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HOUSE BILL 1556

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State of Washington                      52nd Legislature                      1991 Regular Session

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 February 1, 1991. Referred to Committee on Judiciary.

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 7.72.010; adding a new section to chapter 18.64  
4 RCW; creating a new section; and declaring an emergency.

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

6            NEW SECTION.    **Sec. 1.**            The legislature recognizes that drugs  
7 and devices are approved for distribution after study and evaluation.  
8 The legislature finds it is in the public interest that a wide range of  
9 drugs and devices be available to the public, even though some are  
10 potentially harmful. The legislature further finds that the services  
11 of a pharmacist are an extension of the services of prescribing  
12 practitioners in that a pharmacist limits public access to certain  
13 drugs and devices to such practitioners' prescriptions.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 18.64 RCW  
2 to read as follows:

3        The dispensing by a licensed pharmacist of a prescription product  
4 manufactured by a commercial manufacturer pursuant to a prescription  
5 issued by a licensed prescribing practitioner constitutes the rendition  
6 of a service, and is not covered by any implied warranty under the  
7 uniform commercial code, Title 62A RCW, or otherwise.    No civil  
8 liability may be incurred as a result of any such acts, except in a  
9 case of willful or negligent conduct.

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

12        For the purposes of this chapter, unless the context clearly  
13 indicates to the contrary:

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

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

24        (b) A provider of professional services who utilizes or sells  
25 products within the legally authorized scope of the professional  
26 practice of the provider;

27        (c) A commercial seller of used products who resells a product  
28 after use by a consumer or other product user:    PROVIDED, That when it

1 is resold, the used product is in essentially the same condition as  
2 when it was acquired for resale; (~~and~~)

3 (d) A finance lessor who is not otherwise a product seller. A  
4 "finance lessor" is one who acts in a financial capacity, who is not a  
5 manufacturer, wholesaler, distributor, or retailer, and who leases a  
6 product without having a reasonable opportunity to inspect and discover  
7 defects in the product, under a lease arrangement in which the  
8 selection, possession, maintenance, and operation of the product are  
9 controlled by a person other than the lessor; and

10 (e) A licensed pharmacist who dispenses a prescription product  
11 manufactured by a commercial manufacturer pursuant to a prescription  
12 issued by a licensed prescribing practitioner.

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

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

28 (3) Product. "Product" means any object possessing intrinsic value,  
29 capable of delivery either as an assembled whole or as a component part  
30 or parts, and produced for introduction into trade or commerce. Human

1 tissue and organs, including human blood and its components, are  
2 excluded from this term.

3 The "relevant product" under this chapter is that product or its  
4 component part or parts, which gave rise to the product liability  
5 claim.

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

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

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

1        NEW SECTION.    **Sec. 4.**        This act is necessary for the immediate  
2 preservation of the public peace, health, or safety, or support of the  
3 state government and its existing public institutions, and shall take  
4 effect immediately.