

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 15**

BY SENATORS BOSO AND GAUNCH

[Introduced January 13, 2016;

Referred to the Committee on the Judiciary.]



1 A BILL 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 device may not be held liable in a  
2 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 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 drug based upon inadequate warnings or instructions.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.