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**SUBSTITUTE HOUSE BILL 1556**

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**State of Washington                      52nd Legislature                      1991 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Appelwick, Padden, Prentice, Dellwo, Ludwig, Edmondson, Mielke, D. Sommers, Paris, Moyer, Sprenkle, Braddock, Holland, Winsley, Wynne, Vance, Brough, Tate, Silver, Mitchell, Hochstatter, Nealey, Betrozoff, Morton, Wood and Horn).

Read first time March 6, 1991.

1            AN ACT Relating to licensed pharmacists, limiting their liability  
2 by declaring them to be nonproduct sellers who are not subject to Title  
3 62A RCW; amending RCW 7.72.040 and 7.72.010; and adding a new section  
4 to chapter 18.64 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 18.64 RCW  
7 to read as follows:

8            (1) A pharmacist who dispenses a prescription product in the form  
9 manufactured by a commercial manufacturer pursuant to a prescription  
10 issued by a licensed practitioner is not liable to a person who was  
11 injured through the use of the product, based on a claim of the  
12 following:

13            (a) Strict liability in tort; or

14            (b) Implied warranty provisions under the uniform commercial code  
15 Title 62 RCW.

1 (2) The limitation on pharmacist's liability as provided in  
2 subsection (1) of this section shall only apply if the pharmacist  
3 complies with recordkeeping requirements pursuant to chapters 18.64,  
4 69.41, and 69.50 RCW, and related administrative rules.

5 (3) A pharmacist who dispenses a prescription product in the form  
6 manufactured by a commercial manufacturer issued by a licensed  
7 practitioner is liable to the claimant only if the claimant's harm was  
8 proximately caused by (a) the negligence of the pharmacist; (b) breach  
9 of an express warranty made by the pharmacist; or (c) the intentional  
10 misrepresentation of facts about the product by the pharmacist or the  
11 intentional concealment of information about the product by the  
12 pharmacist. A pharmacist shall not be liable for the product  
13 manufacturer's liability except as provided in RCW 7.72.040.

14 **Sec. 2.** RCW 7.72.040 and 1981 c 27 s 5 are each amended to read as  
15 follows:

16 (1) Except as provided in subsection (2) of this section, a product  
17 seller other than a manufacturer is liable to the claimant only if the  
18 claimant's harm was proximately caused by:

19 (a) The negligence of such product seller; or

20 (b) Breach of an express warranty made by such product seller; or

21 (c) The intentional misrepresentation of facts about the product by  
22 such product seller or the intentional concealment of information about  
23 the product by such product seller.

24 (2) A product seller, other than a manufacturer, shall have the  
25 liability of a manufacturer to the claimant if:

26 (a) No solvent manufacturer who would be liable to the claimant is  
27 subject to service of process under the laws of the claimant's domicile  
28 or the state of Washington; or

1 (b) The court determines that it is highly probable that the  
2 claimant would be unable to enforce a judgment against any  
3 manufacturer; or

4 (c) The product seller is a controlled subsidiary of a  
5 manufacturer, or the manufacturer is a controlled subsidiary of the  
6 product seller; or

7 (d) The product seller provided the plans or specifications for the  
8 manufacture or preparation of the product and such plans or  
9 specifications were a proximate cause of the defect in the product; or

10 (e) The product was marketed under a trade name or brand name of  
11 the product seller.

12 (3) Subsection (2) of this section does not apply to a pharmacist  
13 who dispenses a prescription product in the form manufactured by a  
14 commercial manufacturer pursuant to a prescription issued by a licensed  
15 practitioner if the pharmacist complies with recordkeeping requirements  
16 pursuant to chapters 18.64, 69.41, and 69.50 RCW, and related  
17 administrative rules.

