

PROHIBITION OF OBESITY LAWSUITS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Howard A. Stephenson

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 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

78-27d-104, Utah Code Annotated 1953

78-27d-105, Utah Code Annotated 1953

78-27d-106, Utah Code Annotated 1953

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

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

78-27d-101. Title.

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

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

78-27d-102. Definitions.

As used in this chapter:

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

(2) "Food":

(a) means any raw, cooked, or processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption;

(b) does not include:

(i) tobacco products;

(ii) alcohol products;

(iii) vitamins or dietary supplements;

(iv) illegal drugs; or

(v) prescription or over-the-counter drugs.

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

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

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

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

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

78-27d-103. Prevention of unfounded lawsuits -- Exemption.

(1) Except as provided in Subsection (2), a manufacturer, packer, distributor, carrier, holder, seller, marketer, advertiser of a food, or an association of one or more such entities, may not be subject to civil liability arising under any state statute, rule, public policy, court or administrative decision, municipal ordinance, or other action having the effect of law, for any claim of obesity or weight gain resulting from the consumption of food.

(2) Subsection (1) may not apply where the claim of obesity or weight gain is based on:

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

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

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

78-27d-104. Pleading requirements.

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

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

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

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

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

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

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

(1) In any action commenced under the provisions of Subsection 78-27d-103(2), 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 particularized discovery is necessary to preserve evidence or to prevent undue prejudice to a party.

(2) During the pendency of any stay of discovery pursuant to this section, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations, and tangible objects that are in the custody or control of the party and are relevant to the allegations, as if they were the subject of a continuing request for production from an opposing party under Rule 34, URCP.

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

78-27d-106. Applicability.

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