

**FINAL BILL REPORT**

**SSB 5466**

**C 189 L 91**

**SYNOPSIS AS ENACTED**

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

**SPONSORS:** Senate Committee on Law & Justice (originally sponsored by Senators Nelson, Moore, Amondson, Conner, Johnson, Newhouse, West, Rasmussen, Wojahn, Sutherland and L. Smith).

**SENATE COMMITTEE ON LAW & JUSTICE**

**HOUSE COMMITTEE ON JUDICIARY**

**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:**

Statutory limitations relating to the liability of pharmacists are enacted. 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.

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.

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 warranty actions under the Uniform Commercial Code.

**VOTES ON FINAL PASSAGE:**

|        |    |   |                    |
|--------|----|---|--------------------|
| Senate | 45 | 0 |                    |
| House  | 97 | 0 | (House amended)    |
| Senate | 46 | 0 | (Senate concurred) |

**EFFECTIVE:** July 28, 1991