

HOUSE BILL REPORT

HB 1556

*As Reported By House Committee on:
Judiciary*

Title: An act relating to licensed pharmacists, limiting their liability by declaring them to be nonproduct sellers who are not subject to Title 62A RCW.

Brief Description: Limiting the strict liability of pharmacists.

Sponsor(s): 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.

Brief History:

Reported by House Committee on:
Judiciary, March 6, 1991, DPS.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *That Substitute House Bill No. 1556 be substituted therefor, and the substitute bill do pass.*
Signed by 18 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Belcher; Broback; Forner; Hargrove; Inslee; Locke; R. Meyers; Mielke; H. Myers; Scott; D. Sommers; Tate; Vance; and Wineberry.

Staff: Pat Shelledy (786-7149).

Background: Tort actions may be brought under the product liability provisions against "product sellers" who sell products that injure the buyers. "Product seller" means any person or entity that is engaged in the business of selling products, including manufacturers, wholesalers, distributors, or retailers. Certain providers are exempt from the definition of product seller, but pharmacists currently are not exempt.

Product liability claims may be for (a) strict liability in tort, (b) negligence, (c) breach of express or implied warranty under the Uniform Commercial Code, (d) breach of the duty to warn, (e) misrepresentation, concealment, or

nondisclosure, or (f) an action under the consumer protection act.

Product sellers are liable to an injured plaintiff if the product seller's conduct, through negligence, breach of an express warranty, or intentional misrepresentation or concealment, proximately caused the plaintiff's injuries. Product sellers may also be liable if the plaintiff cannot successfully pursue the product's manufacturer, because (a) the plaintiff cannot serve the manufacturer with process, (b) the court finds that the judgment against the manufacturer cannot be enforced, (c) the product seller is a controlled subsidiary of the manufacturer, (d) the product seller provided plans for the manufacture or preparation of the product, or (e) the product was sold under the product seller's brand name.

Summary of Substitute B Bill: 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.

Substitute Bill Compared to Original Bill: The intent section and emergency clause are stricken. The substantive portion of the bill is totally rewritten to explicitly state the liabilities and immunities of pharmacists who dispense commercially manufactured drugs pursuant to a prescription. A record keeping requirement is added.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Original Bill: Without the bill, pharmacists are subject to absolute liability just for giving a purchaser a commercially manufactured drug pursuant to a prescription.

Testimony Against: Original Bill: Giving pharmacists this immunity exacerbates the problems victims have when trying to seek redress for injury caused by manufacturers who cannot be identified or sued. The bill is overly broad. Last year's amendments made the bill more acceptable.

Witnesses: Original Bill: Lars Hennum, Pharmacists of Washington (pro); and Michele Radosevich, Washington State Trial Lawyers Association (con).