

**SENATE BILL REPORT**

**SHB 1556**

**AS OF MARCH 21, 1991**

**Brief Description:** Limiting the strict liability of pharmacists.

**SPONSORS:** 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).

**HOUSE JUDICIARY COMMITTEE**

**SENATE COMMITTEE ON LAW & JUSTICE**

**Staff:** Dick Armstrong (786-7460)

**Hearing Dates:** March 27, 1991

**BACKGROUND:**

In a product liability action, the product seller may be held strictly liable for a manufacturing defect under certain circumstances, such as when the manufacturer is insolvent.

Several product liability actions were brought against drug manufacturers, physicians and dispensing pharmacists after the drug diethylstilbersterol (DES) was discovered to cause clear cell adenocarcinoma in the female children of women who took it during pregnancy. Several courts considered whether or not the dispensing pharmacist could be held strictly liable for the alleged defects in the drug under product liability provisions or implied or express warranty provisions in the Uniform Commercial Code. Generally, courts concluded that a dispensing pharmacist who correctly dispensed a commercially manufactured drug pursuant to a prescription was engaged in a "service" rather than "product selling" and could not be held strictly liable.

In 1986, a Washington trial court disagreed and refused to grant summary judgment in favor of a dispensing pharmacist in a DES case. The jury awarded the plaintiff a judgment against the pharmacist. The pharmacist did not appeal because the manufacturers satisfied the judgment.

**SUMMARY:**

A pharmacist who dispenses a prescription product in the form manufactured by a commercial manufacturer pursuant to prescription issued by a licensed practitioner is not liable to a person who was injured through the use of the product

based on a claim of strict liability in tort or implied warranty provisions under the Uniform Commercial Code. The limitation on liability only applies if the pharmacist complies with the record keeping requirements of the controlled substances and legend drug laws and those governing pharmacists.

A pharmacist is liable for injuries that were proximately caused by the pharmacist's negligence, or an express warranty made by the pharmacist, or an intentional misrepresentation of facts about the product, or the intentional concealment of information about the product by the pharmacist.

The pharmacist is not liable for the liability of a manufacturer who cannot be successfully sued if the pharmacist complies with the record keeping requirements.

A pharmacist who complies with the record keeping requirements is not a "product seller" within the meaning of the products liability actions statute for actions in strict liability in tort and implied warrant actions under the Uniform Commercial Code.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** none requested