



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Senate Bill 402

**Senate Amendment 1 and
Senate Amendment 1 to Senate
Amendment 1**

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Senate Amendment 1 makes the following changes to Senate Bill 402:

1. Senate Bill 402 provides that one of the conditions a claimant must prove in order to have a remedy under the bill is that “no other legal process exists for the claimant to obtain redress from another person for the injury or harm.”

Senate Amendment 1 substitutes the term “lawful process” for the term “legal process”; the former is arguably broader than the latter and would include, for example, an administrative proceeding that provides redress from another person for the injury or harm. The amendment also substitutes the term “seek redress” for the term “obtain redress”; thus, as amended, the claimant must prove there no other lawful process for the claimant to seek redress.

2. Among other things, a claimant under the bill must prove that “the manufacturers, distributors, sellers, or promoters of a product who are named as defendants in the action collectively, during the relevant production period, manufactured, distributed, sold, and promoted within the state at least 80 percent of all products chemically identical to the specific product that allegedly caused the claimant’s injury sold in this state.”

Senate Amendment 1 revises this market share requirement by only including manufacturers who are named as defendants. Thus, under the revised provision, the claimant must prove that the action names as defendants those manufacturers of a product who collectively, during the relevant production period, manufactured at least 80% of all products sold in this state that are chemically identical to the specific product that allegedly caused the claimant’s injury or harm. In turn, Senate Amendment 1 newly defines the term “relevant production period” to mean the time period during which the specific product that allegedly caused the claimant’s injury or harm was manufactured, distributed, sold, or promoted.

3. Senate Bill 402 provides a remedy for a claimant, as defined in the bill, when the claimant is unable to prove that a particular manufacturer, distributor, seller, or promoter of a product manufactured, distributed, sold, or promoted the specific product alleged to have caused the claimant's injury or harm. Under the remedy, a manufacturer, distributor, seller, or promoter of a product may be held liable if the claimant proves all of the conditions specified in the bill (see p. 3, lines 3 to 24). However, even if a manufacturer, distributor, seller, or promoter may otherwise be liable under that remedy, there is no liability if:

a. More than 25 years have passed between the date that the manufacturer, distributor, seller, or promoter of a product last manufactured, distributed, sold, or promoted a product chemically identical to the specific product that allegedly caused the claimant's injury and the date that the claimant's cause of action accrued; or

b. The period of the manufacturing of a product chemically identical to the specific product that allegedly caused the claimant's injury was more than five years. *Senate Amendment 1 to Senate Amendment 1* removes this condition from the bill.

Senate Amendment 1 revises the second liability exception described above to provide that there is no liability if the claimant has not established that the relevant production period was less than five years.

Legislative History

On November 11, 2005, the Senate adopted both amendments on voice votes and passed Senate Bill 402 on a vote of Ayes, 19; Noes, 14.

RS:rv