

HOUSE BILL REPORT

SSB 6601

As Passed House - Amended:

March 4, 2004

Title: An act relating to obesity lawsuits.

Brief Description: Limiting obesity lawsuits.

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

Brief History:

Committee Activity:

Judiciary: 2/26/04, 2/27/04 [DPA].

Floor Activity:

Passed House - Amended: 3/4/04, 95-1.

Brief Summary of Substitute Bill (As Amended by House)

- Bars lawsuits arising out of claims related to weight gain, obesity, or other generally known conditions caused by long-term consumption of food.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 5 members: Representatives Lantz, Chair; Moeller, Vice Chair; Flannigan, Kirby and Lovick.

Minority Report: Do not pass. Signed by 4 members: Representatives Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell and Newhouse.

Staff: Sarah Shirey (786-5793); Trudes Hutcheson (786-7384).

Background:

Obesity is defined by the U.S. Department of Health and Human Services (HHS) as an excessively high ratio of body fat to lean body mass. The HHS currently estimates that 59 million Americans, or 31 percent of adults, are classified as obese. Washington is estimated to have an obesity rate of 19 percent among its adult population.

Since 2001, several legal actions have been filed against the fast food industry for claims relating to obesity. These claims allege that deceptive practices in the advertising, processing

and sale of fast foods have misled consumers and contributed in large part to their weight gain or obesity. To date, all of these cases have been dismissed.

The Food and Drug Administration is responsible for assuring that foods sold in the United States are safe, wholesome and properly labeled. The Food, Drug, and Cosmetic Act and The Fair Packaging and Labeling Act are the federal laws governing food products. In addition, The Nutrition Labeling and Education Act was adopted in 1990. This act requires all retail food products have labels explaining content and nutrition, and regulates the terms used on food packages. Taken together, these acts preempt state regulation of all foods sold in interstate commerce.

Under The Food, Drug, and Cosmetic Act, "food" is defined as articles used for food or drink for man or animals, chewing gum, and articles used for components of food.

Two bills are currently pending before Congress that would ban any suit in federal or state court for damages or injunctive relief based on claims of injury resulting from a person's weight gain, obesity, or any health condition that is related to weight gain or obesity.

Summary of Amended Bill:

Manufacturers, packers, distributors, carriers, holders, sellers, or marketers of food or non-alcoholic beverage products intended for human consumption, or any trade association of such entities, are exempt from liability for any action brought by a private party that is premised upon the individual's weight gain, obesity, or a related health condition resulting from the individual's long-term purchase or consumption of a food.

Generally known conditions caused by the "long-term consumption of food" relates to the effect of cumulative, long-term consumption, as opposed to a single instance of consumption.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The striking amendment contains important changes that narrow the scope of immunity. Namely, the striker allows the Attorney General and other state and local government entities to file suit on behalf of citizens to protect them from anti-consumer practices. This legislation should not take away this public right of action based on information not known today.

Testimony Against: There is model legislation being proposed across the nation to create immunity for restaurants from obesity related claims in a uniform way. The striking amendment does not include many of the important provisions of the model national legislation. Namely, the striker does not bar third-party suits which often are the suits that

become the most out of control. It is better to have the striker pass out of committee than no bill at all, so that this discussion may continue on the House floor.

Persons Testifying: (In support) Stan Bowman, Washington Restaurant Association.

(Opposed) Larry Shannon, Washington State Trial Lawyers Association.

Persons Signed In To Testify But Not Testifying: None.