

By: Janek

S.B. No. 183

A BILL TO BE ENTITLED

AN ACT

relating to the liability of certain health care practitioners and veterinarians for prescribing approved drugs or devices.

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

SECTION 1. Section 17.45, Business & Commerce Code, is amended by adding Subdivisions (14) through (23) to read as follows:

(14) "Advanced practice nurse" has the meaning assigned by Section 301.152, Occupations Code.

(15) "Dentist" means a person licensed to practice dentistry under Subtitle D, Title 3, Occupations Code.

(16) "Device" has the meaning assigned by Section 321, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321), as amended.

(17) "Drug" has the meaning assigned by Section 321, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321), as amended.

(18) "Health care practitioner" means a physician, dentist, podiatrist, optometrist, advanced practice nurse, or physician assistant.

(19) "Optometrist" has the meaning assigned by Section 351.002, Occupations Code.

(20) "Physician" means a person licensed to practice medicine in this state.

1 (21) "Physician assistant" means a person who holds a
2 license issued under Chapter 204, Occupations Code.

3 (22) "Podiatrist" means a person licensed to practice
4 podiatry under Chapter 202, Occupations Code.

5 (23) "Veterinarian" has the meaning assigned by
6 Section 801.002, Occupations Code.

7 SECTION 2. Section 17.49, Business & Commerce Code, is
8 amended by adding Subsection (d-1) to read as follows:

9 (d-1) In an action under this subchapter, including a class
10 action, for damages arising out of personal injury, death, or
11 property damage allegedly caused by using a prescription drug or
12 device, including a blood product, that has been approved by the
13 United States Food and Drug Administration:

14 (1) a person may not name as a defendant a health care
15 practitioner or veterinarian who prescribed the drug or device in
16 accordance with the standard of what a reasonable and prudent
17 health care practitioner or veterinarian holding the same license
18 would have done under the same or similar circumstances; and

19 (2) the health care practitioner or veterinarian who
20 prescribed the drug or device in accordance with the standard of
21 what a reasonable and prudent health care practitioner or
22 veterinarian holding the same license would have done under the
23 same or similar circumstances is not liable to a claimant.

24 SECTION 3. Section 82.001, Civil Practice and Remedies
25 Code, is amended by adding Subdivisions (5) through (14) to read as
26 follows:

27 (5) "Advanced practice nurse" has the meaning assigned

1 by Section 301.152, Occupations Code.

2 (6) "Dentist" means a person licensed to practice
3 dentistry under Subtitle D, Title 3, Occupations Code.

4 (7) "Device" has the meaning assigned by Section 321,
5 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321), as
6 amended.

7 (8) "Drug" has the meaning assigned by Section 321,
8 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321), as
9 amended.

10 (9) "Health care practitioner" means a physician,
11 dentist, podiatrist, optometrist, advanced practice nurse, or
12 physician assistant.

13 (10) "Optometrist" has the meaning assigned by Section
14 351.002, Occupations Code.

15 (11) "Physician" means a person licensed to practice
16 medicine in this state.

17 (12) "Physician assistant" means a person who holds a
18 license issued under Chapter 204, Occupations Code.

19 (13) "Podiatrist" means a person licensed to practice
20 podiatry under Chapter 202, Occupations Code.

21 (14) "Veterinarian" has the meaning assigned by
22 Section 801.002, Occupations Code.

23 SECTION 4. Chapter 82, Civil Practice and Remedies Code, is
24 amended by adding Section 82.007 to read as follows:

25 Sec. 82.007. EXEMPTION FROM LIABILITY FOR HEALTH CARE
26 PRACTITIONERS AND VETERINARIANS. In a products liability action,
27 including a class action, against the manufacturer or seller of a

1 drug or device, including a blood product, that has been approved by
2 the United States Food and Drug Administration:

3 (1) a person may not name as a defendant a health care
4 practitioner or veterinarian who prescribed the drug or device in
5 accordance with the standard of what a reasonable and prudent
6 health care practitioner or veterinarian holding the same license
7 would have done under the same or similar circumstances; and

8 (2) the health care practitioner or veterinarian who
9 prescribed the drug or device in accordance with the standard of
10 what a reasonable and prudent health care practitioner or
11 veterinarian holding the same license would have done under the
12 same or similar circumstances is not liable to a claimant.

13 SECTION 5. The change in law made by this Act applies only
14 to a cause of action that accrues on or after the effective date of
15 this Act. A cause of action that accrued before the effective date
16 of this Act is governed by the law as it existed immediately before
17 that date, and that law is continued in effect for that purpose.

18 SECTION 6. This Act takes effect immediately if it receives
19 a vote of two-thirds of all the members elected to each house, as
20 provided by Section 39, Article III, Texas Constitution. If this
21 Act does not receive the vote necessary for immediate effect, this
22 Act takes effect September 1, 2003.