

By: Van Arsdale, et al.

H.B. No. 107

Substitute the following for H.B. No. 107:

By: Talton

C.S.H.B. No. 107

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting actions brought against certain persons alleging injury relating to an individual's weight gain, obesity, or any health condition associated with weight gain or obesity.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 138 to read as follows:

CHAPTER 138. PERSONAL RESPONSIBILITY FOR FOOD CONSUMPTION

Sec. 138.001. DEFINITIONS. In this chapter:

(1) "Agricultural commodity" has the meaning assigned by Section 41.002, Agriculture Code.

(2) "Agricultural producer" means any producer of an agricultural commodity.

(3) "Food" has the definition assigned by Section 431.002, Health and Safety Code. "Food" does not include:

(A) a cosmetic, as defined by Section 321(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321(i));

(B) a drug, as defined by Section 321(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321(g)), whether prescription or over-the-counter; or

(C) a dietary supplement, as defined by Section 321(ff) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321(ff)).

1 (4) "Livestock" has the meaning assigned by Section
2 1.003, Agriculture Code.

3 (5) "Livestock producer" means any producer of
4 livestock.

5 (6) "Manufacturer" means a person lawfully engaged, in
6 the regular course of the person's trade or business, in
7 manufacturing a food.

8 (7) "Seller" means a person lawfully engaged, in the
9 regular course of the person's trade or business, in marketing,
10 distributing, advertising, or selling a food.

11 (8) "State" includes each state of the United States,
12 the District of Columbia, the Commonwealth of Puerto Rico, the
13 Virgin Islands, Guam, American Samoa, and the Commonwealth of the
14 Northern Mariana Islands and any other territory or possession of
15 the United States and any political subdivision of any of those
16 places.

17 (9) "Trade association" means any association or
18 business organization, whether or not incorporated under federal or
19 state law, that is not operated for profit and two or more members
20 of which are manufacturers, marketers, distributors, advertisers,
21 or sellers of a food.

22 Sec. 138.002. CIVIL ACTION PROHIBITED. (a) Except as
23 otherwise provided by this section, a manufacturer, seller, trade
24 association, livestock producer, or agricultural producer is not
25 liable under any law of this state for any claim arising out of
26 weight gain or obesity, a health condition associated with weight
27 gain or obesity, or any other generally known condition allegedly

1 caused by or allegedly likely to result from the long-term
2 consumption of food, including:

3 (1) an action brought by a person other than the
4 individual on whose weight gain, obesity, or health condition the
5 action is based; and

6 (2) any derivative action brought by or on behalf of
7 any individual or any representative, spouse, parent, child, or
8 other relative of any individual.

9 (b) This section does not prohibit a person from bringing:

10 (1) an action in which:

11 (A) a manufacturer or seller of a food knowingly
12 and wilfully violates a federal or state statute applicable to the
13 manufacturing, marketing, distribution, advertisement, labeling,
14 or sale of the food; and

15 (B) the violation is a proximate cause of injury
16 related to an individual's weight gain or obesity or any health
17 condition associated with an individual's weight gain or obesity;
18 or

19 (2) an action brought:

20 (A) under Chapter 431, Health and Safety Code; or

21 (B) by the attorney general under Section 17.47,
22 Business & Commerce Code.

23 Sec. 138.003. PLEADINGS. In an action described in Section
24 138.002(b)(1), the initiating petition must state with
25 particularity:

26 (1) the federal and state statutes allegedly
27 violated; and

1 (2) the facts that are alleged to have proximately
2 caused the injury claimed.

3 Sec. 138.004. STAY. (a) For an action described by Section
4 138.002(b), all discovery and other proceedings are stayed during
5 the pendency of any motion to dismiss unless the court finds on
6 motion of any party that particularized discovery is necessary to
7 preserve evidence or to prevent undue prejudice to that party.

8 (b) During the pendency of any stay of discovery, unless
9 otherwise ordered by the court, any party to the action with actual
10 notice of the allegations contained in the petition shall treat all
11 documents, data compilations, including electronically recorded or
12 stored data, and tangible objects that are in the custody or control
13 of the person and that are relevant to the allegations, as if they
14 were the subject of a continuing request for production of
15 documents from an opposing party under the applicable rules of
16 civil procedure.

17 (c) A party aggrieved by the wilful failure of an opposing
18 party to comply with this section may apply to the court for an
19 order awarding appropriate sanctions.

20 SECTION 2. A court shall immediately dismiss any pending
21 action under its jurisdiction that:

22 (1) was filed on or after June 1, 2005; and

23 (2) under Chapter 138, Civil Practice and Remedies
24 Code, as added by this Act, could not be brought before the court.

25 SECTION 3. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

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- 1 Act does not receive the vote necessary for immediate effect, this
- 2 Act takes effect September 1, 2005.