

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 474**

(By Senators Kessler (Acting President), Prezioso,  
Beach, Williams, Edgell, Palumbo, Plymale,  
Wills, D. Facemire, Klempa and Yost)

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[Originating in the Committee on the Judiciary;  
reported February 18, 2011.]

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A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-8-16, relating to choice of law products' liability claims that are based upon prescription drug manufacturer's alleged failure to warn.

*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 §55-8-16, to read as follows:

**ARTICLE 8. ACTIONS ON CONTRACTS.**

**§55-8-16. Choice of Law in Pharmaceutical Product Liability**

**Actions.**

- 1 (a) It is public policy of this state that, in determining the  
2 law applicable to a product liability claim brought by a  
3 nonresident of this state against the manufacturer or distrib-  
4 utor of a prescription drug for failure to warn, the duty to  
5 warn shall be governed solely by the product liability law of  
6 the place of injury (“lex loci delicti”)
- 7 (b) This section shall be applicable prospectively to all civil  
8 actions commenced on or after July 1, 2011.

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