

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2011

(By Delegate Long)



Passed April 9, 2005

In Effect Ninety Days from Passage

FILED

2005 MAY -4 P 4: 17

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2011

(BY DELEGATE LONG)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto anew section, designated §55-7-23, relating to removing health care providers' exposure to liability where, in certain cases involving prescription drugs and medical devices, a person has been injured; and exceptions.

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 §55-7-23, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-23. Prescription drugs and medical devices; limiting health care providers' liability exposure.

1 (a) No health care provider, as defined in section two,
2 article seven-b of this chapter, is liable to a patient or third party
3 for injuries sustained as a result of the ingestion of a prescrip-
4 tion drug or use of a medical device that was prescribed or used
5 by the health care provider in accordance with instructions
6 approved by the U. S. Food and Drug Administration regarding
7 the dosage and administration of the drug, the indications for
8 which the drug should be taken or device should be used, and
9 the contraindications against taking the drug or using the
10 device: *Provided*, That the provisions of this section shall not
11 apply if: (1)the health care provider had actual knowledge that
12 the drug or device was inherently unsafe for the purpose for
13 which it was prescribed or used or (2)a manufacturer of such
14 drug or device publicly announces changes in the dosage or
15 administration of such drug or changes in contraindications
16 against taking the drug or using the device and the health care
17 provider fails to follow such publicly announced changes and
18 such failure proximately caused or contributed to the plaintiff's
19 injuries or damages.

20 (b) The provisions of this section are not intended to create
21 a new cause of action.

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

Candy White
Chairman Senate Committee

D. Ruben
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Russell E. Glendon
Clerk of the Senate

George W. Sany
Clerk of the House of Delegates

Carl P. Hankel
President of the Senate

[Signature]
Speaker of the House of Delegates

The within *is approved* this the *4th*
day of *May*, 2005.

[Signature]
Governor

PRESENTED TO THE
GOVERNOR

MAY 2 2005

Time 10:15 AM