

2005 DRAFTING REQUEST

Bill

Received: **04/13/2005**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Jean Hundertmark (608) 266-3794**

By/Representing: **Jason Rostan**

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

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Bus. Assn. - corporations**

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Shareholder liability for corporate debt to employees

Instructions:

delete, as in AB 278

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>
/?	csundber 04/15/2005	lkunkel 04/19/2005		_____			
/1			chaugen 04/20/2005	_____	lnorthro 04/20/2005 mbarman 03/24/2006	lnorthro 03/27/2006	

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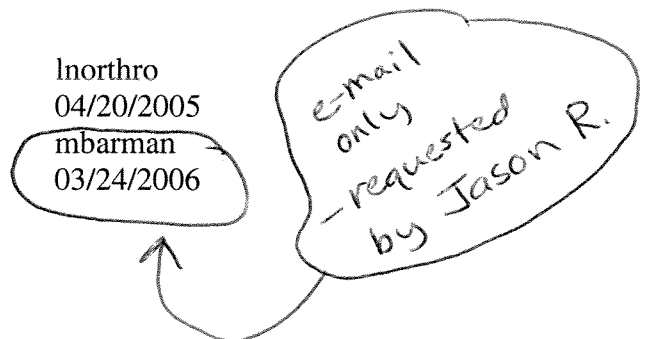
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e-mail only requested by Jason R.



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/?	csundber	/i/mk 4/18	ch 4-19	ch 4-19 SF			

FE Sent For:

<END>

In: 4/13/05
Due: 4/20/05

2005 - 2006 LEGISLATURE

LRB-2525/1

REN/CTS/MDK:lmk:fs

2761/1

keep

2005 ASSEMBLY BILL 278

March 30, 2005 - Introduced by Representatives HUNDERTMARK, GARD, SUDER, JESKEWITZ, GUNDERSON, WIECKERT, HUEBSCH, NISCHKE, VRAKAS, LOEFFELHOLZ, WOOD, KAUFERT, HINES, VOS, LEMAHIEU, HAHN, STRACHOTA, OWENS, MOULTON, TOWNS, MURSAU, NERISON, MCCORMICK, HONADEL, MONTGOMERY, KLEEFISCH, DAVIS, VAN ROY, PETROWSKI, BALLWEG, ALBERS, PRIDEMORE, MEYER, KREIBICH, GIELOW, J. FITZGERALD and OPT, cosponsored by Senators LEIBHAM, SCHULTZ, ZIEN, DARLING, GROTHMAN, OLSEN and S. FITZGERALD. Referred to Committee on Judiciary.

- 1 AN ACT ^{regen} *to repeal* 180.0622 (2) (b); *to renumber and amend* 180.0622 (2) (a),
- 2 907.01 and 907.02; *to amend* 227.45 (1) and 907.03; *to repeal and recreate*
- 3 779.48 (title); and *to create* 227.45 (1m), 779.485, 823.025, 907.01 (3), 907.02
- 4 (1) (a), (b) and (c), 907.02 (2) and 907.02 (3) of the statutes; *relating to: liens,*
- 5 *public nuisances, witnesses, and* liability of shareholders.

Analysis by the Legislative Reference Bureau

Under current law, a plastics fabricator is granted a lien on toolings in the fabricator's possession that belong to a customer for amounts that the customer owes the fabricator for the toolings or for plastic fabrication work. Current law also allows, under certain circumstances, a plastics or cast metal molder to dispose of forms provided by a customer that the customer has not claimed within three years after the molder's last use of the form. This bill creates similar provisions for "special tools," which the bill defines as any tool, die, jig, gauge, gauging fixture, metal casting, pattern, forging, machinery, ferrous or nonferrous machine part, or intellectual property used for the purpose of designing, developing, manufacturing, assembling, or fabricating a metal part.

