

2005 DRAFTING REQUEST

Bill

Received: **11/04/2005**

Received By: **rnelson2**

Wanted: **Today**

Identical to LRB:

For: **Assembly Chief Clerk**

By/Representing: **Kay Inabet**

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: **patrick.fuller@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Liability of lead carbonate manufactureres

Instructions:

See attached

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 11/04/2005			_____			
/1		csicilia 11/07/2005	chaugen 11/07/2005	_____	mbarman 11/07/2005	mbarman 11/07/2005	

FE Sent For:

<END>

↳ Not Needed

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/?	rnelson2	1 cis 11/6 05	Engrossed 11-7 CH	CH SF 11-7			
----	----------	------------------	-------------------------	---------------	--	--	--

FE Sent For:

<END>

Nelson, Robert P.

From: Our Family [pjdykman@chorus.net]
Sent: Friday, November 04, 2005 10:16 AM
To: Dykman, Peter; Nelson, Robert P.; Siciliano, Chris
Subject: RE: Engrossing

Yes but it is rare at this time. Call the assembly chief clerk's office (probably Kay Inabet) and ask. She may need to check with the speaker's office to see if that is helpful or harmful. The engrossing is very rarely done while it is the first house. It is done to give the second house a clear picture of what the first passed. Only if the majority party wants to reconsider the action in the first house is the engrossing done in the first house.

Nothing stops you from starting the engrossing at this time and send it out after the bill has been messaged.

In summary, this is not your decision and your convenience is irrelevant as is mine in enrolling (I think the legislature is well served by engrossing because the intent of the first house can be better carried out and the second house has a new analysis and clear text.)

From: Dykman, Peter [mailto:Peter.Dykman@legis.state.wi.us]
Sent: Friday, November 04, 2005 9:57 AM
To: pjdykman@chorus.net
Subject: FW: Engrossing

From: Nelson, Robert P.
Sent: Friday, November 04, 2005 9:56:39 AM
To: Dykman, Peter
Subject: Engrossing
Auto forwarded by a Rule

Peter,

Can I ask the Assembly to have AB 778 ordered to be printed engrossed? The bill has passed the Assembly, but has not been messaged. It is amendments and amendments to amendments, and I expect amendments in the Senate, probably Tuesday.

Robert P. Nelson
Senior Legislative Attorney
608-267-7511

2005

Mon AM

LRB 4015 / 1

ENGROSS BILL
[or 2nd House Sub]

(To Be Printed for Legislature)

RPW: cjs:

ENGROSSED 2005 Assembly BILL 777

(Date) 11/4, 05 - Printed by direction of Assembly CHIEF CLERK

JOINT RULE 63. **Reproduction of engrossed measures.** Upon the finding by the chief clerk of either house that a bill, joint resolution, resolution or major amendment thereto has been amended in the house of origin to a considerable degree, the chief clerk may instruct the legislative reference bureau to prepare and have reproduced an engrossed copy of the measure. In preparing engrossed copy for a bill, joint resolution or resolution the legislative reference bureau shall, if time permits, provide it with a revised analysis. Upon receipt from the legislative reference bureau of the engrossed copy, the chief clerk shall enter that fact in the history file for the measure. Any subsequent amendments to a measure ordered reproduced with all adopted amendments engrossed therein shall be drafted to the reproduced engrossed text.

ADOPTED DOCUMENTS:

Orig SubAmdt

3851 / 1

Amendments to above (if none, write "NONE"): _____

AA1 add AA1 to AA1, AA4, AA5
and AA1 to AA5, AA6

Corrections - show date (if none, write "NONE"): none

<u>11/4/05</u>	<u>RAN</u>	<u>cjs</u>
Date	Drafter	Editor

ELECTRONIC PROCEDURE: Follow automatic or manual engrossing procedures in *TEXT2000 Reference Guide*, Document Specific Procedures, Ch. 20, Engrossing and Enrolling.

