



## 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 OTT, cosponsored by Senators LEIBHAM, SCHULTZ, ZIEN, DARLING, GROTHMAN, OLSEN and S. FITZGERALD. Referred to Committee on Judiciary.

1     **AN ACT** *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.

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### ***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 provision 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.

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

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*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:

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1           **779.48** (title) **Enforcement.**

2           **SECTION 6.** 779.485 of the statutes is created to read:

3           **779.485 Special tools. (1) DEFINITIONS.** In this section:

4           (a) “Customer” means a person who does any of the following:

5           1. Causes a special tool builder to design, develop, manufacture, assemble, or  
6 otherwise make a special tool.

7           2. Orders a product from a manufacturer that is produced with a special tool  
8 or causes a manufacturer to use a special tool.

9           (b) “Intellectual property” means a design, program, or process.

10          (c) “Manufacturer” means a person who uses a special tool as part of the  
11 person’s manufacturing process.

12          (d) “Manufacturer’s lien” means a lien described in sub. (3) (b).

13          (e) “Special tool” means a tool, die, jig, gauge, gauging fixture, metal casting,  
14 pattern, forging, machinery, ferrous or nonferrous machine part, or intellectual  
15 property used for the purpose of designing, developing, manufacturing, assembling,  
16 or fabricating a metal part.

17          (f) “Special tool builder” means a person who designs, develops, manufactures,  
18 fabricates, or assembles a special tool.

19          (g) “Special tool builder’s lien” means a lien described in sub. (2) (a) 1.

20          **(2) SPECIAL TOOL BUILDERS.** (a) *Lien.* 1. A special tool builder who does all of  
21 the following has a lien on a special tool in the amount that a customer or  
22 manufacturer owes the special tool builder for designing, developing,  
23 manufacturing, fabricating, assembling, repairing, or modifying the special tool:

24           a. Permanently records on the special tool the special tool builder’s name, street  
25 address, city, and state.

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1           b. Files a financing statement for the special tool under subch. V of ch. 409.

2           2. A special tool builder's lien attaches and is perfected on the date that both  
3 of the requirements specified in subd. 1. a. and b. are satisfied.

4           3. A special tool builder retains a special tool builder's lien even if the special  
5 tool builder does not have physical possession of the special tool for which the lien  
6 is claimed.

7           4. A special tool builder's lien remains valid until the first of any of the following  
8 occurs:

9           a. The customer or manufacturer pays the special tool builder the amount for  
10 which the special tool builder's lien is claimed.

11           b. The financing statement is terminated.

12           (b) *Priority.* An attached and perfected special tool builder's lien has priority  
13 over any other lien that subsequently attaches to the special tool.

14           (c) *Enforcement.* 1. A special tool builder may not enforce a special tool  
15 builder's lien unless the builder provides notice in writing to the customer,  
16 manufacturer, or both that owes the builder the amount for which the special tool  
17 builder's lien is claimed. The notice shall be delivered personally or by registered  
18 mail, return receipt requested, to the last-known address of the customer,  
19 manufacturer, or both and shall state that the builder is claiming a lien for the  
20 amount that customer, manufacturer, or both owes the special tool builder for  
21 designing, developing, manufacturing, fabricating, assembling, repairing, or  
22 modifying the special tool and that the builder demands payment for the amount.  
23 Except as provided in subd. 2., if the special tool builder is not paid the amount  
24 claimed within 90 days after either the customer or, if applicable, the manufacturer  
25 receives the notice, whichever is later, the builder has the right to possession of the

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1 special tool and the builder may enforce the right by any available judicial procedure  
2 or by taking possession of the special tool without judicial process, but only if the  
3 taking is done without breach of the peace.

4 2. If the postal service returns any notice required under subd. 1. as  
5 undeliverable, the special tool builder may enforce the right to possession under  
6 subd. 1. no sooner than 90 days after the special tool builder publishes, under ch. 985,  
7 a class 1 notice of the intended enforcement of the right to possession in a newspaper  
8 of general circulation in the place where the special tool is last known to be located  
9 and in the place of the last-known address of any person for which the postal service  
10 returns a notice as undeliverable.

11 **(3) MANUFACTURERS.** (a) *Transfer of interest.* 1. Unless otherwise agreed by  
12 a customer and manufacturer in writing, all rights, title, and interest of a customer  
13 in a special tool that a manufacturer has used to produce parts ordered by the  
14 customer or that the customer has caused a manufacturer to use are transferred to  
15 the manufacturer for the purpose of destroying the special tool, if all of the following  
16 are satisfied:

17 a. The special tool has been in the possession of the manufacturer during the  
18 one-year period beginning after the manufacturer's last use of the special tool.

