

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5466

52nd Legislature
1991 Regular Session

Passed by the Senate April 22, 1991
Yeas 46 Nays 0

President of the Senate

Passed by the House April 10, 1991
Yeas 97 Nays 0

Speaker of the
House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Gordon Golob, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5466** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Secretary of State
State of Washington

SUBSTITUTE SENATE BILL 5466

AS AMENDED BY THE HOUSE

Passed Legislature - 1991 Regular Session

State of Washington 52nd Legislature 1991 Regular Session

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

Read first time February 19, 1991.

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 7.72.040 and 7.72.010; and adding a new section
4 to chapter 18.64 RCW.

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

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

8 (1) A pharmacist who dispenses a prescription product in the form
9 manufactured by a commercial manufacturer pursuant to a prescription
10 issued by a licensed practitioner is not liable to a person who was
11 injured through the use of the product, based on a claim of the
12 following:

13 (a) Strict liability in tort; or

14 (b) Implied warranty provisions under the uniform commercial code
15 Title 62 RCW.

1 (2) The limitation on pharmacist's liability as provided in
2 subsection (1) of this section shall only apply if the pharmacist
3 complies with recordkeeping requirements pursuant to chapters 18.64,
4 69.41, and 69.50 RCW, and related administrative rules.

5 (3) A pharmacist who dispenses a prescription product in the form
6 manufactured by a commercial manufacturer issued by a licensed
7 practitioner is liable to the claimant only if the claimant's harm was
8 proximately caused by (a) the negligence of the pharmacist; (b) breach
9 of an express warranty made by the pharmacist; or (c) the intentional
10 misrepresentation of facts about the product by the pharmacist or the
11 intentional concealment of information about the product by the
12 pharmacist. A pharmacist shall not be liable for the product
13 manufacturer's liability except as provided in RCW 7.72.040.

14 **Sec. 2.** RCW 7.72.040 and 1981 c 27 s 5 are each amended to read as
15 follows:

16 (1) Except as provided in subsection (2) of this section, a product
17 seller other than a manufacturer is liable to the claimant only if the
18 claimant's harm was proximately caused by:

19 (a) The negligence of such product seller; or

20 (b) Breach of an express warranty made by such product seller; or

21 (c) The intentional misrepresentation of facts about the product by
22 such product seller or the intentional concealment of information about
23 the product by such product seller.

24 (2) A product seller, other than a manufacturer, shall have the
25 liability of a manufacturer to the claimant if:

26 (a) No solvent manufacturer who would be liable to the claimant is
27 subject to service of process under the laws of the claimant's domicile
28 or the state of Washington; or

1 (b) The court determines that it is highly probable that the
2 claimant would be unable to enforce a judgment against any
3 manufacturer; or

4 (c) The product seller is a controlled subsidiary of a
5 manufacturer, or the manufacturer is a controlled subsidiary of the
6 product seller; or

7 (d) The product seller provided the plans or specifications for the
8 manufacture or preparation of the product and such plans or
9 specifications were a proximate cause of the defect in the product; or

10 (e) The product was marketed under a trade name or brand name of
11 the product seller.

12 (3) Subsection (2) of this section does not apply to a pharmacist
13 who dispenses a prescription product in the form manufactured by a
14 commercial manufacturer pursuant to a prescription issued by a licensed
15 practitioner if the pharmacist complies with recordkeeping requirements
16 pursuant to chapters 18.64, 69.41, and 69.50 RCW, and related
17 administrative rules.

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

20 For the purposes of this chapter, unless the context clearly
21 indicates to the contrary:

22 (1) Product seller. "Product seller" means any person or entity
23 that is engaged in the business of selling products, whether the sale
24 is for resale, or for use or consumption. The term includes a
25 manufacturer, wholesaler, distributor, or retailer of the relevant
26 product. The term also includes a party who is in the business of
27 leasing or bailing such products. The term "product seller" does not
28 include:

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

4 (b) A provider of professional services who utilizes or sells
5 products within the legally authorized scope of the professional
6 practice of the provider;

7 (c) A commercial seller of used products who resells a product
8 after use by a consumer or other product user: PROVIDED, That when it
9 is resold, the used product is in essentially the same condition as
10 when it was acquired for resale; ((and))

11 (d) A finance lessor who is not otherwise a product seller. A
12 "finance lessor" is one who acts in a financial capacity, who is not a
13 manufacturer, wholesaler, distributor, or retailer, and who leases a
14 product without having a reasonable opportunity to inspect and discover
15 defects in the product, under a lease arrangement in which the
16 selection, possession, maintenance, and operation of the product are
17 controlled by a person other than the lessor; and

18 (e) A licensed pharmacist who dispenses a prescription product
19 manufactured by a commercial manufacturer pursuant to a prescription
20 issued by a licensed prescribing practitioner if the claim against the
21 pharmacist is based upon strict liability in tort or the implied
22 warranty provisions under the uniform commercial code, Title 62A RCW,
23 and if the pharmacist complies with recordkeeping requirements pursuant
24 to chapters 18.64, 69.41, and 69.50 RCW, and related administrative
25 rules as provided in section 2 of this act. Nothing in this subsection
26 (1)(e) affects a pharmacist's liability under RCW 7.72.040(1).

27 (2) Manufacturer. "Manufacturer" includes a product seller who
28 designs, produces, makes, fabricates, constructs, or remanufactures the
29 relevant product or component part of a product before its sale to a

1 user or consumer. The term also includes a product seller or entity
2 not otherwise a manufacturer that holds itself out as a manufacturer.

3 A product seller acting primarily as a wholesaler, distributor, or
4 retailer of a product may be a "manufacturer" but only to the extent
5 that it designs, produces, makes, fabricates, constructs, or
6 remanufactures the product for its sale. A product seller who performs
7 minor assembly of a product in accordance with the instructions of the
8 manufacturer shall not be deemed a manufacturer. A product seller that
9 did not participate in the design of a product and that constructed the
10 product in accordance with the design specifications of the claimant or
11 another product seller shall not be deemed a manufacturer for the
12 purposes of RCW 7.72.030(1)(a).

13 (3) Product. "Product" means any object possessing intrinsic value,
14 capable of delivery either as an assembled whole or as a component part
15 or parts, and produced for introduction into trade or commerce. Human
16 tissue and organs, including human blood and its components, are
17 excluded from this term.

18 The "relevant product" under this chapter is that product or its
19 component part or parts, which gave rise to the product liability
20 claim.

21 (4) Product liability claim. "Product liability claim" includes any
22 claim or action brought for harm caused by the manufacture, production,
23 making, construction, fabrication, design, formula, preparation,
24 assembly, installation, testing, warnings, instructions, marketing,
25 packaging, storage or labeling of the relevant product. It includes,
26 but is not limited to, any claim or action previously based on: Strict
27 liability in tort; negligence; breach of express or implied warranty;
28 breach of, or failure to, discharge a duty to warn or instruct, whether
29 negligent or innocent; misrepresentation, concealment, or
30 nondisclosure, whether negligent or innocent; or other claim or action

1 previously based on any other substantive legal theory except fraud,
2 intentionally caused harm or a claim or action under the consumer
3 protection act, chapter 19.86 RCW.

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

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