LEGISLATIVE PROCESSING SPECIALIST: Give paper copy of engrossed bill to drafter for final check before forwarding.

Make 15 copies of ENGROSSED BILL: Enter introductory information on engrossed bill cover sheet corresponding to the house of the chief clerk who directed the engrossed bill printed. Distribute copies and send copy of engrossed bill electronically to DOA for printing.

DISTRIBUTION:

DIRECTING CHIEF CLERK:

- Cover sheet and 9 copies

LRB:

- Drafting file original

- Drafting attorney 1 copy
- Legislative editors 1 copy each
- Bill index librarian 1 copy

History of Assembly Bill 778

ASSEMBLY BILL 778

LC Amendment Memo

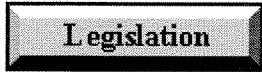
An Act to create 895.046 of the statutes; relating to: actions against manufacturers, distributors, sellers, and promoters of products.

2005

10-20.	A. 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.	
10-20.	A. Read first time and referred to committee on Judiciary	
	529
10-20.	A. Public hearing held.	
10-25.	A. Assembly amendment <u>1</u> offered by Representative Wieckert	533
10-25.	A. Assembly amendment <u>2</u> offered by Representative Wieckert	533
10-25.	A. Assembly amendment <u>3</u> offered by Representative Staskunas	533
10-25.	A. Assembly amendment <u>4</u> offered by Representative Wieckert	533
10-26.	A. Assembly amendment <u>5</u> offered by Representative Wieckert	545
10-27.	A. Executive action taken.	
10-27.	A. Assembly amendment <u>1</u> to Assembly amendment 5 offered by committee on Judiciary	545
10-27.	A. Report Assembly Amendment <u>1</u> adoption recommended by committee on Judiciary, Ayes 5, Noes 3	546
10-27.	A. Report Assembly Amendment <u>4</u> adoption recommended by committee on Judiciary, Ayes 5, Noes 3	546
10-27.	A. Report Assembly Amendment <u>1</u> to Assembly Amendment 5 adoption recommended by committee on Judiciary, Ayes 5, Noes 3	546
10-27.	A. Report Assembly Amendment <u>5</u> adoption recommended by committee on Judiciary, Ayes 5, Noes 3	546
10-27.	A. Report passage as amended recommended by committee on Judiciary, Ayes 5, Noes 3	546
10-27.	A. Referred to committee on Rules	546
10-27.	A. Placed on calendar 11-1-2005 by committee on Rules.	
10-31.	A. Senator Brown added as a cosponsor	561
11-01.	A. Read a second time	570
11-01.	A. Assembly amendment <u>1</u> to Assembly amendment 1 offered by Representative Wieckert	570
11-01.	A. Assembly amendment <u>1</u> to Assembly amendment 1 adopted	570
11-01.	A. Assembly amendment <u>1</u> adopted	570
11-01.	A. Assembly amendment <u>4</u> adopted	570
11-01.	A. Assembly amendment <u>1</u> to Assembly amendment 5 adopted	570
11-01.	A. Assembly amendment <u>5</u> adopted	570
11-01.	A. Assembly amendment <u>6</u> offered by Representatives Wieckert and Staskunas	570
11-01.	A. Assembly amendment <u>6</u> adopted	570
11-01.	A. Assembly amendment <u>7</u> offered by Representatives Colon and Ziegelbauer	570
11-01.	A. Assembly amendment <u>7</u> laid on table, Ayes 57, Noes 39	

11-01. A. Ordered to a third reading	570
11-01. A. Rules suspended	570
11-01. A. Read a third time and passed, <u>Ayes 60, Noes 36</u>	571
11-01. A. Refused to suspend rules to order immediately messed, <u>Ayes 57, Noes 39</u>	571

Search for another history



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ASSEMBLY BILL 778 (LRB -3851)

An Act to create 895.046 of the statutes; relating to: actions against manufacturers, distributors, sellers, and promoters of products.

