

CHAPTER 137
SENATE BILL No. 75°

AN ACT concerning civil procedure; relating to immunity from liability
for claims relating to weight gain or obesity.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) Except as provided in subsection (b), a manufacturer, producer, packer, distributor, carrier, holder, seller, marketer, or advertiser of a food (as defined in Section 201 (f) of the federal food, drug and cosmetic act (21 U.S.C. 321 (f)) as of the effective date of this act), or an association of one or more such entities, shall not be subject to civil liability for any claim arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food.

(b) Subsection (a) shall not preclude civil liability where the claim of weight gain, obesity, health condition associated with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food is based on:

(1) A material violation of an adulteration or misbranding requirement prescribed by statute or rules and regulations of this state or of the United States and the claimed injury was proximately caused by such violation; or

(2) any other material violation of the federal food, drug and cosmetic act as of the effective date of this act or state law applicable to the manufacturing, marketing, distribution, advertising, labeling or sale of food, provided that such violation is knowing and willful and the claimed injury was proximately caused by such violation.

(c) As used in this section:

(1) "Claim" means any claim by or on behalf of a natural person, as well as any other claim lawfully asserted by or on behalf of such person.

(2) "Generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food" means a condition generally known to result or reasonably likely to result from the cumulative effect of consumption of food. For the purposes of this definition only, the term "food" shall not include a food additive (as defined in Section 201(s) of the federal food, drug and cosmetic act (21 U.S.C. 321(s)) as of the effective date of this act.

(3) "Knowing and willful" means that: (A) The conduct constituting the violation was committed with the intent to deceive or injure consumers or with actual knowledge that such conduct was injurious to consumers; and (B) the conduct constituting the violation was not required by state, federal, or local laws, rules and regulations, resolutions or ordinances.

(d) In any action exempted under subsection (b), the complaint initiating such action shall state with particularity the following: The statute, rules and regulations or other law of this state or of the United States that was allegedly violated; the facts that are alleged to constitute a material violation of such statute or rules and regulations, and the facts alleged to demonstrate that such violation proximately caused actual injury to the plaintiff. In any action exempted under subsection (b) (2), in addition to the foregoing pleading requirements, the complaint initiating such action shall state with particularity facts sufficient to support a reasonable inference that the individual requirements in subsection (b)(2) have been satisfied.

(e) In any action exempted under subsection (b), all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss unless the court finds upon the motion of any party that discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

(f) The provisions of this section shall apply to all covered claims filed after the effective date of this act, regardless of when the claim arose.

Sec. 2. The provisions of this act are severable. If any portion of this act is declared unconstitutional or the application of any part of this act to any person or circumstance is held invalid, the remaining portions of the act and their applicability to any person or circumstance shall remain valid and enforceable.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 15, 2005.

Published in the *Kansas Register* April 21, 2005.
