

**2005 DRAFTING REQUEST**

**Assembly Amendment (AA-AB778)**

Received: 10/24/2005

Received By: rnelson2

Wanted: Today

Identical to LRB:

For: Michael Huebsch (608) 266-2401

By/Representing: Jodi J

This file may be shown to any legislator: NO

Drafter: rnelson2

May Contact:

Addl. Drafters:

Subject: Courts - immunity liability

Extra Copies:

Submit via email: YES

Requester's email: Rep.Huebsch@legis.state.wi.us

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Lead paint liability

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**Instructions:**

See Attached

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**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>
/1	rnelson2 10/24/2005	wjackson 10/24/2005	rschluet 10/25/2005	_____	lnorthro 10/25/2005	lnorthro 10/25/2005	
/2	rnelson2 10/25/2005	kfollett 10/25/2005	jfrantze 10/25/2005	_____	lnorthro 10/25/2005	lnorthro 10/25/2005	

FE Sent For:

<END>



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/1	rnelson2						
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1 WJ 10/24

10255 pb

FE Sent For:

<END>

**Nelson, Robert P.**

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**From:** Jensen, Jodi

*Huebsch*

**Sent:** Monday, October 24, 2005 8:53 AM

**To:** Nelson, Robert P.

**Subject:** Amendment to AB 778

Hi Bob - Can you please draft the following amendment to AB 778:

Replace (5)(b) (page 4, line 7) with the following "The claimant has not established that the relevant production period was less than 5 years."

Add to the definitions section: "relevant production period means the time period during which the actual product that allegedly caused the claimant's injury or harm was manufactured, distributed, sold or promoted."

I think we'll need an amendment revising (4)(d) as well (page 3, line 20). Hopefully I'll have language today.

When I spoke with Rep. Gundrum on Friday, he was planning to exec this bill on Thursday, October 27.

Thanks!

Jodi



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRBa1219/1  
RPN:.....

*Wanted 10/25 AM*

*WJ*

ASSEMBLY AMENDMENT ,  
TO 2005 ASSEMBLY BILL 778

*Lps' please fix comp-*

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At the locations indicated, amend the bill as follows:

*the material beginning with "DEFINITION" and ending*  
**1.** Page 2, line 3: delete that line and substitute:  
*with "person" and substitute* **"promoters of products."** (1) DEFINITIONS. In this section:

(a) "Claimant" means a person".

**2.** Page 2, line 5: after that line insert:

"(b) "Relevant production period" means the time period during which the actual product that allegedly caused the claimant's injury or harm was manufactured, distributed, sold or promoted."

**3.** Page 4, line 7: delete lines 7 and 8 and substitute:

"(b) The claimant has not established that the relevant production period was less than 5 years."

(END)

## 2005 ASSEMBLY BILL 778

October 20, 2005 – Introduced by Representatives WIECKERT, HONADEL, NISCHKE, HUEBSCH, JESKEWITZ, ALBERS, GUNDERSON, OTT, MUSSER, LOTHIAN, STONE, HAHN, NASS, LEMAHIEU and AINSWORTH, cosponsored by Senators KANAVAS, SCHULTZ, REYNOLDS, DARLING, STEPP, OLSEN, GROTHMAN, S. FITZGERALD, A. LASEE and HARSDORF. Referred to Committee on Judiciary.

1     **AN ACT** *to create* 895.046 of the statutes; **relating to:** actions against  
2           manufacturers, distributors, sellers, and promoters of products.

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### *Analysis by the Legislative Reference Bureau*

In *Thomas v. Mallett*, 2005 WI 129, the Wisconsin Supreme Court held that the manufacturers of white lead carbonate, which was used as a pigment in paint, were liable for the injuries caused to a child who had ingested paint that contained the white lead carbonate, although the child could not prove that a particular manufacturer produced the white lead carbonate that he ingested. The court made that decision based on the risk-contribution theory, saying that all of the manufacturers' white lead carbonate were basically the same, the manufacturers created the risk of injury, and they should all contribute to the payment of the child's damages.

This bill provides that a manufacturer, distributor, seller, or promoter of a product generally may be held liable for damages only if the injured party proves, in addition to the causation, damages, and other elements of the claim, that the specific product that caused the injury was manufactured, distributed, sold, or promoted by the defendant. The bill also provides that if an injured party cannot prove that the defendant manufactured, distributed, sold, or promoted the specific product that caused the injury, the defendant may be held liable if, in addition to proving the other elements of the claim, the injured party proves all of the following:

1. That no other legal process exists for the injured party to obtain damages.
2. That the injury could only be caused by a product that is chemically identical to the specific product that allegedly caused the injury.

**ASSEMBLY BILL 778**

3. That the defendant manufactured, distributed, sold, or promoted a product that was chemically identical to the specific product that allegedly caused the injury during the time period in which that specific product was manufactured, distributed, sold, or promoted.

4. That the defendants named in the action collectively, during the relevant production period, manufactured, distributed, sold, or promoted within this state at least 80 percent of all products that were chemically identical to the specific product that allegedly caused the injury sold in this state.

