

RESTRICT LAWSUITS ON OBESITY, WEIGHT GAIN

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5809

Sponsor: Rep. David Palsrok

Committee: Commerce

Complete to 5-7-04

A SUMMARY OF HOUSE BILL 5809 AS INTRODUCED 4-22-04

The bill would amend the Revised Judicature Act to provide immunity from civil liability for certain food-related businesses for personal injury or death arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food. The immunity would apply to a manufacturer, packer, distributor, carrier, holder, seller, marketer, or advertiser of a food, or an association containing one or more such entities.

The bill would not preclude civil liability for personal injury or death based on: 1) a material violation of an adulteration or misbranding requirement prescribed by a statute or regulation of this state or the United States that proximately caused the injury or death; or 2) a *knowing and willful* material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food that proximately caused the injury or death.

(The term “knowing and willful” would mean that 1) the conduct was committed with the intent to deceive or injure consumers or with actual knowledge that the conduct was injurious to consumers; and 2) the conduct was not required by a regulation, order, rule, or other pronouncement of, or a statute administered by, a federal, state, or local government agency.)

In an action described in the paragraph above, the complaint would have to state with particularity all of the following: 1) the statute, regulation, or other law allegedly violated; 2) the facts alleged to constitute a material violation; 3) the facts alleged to demonstrate that the violation proximately caused actual injury to the plaintiff or individual on whose behalf the plaintiff is bringing the action; and 4) the facts sufficient to support a reasonable inference that the conduct was committed with intent to deceive or injure consumers or with the actual knowledge that the conduct was injurious to consumers.

In such an action, all discovery and other proceedings would be stayed while a motion to dismiss was pending unless the court found on motion of a party that particularized discovery was necessary to preserve evidence or to prevent undue prejudice to that party.

While discovery was stayed under this provision, unless otherwise ordered by a court, a party to the action with actual notice of the allegations in the complaint would have to treat all documents, data compilations, including electronically recorded or stored data, and tangible objects that were in the custody or control of the party, and that were relevant to the allegations, as if they were the subject of a continuing request for producing of documents or things from an opposing party under the court rules.

The bill would apply to all actions pending on and all actions filed after the effective date of the bill, regardless of when the claim accrued.

MCL 600.2974

FISCAL IMPACT:

The bill would have no state or local fiscal impact.

Legislative Analyst: Chris Couch
Fiscal Analyst: Marilyn Peterson

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.