Senate Bill No. 377

(By Senators Boso and Gaunch)

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[Introduced January 30, 2015; referred to the Committee on the Judiciary.]

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A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-27, relating to manufacturers and sellers of prescription and over-the-counter drugs; and adopting the learned intermediary doctrine as defense to civil action based upon inadequate warnings or instructions.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §55-7-27, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-27. Adequate pharmaceutical warnings; limiting civil liability for manufacturers or sellers who provide warning to a learned intermediary.

(a) A manufacturer or seller of a prescription drug or device may not be held liable in a product liability action for a claim based upon inadequate warning or instruction unless the claimant proves, among other elements, that:

(1) The manufacturer or seller acted unreasonably in failing to provide adequate warning or

instruction;

(2) The failure to provide adequate warning or instruction was a proximate cause of the harm for which damages are sought; and

(3) There was not adequate warning or instruction provided to the physician or other legally authorized person who prescribes or dispenses that prescription drug or device.

(b) A manufacturer or seller of an over-the-counter drug or device may not be held liable in a product liability action for a claim based upon inadequate warning or instruction unless the claimant proves, among other elements, that:

(1) The manufacturer or seller acted unreasonably in failing to provide adequate warning or instruction;

(2) The failure to provide adequate warning or instruction was the proximate cause of the harm for which damages are sought; and

(3) There was not adequate warning or instruction provided to the physician or other legally authorized person who prescribes or dispenses the over-the-counter drug or device to the claimant, and the claimant consulted with the physician or other legally authorized person prior to using the over the counter drug or device.

(c) A manufacturer or seller of a prescription or over-the-counter drug or device is not excused from liability under subsections (a) or (b) of this section if the manufacturer has not provided warning information to the physician or other legally authorized person who prescribes or dispenses the prescription or over-the-counter drug or device and has not provided the information to the consumer.

(d) It is the intent of the Legislature that this section adopts and codifies the learned

intermediary doctrine in civil actions seeking to assert liability against a manufacturer or seller of prescription or over the counter drugs or devices.

NOTE: The purpose of this bill is to adopt and codify the learned intermediary doctrine as a defense to a civil action against a manufacturer or seller of a prescription and over-the-counter drug based upon inadequate warnings or instructions.

This section is new; therefore, strike-throughs and underscoring have been omitted.