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SENATE BILL 5986

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State of Washington                      59th Legislature                      2005 Regular Session

By Senators Kline, Franklin, Keiser and Kohl-Welles

Read first time 02/18/2005. Referred to Committee on Judiciary.

1            AN ACT Relating to the learned intermediary doctrine for  
2 prescription products; adding a new section to chapter 7.72 RCW; and  
3 creating a new section.

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

5            NEW SECTION.    **Sec. 1.** It is the intent of the legislature through  
6 this act to create an exception to the "learned intermediary doctrine"  
7 for prescription products advertised directly to consumers, and that  
8 the state supreme court holding in Terhune v. A.H. Robins Co., and  
9 subsequent cases, to the extent that they are inconsistent with this  
10 intent, are no longer valid.

11           NEW SECTION.    **Sec. 2.** A new section is added to chapter 7.72 RCW  
12 to read as follows:

13           (1) Where a consumer has sought a prescription product in response  
14 to an advertisement for that product, the manufacturer of that product,  
15 who would otherwise be subject to liability under this chapter, is not  
16 relieved of that liability solely because the manufacturer warned the  
17 practitioner who prescribed the product of its proper use and attendant  
18 dangers.

1           (2) For purposes of this section, "advertisement" means an  
2 advertisement for the product placed by the manufacturer or the  
3 manufacturer's agent in a journal, magazine, or newspaper, or on radio,  
4 television, the internet, or telephone communication systems, where it  
5 is generally intended that it will be read, watched, or listened to by  
6 persons other than medical professionals.

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