

SUBJECT: Barring lawsuits alleging injuries related to obesity or weight gain

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 7 ayes — Nixon, Rose, Madden, Raymond, Strama, Talton, Woolley

0 nays

2 absent — P. King, Martinez Fischer

WITNESSES: None

DIGEST: CSHB 107 would add ch. 138, Personal Responsibility for Food Consumption, to the Civil Practice and Remedies Code. Chapter 138 would bar lawsuits against a manufacturer, seller, trade association, livestock producer, or agricultural producer for any claim arising from weight gain or obesity or a health condition associated with weight gain or obesity. Actions brought by a person other than, or actions brought by or on behalf of, the person who claimed weight gain or obesity also would be barred, as would similar actions brought by such a person's spouse or relative. Claims involving damages arising from obesity-related injuries caused by cosmetics, medicine, or dietary supplements would not be barred.

The bill would not prohibit a claim alleging that a manufacturer or seller knowingly and willfully violated a federal or state law related to manufacturing, marketing, distribution, advertisement, labeling, or sale of a food if the violation were a cause of the person's obesity-related injury. A person bringing such a claim would have to state in the initial petition the federal and state statutes allegedly violated and the facts alleged to have caused the plaintiff's injury.

CSHB 107 would not bar an action under ch. 431, Texas Food, Drug, and Cosmetic Act, of the Health and Safety Code, or a request by the attorney general for a restraining order in relation to deceptive trade practices.

For a claim permitted by the bill, discovery would be stayed if a motion to dismiss were brought, unless the court found that certain discovery was necessary to preserve evidence or to prevent undue prejudice. While

discovery was stayed, all parties would treat all documents, data compilations, and tangible objects in the control of that party and relevant as if those items were the subject of a continuing request for document production. If a party willfully failed to comply with these requirements, an aggrieved party could apply to the court for an order awarding sanctions.

The bill would require a court to dismiss any pending action filed on or after June 1, 2005, that would be barred by the bill.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

**SUPPORTERS
SAY:**

Frivolous claims alleging obesity or weight gain recently have been filed in the United States. CSHB 107 would bar such claims, assuring that no manufacturer, seller, trade association, livestock producer, or agricultural producer would be liable on this frivolous basis.

Individuals ultimately are responsible for the food and nutrition choices they make, and excessive litigation restricts the range of choices that otherwise would be available to individuals who consume products responsibly. Seeking to change regulation of the food industry, not through new laws or regulations but through lawsuits, undermines the balance of personal responsibility for one's food choices and the supplier's right to provide those choices. CSHB 107 would affirm that each individual must assume responsibility for his or her own food choices.

The bill would not bar claims against a manufacturer or seller who knowingly and willingly had violated a federal or state law on the manufacturing, marketing, distribution, advertisement, labeling, or sale of a food.

**OPPONENTS
SAY:**

Young children should not be held to the same standard of personal responsibility in food choices as adults. Children are not personally accountable for their food choices in the same way that adults are because children do not have the capacity to make educated nutritional decisions. Many food companies take advantage of this fact by marketing unhealthy food specifically to children. Food companies should not have immunity from suit for intentionally enticing children to eat unhealthy food.

Only a few obesity-related suits against food companies have been brought in the entire country, and almost all of those suits have been dismissed in summary judgment proceedings. These lawsuits are not a serious problem, and courts are handling these suits effectively without legislative meddling. The bill is a solution in search of a problem that does not exist.

Corporations are much too quick to condemn lawsuits filed against them as frivolous. If a lawsuit truly were frivolous, a judge would dismiss it. Legislative intervention in the form of blanket immunity is not necessary. Consumers are entitled to due process, which CSHB 107 would deny to them. The Legislature should not interfere with the job of the courts.

NOTES:

The bill as introduced used the definition of food under the Federal Food, Drug, and Cosmetic Act. The substitute uses the definition provided in Health and Safety Code, sec. 431.002. The substitute added definitions for agricultural commodity, agricultural producer, livestock, and livestock producer and added agricultural and livestock producers to the list of entities immune from liability.

The bill as introduced would not have prohibited actions for breach of express contract or express warranty in connection with the purchase of food or actions brought under the Federal Trade Commission Act or the Federal Food, Drug, and Cosmetic Act. The substitute would allow actions brought under the Texas Food, Drug, and Cosmetic Act and restraining orders brought by the attorney general for deceptive trade practices.

The bill as introduced did not have a section regulating discovery, and it would have instructed a court to dismiss with prejudice a claim barred by ch. 138. The substitute would instruct a court to dismiss any pending action filed on or after June 1, 2005, that would be barred by the bill.