

**Senator Howard A. Stephenson** proposes the following substitute bill:

**PROHIBITION OF OBESITY LAWSUITS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Howard A. Stephenson**

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**LONG TITLE**

**General Description:**

This bill enacts the Commonsense Consumption Act.

**Highlighted Provisions:**

This bill:

- ▶ provides manufacturers, packers, distributors, carriers, holders, sellers, marketers, and advertisers of food with immunity from civil liability for obesity § [;] AND § weight gain § [;

~~and related health concerns] CLAIMS § ;~~

- ▶ allows an exception for food that does not meet state or federal standards; and
- ▶ requires that any actions commenced plead with particularity the injury and the proximate cause.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**78-27d-101**, Utah Code Annotated 1953

**78-27d-102**, Utah Code Annotated 1953

**78-27d-103**, Utah Code Annotated 1953



- 26 **78-27d-104**, Utah Code Annotated 1953
- 27 **78-27d-105**, Utah Code Annotated 1953
- 28 **78-27d-106**, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section **78-27d-101** is enacted to read:

31 **78-27d-101. Title.**

32 This chapter is known as the "Commonsense Consumption Act."

33 Section 2. Section **78-27d-102** is enacted to read:

34 **78-27d-102. Definitions.**

35 As used in this chapter:

36 (1) "Claim" means any assertion by or on behalf of a natural person, as well as any  
 37 derivative claim arising from it, and asserted by or on behalf of any other person.

38 (2) "Food" § [means] § :

39 (a) ~~§ [articles used for internal consumption for man or other animals]~~ **MEANS ANY RAW,**  
 40 **COOKED, OR PROCESSED EDIBLE SUBSTANCE, BEVERAGE, OR INGREDIENT USED OR INTENDED**  
 40a **FOR USE OR FOR SALE IN WHOLE OR IN PART FOR HUMAN CONSUMPTION § :**

40b (b) ~~§ [chewing gum; and]~~ **DOES NOT INCLUDE:**

41 (i) **TOBACCO PRODUCTS;**

41a (ii) **ALCOHOL PRODUCTS;**

41b (iii) **VITAMINS OR DIETARY SUPPLEMENTS;**

41c (iv) **ILLEGAL DRUGS; OR**

41d (v) **PRESCRIPTION OR OVER-THE-COUNTER DRUGS.**

41e ~~[(c) articles used for components of Subsection (a) or (b):]~~ §

42 (3) "Knowing and willful violation" means that the conduct constituting the violation  
 43 was:

44 (a) committed with the intent to deceive or injure consumers or with actual knowledge  
 45 that the conduct was injurious to consumers; and

46 (b) not required by regulation, order, rule, ordinance, or any statute administered by a  
 47 federal, state, or local government agency.

48 (4) "Condition resulting from long term consumption of food" means the cumulative  
 49 effect of consumption of food, which includes weight gain, obesity, or other generally known  
 50 health conditions allegedly caused by or likely to result from the consumption of food.

51 Section 3. Section **78-27d-103** is enacted to read:

52 **78-27d-103. Prevention of § [frivolous] UNFOUNDED § lawsuits -- Exemption.**

53 (1) Except as provided in Subsection (2), a manufacturer, packer, distributor, carrier,  
 54 holder, seller, marketer, advertiser of a food, or an association of one or more such entities,  
 55 may not be subject to civil liability arising under any state statute, rule, public policy, court or  
 56 rule.

57 administrative decision, municipal ordinance, or other action having the effect of law, for any  
 58 claim § [for a condition] OF OBESITY OR WEIGHT GAIN § resulting from § [long term] THE §  
 58a consumption of food.

59 (2) Subsection (1) may not apply where the claim of § [conditions] OBESITY OR WEIGHT  
 59a GAIN [resulting from  
 60 long-term consumption of food] § is based on:

61 (a) a material violation of an adulteration or misbranding requirement prescribed by  
 62 state or federal statute, rule, regulation, or ordinance and the claimed injury was proximately  
 63 caused by the violation; or

64 (b) any other material violation of federal or state law applicable to the manufacturing,  
 65 marketing, distribution, advertising, labeling, or sale of food, provided that the violation is  
 66 knowing and willful, and the claimed injury was proximately caused by the violation.

67 Section 4. Section **78-27d-104** is enacted to read:

68 **78-27d-104. Pleading requirements.**

69 (1) In any action commenced under the provisions of Subsection 78-27d-103(2), the  
 70 complaint or petition shall state with particularity the following:

71 (a) the statute, rule, regulation, ordinance, or other law that was allegedly violated;

72 (b) the facts that are alleged to constitute a material violation of the statute, rule,  
 73 regulation, ordinance, or other law; and

74 (c) the facts alleged to demonstrate that the violation proximately caused actual injury  
 75 to the plaintiff.

76 (2) The complaint or petition shall also state with particularity facts sufficient to  
 77 support a reasonable inference that the violation was with intent to deceive or injure consumers  
 78 or with the actual knowledge that the violation was injurious to consumers.

79 Section 5. Section **78-27d-105** is enacted to read:

80 **78-27d-105. Stay pending motion to dismiss.**

81 (1) In any action commenced under the provisions of Subsection 78-27d-103(2), all  
 82 discovery and other proceedings shall be stayed during the pendency of any motion to dismiss  
 83 unless the court finds upon the motion of any party that particularized discovery is necessary to  
 84 preserve evidence or to prevent undue prejudice to a party.

85 (2) During the pendency of any stay of discovery pursuant to this section, unless  
 86 otherwise ordered by the court, any party to the action with actual notice of the allegations  
 87 contained in the complaint shall treat all documents, data compilations, and tangible objects

88 that are in the custody or control of the party and are relevant to the allegations, as if they were  
89 the subject of a continuing request for production from an opposing party under Rule 34,  
90 URCP.

91 Section 6. Section **78-27d-106** is enacted to read:

92 **78-27d-106. Applicability.**

93 The provisions of this chapter apply to all covered claims pending on May 3, 2004, and  
94 all claims filed after that date, regardless of when the claim arose.

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**Legislative Review Note**  
**as of 2-11-04 6:00 PM**

The Utah Constitution, Article I, Section 11, provides every person with open access to the courts for an injury done to his person, property, or reputation. This legislation exempts from civil liability any manufacturer, packer, distributor, carrier, holder, seller, marketer, or advertiser of food in an action brought by a person claiming to have suffered an injury such as weight gain, obesity, or other generally known condition allegedly caused by or likely to result from the long-term consumption of food.

If a court determined that a person's health condition could be attributed to the long-term consumption of food served by a commercial establishment, and that the person's health condition was an "injury," then this legislation might violate the Utah Supreme Court's interpretation of Article I, Section 11, because it would prevent an injured person from open access to the courts.

**Office of Legislative Research and General Counsel**

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**Fiscal Note****Prohibition of Obesity Lawsuits***17-Feb-04***Bill Number SB0214s01***10:53 AM*

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**State Impact**

No fiscal impact for implementation. However, this bill has a Legislative Review Note. There may be additional costs to the state if there is a challenge in the courts.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**