2005

10-27.	A.	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.	
10-20.	A.	Read first time and referred to committee on Judiciary	529
10-20.	A.	Public hearing held.	
10-25.	A.	Assembly amendment 1 offered by Representative Wieckert (LRB a1219) <i>adopted</i>	533
10-25.	A.	Assembly amendment 2 offered by Representative Wieckert (LRB a1222)	533
10-25.	A.	Assembly amendment 3 offered by Representative Staskunas (LRB a1235)	533
10-25.	A.	Assembly amendment 4 offered by Representative Wieckert (LRB a1242) <i>e. adopted</i>	533
10-26.	A.	Assembly amendment 5 offered by Representative Wieckert (LRB a1249) <i>e. adopted</i>	545
10-27.	A.	Executive action taken.	
10-27.	A.	Assembly amendment 1 to Assembly amendment 5 offered by committee on Judiciary (LRB a1260) <i>adopted</i>	545
10-27.	A.	Report Assembly Amendment 1 adoption recommended by committee on Judiciary, Ayes 5, Noes 3	546
10-27.	A.	Report Assembly Amendment 4 adoption recommended by committee on Judiciary, Ayes 5, Noes 3	546
10-27.	A.	Report Assembly Amendment 1 to Assembly Amendment 5 adoption recommended by committee on Judiciary, Ayes 5, Noes 3	546
10-27.	A.	Report Assembly Amendment 5 adoption recommended by committee on Judiciary, Ayes 5, Noes 3	546
10-27.	A.	Report passage as amended recommended by committee on Judiciary, Ayes 5, Noes 3	546
10-27.	A.	Referred to committee on Rules	546
10-27.	A.	Placed on calendar 11-1-2005 by committee on Rules.	
10-31.	A.	Senator Brown added as a cosponsor	561
11-01.	A.	Read a second time	570
11-01.	A.	Assembly amendment 1 to Assembly amendment 1 offered by Representative Wieckert (LRB a1306) <i>adopted</i>	570
11-01.	A.	Assembly amendment 1 to Assembly amendment 1 adopted	570
11-01.	A.	Assembly amendment 1 adopted	570
11-01.	A.	Assembly amendment 4 adopted	570
11-01.	A.	Assembly amendment 1 to Assembly amendment 5 adopted	570
11-01.	A.	Assembly amendment 5 adopted	570
11-01.	A.	Assembly amendment 6 offered by Representatives Wieckert and Staskunas (LRB a1311) <i>e. adopted</i>	570
11-01.	A.	Assembly amendment 6 adopted	570
11-01.	A.	Assembly amendment 7 offered by Representatives Colon and Ziegelbauer (LRB a1297)	570
11-01.	A.	Assembly amendment 7 laid on table, Ayes 57, Noes 39	570
11-01.	A.	Ordered to a third reading	570
11-01.	A.	Rules suspended	571
11-01.	A.	Read a third time and passed , Ayes 60, Noes 36	571
11-01.	A.	Refused to suspend rules to order immediately messaged, Ayes 57, Noes 39	571

Brought in with Auto Engrossing

Amendments to Amendments

Amendments highlighted in yellow are the only ones we have hard copies of.

Amendments pulled in by auto engrossing a1249/1, a1219/2, a1311/1, and a1242/1

Bill Sect. No.	Introduced No.	Page No.	Line No.	Error Message
1	AA1-AB778	2	3	Could not find pattern match.
1	AA1-AB778	2	4	
1	AA1-AB778	2	5	
1	AA4-AB778	3	7	
1	AA5-AB778	3	20	
1	AA6-AB778	4	2	

this
should not
appear on engrossed bill

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.

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, may be 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.

Insert
anal →

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

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

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

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

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

DEFINITIONS CS

§(a) "Claimant"

AAI

→ insert AAI-1-5

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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:

AA4

7

(a) That no other ^{lawful} legal process exists for the claimant to ^{seek} 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.

