

A BILL TO BE ENTITLED

AN ACT

1
2 relating to prohibiting actions brought against certain persons
3 alleging injury relating to an individual's weight gain, obesity,
4 or any health condition associated with weight gain or obesity.

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

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

8 CHAPTER 138. PERSONAL RESPONSIBILITY FOR FOOD CONSUMPTION

9 Sec. 138.001. DEFINITIONS. In this chapter:

10 (1) "Food" has the definition assigned that term by
11 Section 201(f) of the Federal Food, Drug, and Cosmetic Act (21
12 U.S.C. Section 321(f)).

13 (2) "Manufacturer" means a person lawfully engaged, in
14 the regular course of the person's trade or business, in
15 manufacturing a food in interstate or foreign commerce.

16 (3) "Seller" means a person lawfully engaged, in the
17 regular course of the person's trade or business, in marketing,
18 distributing, advertising, or selling a food in interstate or
19 foreign commerce.

20 (4) "State" includes each of the several states of the
21 United States, the District of Columbia, the Commonwealth of Puerto
22 Rico, the Virgin Islands, Guam, American Samoa, and the
23 Commonwealth of the Northern Mariana Islands, and any other
24 territory or possession of the United States, and any political

1 subdivision of any of those places.

2 (5) "Trade association" means any association or
3 business organization, whether or not incorporated under federal or
4 state law, that is not operated for profit, and two or more members
5 of which are manufacturers, marketers, distributors, advertisers,
6 or sellers of a food.

7 Sec. 138.002. CIVIL ACTION PROHIBITED. (a) Except as
8 otherwise provided by this section, a person may not bring in any
9 state court a civil action against a manufacturer or seller of a
10 food, or a trade association, for damages, penalties, declaratory
11 judgment, injunctive or declaratory relief, restitution, or other
12 relief arising out of, related to, or resulting in injury or
13 potential injury resulting from an individual's consumption of a
14 food and weight gain, obesity, or any health condition that is
15 associated with an individual's weight gain or obesity, including:

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

19 (2) any derivative action brought by or on behalf of
20 any individual or any representative, spouse, parent, child, or
21 other relative of any individual.

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

23 (1) an action in which:

24 (A) a manufacturer or seller of a food knowingly
25 and wilfully violates a federal or state statute applicable to the
26 manufacturing, marketing, distribution, advertisement, labeling,
27 or sale of the food; and

1 (B) the violation is a proximate cause of injury
2 related to an individual's weight gain, obesity, or any health
3 condition associated with an individual's weight gain or obesity;

4 (2) an action for breach of express contract or
5 express warranty in connection with the purchase of a food; or

6 (3) an action brought under:

7 (A) the Federal Trade Commission Act (15 U.S.C.
8 Section 41 et seq.); or

9 (B) the Federal Food, Drug, and Cosmetic Act (21
10 U.S.C. Section 301 et seq.).

11 (c) A court shall dismiss with prejudice an action that a
12 person is prohibited from bringing under this section.

13 Sec. 138.003. PLEADINGS. In an action described in Section
14 138.002(b)(1), the initiating petition must state with
15 particularity:

16 (1) the federal and state statutes allegedly violated;
17 and

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

20 SECTION 2. (a) Subject to Subsection (b) of this section, a
21 court shall immediately dismiss any pending action under its
22 jurisdiction that, under Chapter 138, Civil Practice and Remedies
23 Code, as added by this Act, could not be brought before it.

24 (b) For an action described by Section 138.002(b)(1) or (2),
25 Civil Practice and Remedies Code, as added by this Act, all
26 discovery and other proceedings are stayed during the pendency of
27 any motion to dismiss unless the court finds on motion of any party

1 that particularized discovery is necessary to preserve evidence or
2 to prevent undue prejudice to that party. During the pendency of
3 any stay of discovery, unless otherwise ordered by the court, any
4 party to the action with actual notice of the allegations contained
5 in the petition shall treat all documents, data compilations,
6 including electronically recorded or stored data, and tangible
7 objects that are in the custody or control of the person and that
8 are relevant to the allegations, as if they were the subject of a
9 continuing request for production of documents from an opposing
10 party under the applicable rules of civil procedure. A party
11 aggrieved by the wilful failure of an opposing party to comply with
12 this subsection may apply to the court for an order awarding
13 appropriate sanctions.

14 SECTION 3. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect September 1, 2005.