



Senate Fiscal Agency  
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## BILL ANALYSIS

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House Bill 5809 (Substitute H-2 as passed by the House)

Sponsor: Representative David Palsrok

House Committee: Commerce

Senate Committee: Commerce and Labor

Date Completed: 6-29-04

**CONTENT**

**The bill would amend the Revised Judicature Act to do all of the following:**

- Provide immunity from civil liability to certain entities involved in the manufacture, distribution, and marketing of food, for injury or death arising out of weight gain or obesity.**
- Allow an action against those entities under circumstances involving adulteration, misbranding, or a willful violation of law, and specify requirements for a complaint.**
- Prohibit a political subdivision of the State from filing, prosecuting, or joining a civil action allowed under the bill, on its own behalf or on behalf of its citizens or another class of persons.**

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

Specifically, except as provided below, a food manufacturer, packer, distributor, carrier, holder, seller, marketer, promoter, or advertiser, or an association that included one or more of those entities, would not be subject to civil liability for personal injury or death arising out of weight gain, obesity, or a health condition associated with weight gain or obesity.

This provision would not preclude civil liability for personal injury or death based on either of the following that proximately caused injury or death:

- A material violation of an adulteration or misbranding requirement prescribed by a State or Federal law or regulation.
- A knowing and willful material violation of State or Federal law that applied to food manufacturing, marketing, distribution, advertising, labeling, or sale.

(Under the bill, "knowing and willful", with respect to a violation of Federal or State law, would mean that the conduct was committed with the intent to deceive or injure consumers or with actual knowledge that the conduct was injurious to consumers, and that 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 allowed under the bill, the complaint would have to state with particularity all of the following:

- The State or Federal statute, regulation, or other law that allegedly was violated.
- The facts that were alleged to constitute a material violation of the statute, regulation, or law.
- The facts alleged to demonstrate that the violation proximately caused actual injury to the plaintiff or individual on whose behalf the plaintiff brought the action.
- 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, if the claim were based on a knowing and willful material violation of Federal or State law that applied to the manufacturing, marketing, distributing, advertising, labeling, or sale of food.

In an action allowed under the bill, all discovery and other proceedings would have to be stayed while a motion to dismiss was pending, unless the court found on the motion of a party that particularized discovery was necessary to preserve evidence or to prevent undue prejudice to that party. While discovery was stayed, unless the court ordered otherwise upon a motion from the plaintiff, a party to the action with actual notice of the allegations would have to tender to the court, in camera (i.e., in chambers; in private), all documents, data compilations, including electronically recorded or stored data, and tangible objects that were in the party's custody or control and that were relevant to the allegations or that could lead to the discovery of relevant facts.

Proposed MCL 600.2974

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

To the extent that the bill would limit the number of civil liability suits filed in Michigan courts, it could prevent additional costs for the judicial branch.

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.