

2007 DRAFTING REQUEST

Bill

Received: **01/03/2007**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **Ted Kanavas (608) 266-9174**

By/Representing: **Mike**

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: **Sen.Kanavas@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Actions against manufacturers, distributors, sellers, and promoters of products

Instructions:

See Attached 05 SB 402

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 01/03/2007	kfollett 01/26/2007		_____			
/1			nmatzke 01/29/2007	_____	cduerst 01/29/2007	cduerst 02/20/2007	

FE Sent For:

<END>

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/?	rnelson2	1/1 kjf 1/28	Jb 1/29	JRP 1/29			

FE Sent For:

<END>

History of Senate Bill 402

SENATE BILL 402

LC Amendment Memo

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

2005

10-24. S. Introduced by Senators Kanavas, Schultz, S. Fitzgerald, Darling, Reynolds, Stepp, Leibham, Grothman, Harsdorf, Kedzie, A. Lasee, Cowles, Olsen and Roessler; cosponsored by Representatives Wieckert, Huebsch, Nischke, Honadel, Jeskewitz, Ott, Stone, Albers, Gunderson, Musser, Lothian, Hahn, Nass, F. Lasee, Bies, Petrowski, Ainsworth and LeMahieu.

10-24. S. Read first time and referred to committee on Judiciary, Corrections and Privacy 401

10-31. S. Senator Brown added as a coauthor 417

10-31. S. Executive action taken.

11-01. S. Report introduction and adoption of Senate Amendment 1 recommended by committee on Judiciary, Corrections and Privacy, Ayes 3, Noes 2 418

11-01. S. Report passage as amended recommended by committee on Judiciary, Corrections and Privacy, Ayes 3, Noes 2 418

11-01. S. Available for scheduling.

11-02. S. Placed on calendar 11-8-2005 by committee on Senate Organization.

11-08. S. Read a second time 441

11-08. S. Senate amendment 1 to Senate amendment 1 offered by Senator Kanavas 441

11-08. S. Senate amendment 1 to Senate amendment 1 **adopted** 441

11-08. S. Senate amendment 1 **adopted** 441

11-08. S. Senate amendment 2 offered by Senators Plale, Carpenter, Erpenbach, Breske, Taylor, Coggs and Jauch 441

11-08. S. Senate amendment 2 laid on table, Ayes 19, Noes 14 441

11-08. S. Ordered to a third reading 441

11-08. S. Rules suspended 441

11-08. S. Read a third time and passed, Ayes 19, Noes 14 441

11-08. S. Ordered immediately messaged 443

11-14. A. Received from Senate 618

11-14. A. Read first time and referred to committee on Rules 620

12-06. A. Placed on calendar 12-13-2005 by committee on Rules.

12-06. A. Made a special order of business at 9:15 A.M. on 12-13-2005 pursuant to Assembly Resolution 43 653

12-13. A. Read a second time 673

12-13. A. Ordered to a third reading 673

12-13. A. Rules suspended 673

12-13. A. Read a third time and concurred in 673

12-13. A. Ordered immediately messaged 673

12-14. S. Received from Assembly concurred in 499

12-16. S. Report correctly enrolled on 12-16-2005 504

2006

01-05. S. Presented to the Governor on 1-5-2006 518

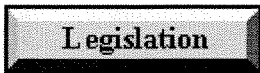
01-06. S. Report vetoed by the Governor on 1-6-2006 520

01-26. S. Placed on calendar 1-31-2006 by committee on Senate Organization.

01-31. S. Referred to committee on Senate Organization 566

06-16. S. Failed to pass notwithstanding the objections of the
Governor pursuant to Joint Rule 82 882

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2005 SENATE BILL 402

October 24, 2005 - Introduced by Senators KANAVAS, SCHULTZ, S. FITZGERALD, DARLING, REYNOLDS, STEPP, LEIBHAM, GROTHMAN, HARSDORF, KEDZIE, A. LASEE, COWLES, OLSEN and ROESSLER, cosponsored by Representatives WIECKERT, HUEBSCH, NISCHKE, HONADEL, JESKEWITZ, OTT, STONE, ALBERS, GUNDERSON, MUSSER, LOTHIAN, HAHN, NASS, F. LASEE, BIES, PETROWSKI, AINSWORTH and LEMAHIEU. Referred to Committee on Judiciary, Corrections and Privacy.

Regen

1 AN ACT to create 895.045 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, 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.

lawful

seek seek redress for the injury or harm

SENATE BILL 402

sold in this state

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.

names the defendant manufacturers who

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 or harm or

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

chemically identical to the specific product that allegedly caused the injury or harm

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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SENATE BILL 402

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 ^{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.

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.

Insert
3-24 →

SENATE BILL 402

SECTION 1

1 (5) LIMITATION ON LIABILITY. No manufacturer, distributor, seller, or promoter
2 of a product is liable under sub. (4) if any of the following conditions exist:

3 (a) 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 (b) The period of the manufacturing of a product chemically identical to the
8 specific product that allegedly caused the claimant's injury was more than 5 years.

9 (6) APPORTIONMENT OF LIABILITY. If more than one manufacturer, distributor,
10 seller, or promoter of a product is found liable for the claimant's injury or harm under
11 subs. (4) and (5), the court shall apportion liability among those manufacturers,
12 distributors, sellers, and promoters, but that liability shall be several and not joint.

13 **SECTION 2. Initial applicability.**

14 (1) This act first applies to actions commenced on the effective date of this
15 subsection.

16 **SECTION 3. Effective date.**

17 (1) This act takes effect on first day of the 2nd month beginning after
18 publication.

19 (END)

Insert
4-8
→

**SENATE AMENDMENT 1,
TO 2005 SENATE BILL 402**

November 1, 2005 – Offered by COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY.

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 3, line 7: delete that line and substitute:

12 "(a) That no other lawful process exists for the claimant to seek redress from".

Insert
2-3

Insert
2-4

Insert
2-5

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9

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

2 “(dm) That the action names, as defendants, those manufacturers of a product
3 who collectively, during the relevant production period, manufactured at least 80
4 percent of all products sold in this state that are chemically identical to the specific
5 product that allegedly caused the claimant’s injury or harm.”

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

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

9 (END)

Insert
3-28

**SENATE AMENDMENT 1,
TO SENATE AMENDMENT 1,
TO 2005 SENATE BILL 402**

November 8, 2005 - Offered by Senator KANAVAS.

insert
4-8

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

2 ✓ 1. Page 2, line 6: delete lines 6 to 8 and substitute:

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

8 (END)

Duerst, Christina

From: Richards, Mike
Sent: Tuesday, February 20, 2007 10:43 AM
To: LRB.Legal
Subject: Draft Review: LRB 07-1323/1 Topic: Actions against manufacturers, distributors, sellers, and promoters of products

Please Jacket LRB 07-1323/1 for the SENATE.