Under the bill, a "special tool builder" who satisfies certain requirements is granted a lien in the amount that a "manufacturer" or "customer" owes the special tool builder for designing, developing, manufacturing, assembling, repairing, or modifying a special tool. The bill defines "special tool builder" as a person who makes a special tool, a "manufacturer" as a person who uses a special tool in a

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manufacturing process, and a “customer” as a person who does any of the following: 1) causes a special tool builder to make a special tool; 2) orders a product from a manufacturer that is produced with a special tool; or 3) causes a manufacturer to use a special tool.

The bill grants a special tool builder a lien if the special tool builder permanently records the builder’s name and address on the special tool and files a financing statement for the special tool under the state’s version of Article IX of the Uniform Commercial Code (Article IX), which covers secured transactions. The lien is attached on the date that both of the foregoing requirements are satisfied, which means that on that date the special tool builder has lien rights that may be enforced against the manufacturer or customer. The lien is also perfected on that date, which means that the special tool builder’s lien has priority over other liens and security interests in the special tool that are perfected after that date. The bill provides that the lien remains valid until either: 1) the manufacturer or customer pays the special tool builder the amount for which the lien is claimed; or 2) the financing statement is terminated under Article IX.

The bill allows a special tool builder to enforce a lien by any available judicial procedure, or by taking possession of the special tool without judicial process, but only if the taking is done without breach of the peace. Before enforcing the lien, a special tool builder must provide written notice, delivered personally or by registered mail, to the manufacturer or customer that the special tool builder demands payment for the amount claimed. (If the claim is against both the manufacturer and customer, the special tool builder must notify both.) If the special tool builder is not paid within 90 days after receipt of the notice, the special tool builder may enforce the lien. However, if mailed notice is returned as undeliverable, the bill requires the special tool builder to publish a legal notice before the builder may enforce the lien.

The bill also grants a lien to a manufacturer in a special tool belonging to a customer that a customer causes the manufacturer to use. The amount of the lien is the amount due to the manufacturer from the customer for any work performed with the special tool or for making or improving the special tool. The manufacturer is allowed to retain possession of the special tool until the amount due is paid. The bill allows a manufacturer to enforce a lien by selling the special tool at public auction, but only after satisfying written notice and legal publication requirements that are similar to the requirements described above for special tool builders. Also, the bill prohibits a public auction if the customer claims that any product produced by the manufacturer with the special tool did not comply with the quality and quantity ordered by the customer. A public auction may not take place until such a claim is resolved. If there is a public auction, the proceeds are first paid to any prior holder of a lien in the special tool (such as, for example, a special tool builder) and then paid to the manufacturer to satisfy the manufacturer’s lien. Any remaining proceeds are paid to the customer.

Unless otherwise agreed in writing by a manufacturer and a customer, the bill allows a manufacturer, under certain circumstances, to destroy a customer’s special tool that the manufacturer has used to produce parts ordered by the customer or that the customer has caused the manufacturer to use. A manufacturer may destroy a

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customer's special tool if all of the following are satisfied: 1) the special tool has been in the manufacturer's possession for one year after the manufacturer's last use of the tool; 2) the customer has not claimed possession of the special tool during that year; and 3) the manufacturer complies with requirements specified in the bill for providing notice to the customer 120 days before the manufacturer intends to destroy the tool. If the notice requirements are satisfied and the customer has not claimed possession of the special tool or agreed to arrangements for storage of the special tool, the bill transfers the customer's interest in the tool to the manufacturer for the purpose of destroying the tool.

Under current law, if a witness is not testifying as an expert, the witness's testimony is limited to those opinions that are rationally based on the perception of the witness and helpful to a clear understanding of the witness's testimony or of a fact at issue in the case. This bill adds the additional limit that a nonexpert's testimony may not be based on scientific, technical, or other specialized knowledge of the witness.

