

HOUSE BILL No. 2233

By Committee on Federal and State Affairs

2-1

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

11

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

13 Section 1. As used in this section:

14 (1) "Claim" means any claim by or on behalf of a natural person, as
15 well as any derivative or other claim arising therefrom asserted by or on
16 behalf of any other person.

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

21 (3) "Knowing or willful violation of federal or state law" means that:

22 (A) The conduct constituting the violation was committed with the
23 intent to deceive or injure consumers or with actual knowledge that such
24 conduct was injurious to consumers; and

25 (B) the conduct constituting the violation was not required by rules
26 and regulations, orders or other pronouncements of, or statutes admin-
27 istered by, a federal, state or local government agency.

28 (4) "Other person" means any individual, corporation, company, as-
29 sociation, firm, partnership, society, joint-stock company or any other en-
30 tity, including any governmental entity or the attorney general.

31 (b) Except as provided in subsection (c), a manufacturer, packer, dis-
32 tributor, carrier, holder, seller, marketer, retailer or advertiser of a food,
33 as defined in the federal food, drug, and cosmetic act (21 U.S.C. 321(f)),
34 as amended, but shall not include alcoholic beverages, or an association
35 of one or more such entities shall not be subject to civil liability under
36 any state law, including all statutes, rules and regulations, common law,
37 public policies, court or administrative decisions or decrees, or other state
38 actions having the effect of law, for any claim arising out of weight gain,
39 obesity or a health condition associated with weight gain or obesity.

40 (c) The provisions of subsection (b) shall not preclude civil liability
41 where the claim of weight gain, obesity, health condition associated with
42 weight gain or obesity, or other generally known condition allegedly
43 caused by or allegedly likely to result from long-term consumption of

1 food is based on:

2 (1) A material violation of an adulteration or misbranding require-
3 ment prescribed by statute or rules and regulations of the state of Kansas
4 or the United States and the claimed injury was proximately caused by
5 such violation; or

6 (2) any other material violation of federal or state law applicable to
7 the manufacturing, marketing, distribution, advertising, labeling or sale
8 of food, provided that such violation is knowing and willful, and the
9 claimed injury was proximately caused by such violation. The provisions
10 of subsection (c) shall not preclude civil liability for breach of express
11 contract or express warranty in connection with the purchase of food.

12 (d) In any action exempted under subsection (c)(1) or (c)(2), the pe-
13 tition initiating such action shall state with particularity the following: The
14 statute, rules and regulations, or other state or federal law that was alleg-
15 edly violated, the facts that are alleged to constitute a material violation
16 of such statute or rules and regulations, and the facts alleged to demon-
17 strate that such violation proximately caused actual injury to the plaintiff.
18 In any action exempted under subsection (c) (2), the petition initiating
19 such action shall also state with particularity facts sufficient to support a
20 reasonable inference that the violation occurred with the intent to deceive
21 or injure consumers or with the actual knowledge that such violation was
22 injurious to consumers. For purposes of applying this section the pleading
23 requirements under this section are deemed part of state substantive law
24 and not merely procedural provisions.

25 (e) In any action exempted under subsection (c), all discovery and
26 other proceedings shall be stayed during the pendency of any motion to
27 dismiss unless the court finds upon the motion of any party that partic-
28 ularized discovery is necessary to preserve evidence, resolve the motion
29 to dismiss or to prevent undue prejudice to that party. During the pen-
30 dency of any stay of discovery under this subsection and unless otherwise
31 ordered by the court, any party to the action with actual notice of the
32 allegations contained in the petition shall treat all documents, data com-
33 pilations, including electronically recorded or stored data, and tangible
34 objects that are in the custody or control of such party that are relevant
35 to the allegations as if they were the subject of a continuing request for
36 production of documents from an opposing party under the code of civil
37 procedure.

38 (f) The provisions of this section shall apply to all covered claims
39 pending on or filed after July 1, 2005, regardless of when the claim arose.

40 Sec. 2. This act shall take effect and be in force from and after its
41 publication in the statute book.