By: Wohlgemuth H.B. No. 2851

A BILL TO BE ENTITLED

AN ACT

relating to products liability.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 82, Civil Practice and Remedies Code, is amended by adding Sections 82.007-82.009 to read as follows:

Sec. 82.007. PRESCRIPTION DRUGS AND DEVICES. (a) In this section:

(1) "Device" means a device defined by 21 U.S.C. Section 321, as amended, and approved by the United States Food and Drug Administration.

(2) "Drug" means a drug defined by 21 U.S.C. Section 321, as amended, and approved by the United States Food and Drug Administration.

(3) "Health care" has the meaning assigned by Section 1.03(a), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes).

(4) "Health care provider" means any person, partnership, professional association, limited liability company, corporation, facility, or institution licensed, certified, registered, or chartered by this state to provide health care, including a registered nurse, hospital, dentist, podiatrist, pharmacist, assisted living facility, or nursing home. The term includes an officer, employee, independent contractor, or agent of a health care provider or physician acting in the course or scope of

the person's employment.

(b) A health care provider that prescribes a prescription drug or medical device is not liable to a patient or a third party for damages arising out of the ingestion of the drug or use of the device if the drug or device was prescribed in accordance with instructions approved by the United States Food and Drug Administration regarding:

(1) dosage and administration of the drug;

(2) indications for which the approved drug should be taken or for which the device should be used; and

(3) contraindications against taking the drug or using the device.

(c) A pharmacy or pharmacist that fills a prescription described by Subsection (b) is not liable for damages arising out of the ingestion of the drug or use of the device prescribed.

Sec. 82.008. EVIDENCE OF SUBSEQUENT IMPROVEMENTS OR OTHER MEASURES. In a products liability action, a court may not admit, except for purposes of impeachment, evidence of a subsequent improvement made or measure taken with respect to the defect alleged to have caused harm, or a similar product that, if made or taken before the product was supplied, would have made the claimant's harm less likely.

Sec. 82.009. COMPLIANCE WITH GOVERNMENT STANDARDS. (a) Notwithstanding any other law, a manufacturer or seller of a product that allegedly caused the claimant's harm is not liable if the product was manufactured or sold in compliance with a federal or state law or rule governing the manufacture or sale of the product,

including specifications for manufacturing, using, packaging, or labeling of the product.

(b) Subsection (a) does not apply to a manufacturer or seller if a final determination has been made by the regulatory agency or a court having jurisdiction over the regulatory agency that the manufacturer or seller intentionally withheld from or misrepresented to the applicable regulatory agency information concerning the product and:

(1) the claimant proves by clear and convincing evidence that the manufacturer knew or should have known that the withheld or misrepresented information could result in a potentially harmful product defect; and

(2) the claimant's injuries resulted from the anticipated defect.

SECTION 2. The changes in law made by this Act apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2003.