19 b. The customer has not claimed possession of the special tool before the  
20 expiration of the one-year period specified in subd. 1. a.

21 c. After the expiration of the one-year period specified in subd. 1. a., the  
22 manufacturer provides written notice by registered mail, return receipt requested,  
23 to an address designated in writing by the customer or, if the customer has made no  
24 such designation, to the customer's last-known address, that indicates that the  
25 manufacturer intends to terminate the customer's rights, title, and interest in the

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1 special tool and transfer those rights, title, and interest to the manufacturer as  
2 provided in this paragraph.

3 d. The customer has not, within 120 days after the date that the manufacturer  
4 receives the return receipt of notice specified in subd. 1. c. or within 120 days after  
5 the customer provides notice if no return receipt is received within that period,  
6 claimed possession of the special tool or agreed to other arrangements with the  
7 manufacturer for storage of the special tool.

8 2. The one-year period specified in subd. 1. a. applies retroactively to special  
9 tools last used before the effective date of this subdivision .... [revisor inserts date].

10 3. This paragraph does not apply to a special tool that is titled to, and in the  
11 possession of, a manufacturer. This paragraph may not be construed to grant a  
12 customer any right, title, or interest in a special tool.

13 (b) *Lien.* A manufacturer has a lien on any special tool in the manufacturers'  
14 possession belonging to a customer for the amount due the manufacturer from the  
15 customer for work performed with the special tool or for making or improving the  
16 special tool. A manufacturer may retain possession of the special tool until the  
17 amount due is paid.

18 (c) *Enforcement.* 1. A manufacturer may not enforce a manufacturers' lien  
19 unless the manufacturer provides notice in writing to the customer, delivered  
20 personally or by registered mail to the last-known address of the customer, that  
21 states that the manufacturer is claiming a lien for the amount due described in par.

22 (b). Except as provided in subd. 2., if the manufacturer is not paid the amount due  
23 within 90 days after the customer receives the notice, and if the manufacturer is still  
24 in possession of the special tool, the manufacturer may sell the special tool at public  
25 auction under par. (d).



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1           2. If the postal service returns a notice under subd. 1. as undeliverable and if  
2 the manufacturer is still in possession of the special tool, the manufacturer may sell  
3 the special tool at public auction under par. (d) no sooner than 90 days after the  
4 special tool builder publishes, under ch. 985, a class 1 notice of the sale in a  
5 newspaper of general circulation in the place of the last-known address of the  
6 customer.

7           (d) *Public auction.* 1. A manufacturer may not sell a special tool at public  
8 auction unless the manufacturer has provided, by registered mail, return receipt  
9 requested, the customer and any other person, including a special tool builder, who  
10 has perfected by filing a security interest in the special tool, a notice that includes  
11 all of the following:

12           a. A statement that the manufacturer intends to sell the special tool no sooner  
13 than 60 days after receipt of the notice.

14           b. A description of the special tool.

15           c. The time and place of the public auction.

16           d. An itemized statement of the amount for which the manufacturer's lien is  
17 claimed.

18           e. A statement that any product produced by the manufacturer with the special  
19 tool complies with the quality and quantity ordered by the customer.

20           2. Except as provided in subd. 3., a manufacturer may sell a special tool at  
21 public auction no sooner than 60 days after the customer's or other person's receipt  
22 of the notice specified in subd. 1., whichever is later, except that, if the postal service  
23 returns any of the notices as undeliverable, the manufacturer may sell the special  
24 tool no sooner than 60 days after the manufacturer publishes, under ch. 985, a class  
25 1 notice of the intended sale, that includes the information specified in subd. 1., in

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1 a newspaper of general circulation in the place where the manufacturer is holding  
2 the special tool for sale, in the place of the customer's last-known address, and in the  
3 place of the other person's last-known address.

4 3. If a customer disagrees with the statement specified in subd. 1. e. that is  
5 included in a notice, the customer may notify the manufacturer of the disagreement  
6 in writing by registered mail, return receipt requested. If a manufacturer receives  
7 a notification under this subdivision before the date of the public auction, the  
8 manufacturer may not sell the special tool at public auction until after the  
9 disagreement is resolved.

10 (e) *Proceeds*. The proceeds of a sale of a special tool under par. (d) shall, if  
11 applicable, first be paid to a prior lienholder who has perfected a lien in an amount  
12 sufficient to extinguish that lien. Any excess proceeds shall next be paid to the  
13 manufacturer in an amount sufficient to extinguish the manufacturer's lien. Any  
14 remainder shall be paid to the customer.

