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

(b) The provisions of this section are not intended to create a new cause of action.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety 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 was approved this the 4th day of May, 2005.

Governor
PRESENTED TO THE GOVERNOR

MAY 2 2005

Time 10:15