Current law allows the testimony of an expert witness if that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact at issue in the case. This bill limits the testimony of an expert witness to testimony that is based on sufficient facts or data, that is the product of reliable principles and methods, and that is based on the witness applying those principles and methods to the facts of the case. The bill also prohibits the testimony of an expert witness who is entitled to receive any compensation contingent on the outcome of the case.

Currently, the facts or data in a particular case on which an expert witness bases his or her opinion may be made known to the expert at or before the case hearing, but if those facts or data are reasonably relied upon by experts in the field in forming opinions about the subject, they do not need to be admissible into evidence in the case. This bill adds that facts or data that are otherwise inadmissible may not be disclosed to the jury unless the court determines that their value in assisting the jury to evaluate the expert's testimony outweighs their prejudicial effect.

These changes regarding witness testimony do apply to administrative hearing but do not apply to sexually violent commitment cases or criminal cases.

Current law imposes personal liability on each shareholder of a corporation in ~~an amount up to the value of the shares that the shareholder owns~~, for any amount owed by the corporation to its employees for up to six months of work per employee. This bill eliminates ~~this~~ ^{those} provision^s of current law. By cross-reference, the bill also applies to stock insurance corporations.

In addition, the bill prohibits the state, and counties, cities, and villages from bringing an action to abate a public nuisance if the activity or use of the property alleged to be a nuisance is not in violation of any statute, rule, permit, approval, or local ordinance or regulation. The bill requires a court to award litigation expenses, including reasonable attorney fees, to a defendant in a nuisance action if the activity or use of the property alleged to be a public nuisance is found not to be a public nuisance.

The amount of a shareholder's personal liability is limited to the value of the shares that the shareholder owns. organized under the laws of this state, including an insurance company that issues stocks

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 180.0622 (2) (a) of the statutes is renumbered 180.0622 (2) and
2 amended to read:

3 180.0622 (2) ~~Except as provided in par. (b) or unless~~ Unless otherwise provided
4 in the articles of incorporation, a shareholder of a corporation is not personally liable
5 for the acts or debts of the corporation, except that a shareholder may become
6 personally liable by his or her acts or conduct other than as a shareholder.

7 **SECTION 2.** 180.0622 (2) (b) of the statutes is repealed.

8 **SECTION 3.** 227.45 (1) of the statutes is amended to read:

9 227.45 (1) Except as provided in sub. (1m) and ss. 19.52 (3) and 901.05, an
10 agency or hearing examiner shall not be bound by common law or statutory rules of
11 evidence. The agency or hearing examiner shall admit all testimony having
12 reasonable probative value, but shall exclude immaterial, irrelevant or unduly
13 repetitious testimony or evidence that is inadmissible under s. 901.05. The agency
14 or hearing examiner shall give effect to the rules of privilege recognized by law. Basic
15 principles of relevancy, materiality and probative force shall govern the proof of all
16 questions of fact. Objections to evidentiary offers and offers of proof of evidence not
17 admitted may be made and shall be noted in the record.

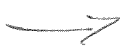
18 **SECTION 4.** 227.45 (1m) of the statutes is created to read:

19 227.45 (1m) Other than cases under s. 59.694 or 62.23 (7) (e), an agency or
20 hearing examiner is subject to the provisions of ss. 907.01, 907.02, and 907.03.

21 **SECTION 5.** 779.48 (title) of the statutes is repealed and recreated to read:

(END)

INS
4-8



2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2761/lins
CTS:.....

1 **Insert 4-8:**

2 **SECTION ~~1~~ Initial applicability.**

3 (1) This act first applies to actions or proceedings commenced on the effective
4 date of this subsection.

*debts
incurred ✓*

Northrop, Lori

From: Rostan, Jason
Sent: Friday, March 24, 2006 12:34 PM
To: LRB.Legal
Subject: Draft Review: LRB 05-2761/1 Topic: Shareholder liability for corporate debt to employees

Please Jacket LRB 05-2761/1 for the ASSEMBLY.