

SENATE BILL REPORT

SB 5466

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, FEBRUARY 15, 1991

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

**SPONSORS:** Senators Nelson, Moore, Amondson, Conner, Johnson, Newhouse, West, Rasmussen, Wojahn, Sutherland and L. Smith.

**SENATE COMMITTEE ON LAW & JUSTICE**

**Majority Report:** That Substitute Senate Bill No. 5466 be substituted therefor, and the substitute bill do pass.

Signed by Senators Nelson, Chairman; Thorsness, Vice Chairman; Erwin, Hayner, Newhouse, and Rasmussen.

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

**Hearing Dates:** February 11, 1991; February 15, 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 dispensing a prescription product, manufactured by a commercial manufacturer, pursuant to a prescription issued by a licensed prescribing practitioner is not a "product seller" under the law of product liability.

The dispensing procedure is considered a rendition of service rather than a sale. Therefore, a pharmacist cannot be held strictly liable under product liability law for dispensing drugs correctly.

A pharmacist may still be held liable, however, for willful misconduct or negligence in dispensing drugs.

**EFFECT OF PROPOSED SUBSTITUTE:**

The emergency clause is deleted.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** none requested

**TESTIMONY FOR:**

Most states do not treat pharmacists as "product sellers" under the product liability laws. This bill will remove them from having to face strict liability in a product liability lawsuit; however, they will still be subject to liability for their own negligence.

**TESTIMONY AGAINST:**

WSTLA does not want to amend the definitions in the product liability act to accomplish the goals of this bill.

**TESTIFIED:** Lars Hennum, Pharmacists of Washington (pro); Michele Radosevich, WSTLA (con)