

# HOUSE BILL No. 5809

April 22, 2004, Introduced by Reps. Palsrok, DeRossett, Bisbee, Drolet, Milosch, Wenke, Palmer, Vander Veen, Mortimer, Shulman, Hoogendyk, Ward, Tabor, Stahl, Sheen, Shackleton, Shaffer, Casperson, Amos, Pastor, Brandenburg, Garfield, Hune, Stakoe, Hummel, Pappageorge, Ehardt, Nofs, Farhat, Emmons, Middaugh, Woronchak, DeRoche, Bradstreet, Hager, Meyer, Kooiman, LaJoy, Walker, Moolenaar, Steil, Richardville, Acciavatti, Gaffney, Pumford, Julian, Newell, Caswell, Rocca, Ruth Johnson, Huizenga, Robertson, Nitz and Hart and referred to the Committee on Commerce.

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, or  
3 advertiser of a food or an association that includes 1 or more  
4 manufacturers, packers, distributors, carriers, holders, sellers,  
5 marketers, or advertisers of a food is not subject to civil  
6 liability for personal injury or death arising out of weight  
7 gain, obesity, a health condition associated with weight gain or  
8 obesity, or other generally known condition allegedly caused by  
9 or allegedly likely to result from long-term consumption of  
10 food.

11       (2) Subsection (1) does not preclude civil liability for

1 personal injury or death based on either of the following:

2 (a) A material violation of an adulteration or misbranding  
3 requirement prescribed by a statute or regulation of this state  
4 or the United States that proximately caused the injury or  
5 death.

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

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

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

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

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

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

25 (4) In an action for civil liability described in subsection  
26 (2), all discovery and other proceedings shall be stayed while a  
27 motion to dismiss is pending unless the court finds on motion of

1 a party that particularized discovery is necessary to preserve  
2 evidence or to prevent undue prejudice to that party. While  
3 discovery is stayed under this subsection, unless otherwise  
4 ordered by the court, a party to the action with actual notice of  
5 the allegations in the complaint shall treat all documents, data  
6 compilations, including electronically recorded or stored data,  
7 and tangible objects that are in the custody or control of the  
8 party and that are relevant to the allegations as if they were  
9 the subject of a continuing request for production of documents  
10 or things from an opposing party under the court rules.

11 (5) This section applies to all actions pending on and all  
12 actions filed after the effective date of the amendatory act that  
13 added this section, regardless of when the claim accrued.

14 (6) As used in this section:

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

16 (b) "Generally known condition allegedly caused by or  
17 allegedly likely to result from long-term consumption" means a  
18 condition generally known to result or to be likely to result  
19 from the cumulative effect of consumption, not from a single  
20 instance of consumption.

21 (c) "Knowing and willful" means, with respect to a violation  
22 of federal or state law, that both of the following apply to the  
23 conduct constituting the violation:

24 (i) The conduct was committed with the intent to deceive or  
25 injure consumers or with actual knowledge that the conduct was  
26 injurious to consumers.

27 (ii) The conduct was not required by a regulation, order,

1 rule, or other pronouncement of, or a statute administered by, a  
2 federal, state, or local government agency.