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

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.

→ Insert AA5 and insert LY to AA5

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3851/1ins
RPN:kjf:pg

insert anl:

Engrossment information:

use sub:sub

the bill as affected by

The text of Engrossed 2005 Assembly Bill 778 consists of the following documents adopted in the assembly on November 1, 2005: Assembly Amendment 1 (as affected by Assembly Amendment 1 thereto), Assembly Amendment 4, Assembly Amendment 5 (as affected by Assembly Amendment 1 thereto), and Assembly Amendment 6.

Bill

use sub:sub

Content of Engrossed 2005 Assembly Amendment 778:

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, may be 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 if the other elements of the claim are proved.

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:

the term that appeared in the original Assembly Bill 778

1. That no other lawful (in place of legal) process exists for the injured party to seek (in place of 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.

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 action names as defendants those manufacturers who collectively, during the relevant production period, manufactured (in place of manufactured, distributed, sold or promoted) at least 80 percent of all products sold in this state that were chemically identical to the specific product that allegedly caused the injury or harm.

STET: keep as typed

material moved from following page

SKT:
keep
as
typed

move to preceding page at location indicated

that appeared in the original Assembly Bill 778

The bill limits liability to products that were manufactured, distributed, sold, or promoted within 25 years before the date the injury occurred, but removes the language that would also have required that the product was manufactured for more than five years.

(no 9) This bill now defines "relevant production period" as the time period during which the specific product that allegedly caused the claimant's injury or harm was manufactured, distributed, sold, or promoted. The original Assembly Bill 778 did not define ~~the~~ this term.

**ASSEMBLY AMENDMENT 1,
TO 2005 ASSEMBLY BILL 778**

October 25, 2005 – Offered by Representative WIECKERT.

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:".

4 **2.** Page 2, line 4: delete that line and substitute:

5 "(a) "Claimant" means a person seeking damages or other relief for injury or
6 harm to a person or property caused by".

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

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

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

AA1

AA1 to
AA1

Insert
AA1-1-5

AA1
AA1

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2
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“(bm) The claimant has not established that the relevant production period was less than 5 years.”

(END)

441
6
441

**ASSEMBLY AMENDMENT 5,
TO 2005 ASSEMBLY BILL 778**

October 26, 2005 – Offered by Representative WIECKERT.

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

2 **1.** Page 3, line 20: delete lines 20 to 24 and substitute:

3 ~~(dn)~~ That the manufacturers of a product who are named as defendants in the
4 action collectively, during the relevant production period, accounted for at least 80
5 percent of all products sold in this state that are chemically identical to the specific
6 product that allegedly caused the claimant's injury or harm. *fe*

7 (END)

*Insert
1-4
to AAS

(from
AA1 to AAS)*

**ASSEMBLY AMENDMENT 1,
TO ASSEMBLY AMENDMENT 5,
TO 2005 ASSEMBLY BILL 778**

October 27, 2005 – Offered by COMMITTEE ON JUDICIARY.

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

2 **1.** Page 1, line 3: delete lines 3 and 4 and substitute:

3 “(dm) That the action names as defendants those manufacturers of a product
4 who collectively, during the relevant production period, manufactured at least 80”.

5 (END)

insert 1-4 to AAS

✓
**ASSEMBLY AMENDMENT 6,
TO 2005 ASSEMBLY BILL 778**

November 1, 2005 – Offered by Representatives WIECKERT and STASKUNAS.

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

2 **1.** Page 4, line 2: delete lines 2 to 8 and substitute "of a product is liable under
3 sub. (4) if more than 25 years have passed between the date that the manufacturer,
4 distributor, seller, or promoter of a product last manufactured, distributed, sold, or
5 promoted a product chemically identical to the specific product that allegedly caused
6 the claimant's injury and the date that the claimant's cause of action accrued."

7 (END)

INS AAG