



WISCONSIN CIVIL JUSTICE COUNCIL, INC.

Promoting Fairness and Equity in Wisconsin's Civil Justice System

Special Session Legal Reforms Fact Sheet

Product Liability

Product liability is a strict liability theory which does not require proof of negligent conduct but relates directly to product defect. This legislation will assist **manufacturers** by requiring proof of a “reasonable alternative design” to prove a defective design, moving Wisconsin away from the much broader and loose “consumer contemplation” test. This significant change will bring Wisconsin in line with 46 other states.

The proposed legislation will remove **sellers** from strict (product) liability litigation whenever there is a viable manufacturer to sue and also addresses the **joint and several liability** issue created by a 2001 Wisconsin Supreme Court decision which held that the positive changes to joint and several liability adopted in the 1995 session do not apply to strict liability cases, including products cases.

The specific provisions of the bill:

- Define the basis for a manufacturer’s liability;
- Require proof of a reasonable alternative design to prove a defective design;
- Provide a defense where damage arises from an inherent characteristic of the product that is open and obvious;
- Provide a defense where damage results from product misuse, alteration or modification;
- Preclude liability of a seller unless the manufacturer is not subject to service within the state or a judgment could not be enforced against the manufacturer;
- Preclude liability of a seller for negligence unless the seller failed to exercise reasonable care in assembling, inspecting or maintaining the product or in giving warnings or instructions;
- Provide defense for intoxication;
- Exclude from evidence remedial measures taken subsequent to the plaintiff’s damages; and,
- Create a 15-year statute of repose with exceptions for latent diseases.

The need to change Wisconsin’s product liability law:

- This is not a radical idea – 46 other states follow the “alternative reasonable design” test.
- The purpose is to inject fairness and common sense into the system. Middlemen (in most instances small businesses) will not be held responsible for defects caused by manufacturers for no reason other than they have money, assets or insurance. They will be held accountable when their actions play a role in an injury or when recovery from the manufacturer is not possible.
- The goal is to limit liability to situations where it is most appropriate. This legislation focuses on the role and actions of the manufacturer, seller, distributor and plaintiff.

- No one is saying plaintiffs are always at fault and manufacturers are never to blame. Rather, companies that exercise care and play by the rules should be treated fairly by our civil justice system.
- This legislation does not limit access to the courts or prevent relief when a product is defective.
- Litigation plays an important role in our society. Yet, unnecessary litigation is detrimental, causing prices to rise for businesses and consumers.
- A fair and predictable civil justice system is necessary for encouraging the expansion of existing businesses or for attracting new business or corporate relocations to the state. A state's litigation climate is one of the four or five most important considerations in arriving at the above decisions. In fact, a recent report by the Chamber of Commerce's Institute for Legal Reform found that 67 percent of businesses surveyed responded that a state's litigation environment has an impact on such important decisions as where to locate or do business.
- Wisconsin made great strides in civil justice reform in the mid-1990s but we have recently seen our national rating slip because we have failed to address a couple of key areas, including aspects of our Products law.