

BILL ANALYSIS

C.S.H.B. 107
By: Van Arsdale
Civil Practices
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Fourteen states across the country have enacted frivolous lawsuit/personal responsibility legislation on the obesity issue. Texas is among twelve states now considering this type of legislation, which will prohibit a person from bringing a civil action against a manufacturer, seller, or trade association for damages resulting from weight gain or obesity due to long-term consumption of a food product.

The bill does not preclude a person from filing a suit when a manufacturer or seller has knowingly and willingly violated a federal or state statute regarding such things as labeling, marketing, or selling a food product. CSHB 107 is a necessary and pre-emptive strike against obesity litigation cases in Texas and will further the progress made on tort reform issues during the 78th Session.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

CSHB 107 amends Title 6, Civil Practice and Remedies Code, by adding Chapter 138 entitled "PERSONAL RESPONSIBILITY FOR FOOD CONSUMPTION" to prohibit civil actions against manufacturers, sellers, trade associations, livestock or agricultural producers for damages resulting from an individual's long-term consumption of food and subsequent weight gain or obesity or a health condition associated with weight gain or obesity. Allows for suits in an action where a manufacturer or seller of a food knowingly and willfully violates a federal or state statute, including under Section 17.47 of the Health & Safety Code or Chapter 431, Health & Safety Code. Defines requirements for pleadings and what must be included in the suit, as well as requirements for documents under discovery and the pendency of any stay of discovery unless otherwise ordered by the court.

CSHB 107 states that a court shall immediately dismiss any pending action if the action was filed after June 1, 2005; and could not be brought under Ch. 138 of the Civil Practices Code as added by this bill.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

CSHB 107 adds definitions for agricultural commodity, agricultural producer, livestock and livestock producer. Clarifies the definition of food to coincide with existing state law and provides exclusions to the definition. The introduced version had used the definition of food under the Federal Food, Drug & Cosmetic Act.

Adds livestock and agricultural producers to the list of entities that are protected under the legislation. Deletes text regarding an action brought for breach of express contract or warranty or actions brought under federal acts.

Removes language instructing a court to dismiss such actions with prejudice and replaces it with language regarding actions brought under the Health and Safety Code (Ch. 431) or by the Texas Attorney General under Section 17.47 of the Business & Commerce Code. Adds language on discovery and other proceedings to be stayed during the pendency of any motion.

CSHB 107 adds language regarding cases in which a court is to dismiss pending action under its jurisdiction, specifically if the action is filed on or after June 1, 2005.