

SUBSTITUTE FOR

HOUSE BILL NO. 5809

(As amended May 19, 2004)

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
(MCL 600.101 to 600.9947) by adding section 2974.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 2974. (1) Subject to subsection (2), a manufacturer,  
2 packer, distributor, carrier, holder, seller, marketer, [promoter,] or  
3 advertiser of a food or an association that includes 1 or more  
4 manufacturers, packers, distributors, carriers, holders, sellers,  
5 marketers, [promoters,] or advertisers of a food is not subject to civil  
6 liability for personal injury or death arising out of weight  
7 gain, obesity, or a health condition associated with weight gain  
8 or obesity.

9       (2) Subsection (1) does not preclude civil liability for  
10 personal injury or death based on either of the following:

11       (a) A material violation of an adulteration or misbranding

1 requirement prescribed by a statute or regulation of this state  
2 or the United States that proximately caused the injury or  
3 death.

4 (b) A knowing and willful material violation of federal or  
5 state law applicable to the manufacturing, marketing,  
6 distribution, advertising, labeling, or sale of food that  
7 proximately caused the injury or death.

8 (3) In an action for civil liability described in subsection  
9 (2), the complaint shall state with particularity all of the  
10 following:

11 (a) The statute, regulation, or other law of this state or  
12 the United States that was allegedly violated.

13 (b) The facts that are alleged to constitute a material  
14 violation of the statute, regulation, or law.

15 (c) The facts alleged to demonstrate that the violation  
16 proximately caused actual injury to the plaintiff or individual  
17 on whose behalf the plaintiff is bringing the action.

18 (d) If the plaintiff claims that subsection (2)(b) applies,  
19 facts sufficient to support a reasonable inference that the  
20 conduct was committed with intent to deceive or injure consumers  
21 or with the actual knowledge that the conduct was injurious to  
22 consumers.

23 (4) In an action for civil liability described in subsection  
24 (2), all discovery and other proceedings shall be stayed while a  
25 motion to dismiss is pending unless the court finds on motion of  
26 a party that particularized discovery is necessary to preserve  
27 evidence or to prevent undue prejudice to that party. While

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1 discovery is stayed under this subsection, unless otherwise  
2 ordered by the court upon a motion from the plaintiff, a party to  
3 the action with actual notice of the allegations in the complaint  
4 shall tender to the court in camera all documents, data  
5 compilations, including electronically recorded or stored data,  
6 and tangible objects that are in the custody or control of the  
7 party and that are relevant to the allegations or that may lead  
8 to the discovery of relevant facts.

[(5) A political subdivision of this state shall not file,  
prosecute, or join, on its own behalf or on behalf of its citizens or  
another class of persons, a civil action described in this section for  
damages or other remedy against a person.]

9 [(6)] This section applies to all actions pending on and all  
10 actions filed after the effective date of the amendatory act that  
11 added this section, regardless of when the claim accrued.

12 [(7)] As used in this section:

13 (a) "Food" means that term as defined in 21 USC 321.

14 (b) "Knowing and willful" means, with respect to a violation  
15 of federal or state law, that both of the following apply to the  
16 conduct constituting the violation:

17 (i) The conduct was committed with the intent to deceive or  
18 injure consumers or with actual knowledge that the conduct was  
19 injurious to consumers.

20 (ii) The conduct was not required by a regulation, order,  
21 Rule, or other pronouncement of, or a statute administered by, a  
22 federal, state, or local government agency.

[(c) "Person" means an individual, partnership, corporation,  
association, or other legal entity.]

[(d) "Political subdivision" means a county, city, township, or  
village.]