

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 377

(By Senators Boso and Gaunch)

[Originating in the
Committee on the Judiciary;
reported February 24, 2015.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-27, relating generally to manufacturers and sellers of prescription drugs and medical devices and liability of those entities for alleged inadequate warning or instruction; 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.

- 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 claimant
3 proves, among other elements, that:

[COM. SUB. FOR S. B. NO. 377]

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

6 (2) The manufacturer or seller of a prescription drug or medical device acted unreasonably
7 in failing to provide reasonable instructions or warnings regarding foreseeable risks of harm to the
8 patient when the manufacturer or seller knows or has reason to know that health care providers will
9 not be in a position to reduce the risks of harm in accordance with the instructions or warnings and
10 that failure to provide reasonable instructions or warnings was a proximate cause of harm.

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