
SUBSTITUTE SENATE BILL 6601

State of Washington

58th Legislature

2004 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Brandland, T. Sheldon, Stevens, Roach, Murray and Oke)

READ FIRST TIME 02/09/04.

1 AN ACT Relating to obesity lawsuits; adding a new section to
2 chapter 7.72 RCW; and creating new sections.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature intends by this act to
5 prevent frivolous lawsuits against manufacturers, packers,
6 distributors, carriers, holders, sellers, marketers, or advertisers of
7 food products that comply with applicable statutory and regulatory
8 requirements.

9 NEW SECTION. **Sec. 2.** A new section is added to chapter 7.72 RCW
10 to read as follows:

11 (1) Except as exempted in subsection (2) of this section, a
12 manufacturer, packer, distributor, carrier, holder, seller, marketer,
13 or advertiser of a food, or an association of one or more such
14 entities, shall not be subject to civil liability arising under any law
15 of this state, including all statutes, regulations, rules, common law,
16 public policies, court or administrative decisions or decrees, or other
17 state action having the effect of law, for any claim arising out of

1 weight gain, obesity, a health condition associated with weight gain or
2 obesity, or other generally known condition allegedly caused by or
3 allegedly likely to result from long-term consumption of food.

4 (2) Subsection (1) of this section does not preclude civil
5 liability where the claim of weight gain, obesity, health condition
6 associated with weight gain or obesity, or other generally known
7 condition allegedly caused by or allegedly likely to result from
8 long-term consumption of food is based on: (a) A material violation of
9 an adulteration or misbranding requirement prescribed by statute or
10 rule of the state of Washington or the United States and the claimed
11 injury was proximately caused by such violation; or (b) any other
12 material violation of federal or state law applicable to the
13 manufacturing, marketing, distribution, advertising, labeling, or sale
14 of food, provided that such violation is knowing and willful, and the
15 claimed injury was proximately caused by such violation.

16 (3) In any action exempted under subsection (2)(a) of this section,
17 the complaint initiating such action shall state with particularity the
18 following: The statute, regulation, or other law of the state of
19 Washington or of the United States that was allegedly violated; the
20 facts that are alleged to constitute a material violation of such
21 statute or regulation; and the facts alleged to demonstrate that such
22 violation proximately caused actual injury to the plaintiff. In any
23 action exempted under subsection (2)(b) of this section, in addition to
24 the foregoing pleading requirements, the complaint initiating such
25 action shall state with particularity facts sufficient to support a
26 reasonable inference that the violation was with the intent to deceive
27 or injure consumers or with the actual knowledge that such violation
28 was injurious to consumers. For purposes of applying this section, the
29 pleading requirements of this subsection are hereby deemed part of the
30 substantive law of the state of Washington and not merely in the nature
31 of procedural provisions.

32 (4) In any action exempted under subsection (2) of this section,
33 all discovery and other proceedings shall be stayed during the pendency
34 of any motion to dismiss unless the court finds upon the motion of any
35 party that particularized discovery is necessary to preserve evidence
36 or to prevent undue prejudice to that party. During the pendency of
37 any stay of discovery pursuant to this subsection, unless otherwise
38 ordered by the court, any party to the action with actual notice of the

1 allegations contained in the complaint shall treat all documents, data
2 compilations including electronically recorded or stored data, and
3 tangible objects that are in the custody or control of such party and
4 that are relevant to the allegations, as if they were the subject of a
5 continuing request for production of documents from an opposing party
6 under Washington court rules.

7 (5) The provisions of this section shall apply to all covered
8 claims pending on the effective date of this act and all claims filed
9 thereafter, regardless of when the claim arose.

10 (6) For purposes of this section:

11 (a) "Claim" means any claim by or on behalf of a natural person, as
12 well as any derivative or other claim arising therefrom asserted by or
13 on behalf of any individual, corporation, company, association, firm,
14 partnership, society, joint stock company, or any other entity,
15 including any governmental entity or private attorney general.

16 (b) "Food" means "food" as defined in section 201(f) of the federal
17 food, drug, and cosmetic act (21 U.S.C. 321(f)).

18 (c) "Generally known condition allegedly caused by or allegedly
19 likely to result from long-term consumption" means a condition
20 generally known to result or to likely result from the cumulative
21 effect of consumption, and not from a single instance of consumption.

22 (d) "Knowing and willful violation" means that: (i) The conduct
23 constituting the violation was committed with the intent to deceive or
24 injure consumers or with actual knowledge that such conduct was
25 injurious to consumers; and (ii) the conduct constituting the violation
26 was not required by regulations, orders, rules, or other pronouncement
27 of, or any statute administered by, a federal, state, or local
28 government agency.

29 NEW SECTION. **Sec. 3.** This act may be cited as the commonsense
30 consumption act.

--- END ---