To:** Newhouse, Chris  
**Subject:** LRB-1662/5 (attached as requested)



03-1662/5

Lynn Emery  
Program Assistant  
Legislative Reference Bureau  
608-266-3561  
[lynn.emery@legis.state.wi.us](mailto:lynn.emery@legis.state.wi.us)