

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Senate Bill 15

BY SENATORS BOSO AND GAUNCH

[Passed February 17, 2016; in effect 90 days from passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §55-7-30, relating generally to manufacturers and sellers of prescription drugs
3 and medical devices and liability of those entities for alleged inadequate warning or
4 instruction; and adopting the learned intermediary doctrine as defense to civil action based
5 upon inadequate warnings or instructions.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 section, designated §55-7-30, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

**§55-7-30. Adequate pharmaceutical warnings; limiting civil liability for manufacturers or
sellers who provide warning to a learned intermediary.**

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

4 (1) The manufacturer or seller of a prescription drug or medical device acted unreasonably
5 in failing to provide reasonable instructions or warnings regarding foreseeable risks of harm to
6 prescribing or other health care providers who are in a position to reduce the risks of harm in
7 accordance with the instructions or warnings; and

8 (2) Failure to provide reasonable instructions or warnings was a proximate cause of harm.

9 (b) It is the intention of the Legislature in enacting this section to adopt and allow the
10 development of a learned intermediary doctrine as a defense in cases based upon claims of
11 inadequate warning or instruction for prescription drugs or medical devices.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman, Senate Committee

.....
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

.....
Clerk of the Senate

.....
Clerk of the House of Delegates

.....
President of the Senate

.....
Speaker of the House of Delegates

The within this the.....
Day of, 2016.

.....
Governor