

1-1 By: Van Arsdale, et al. (Senate Sponsor - Carona) H.B. No. 107  
1-2 (In the Senate - Received from the House May 10, 2005;  
1-3 May 12, 2005, read first time and referred to Committee on State  
1-4 Affairs; May 20, 2005, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;  
1-6 May 20, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 107 By: Armbrister

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to prohibiting actions brought against certain persons  
1-11 alleging injury relating to an individual's weight gain, obesity,  
1-12 or any health condition associated with weight gain or obesity.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Title 6, Civil Practice and Remedies Code, is  
1-15 amended by adding Chapter 138 to read as follows:

1-16 CHAPTER 138. PERSONAL RESPONSIBILITY FOR FOOD CONSUMPTION

1-17 Sec. 138.001. DEFINITIONS. In this chapter:

1-18 (1) "Agricultural commodity" has the meaning assigned  
1-19 by Section 41.002, Agriculture Code.

1-20 (2) "Agricultural producer" means any producer of an  
1-21 agricultural commodity.

1-22 (3) "Food" has the definition assigned by Section  
1-23 431.002, Health and Safety Code. "Food" does not include:

1-24 (A) a cosmetic, as defined by Section 321(i) of  
1-25 the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321  
1-26 (i));

1-27 (B) a drug, as defined by Section 321(g) of the  
1-28 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321(g)),  
1-29 whether prescription or over-the-counter; or

1-30 (C) a dietary supplement, as defined by Section  
1-31 321(ff) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.  
1-32 Section 321(ff)).

1-33 (4) "Livestock" has the meaning assigned by Section  
1-34 1.003, Agriculture Code.

1-35 (5) "Livestock producer" means any producer of  
1-36 livestock.

1-37 (6) "Manufacturer" means a person lawfully engaged, in  
1-38 the regular course of the person's trade or business, in  
1-39 manufacturing a food.

1-40 (7) "Seller" means a person lawfully engaged, in the  
1-41 regular course of the person's trade or business, in marketing,  
1-42 distributing, advertising, or selling a food.

1-43 (8) "State" includes each state of the United States,  
1-44 the District of Columbia, the Commonwealth of Puerto Rico, the  
1-45 Virgin Islands, Guam, American Samoa, and the Commonwealth of the  
1-46 Northern Mariana Islands and any other territory or possession of  
1-47 the United States and any political subdivision of any of those  
1-48 places.

1-49 (9) "Trade association" means any association or  
1-50 business organization, whether or not incorporated under federal or  
1-51 state law, that is not operated for profit and two or more members  
1-52 of which are manufacturers, marketers, distributors, advertisers,  
1-53 or sellers of a food.

1-54 Sec. 138.002. CIVIL ACTION PROHIBITED. (a) Except as  
1-55 otherwise provided by this section, a manufacturer, seller, trade  
1-56 association, livestock producer, or agricultural producer is not  
1-57 liable under any law of this state for any claim arising out of  
1-58 weight gain or obesity, a health condition associated with weight  
1-59 gain or obesity, or any other generally known condition allegedly  
1-60 caused by or allegedly likely to result from the long-term  
1-61 consumption of food, including:

1-62 (1) an action brought by a person other than the  
1-63 individual on whose weight gain, obesity, or health condition the

2-1 action is based; and

2-2 (2) any derivative action brought by or on behalf of  
2-3 any individual or any representative, spouse, parent, child, or  
2-4 other relative of any individual.

2-5 (b) This section does not prohibit a person from bringing:

2-6 (1) an action in which:

2-7 (A) a manufacturer or seller of a food knowingly  
2-8 and wilfully violates a federal or state statute applicable to the  
2-9 manufacturing, marketing, distribution, advertisement, labeling,  
2-10 or sale of the food; and

2-11 (B) the violation is a proximate cause of injury  
2-12 related to an individual's weight gain or obesity or any health  
2-13 condition associated with an individual's weight gain or obesity;  
2-14 or

2-15 (2) an action brought:

2-16 (A) under Chapter 431, Health and Safety Code; or

2-17 (B) by the attorney general under Section 17.47,  
2-18 Business & Commerce Code.

2-19 (c) This section does not create a cause of action.

2-20 Sec. 138.003. PLEADINGS. In an action described in Section  
2-21 138.002(b)(1), the initiating petition must state with  
2-22 particularity:

2-23 (1) the federal and state statutes allegedly  
2-24 violated; and

2-25 (2) the facts that are alleged to have proximately  
2-26 caused the injury claimed.

2-27 Sec. 138.004. STAY. (a) For an action described by Section  
2-28 138.002(b), all discovery and other proceedings are stayed during  
2-29 the pendency of any motion to dismiss unless the court finds on  
2-30 motion of any party that particularized discovery is necessary to  
2-31 preserve evidence or to prevent undue prejudice to that party.

2-32 (b) During the pendency of any stay of discovery, unless  
2-33 otherwise ordered by the court, any party to the action with actual  
2-34 notice of the allegations contained in the petition shall treat all  
2-35 documents, data compilations, including electronically recorded or  
2-36 stored data, and tangible objects that are in the custody or control  
2-37 of the person and that are relevant to the allegations, as if they  
2-38 were the subject of a continuing request for production of  
2-39 documents from an opposing party under the applicable rules of  
2-40 civil procedure.

2-41 (c) A party aggrieved by the wilful failure of an opposing  
2-42 party to comply with this section may apply to the court for an  
2-43 order awarding appropriate sanctions.

2-44 SECTION 2. A court shall immediately dismiss any pending  
2-45 action under its jurisdiction that:

2-46 (1) was filed on or after June 1, 2005; and

2-47 (2) under Chapter 138, Civil Practice and Remedies  
2-48 Code, as added by this Act, could not be brought before the court.

2-49 SECTION 3. This Act takes effect immediately if it receives  
2-50 a vote of two-thirds of all the members elected to each house, as  
2-51 provided by Section 39, Article III, Texas Constitution. If this  
2-52 Act does not receive the vote necessary for immediate effect, this  
2-53 Act takes effect September 1, 2005.

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