15 **SECTION 7.** 823.025 of the statutes is created to read:

16 **823.025 Litigation expenses in an action to abate or enjoin a public**  
17 **nuisance.** (1) In this section, "litigation expenses" means the sum of the costs,  
18 disbursements, and expenses, including reasonable attorney fees, expert witnesses,  
19 and engineering fees, necessary to prepare or participate in a court action.

20 (2) The state may not bring an action under s. 823.02, and a county, city, village,  
21 or town may not bring an action under s. 823.01, if the activity, use, or practice  
22 alleged to be a nuisance is not in violation of any statute, rule, permit, approval, or  
23 local ordinance or regulation.

24 (3) Notwithstanding s. 814.04 (1) and (2), the court shall award litigation  
25 expenses to the defendant in any action brought under s. 823.01 or 823.02 in which

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1 the court finds that the defendant's activity, use, or practice that was alleged to be  
2 a public nuisance was not a public nuisance.

3 **SECTION 8.** 907.01 of the statutes is renumbered 907.01 (intro.) and amended  
4 to read:

5 **907.01 Opinion testimony by lay witnesses.** (intro.) If the witness is not  
6 testifying as an expert, the witness's testimony in the form of opinions or inferences  
7 is limited to those opinions or inferences which are rationaly all of the following:

8 (1) Rationally based on the perception of the witness ~~and helpful.~~

9 (2) Helpful to a clear understanding of the witness's testimony or the  
10 determination of a fact in issue.

11 **SECTION 9.** 907.01 (3) of the statutes is created to read:

12 907.01 (3) If the testimony is given in a case other than a criminal case or a case  
13 brought under ch. 980, not based on scientific, technical, or other specialized  
14 knowledge within the scope of a witness under s. 907.02 (1).

15 **SECTION 10.** 907.02 of the statutes is renumbered 907.02 (1) (intro.) and  
16 amended to read:

17 907.02 (1) (intro.) If the testimony is given in a case other than a criminal case  
18 or a case brought under ch. 980 and if scientific, technical, or other specialized  
19 knowledge will assist the trier of fact to understand the evidence or to determine a  
20 fact in issue, a witness qualified as an expert by knowledge, skill, experience,  
21 training, or education, may testify thereto in the form of an opinion or otherwise. if  
22 all of the following criteria are met:

23 **SECTION 11.** 907.02 (1) (a), (b) and (c) of the statutes are created to read:

24 907.02 (1) (a) The testimony is based upon sufficient facts or data.

25 (b) The testimony is the product of reliable principles and methods.

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1 (c) The witness has applied the principles and methods reliably to the facts of  
2 the case.

3 **SECTION 12.** 907.02 (2) of the statutes is created to read:

4 907.02 (2) Notwithstanding sub. (1), the testimony of an expert witness may  
5 not be admitted under sub. (1) if the expert witness is entitled to receive any  
6 compensation contingent on the outcome of any claim or case with respect to which  
7 the testimony is being offered.

8 **SECTION 13.** 907.02 (3) of the statutes is created to read:

9 907.02 (3) If the testimony is given in a criminal case or a case brought under  
10 ch. 980 and if scientific, technical, or other specialized knowledge will assist the trier  
11 of fact to understand the evidence or to determine a fact in issue, a witness qualified  
12 as an expert by knowledge, skill, experience, training, or education may testify  
13 thereto in the form of an opinion or otherwise.

14 **SECTION 14.** 907.03 of the statutes is amended to read:

15 **907.03 Bases of opinion testimony by experts.** The facts or data in the  
16 particular case upon which an expert bases an opinion or inference may be those  
17 perceived by or made known to the expert at or before the hearing. If of a type  
18 reasonably relied upon by experts in the particular field in forming opinions or  
19 inferences upon the subject, the facts or data need not be admissible in evidence in  
20 order for the opinion or inference to be admitted. Unless the testimony is given in  
21 a criminal case or a case that is brought under ch. 980, facts or data that are  
22 otherwise inadmissible may be disclosed to the jury by the proponent of the opinion  
23 or inference only if the court determines that their probative value in assisting the  
24 jury to evaluate the expert's opinion or inference substantially outweighs their  
25 prejudicial effect.

**ASSEMBLY BILL 278****1 SECTION 15. Initial applicability.**

2 (1) The treatment of sections 227.45 (1) and (1m) and 907.03 of the statutes,  
3 the renumbering and amendment of sections 907.01 and 907.02 of the statutes, and  
4 the creation of sections 907.01 (3) and 907.02 (1) (a), (b), and (c), (2), and (3) of the  
5 statutes first apply to actions or proceedings commenced on the effective date of this  
6 subsection.

7 (END)