

**2007 DRAFTING REQUEST**

**Bill**

Received: **02/07/2007**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Honadel (608) 266-0610**

By/Representing: **Jason**

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.Honadel@legis.wisconsin.gov**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Actions against manufacturers and distributors of products

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**Instructions:**

See Attached 05 AB 778

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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>
/?	rnelson2 02/08/2007	jdye 02/13/2007		_____			
/1			nmatzke 02/13/2007	_____	cdurst 02/13/2007	cdurst 02/13/2007	

FE Sent For:

<END>

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/?	rnelson2	1 2/3 jld	nwn 2/13	nwn/rs 2/13			

FE Sent For:

<END>

**Nelson, Robert P.**

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**From:** Vick, Jason  
**Sent:** Monday, February 05, 2007 4:19 PM  
**To:** Nelson, Robert P.  
**Subject:** Drafting Request

Robert:

Rep. Honadel would like to re-draft 2005 AB 778 relating to: actions against manufacturers, distributors, sellers, and promoters of products.

Please contact me with any questions.

Thank you,

**Jason Vick**

Office of Rep. Mark Honadel  
Majority Caucus Chair  
**608-266-0611**

2/19 mb

JLD

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 HARSDFORF. Referred to Committee on Judiciary.

Regen

- 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. ✓

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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 <sup>on which</sup> 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. \*

*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,

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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.





**Duerst, Christina**

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**From:** Rep.Honadel  
**Sent:** Tuesday, February 13, 2007 1:51 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 07-1865/1 Topic: Actions against manufacturers and distributors of products

Please Jacket LRB 07-1865/1 for the ASSEMBLY.