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5 Strike everything after the enacting clause and insert the
6 following:

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

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

14 (a) Strict liability in tort; or

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

17 (2) The limitation on pharmacist's liability as provided in
18 subsection (1) of this section shall only apply if the pharmacist
19 complies with recordkeeping requirements pursuant to chapters 18.64,
20 69.41, and 69.50 RCW, and related administrative rules.

21 (3) A pharmacist who dispenses a prescription product in the form
22 manufactured by a commercial manufacturer issued by a licensed
23 practitioner is liable to the claimant only if the claimant's harm was
24 proximately caused by (a) the negligence of the pharmacist; (b) breach
25 of an express warranty made by the pharmacist; or (c) the intentional
26 misrepresentation of facts about the product by the pharmacist or the
27 intentional concealment of information about the product by the

1 pharmacist. A pharmacist shall not be liable for the product
2 manufacturer's liability except as provided in RCW 7.72.040."

3 "Sec. 2. RCW 7.72.040 and 1981 c 27 s 5 are each amended to read
4 as follows:

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

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

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

10 (c) The intentional misrepresentation of facts about the product by
11 such product seller or the intentional concealment of information about
12 the product by such product seller.

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

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

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

21 (c) The product seller is a controlled subsidiary of a
22 manufacturer, or the manufacturer is a controlled subsidiary of the
23 product seller; or

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

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

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

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

9 For the purposes of this chapter, unless the context clearly
10 indicates to the contrary:

11 (1) Product seller. "Product seller" means any person or entity
12 that is engaged in the business of selling products, whether the sale
13 is for resale, or for use or consumption. The term includes a
14 manufacturer, wholesaler, distributor, or retailer of the relevant
15 product. The term also includes a party who is in the business of
16 leasing or bailing such products. The term "product seller" does not
17 include:

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

21 (b) A provider of professional services who utilizes or sells
22 products within the legally authorized scope of the professional
23 practice of the provider;

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

28 (d) A finance lessor who is not otherwise a product seller. A
29 "finance lessor" is one who acts in a financial capacity, who is not a

1 manufacturer, wholesaler, distributor, or retailer, and who leases a
2 product without having a reasonable opportunity to inspect and discover
3 defects in the product, under a lease arrangement in which the
4 selection, possession, maintenance, and operation of the product are
5 controlled by a person other than the lessor; and

6 (e) A licensed pharmacist who dispenses a prescription product
7 manufactured by a commercial manufacturer pursuant to a prescription
8 issued by a licensed prescribing practitioner if the claim against the
9 pharmacist is based upon strict liability in tort or the implied
10 warranty provisions under the uniform commercial code, Title 62A RCW,
11 and if the pharmacist complies with recordkeeping requirements pursuant
12 to chapters 18.64, 69.41, and 69.50 RCW, and related administrative
13 rules as provided in section 2 of this act. Nothing in this subsection
14 (1)(e) affects a pharmacist's liability under RCW 7.72.040(1).

15 (2) Manufacturer. "Manufacturer" includes a product seller who
16 designs, produces, makes, fabricates, constructs, or remanufactures the
17 relevant product or component part of a product before its sale to a
18 user or consumer. The term also includes a product seller or entity
19 not otherwise a manufacturer that holds itself out as a manufacturer.

20 A product seller acting primarily as a wholesaler, distributor, or
21 retailer of a product may be a "manufacturer" but only to the extent
22 that it designs, produces, makes, fabricates, constructs, or
23 remanufactures the product for its sale. A product seller who performs
24 minor assembly of a product in accordance with the instructions of the
25 manufacturer shall not be deemed a manufacturer. A product seller that
26 did not participate in the design of a product and that constructed the
27 product in accordance with the design specifications of the claimant or
28 another product seller shall not be deemed a manufacturer for the
29 purposes of RCW 7.72.030(1)(a).

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

6 The "relevant product" under this chapter is that product or its
7 component part or parts, which gave rise to the product liability
8 claim.

9 (4) Product liability claim. "Product liability claim" includes any
10 claim or action brought for harm caused by the manufacture, production,
11 making, construction, fabrication, design, formula, preparation,
12 assembly, installation, testing, warnings, instructions, marketing,
13 packaging, storage or labeling of the relevant product. It includes,
14 but is not limited to, any claim or action previously based on: Strict
15 liability in tort; negligence; breach of express or implied warranty;
16 breach of, or failure to, discharge a duty to warn or instruct, whether
17 negligent or innocent; misrepresentation, concealment, or
18 nondisclosure, whether negligent or innocent; or other claim or action
19 previously based on any other substantive legal theory except fraud,
20 intentionally caused harm or a claim or action under the consumer
21 protection act, chapter 19.86 RCW.

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

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

4 **SSB 5466** - H COMM AMD
5 By Committee on Judiciary

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7 On page 1, line 3 of the title, after "62A RCW;" strike the
8 remainder of the title and insert "amending RCW 7.72.040 and 7.72.010;
9 and adding a new section to chapter 18.64 RCW."