18 **Sec. 3.** RCW 7.72.010 and 1981 c 27 s 2 are each amended to read as  
19 follows:

20 For the purposes of this chapter, unless the context clearly  
21 indicates to the contrary:

22 (1) Product seller. "Product seller" means any person or entity  
23 that is engaged in the business of selling products, whether the sale  
24 is for resale, or for use or consumption. The term includes a  
25 manufacturer, wholesaler, distributor, or retailer of the relevant  
26 product. The term also includes a party who is in the business of  
27 leasing or bailing such products. The term "product seller" does not  
28 include:

1 (a) A seller of real property, unless that person is engaged in the  
2 mass production and sale of standardized dwellings or is otherwise a  
3 product seller;

4 (b) A provider of professional services who utilizes or sells  
5 products within the legally authorized scope of the professional  
6 practice of the provider;

7 (c) A commercial seller of used products who resells a product  
8 after use by a consumer or other product user: PROVIDED, That when it  
9 is resold, the used product is in essentially the same condition as  
10 when it was acquired for resale; ((and))

11 (d) A finance lessor who is not otherwise a product seller. A  
12 "finance lessor" is one who acts in a financial capacity, who is not a  
13 manufacturer, wholesaler, distributor, or retailer, and who leases a  
14 product without having a reasonable opportunity to inspect and discover  
15 defects in the product, under a lease arrangement in which the  
16 selection, possession, maintenance, and operation of the product are  
17 controlled by a person other than the lessor; and

18 (e) A licensed pharmacist who dispenses a prescription product  
19 manufactured by a commercial manufacturer pursuant to a prescription  
20 issued by a licensed prescribing practitioner if the claim against the  
21 pharmacist is based upon strict liability in tort or the implied  
22 warranty provisions under the uniform commercial code, Title 62A RCW,  
23 and if the pharmacist complies with recordkeeping requirements pursuant  
24 to chapters 18.64, 69.41, and 69.50 RCW, and related administrative  
25 rules as provided in section 2 of this act. Nothing in this subsection  
26 (1)(e) affects a pharmacist's liability under RCW 7.72.040(1).

27 (2) Manufacturer. "Manufacturer" includes a product seller who  
28 designs, produces, makes, fabricates, constructs, or remanufactures the  
29 relevant product or component part of a product before its sale to a

1 user or consumer. The term also includes a product seller or entity  
2 not otherwise a manufacturer that holds itself out as a manufacturer.

3 A product seller acting primarily as a wholesaler, distributor, or  
4 retailer of a product may be a "manufacturer" but only to the extent  
5 that it designs, produces, makes, fabricates, constructs, or  
6 remanufactures the product for its sale. A product seller who performs  
7 minor assembly of a product in accordance with the instructions of the  
8 manufacturer shall not be deemed a manufacturer. A product seller that  
9 did not participate in the design of a product and that constructed the  
10 product in accordance with the design specifications of the claimant or  
11 another product seller shall not be deemed a manufacturer for the  
12 purposes of RCW 7.72.030(1)(a).

13 (3) Product. "Product" means any object possessing intrinsic value,  
14 capable of delivery either as an assembled whole or as a component part  
15 or parts, and produced for introduction into trade or commerce. Human  
16 tissue and organs, including human blood and its components, are  
17 excluded from this term.

18 The "relevant product" under this chapter is that product or its  
19 component part or parts, which gave rise to the product liability  
20 claim.

21 (4) Product liability claim. "Product liability claim" includes any  
22 claim or action brought for harm caused by the manufacture, production,  
23 making, construction, fabrication, design, formula, preparation,  
24 assembly, installation, testing, warnings, instructions, marketing,  
25 packaging, storage or labeling of the relevant product. It includes,  
26 but is not limited to, any claim or action previously based on: Strict  
27 liability in tort; negligence; breach of express or implied warranty;  
28 breach of, or failure to, discharge a duty to warn or instruct, whether  
29 negligent or innocent; misrepresentation, concealment, or  
30 nondisclosure, whether negligent or innocent; or other claim or action

1 previously based on any other substantive legal theory except fraud,  
2 intentionally caused harm or a claim or action under the consumer  
3 protection act, chapter 19.86 RCW.

4 (5) Claimant. "Claimant" means a person or entity asserting a  
5 product liability claim, including a wrongful death action, and, if the  
6 claim is asserted through or on behalf of an estate, the term includes  
7 claimant's decedent. "Claimant" includes any person or entity that  
8 suffers harm. A claim may be asserted under this chapter even though  
9 the claimant did not buy the product from, or enter into any  
10 contractual relationship with, the product seller.

11 (6) Harm. "Harm" includes any damages recognized by the courts of  
12 this state: PROVIDED, That the term "harm" does not include direct or  
13 consequential economic loss under Title 62A RCW.