



Aida S. Montano

Bill Analysis
Legislative Service Commission

H.B. 350

125th General Assembly
(As Introduced)

Reps. Gibbs, Wagner, Setzer, Seitz, Husted, Williams, Hollister, Young, C. Evans, Webster, Hagan, Martin, Aslanides, McGregor, Collier, Allen, Raussen, Faber, Schaffer, Seaver

BILL SUMMARY

- Precludes any manufacturer or seller of a qualified product (generally, food or drink) and any trade association from being liable for injury, death, or loss to person or property for damages, from not being subject to an action for declaratory judgment, injunctive, or declaratory relief, and from being responsible for restitution or other relief arising out of, resulting from, or related to an injury from cumulative consumption of a qualified product, weight gain or obesity or any health condition that is related to weight gain, obesity, or cumulative consumption.
- Permits a party that prevails on a motion to dismiss an action described in the preceding dot point to recover reasonable attorney's fees and costs that the party incurred in connection with the motion to dismiss.

CONTENT AND OPERATION

Operation of the bill

The bill precludes any manufacturer¹ or seller² of a qualified product³ and any trade association⁴ from being liable for injury, death, or loss to person or

1 "Manufacturer" means a person engaged in a business to design, formulate, produce, create, make, construct, assemble, or rebuild a product or a component of a product (R.C. 2305.36(A)(4), by reference to R.C. 2307.71(I)--not in the bill).

2 "Seller" means, with respect to a qualified product, a person lawfully engaged in the business of marketing, distributing, advertising, or selling the product. "Engaged in the business" means a person who manufactures, markets, distributes, advertises, or sells a qualified product in the regular course of the person's trade or business. (R.C. 2305.36(A)(3) and (6).)

property for damages, from *not* being subject to an action for declaratory judgment, injunctive, or declaratory relief (see **COMMENT 1**), and from being responsible for restitution or other relief arising out of, resulting from, or related to an injury from cumulative consumption⁵ of a qualified product, weight gain or obesity or any health condition that is related to weight gain, obesity, or cumulative consumption. (R.C. 2305.36(B).)

The bill permits a party that prevails on a motion to dismiss an action described in the preceding paragraph to recover reasonable attorney's fees and costs that the party incurred in connection with the motion to dismiss (R.C. 2305.36(C)).

See **COMMENT 2**.

COMMENT

1. R.C. 2305.36(B) in the bill states in relevant part that "[n]o manufacturer or seller of a qualified product and no trade association is liable for injury, death, or loss to person or property for damages, shall *not* be subject to an action for declaratory judgment, injunctive, or declaratory relief, and is responsible for restitution or other relief . . ." (emphasis added). It appears that the use of a double negative in the terms emphasized in this provision is an error.

2. The bill defines "claim" as including any claim asserted by or on behalf of an individual whose actual weight gain, obesity, or health condition is the basis of the claim, any individual other than the individual whose actual weight gain, obesity, or health condition is the basis of the claim, or any derivative claim made by or on behalf of any individual or any representative, spouse, parent, child, or other relative of any individual (R.C. 2305.36(A)(1)). However, the operative

3 "*Qualified product*" means all of the following: (a) articles used for food or drink for a human being or other animal, (b) chewing gum, and (c) articles used for components of any article listed in (a) or (b), above (R.C. 2305.36(A)(5)).

4 "*Trade association*" means any association or business organization that is not operated for profit and two or more members of the trade association are manufacturers, marketers, distributors, advertisers, or sellers of a qualified product (R.C. 2305.36(A)(7)).

5 "*Cumulative consumption*" means, with respect to a health condition, any health condition, including, but not limited to, increased cholesterol, heart disease, or high blood pressure, that increases in severity in whole or in part because of the successive consumption of a qualified product (R.C. 2305.36(A)(2)).

provisions in the bill and the definitions of the terms in the bill other than "claim" do not use the term "claim."

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	12-09-03	p. 1260

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