
Judiciary Committee

SSB 6601

Title: An act relating to obesity lawsuits.

Brief Description: Limiting obesity lawsuits.

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

Brief Summary of Substitute Bill

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| <ul style="list-style-type: none">• Bars lawsuits arising out of claims related to weight gain, obesity, or other generally known conditions caused by long-term consumption of food. |
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Hearing Date: 2/26/04

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. 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 that 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 now 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 Bill:

Manufacturers, packers, distributors, carriers, holders, sellers, marketers, or advertisers of food, or trade associations of such entities are exempt from liability for any future or pending claims, including claims for any governmental entity, arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or any other generally known condition allegedly caused by long-term consumption of food.

"Food" is defined by reference to The Food, Drug, and Cosmetic Act (which includes articles used for food or drink for man or animals, chewing gum, and articles used for components of food).

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

Civil lawsuits based on a material violation of an adulteration or misbranding regulation, or any other material violation of a federal or state law applicable to manufacturing, marketing, distribution, advertising, labeling, or sale of food, is not precluded so long as there is sufficient evidence to show that the violation was knowing and willful. This means the violation must have been committed with the intent to injure consumers or with actual knowledge that such conduct was injurious to consumers.

In any action that is not precluded, the complaint initiating the action must state with particularity the rule or law allegedly violated, the facts constituting a material violation of such rule or law, and the facts demonstrating the violation's proximate cause of the plaintiff's actual injury. In addition, the complaint must state with particularity facts sufficient to support a reasonable inference that the violation was with the intent to deceive or injure consumers or with the actual knowledge that such violation was injurious to consumers. All discovery and other proceedings are stayed during the pendency of any motion to dismiss.

Appropriation: None.

Fiscal Note: Not requested.

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