The bill limits liability to products that were manufactured, distributed, sold, or promoted within 25 years before the date the injury occurred and only if the product was manufactured for more than five years.

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

1           **SECTION 1.** 895.046 of the statutes is created to read:

2           **895.046 Remedies against manufacturers, distributors, sellers, and**  
3 **promoters of products. (1) DEFINITION.** In this section, “claimant” means a person  
4 seeking damages or other relief for injury or harm to a person or property caused by  
5 or arising from a product.

6           **(2) APPLICABILITY.** This section applies to all actions in which a claimant alleges  
7 that the manufacturer, distributor, seller, or promoter of a product is liable for an  
8 injury or harm to a person or property, including actions based on allegations that  
9 the design, manufacture, distribution, sale, or promotion of, or instructions or  
10 warnings about, a product caused or contributed to a personal injury or harm to a  
11 person or property, a private nuisance, or a public nuisance, and to all related or  
12 independent claims, including unjust enrichment, restitution, or indemnification.

13           **(3) REMEDY WITH SPECIFIC PRODUCT IDENTIFICATION.** Except as provided in sub.  
14 (4), the manufacturer, distributor, seller, or promoter of a product may be held liable  
15 in an action under sub. (2) only if the claimant proves, in addition to any other  
16 elements required to prove his or her claim, that the manufacturer, distributor,

**ASSEMBLY BILL 778**

1 seller, or promoter of a product manufactured, distributed, sold, or promoted the  
2 specific product alleged to have caused the claimant's injury or harm.

3 (4) REMEDY WITHOUT SPECIFIC PRODUCT IDENTIFICATION. Subject to sub. (5), if a  
4 claimant cannot meet the burden of proof under sub. (3), the manufacturer,  
5 distributor, seller, or promoter of a product may be held liable for an action under sub.  
6 (2) only if the claimant proves all of the following:

7 (a) That no other legal process exists for the claimant to obtain redress from  
8 another person for the injury or harm.

9 (b) That the claimant has suffered an injury or harm that can be caused only  
10 by a product chemically identical to the specific product that allegedly caused the  
11 claimant's injury or harm.

12 (c) That the manufacturer, distributor, seller, or promoter of a product  
13 manufactured, distributed, sold, or promoted a product that meets all of the  
14 following criteria:

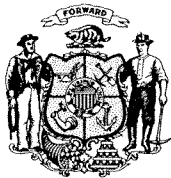
15 1. Is chemically identical to the specific product that allegedly caused the  
16 claimant's injury or harm.

17 2. Was manufactured, distributed, sold, or promoted in this state during the  
18 time period in which the specific product that allegedly caused the claimant's injury  
19 or harm was manufactured, distributed, sold, or promoted.

20 (d) The manufacturers, distributors, sellers, or promoters of a product who are  
21 named as defendants in the action collectively, during the relevant production  
22 period, manufactured, distributed, sold, and promoted within this state at least 80  
23 percent of all products chemically identical to the specific product that allegedly  
24 caused the claimant's injury sold in this state.







State of Wisconsin  
2005 - 2006 LEGISLATURE

LRBa1219/1

RPN:wlj:ks

*Now ish*

*stays*

ASSEMBLY AMENDMENT ,  
TO 2005 ASSEMBLY BILL 778

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 3: delete the material beginning with "DEFINITION" and ending  
3 with "person" and substitute "DEFINITIONS. In this section: (3)

4 (a) "Claimant" means a person".

*Seeking damages or other relief for injury or harm to a person or property caused by*

5 **2.** Page 2, line 5: after that line insert:

6 "(b) "Relevant production period" means the time period during which the  
7 ~~actual~~ <sup>specific</sup> product that allegedly caused the claimant's injury or harm was  
8 manufactured, distributed, sold, or promoted."

9 **3.** Page 4, line 7: delete lines 7 and 8 and substitute:

10 "(bm) The claimant has not established that the relevant production period was  
11 less than 5 years."

12 (END)

*# Page 2, line 4: delete that line and substitute (3)*

**Nelson, Robert P.**

---

**From:** Jensen, Jodi  
**Sent:** Tuesday, October 25, 2005 1:19 PM  
**To:** Nelson, Robert P.  
**Subject:** FW: LRB 05a1219 Topic: Lead paint liability  
**Attachments:** LRB a1219\_1

Per my voice mail - line 7 should begin with the word "specific" rather than "actual."

Thanks. Our plan is to introduce this amendment today.

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**From:** Welhouse, Andrew  
**Sent:** Tuesday, October 25, 2005 10:19 AM  
**To:** Jensen, Jodi  
**Subject:** FW: LRB 05a1219 Topic: Lead paint liability

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**From:** Northrop, Lori  
**Sent:** Tuesday, October 25, 2005 9:26 AM  
**To:** Rep.Huebsch  
**Subject:** LRB 05a1219 Topic: Lead paint liability

The attached proposal has been jacketed for introduction.

• A copy has also been sent to: