

## RESTRICT LAWSUITS ON OBESITY, WEIGHT GAIN

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**House Bill 5809 (Substitute H-2)**

**Sponsor: Rep. David Palsrok**

**Committee: Committee**

**First Analysis (5-18-04)**

**BRIEF SUMMARY:** 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 a health condition associated with weight gain or obesity. The bill also would spell out the circumstances in which lawsuits could be brought.

**FISCAL IMPACT:** The bill would have no state or local fiscal impact.

### **THE APPARENT PROBLEM:**

Some people are concerned that one of the new areas for large scale litigation across the nation will be the so-called “obesity lawsuit”; that is, lawsuits against food manufacturers or vendors for the harm allegedly done to consumers from eating food with high fat, high sugar, or high caloric content. While no such lawsuits have been filed in Michigan, critics of this kind of lawsuit believe that proactive legislation is necessary.

### **THE CONTENT OF THE BILL:**

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 a health condition associated with weight gain or obesity. 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 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 a permitted civil 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) 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 upon a motion from the plaintiff, a party to the action with actual notice of the allegations in the complaint would have to tender to the court in camera 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 or that could lead to the discovery of relevant facts.

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

### ***ARGUMENTS:***

#### ***For:***

The following is excerpted from or based on written testimony provided to the House Committee on Commerce by the Michigan Lawsuit Abuse Watch.

The restriction of lawsuits provided by this bill is the common sense thing to do and would be a victory for those who believe in personal responsibility.

The threat of obesity-related litigation has become a serious problem for those who provide food for families. So serious that in the past year, legislatures in ten other states have approved bills aimed at pre-empting the ability to file such suits. . . Michigan families could have fewer food choices in the future if the legislature does not approve reasonable limits on obesity-related lawsuits. The negative effects would not be limited to consumers but [would also affect] those who rely on the food industry for their livelihood. [The bill] does a good job of keeping the responsibility for the obvious consequences of one's eating decisions where it belongs, with each individual.

As to whether public policy in this area should be set by the courts [or by the legislature]: The people of Michigan will be best served by having this important public policy question settled under the bright spotlight provided in [the] legislature, not by some court behind closed doors.

There is precedent for providing special protection . . . to one industry. The legislature has found it necessary from time to time to single out specific industries or situations for protection from lawsuits. The ski industry and the horse industry have already been granted special protections: the people of Michigan understand the potential consequences of overeating just as well as they understand the potential consequences of skiing down a hill or riding a horse.

Providing protection before any lawsuits are filed is not “jumping the gun”. The legislature would do well to nip this problem in the bud and allow all those who provide food choices to Michigan’s families to do so without the constant threat of frivolous obesity lawsuits hanging over their heads. It is not uncommon . . . [for people] to spend their life savings to win a lawsuit that should never have been filed in the first place. There are numerous examples of industries that have been hurt because legislative bodies waited too long to act: [for example] 13 of the 14 companies that manufactured brain shunts decided to leave the business because of lawsuits. Eventually, Congress enacted legislation to eliminate that lawsuit problem . . . but they could have and should have acted earlier.

***Against:***

The following is excerpted from or based on written testimony provided to the House Committee on Commerce by the Michigan Trial Lawyers Association.

To our knowledge, there has not been one single “obesity” suit brought in Michigan. Indeed, there have been only a handful of lawsuits nationwide. All of them have been dismissed. There is no evidence the legal system in Michigan is not working. Instead, there is evidence that what is not working is the [failure] to focus on the very real health issues associated with obesity, which is close to outranking tobacco as the leading cause of preventable death. We find the PR effort to shift the focus from high fat, high caloric foods to tired attacks on the legal system to be disingenuous. The Legislature and society should focus on preventing the sale of fatty, sugar-laden products in our nation’s schools or requiring that fast food manufacturers provide nutritional information on the food they sell.

The current legal system in Michigan has a number of procedures that defendants in civil lawsuits are afforded which protects them not only from law suits without merit but also many valid ones. Whatever potential exposure to liability remaining in Michigan may have a beneficial impact on motivating the fast food industry to think twice before selling unhealthy or dangerous food products. . . The Legislature’s time may be better spent focusing on making public policy that could retard the emerging epidemic of obesity than trying to stop litigation that does not exist and that our courts are suited to handle, if it ever does. . . The bill has little or nothing to do with encouraging personal responsibility and everything to do with encouraging corporate irresponsibility.

The trial lawyers also noted that the state already has a stringent products liability statute and argued that existing time-tested court procedures ensure that defendants are treated fairly. It is up to the courts to decide if a case is frivolous. The fact that the cases in

question have all been dismissed is proof positive that the system works. They also said that since the coverage of obesity lawsuits began, fast food chains and junk food producers have taken responsibility for their product. They note that the most recent lawsuit against McDonald's was dismissed in September [and] what followed was a sudden wave of corporate responsibility. McDonald's will now offer a "Go Active Meal" for adults modeled after the children's Happy Meal. It will contain a healthy salad along with exercise tools. Other similar examples were also cited.

***POSITIONS:***

Among those indicating support for the bill to the House Committee on Commerce were Michigan Lawsuit Abuse Watch, the Michigan Restaurant Association, Michigan Soft Drink Association, the Michigan Retailers Association, the Michigan Chamber of Commerce, the National Federation of Independent Business – Michigan, the Michigan Grocers Association, and the Michigan Distributors and Vendors Association. (5-11-04)

The Michigan Trial Lawyers Association is opposed to the bill. (5-11-04)

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■ 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.