

State of Misconsin 2013 - 2014 LEGISLATURE



2013 ASSEMBLY BILL 335

August 23, 2013 – Introduced by Representatives Kessler, Goyke, Wachs, Hebl, Kolste, Zamarripa, Bernard Schaber, Shankland, Mason, Sinicki, Berceau, Zepnick, Richards, Wright, C. Taylor, Young, Jorgensen, Ohnstad, Milroy, Billings and Barca, cosponsored by Senator T. Cullen. Referred to Joint Committee on Finance.

AN ACT to repeal 895.046 (1g); to renumber 895.046 (1r); to amend 895.046 (2)
of the statutes; and to affect 2013 Wisconsin Act 20, section 9307 (4q); relating
to: remedies against manufacturers, distributors, sellers, and promoters of a product.

Analysis by the Legislative Reference Bureau

2011 Wisconsin Act 2 (Act 2) made a number of changes to the law governing civil actions against manufacturers, distributors, sellers, and promoters of products. Under Act 2, a manufacturer, distributor, seller, or promoter of a product who is a defendant in a civil action generally may be held liable for damages only if an injured party proves, in addition to 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.

Also under Act 2, in cases in which 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 under risk contribution theory if: 1) the injured party names as defendants in the action those manufacturers who, collectively, during the relevant production period, manufactured at least 80 percent of all products sold in this state that are chemically identical to the specific product that allegedly caused the claimant's injury, and 2) the injured party proves certain other elements related to the cause of the injury and the right of the injured party to a recovery.

ASSEMBLY BILL 335

3

4

5

6

7

8

9

10

11

12

13

14

15

These provisions of Act 2 were made applicable to actions or special proceedings commenced on or after the effective date of the Act.

2013 Wisconsin Act 20 (Act 20) provides that the provisions of Act 2 governing remedies against manufacturers, distributors, sellers, and promoters of a product apply to all actions in law or equity, whenever filed or accrued. Act 20 created a statement of legislative findings and intent that states, in part, that the portions of Act 2 governing remedies against manufacturers, distributors, sellers, and promoters of a product under risk contribution theory were enacted in response to the Wisconsin Supreme Court's decision in *Thomas v. Mallett*, 2005 WI 129.

This bill repeals the portions of Act 20 that apply Act 2 to all actions in law or equity, whenever filed or accrued, and repeals the statement of legislative findings.

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

SECTION 1. 895.046 (1g) of the statutes, as created by 2013 Wisconsin Act 20, is repealed.

SECTION 2. 895.046 (1r) of the statutes, as affected by 2013 Wisconsin Act 20, is renumbered 895.046 (1).

Section 3. 895.046 (2) of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

895.046 (2) APPLICABILITY. This section applies to all actions in law or equity, whenever filed or accrued, 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.

Section 4. 2013 Wisconsin Act 20, section 9307 (4g) is repealed.

16 (END)