

SENATE BILL REPORT

SSB 5466

AS PASSED SENATE, MARCH 7, 1991

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

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

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:

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.

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 Hennem, Pharmacists of Washington (pro); Michele Radosevich, WSTLA (con)

HOUSE AMENDMENT(S):

All provisions of the Senate bill are deleted. 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 warranty actions under the Uniform Commercial Code.