

BILL ANALYSIS

Senate Research Center
79R8354 DAK-F

H.B. 107
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State Affairs
5/14/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Eighteen states have enacted frivolous lawsuit/personal responsibility legislation on the obesity issue. Texas is among the sixteen states now considering this type of legislation, prohibiting 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.

H.B. 107 does not preclude a person from filing a suit when a manufacturer or seller has knowingly and willingly violated federal or state statute regarding issues such as labeling, marketing, or selling a food product.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 138, as follows:

CHAPTER 138. PERSONAL RESPONSIBILITY FOR FOOD CONSUMPTION

Sec. 138.001. DEFINITIONS. Defines "agricultural commodity," "agricultural producer," "food," "livestock," "livestock producer," "manufacturer," "seller," "state," and "trade association."

Sec. 138.002. CIVIL ACTION PROHIBITED. (a) Provides that, except as otherwise provided by this section, a manufacturer, seller, trade association, livestock producer, or agricultural producer is not liable under any law of this state for any claim arising out of weight gain or obesity, a health condition associated with weight gain or obesity, or any other generally known condition allegedly caused by or allegedly likely to result from the long-term consumption of food, including an action brought by a person other than the individual on whose weight gain, obesity, or health condition the action is based, or any derivative action brought by or on behalf of any individual or any representative, spouse, parent, child, or other relative of any individual.

(b) Provides that this section does not prohibit a person from bringing an action in which certain conditions are met, or an action brought under Chapter 431, Health and Safety Code, or by the attorney general under Section 17.47 (Restraining Orders), Business & Commerce Code.

Sec. 138.003. PLEADINGS. Specifies certain information that must be stated, with particularity, in the initiating petition in an action described in Section 138.002(b)(1).

Sec. 138.004. STAY. (a) Provides that, for any action described by Section 138.002(b), all discovery and other proceedings are stayed during the pendency of any motion to dismiss unless the court makes a certain finding.

(b) Requires any party to the action with actual notice of the allegations contained in the petition, during the pendency of any stay of discovery, unless otherwise

ordered by the court, to treat certain documents, data compilations, and tangible objects that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the applicable rules of civil procedure.

(c) Authorizes a party aggrieved by the wilful failure of an opposing party to comply with this section to apply to the court for an order awarding appropriate sanctions.

SECTION 2. Requires a court to immediately dismiss any pending action under its jurisdiction that was filed on or after June 1, 2005, and that under Chapter 138, Civil Practice and Remedies Code, as added by this Act, could not be brought before the court.

SECTION 3. Effective date: upon passage or September 1, 2005.