

2011 Jr1 DRAFTING REQUEST

Assembly Amendment (AA-SB1)

Received: 01/20/2011

Received By: phurley

Wanted: As time permits

Companion to LRB:

For: Louis Molepske Jr (608) 267-9649

By/Representing:

May Contact:

Drafter: phurley

Subject: Courts - miscellaneous

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Molepske@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Liability of manufacturers and distributors

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>
/1	phurley 01/20/2011	wjackson 01/20/2011	rschluet 01/20/2011	_____	lparisi 01/20/2011	lparisi 01/20/2011	

FE Sent For:

<END>

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/1

phurley

1/19/20

2011

FE Sent For:

<END>

Hurley, Peggy

From: Rep.Molepske
Sent: Thursday, January 20, 2011 2:02 PM
To: Dodge, Tamara; Kuczenski, Tracy; Hurley, Peggy
Cc: Molepske, Louis
Subject: FW: Tort Reform Bill floor amendment request

Rep. Molepske would like an amendment drafted per the attached email.

If you have questions regarding the content/intent, please call Mr. Russ Golla directly at 715-344-0890.

Many thanks for your assistance.

Kathy Farnsworth
Office of Rep. Louis J. Molepske, Jr.
71st Assembly District
Phone: 888.534.0071
608/267.9649
FAX: 608/282.3671
e-mail: Kathy.farnsworth@legis.wisconsin.gov

*del (3) e
replace w:
(3a)*

From: Russ Golla [mailto:RTG@andlaw.com]
Sent: Thursday, January 20, 2011 1:29 PM
To: Rep.Molepske; Rep.Molepske
Subject: Tort Reform Bill

Louis, I would not amend the propose 895.047(2) - this deals with the situations where the seller or distributor can be liable. Rather, I would amend 895.047(3) to delete all of (3). If a person causes injury to him or herself by intoxicated use of a defective product, the jury doesn't need to be told they are to presume that the intoxication or drug use was the cause of the injury. This presumption states the obvious and is unnecessary and can cause all kinds of mischief in cases where intoxication would have no role such as where the person is stopped at a red light and is rear ended or where another runs a red light and T-Bones the driver with a .08.

Second, all standards are, at best minimum standards and the FMVSS - Federal Motor Vehicle Safety Standards state exactly this. If we say that compliance meets the standard to design a safe product, then the worst manufacturers will find the cheapest way to meet the standard by having the product manufactured in China and, by doing so, gain a competitive advantage over the innovative and better manufacturers who go above and beyond the minimum. Do we really want this? (b)

Third, if you really want to protect local sellers and distributors, amend this proposed statute to give them an absolute right to indemnification against the manufacturer for attorneys fees incurred in defending themselves and any damages awarded against them as a result of the sale of a defective and unreasonably dangerous product if they can prove that they had no input into the design of the product and no role in its manufacture and further, did not damage it in any way so as to make it unreasonably

dangerous to the user or consumer.

I really think you should be able to make some progress with the third proposal but will get flack from big business. Good luck.

Attorney Russell T. Golla
Anderson, O'Brien, Bertz, Skrenes & Golla
1257 Main Street
P.O. Box 228
Stevens Point, WI 54481
715-344-0890
Fax: 715-344-5313 E-mail: rtg@andlaw.com

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ATTORNEY/CLIENT COMMUNICATION

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H/C: cr. (2m)

IF a seller or distributor is liable under (2)(a), the seller or distributor has a right to indemnification against the manufacturer for attorneys' fees if it can prove...

delete (3)(a) + (5) + (4) + (5)
run these past Rev. Madgala



State of Wisconsin
2011 - 2012 LEGISLATURE

January 2011 Special Session



LRBa0260/1

PJH:.....

Wlj

ASSEMBLY AMENDMENT,
TO SENATE BILL 1

CS RIGHT TO INDEMNIFICATION

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

2 ✓ 1. Page 25, line 14: after that line insert:

3 “(2m) If a seller or distributor of a product is found liable under sub. (2) (a), the

4 seller or distributor has a right to indemnification against the manufacturer of the

5 product for costs and attorneys fees and damages assessed against the seller or

6 distributor under this section if ~~the~~ seller or ^{distributor} ~~distributor~~ proves all of the following:

7 (a) The seller or distributor had no role in the design of the product.

8 (b) The seller or distributor had no role in the manufacture of the product.

9 (c) The seller or distributor did not damage or alter the product in a way that

10 made the product unreasonably dangerous to a consumer.”.

11 2. Page 25, line 15: delete the material beginning with “(a)” and ending with

12 line ²⁴ ~~25~~.
^

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa0260/1dn

PJH/.....

WLy

Date

Representative Molepske:

Please review this draft to ensure that it is consistent with your intent. I drafted this amendment to address the concerns raised in the email from Mr. Russ Golla that you forwarded to me and, following a phone conversation with Mr. Golla, to also delete provisions from the bill relating to subsequent remedial measures and time limits. Please let me know if you would like any changes.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa0260/1dn
PJH:wlj:rs

January 20, 2011

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